Citizenship and Immigration Canada | Citoyenneté et Immigration Canada

Pre-Removal Risk Assessment Unit
6080 McLeod Road,
NIAGARA FALLS, Ontario
L2G 7T4

25 July 2008

Client ID: **5359-5558; 5359-5562; 5359-5563**

HINZMAN, Jeremy Dean
NGUYEN, Nga Thi
NGUYEN HINZMAN, Liam Liem

- To be delivered by hand -

PRE-REMOVAL RISK ASSESSMENT (PRRA) RESULTS

Your PRRA application was reviewed carefully to determine whether you would be in danger of torture, be at risk of persecution, or face a risk to your life or a risk of cruel and unusual treatment or punishment if removed to your country of nationality or habitual residence.

Your PRRA application was **rejected** on July 25, 2008 for the following reason(s):

☒It has been determined that you would not be subject to risk of persecution, danger of torture, risk to life or risk of cruel and unusual treatment or punishment if returned to your country of nationality or habitual residence.

☐You withdrew your PRRA application in writing on DD MM YYYY

☐Your PRRA application was declared abandoned because you did not report to a hearing on DD MM YYYY, this after failing to report to a hearing on DD MM YYYY

☐Your PRRA application was declared abandoned because you departed from Canada.

The removal order against you may now be enforced. The Canada Border Services Agency will provide you with instructions on how to leave Canada and confirm your departure.

If you do not leave Canada as instructed, the Canada Border Services Agency will make arrangements to enforce your removal from Canada.

Please be advised that if the removal order against you is or has become a deportation order, you must obtain written authorisation from a Canadian immigration officer if you wish to return to Canada at any time in the future.

If you would like to receive a copy of the notes of the PRRA officer that reviewed your application, you may request the notes in person, or by writing to the PRRA office where your application was processed (see address at the top of the page).

S. Parr
PRRA Officer

cc. file; Geraldine Sadoway & Neil Wilson, Parkdale Community Legal Services, 126 Queen Street West, Toronto, Ontario, M6K 1L3.
Letter Issued at: NIAGARA FALLS CBSA OFFICE

PRE-REMOVAL RISK ASSESSMENT (PRRA)

NAME(S): HINZMAN, Jeremy Dean
NGUYEN, Nga Thi
NGUYEN HINZMAN, Liam Liem

FILE/ID: 5359-5558; 5359-5562; 5359-5563

REPRESENTATION: The applicants were assisted in the preparation of their PRRA application and submissions by Geraldine Sadoway & Neil Wilson, Parkdale Community Legal Services, 1266 Queen Street West, Toronto, Ontario, M6K 1L3.

COUNTRY OF NATIONALITY: United States of America
COUNTRY OF FORMER HABITUAL RESIDENCE: United States of America

1. Applicant excluded from applying for protection under PRRA?

Section 112(1) Immigration and Refugee Protection Act (IRPA)	Yes	No
Applicant is described in subsection 115(1)	☐	☒
Applicant is named in a certificate described in subsection 77(1) - ***that has been determined to be reasonable by the Federal Court***	☐	☒
Section 112(2) IRPA	**Yes**	**No**
(a) applicant is the subject of an authority to proceed issued under section 15 of the *Extradition Act*	☐	☒
(b) applicant has made a claim to refugee protection that has been determined under paragraph 101(1)(c) to be ineligible - ***safe third country provisions***	☐	☒
(c) applicant has not left Canada since the application for protection was rejected and the prescribed period has not expired - ***INOPERATIVE***		
(d) applicant left Canada since the removal order came into force, however less than six months have passed since they left Canada after their claim to refugee protection (*IRB*)was determined to be ineligible, abandoned, withdrawn or rejected or their application for protection (*PRRA*)was rejected	☐	☒

2. Applicant described in 112(3)?

Section 112(3), IRPA	Yes	No
(a) applicant is determined to be inadmissible on grounds of security (*34(1)*), violating human or international rights (*35(1)*)or organised criminality (*37(1)*)	☐	☒
(b) applicant is determined to be inadmissible on grounds of serious criminality with respect to:		
♦ A conviction in Canada punished by a term of imprisonment of at least two years (*36(1)(a)*), or	☐	☒

♦ A conviction outside Canada for an offence that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years (*36(1)(b)*)	☐	☒
(c) applicant made a claim to refugee protection that was rejected on the basis of section F of Article 1 of the Refugee Convention	☐	☒
(d) applicant is named in a certificate referred to in subsection 77(1) - ***awaiting determination by the Federal Court***	☐	☒

3. Risks Identified by the Applicant

The applicants consist of Jeremy Dean HINZMAN (the principal applicant), Nga Thi NGUYEN (the female applicant), and Liam Liem NGUYEN HINZMAN (the minor applicant).

In an affidavit dated 31 January 2008, the principal applicant states: *"I came to Canada to claim refugee status, fearing that I would be persecuted for my moral and religious beliefs against war. My refugee claim was unsuccessful, as were judicial review applications to the Federal Court, and Federal Court of Appeal. My application for leave to appeal to the Supreme Court of Canada was denied. I remain opposed to the occupation of Iraq, and to war in general. I now consider myself to be a pacifist, and against all participation in war. I still fear that if I am returned to my home country that I will be persecuted for my moral and religious beliefs. Because I have already been denied conscientious objectors status, I would be required to take part in any offensive operation that my command deemed justified. I believe that even if I were required to participate in a non combatant role, that I would be materially supporting a war that is both illegal and causing systematic abuses of international humanitarian law. This would be a violation of my conscience. Since my moral and religious beliefs were previously given no credence, I am certain they would not be considered if returned to the U.S."*

4. This Section Reserved for Failed Claimants and failed PRRA Applicants

Previous protection decision(s)	Yes	No	Date of last decision
Applicant has made a claim for refugee protection that was rejected by the IRB?	☒	☐	16 March 2005
Applicant has made a previous application for protection under PRRA that has been rejected?	☐	☒	

New evidence (Section 113(a) IRPA)?	Yes	No
♦ Evidence arose after the rejection, or	☒	☐
♦ Evidence was not reasonably available, or	☐	☐
♦ The applicant could not reasonably have been expected in the circumstances to have presented the evidence, at the time of the rejection	☐	☐
If "No" to all of the above, provide explanation below.		
♦ Is there new evidence?	☒	☐
If no new evidence, provide any relevant information on country conditions below		

Section 113(a) of the *Immigration and Refugee Protection Act* (IRPA) states that:

> ***an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have been presented, at the time of the rejection;***[1]

Section 161(2) of the Immigration and Refugee Protection Regulations (IRPA Regulations) states:

> ***A person who makes written submissions must identify the evidence presented that meets the requirements of paragraph 113(a) of the Act and indicate how that evidence relates to them.***[2]

The applicants have made extensive submissions in support of their PRRA and Humanitarian and Compassionate (H&C) applications. I was also the decision-maker for the applicants' H&C application. To the extent that the H&C submissions pertain to the applicants' identified risks, they have been considered in this decision. However, the H&C submissions that do not pertain to the applicants' risks have not been considered. As the Federal Court in *Kim*[3] stated that: "*I find that PRRA officers need not consider humanitarian and compassionate factors in making their decisions. There is no discretion afforded to a PRRA officer in making a risk assessment. Either the officer is satisfied that the risk factors alleged exist and are sufficiently serious to grant protection, or the officer is not satisfied. The PRRA inquiry and decision-making process does not take into account factors other than risk.*"

5. Common Considerations

Common Considerations Applicable to All Protection Grounds	Yes	No
Nature of the Risk		
♦ The risk identified by applicant is among those described in sections 96 and 97 of the Immigration and Refugee Protection Act.	☒	☐
♦ The Risk is personal, or ♦ Other individuals in a similar situation share the same risk. *If "yes" in either case, then mark "yes". If "no" in both, mark "no"*	☒	☐
♦ The risk is objectively identifiable.	☒	☐
State Protection		
♦ The applicant is unable or, because of the risk alleged, unwilling to avail themself of state protection	☒	☐
Internal Flight Alternative/Country or countries of nationality or habitual residence		
♦ The risk is faced by the applicant in every part of the country or countries of nationality or habitual residence.	☒	☐

[1] *Immigration and Refugee Protection Act*, S.O. 2001, c.27.
[2] Immigration and Refugee Protection Regulations, s. 161(2).
[3] *Kim v. Canada (Minister of Citizenship and Immigration)* 2005 FC 437 at para. 70.

Law of General Application		
♦ Penalty unlawfully imposed (*not inherent or incidental to lawful sanctions*), or ♦ Penalty imposed in disregard of accepted international standards *If "yes" in either case, then mark "yes", If "no" in both, mark "no"*	☒	☐

Assessment of common considerations
♦ If "Yes" to **all** common considerations, continue assessment under "Assessment of Risk"
♦ If "No" to **one or more** of the common considerations, provide explanation below

The Table of Common Considerations has been completed from the perspective of the applicant. See section 6 for an assessment of risk.

6. Assessment of Risk

Background

The applicants arrived in Canada on 03 January 2004 and made claims for refugee protection based on a well-founded fear of persecution, a risk to life and risk of cruel and unusual treatment or punishment, and danger of torture on 16 February 2004. Their claims were heard at an oral hearing by a panel of the Immigration and Refugee Board (Refugee Protection Division) (RPD) on 06, 07 and 08 December 2004. The RPD rendered a negative decision on 16 March 2005. Leave to seek judicial review of the negative RPD decision was granted on 10 November 2005, and judicial review was subsequently denied by the Federal Court of Canada on 31 March 2006. The appeal of the Federal Court's decision was denied by the Federal Court of Appeal on 30 April 2007. Leave to appeal the Federal Court of Appeal's decision was denied by the Supreme Court of Canada on 15 November 2007. The applicants submitted an H&C application, which I denied on 22 July 2008.

Prior to entering Canada, the principal applicant was a Specialist in Alpha Company, 2nd Battalion, 504th Parachute Infantry Regiment of the 82nd Airborne Division of the U.S. Army. He has been Absent Without Leave (AWOL) since January 2004.

The principal applicant signed his enlistment documents with the U.S. Army on 27 November 2000 and travelled to Fort Benning, Georgia to begin basic training on 17 January 2001. He enlisted for a period of four years. He states that he enlisted in the Army because of the College funding that would be provided and to allow for better job prospects. His affidavit states that: "*During my basic training I began to awaken to the realization that the ultimate purpose of a soldier is to kill. I grew increasingly disturbed by the conditioning that I and my fellow recruits were subjected to.*" With respect to basic training, the RPD noted that: "*This was the beginning of the self-questioning process that led to his application for non-combatant status.*"

Following basic training, the principal applicant began three weeks of training at the Airborne School and received his parachutist badge on 15 June 2001. Approximately one month later, he received his posting orders for Fort Bragg. He became airborne qualified and continued to maintain his jump status. He was awarded his Expert Infantryman's Badge on 21 September

2001 and was promoted to Private First Class earlier than average as a result of his positive performance in the Army. The RPD noted that the principal applicant was one of 15% of 135 soldiers in his company selected for the pre-Ranger course.

The panel noted: "*Mr. Hinzman testified that he had been 'kind of living a double life'. On the one hand, he gave every outward indication to his peers and superiors that he was a 'soldier's soldier'. Inwardly, however, his concerns about killing were simmering. He self-questioned whether he should be proceeding to pre-Ranger school and Ranger school, which he described as a point of no return. After that there would be no turning back, and he would be living his life as a lie. At that time, he became aware that the army made provision for personnel to apply for conscientious objector status, in which the options of a complete discharge from the army or remaining in the army in a non-combatant role were available. He did not share his dilemma with anyone in the army because the work atmosphere was loaded with machismo. He did tell his wife, whom he had married on 12 January 2001, and his grandmother, who had been the primary maternal figure in his life.*"

Submissions indicate that the principal applicant's hesitations about the military became crystallized in an aversion to killing when he began reading books on Buddhism at Fort Bragg. The applicants began attending weekly meetings of the Religious Society of Friends (also known as Quakers) shortly after their wedding in 2001, when the female applicant was pregnant with their son, Liam (the minor applicant). His affidavit states: "*It became clear to me that I had made a profound mistake in joining the infantry. Consequently I took steps to change my situation while still honouring my commitment to the army.*"

The applicant applied for conscientious objector status in August 2002 and requested that he be granted non-combatant status. He states that he gave the application directly to his company commander; however, he was informed three months later that his application had never been received. He resubmitted an application for conscientious objector status on the eve of his battalion's deployment to Afghanistan. He states in his affidavit that the timing of his second application made: "*...it appear on record that I was desperate and opportunistic to avoid deployment, and not that I had deeply felt moral aversions to war.*"

In accordance with Army Regulation 600-43, a hearing was held in relation to the principal applicant's application. The hearing was conducted in Afghanistan on 02 April 2003. Submissions indicate that the principal applicant was assigned to menial kitchen duties while in Afghanistan. The investigating officer submitted his findings, conclusions and recommendations on 29 April 2003. As noted by the RPD, the report contained the following information:

- "*a) The applicant sincerely opposes war on philosophical, societal and intellectual levels.*
- *b) The applicant truly feels that he could not perform an offensive combat operation, but feels that he could perform defensive operations, and*
- *c) The applicant's wife had recently given birth to the applicant's son during the same time frame as when this unit found that they were headed to Afghanistan in support of OEF* [Operation Enduring Freedom]. *The applicant subsequently submitted the application for reclassification."*

The investigating officer concluded that the principal applicant was using the conscientious objector regulation to get out of the infantry and that his beliefs were not congruent with the definition of conscientious objector outlined in the regulation. Specifically, the report stated: "*He is not willing to conduct offensive operations as a combatant, but he is willing to conduct defensive operations as a combatant...He clearly stated 'it would be his duty to defend his airfield if it were attacked.' He is willing to defend a military installation as part of his duty. If he is willing to fight and defend against the enemy, he cannot choose when or where.*"

The principal applicant continued his assigned duties in Afghanistan and resumed his regular infantryman duties when he returned to Fort Bragg in July 2003. He did not exercise any of his appeal rights within the military chain of command or through the outside court system with respect to the negative conscientious objector decision. He states in his affidavit that: "*After my application was rejected I resigned myself to continue my term of service. Contrary to what my unit wanted to believe, my convictions regarding war did not suddenly evaporate.*"

The principal applicant received notification that his battalion was to be deployed to Iraq in mid-January 2004. He states in his affidavit that: "*I was aware that a soldier had a duty to refuse to follow a manifestly unlawful order. It is my view that since the military occupation of Iraq is without legal underpinnings, I would have been a criminal if I were to take part in it...I remain opposed to the occupation of Iraq, and to war in general. I now consider myself to be a pacifist, and against all participation in war.*"

The RPD noted that the principal applicant decided that he was not going to Iraq and only discussed his decision with his wife. They discussed two options: the first was to refuse the orders of his command and take the repercussions under the Uniform Code of Military Justice (UCMJ); the second option was to go AWOL to Canada. The applicants arrived in Canada on 03 January 2004.

The RPD found that the applicants were not Convention refugees or persons in need of protection. In part, the panel found that the court martial process that would apply to the principal applicant: "*...reveals a sophisticated military judicial system that respects the rights of the service person, guarantees appellate review and a limited access to the US Supreme Court.*" Further, the panel noted that the UCMJ is a law of general application and that the principal applicant had not discharged the onus of showing that the law was inherently, or for another reason, persecutory in relation to a Convention ground. The RPD continued its discussion of state protection by finding that the principal applicant had brought forward no evidence to support that he would not be afforded full protection of the law and that US military law has regulations in place to provide for conscientious objector status. The principal applicant availed himself of this process; however, the panel found that he did not provide sufficient evidence to establish that he was, or would be, denied due process or treated differently were he to return to US and be court-martialled. In conclusion, the panel stated: "*I find that Mr. Hinzman has not rebutted the presumption that the US system of military justice, including court-martialling, is fair and independent, nor has he established any persecutory intent toward him on the part of enforcement officials, prosecutors or judges within the US military justice system.*"

The RPD then considered whether the principal applicant met the definition of a refugee based on conscientious objection as described in the United Nations High Commissioner for Refugees (UNHCR) 'Handbook on Procedures and Criteria for Determining Refugee Status' (the 'Handbook'). The panel concluded that he was not a conscientious objector because he was not opposed to war in any form, or to the bearing of arms in all circumstances due to his genuine political, religious or moral convictions, or to valid reasons of conscience. The panel also noted his failure to pursue an appeal of his conscientious objector application, or to make a new application, or to make a request to delay the hearing until he returned to the United States. The RPD stated: "*As a result, punishment that he may receive under the UCMJ as a consequence of his decision to desert is not inherently persecutory.*"

The RPD also considered whether the principal applicant's deployment to Iraq was condemned by the international community as contrary to basic rules of human conduct, and therefore, any punishment for desertion should be regarded as persecution, as outlined in paragraph 171 of the Handbook. The panel concluded he had failed to established that he would have engaged, been associated with, or complicit in military action condemned by the international community. Specifically, they stated: "*He has not shown 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.*"

Overall, the RPD concluded that: "*I find, on a balance of probabilities, that, were Mr. Hinzman to return to the US, he would be court-martialled, found to have breached the article respecting desertion, would be sentenced to a term of one to five years imprisonment, would forfeit his pay and be dishonourably discharged. I find that Mr. Hinzman has failed to establish that a sentence for desertion that included imprisonment for a term of one to five years would be persecutory...Nor has Mr. Hinzman established that this would constitue a disproportionately severe punishment for desertion, such that it amounts to cruel and unusual punishment.*"

The applicants were granted leave to seek judicial review of the negative RPD decision to the Federal Court of Canada.[4] A central issue before the Court was the panel's interpretation and application of paragraph 171 of the Handbook. The applicants argued that the RPD erred in excluding evidence of the Iraq war's illegality as irrelevant to the refugee claims and that the panel erred in their finding that the applicants had not established that the violations of international humanitarian law are systemic. The Court rejected all of the applicants' claims and found the RPD's decision that the applicants had not rebutted the presumption of state protection was appropriate. The Court also certified the following question: "*When dealing with a refugee claim advanced by a mere foot soldier, is the question whether a given conflict may be unlawful in international law relevant to the determination which must be made by the Refugee Division under paragraph 171 of the UNHCR Handbook*"?

The Federal Court's decision was appealed to the Federal Court of Appeal.[5] The Court declined to answer the certified question as it found that the applicants failed to first satisfy the court that they sought, but were unable to obtain, protection from their home state, or that their home state

[4] *Hinzman v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 420.
[5] *Hinzman v. The Minister of Citizenship and Immigration*, 2007 FCA 171.

could not be expected to provide protection. "*In conclusion, the appellants have failed to satisfy the fundamental requirement in refugee law that claimants seek protection from their home state before going abroad to obtain protection through the refugee system. Several protective mechanisms are potentially available to the appellants in the United States. Because the appellants have not adequately attempted to access these protections, however, it is impossible for a Canadian court or tribunal to assess the availability of protection in the United States.*"[6]

With respect to the RPD's opinion that the principal applicant would be imprisoned for desertion if returned to the United States, the Federal Court of Appeal found that the panel's opinion could not be relied on. The Court found that the RPD failed to make reference to the critical statistic that most deserters have not been imprisoned, and therefore, the panel did not consider all of the important evidence. Statistics indicate that approximately 94% of deserters from the US Army have not faced prosecution and imprisonment, but have been released from the military with a less-than-honourable discharge. Leave to appeal the Federal Court of Appeal's decision was denied by the Supreme Court of Canada.

DELEGATED AUTHORITY

As a PRRA Officer, it is important to note that my delegated authority is limited to rendering a decision as to whether the applicants meet the definition of Convention refugees or persons in need of protection under sections 96 and 97 of the IRPA. I do not have the authority to make findings with respect to the legality of the war in Iraq or to comment on the foreign policy of the United States government.

I am aware that a motion was passed in the Canadian House of Commons on 03 June 2008 stating: "*The Committee* [The Standing Committee on Citizenship and Immigration] *recommends that the government immediately implement a program to allow conscientious objectors and their immediate family members (partners and dependents), who have refused or left military service related to a war not sanctioned by the United Nations and do not have a criminal record, to apply for permanent resident status and remain in Canada; and that the government should immediately cease any removal or deportation actions that may have already commenced against such individuals.*"[7] This motion was introduced by the New Democratic Party, an opposition political party in Canada. Although the motion was supported by all three opposition parties, it is not binding on the Canadian government. As of the date of this decision, the motion has not been adopted as law, or immigration policy, in Canada.

ANALYSIS

I have reviewed the RPD decision and reasons, the applicants' PRRA and H&C applications and submissions, the Federal Court and Federal Court of Appeal decisions, the applicants' Personal

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[6] *Ibid.* at para 62.

[7] Hansard Debates (Number 104), 39th Parliament, 2nd Session (paras. 1510-1515), <http://www2.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&Parl=39&Ses=2&DocId=3543213>; also see: Hansard Debates (Number 101), 39th Parliament, 2nd Session (paras. 1010-1310), 29 May 2008, <http://www2.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&Parl=39&Ses=2&DocId=3529225>.

Information Forms (PIFs), and country documentation, legislation and jurisprudence obtained through independent research. Risk by definition is forward-looking; as a result, I look to the most current, publicly available documentary evidence regarding country conditions and human rights in United States in order to make a determination regarding risk. Based on the evidence before me, the applicants have not met the burden of providing clear and convincing evidence that they are unable or unwilling to avail themselves of state protection in the United States.

The Federal Court in *Perez* stated that: "*It is well-established that a PRRA is not intended to be an appeal of a decision of the RPD. The decision of the RPD is to be considered as final with respect to the issue of protection under s. 96 or s. 97 of the IRPA, subject only to the possibility that new evidence demonstrates that the applicant would be exposed to a new, different or additional risk that could not have been contemplated at the time of the RPD decision.*"[8] While not bound by the RPD's decision, documentary evidence does not indicate a material change in country conditions such that the availability of state protection has deteriorated since the RPD or Federal Court of Appeal decision.

The risks put forward by the applicants are substantively the same as those that were heard and assessed by the RPD. However, the applicants' submissions include evidence that counsel states: "*...are the new, or reasonably not available, pieces of evidence relied upon in these submissions.*" In addition, counsel notes that: "*The point of a PRRA is not to re-litigate a negative decision of the IRB and/or negative decisions by the Federal Courts. However, this does not mean that the grounds for a PRRA cannot be the same as the grounds for the initial claim for refugee status.*" As the majority of evidence presented in the applicants' PRRA submissions post-date the RPD decision, and includes information that is significant to the applicants' identified risks,[9] it has been considered in this PRRA assessment.

For purposes of clarity, the following analysis has been divided into sections discussing two areas of Common Considerations applicable to both sections 96 and 97 of the IRPA: Law of General Application; and State Protection. However, as these considerations are necessarily related, some elements of the analysis overlap. As a result, the division of the analysis should be interpreted as being cumulative rather than mutually exclusive.

Law of General Application

The UCMJ includes several sections which are applicable to soldiers who are voluntarily absent from their military unit. Desertion, the most serious of these types of offences, is discussed in Article 85. Articles 86 and 87 outline the offence and punishment for being Absent Without Leave and Missing Movement respectively.[10] The punishment for these offences varies greatly, including punishment by death for desertion or attempt to desert in time of war. Although the principal applicant's affidavit indicates that the death penalty is the maximum punishment for desertion, his submissions specifically refer to being imprisoned for desertion and receiving a harsher sentence than other deserters in similar circumstances.

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[8] *Perez* v. *Minister of Citizenship and Immigration* (2006 FC 1380).
[9] See *Raza v. The Minister of Citizenship and Immigration*, 2006 FC 1385 at para. 22.
[10] Uniform Code of Military Justice, Articles 85-87.

The RPD found there to be less than a mere possibility that the principal applicant would receive the death penalty if returned to the United States. The panel noted: "*Counsel for the claimants acknowledges, in his reply to the Minister's submissions, that the claimants have not met the burden of establishing that the degree of the risk of the imposition of the death penalty on Mr. Hinzman for desertion is more likely than not.*" Submissions provided in support of the applicants' PRRA application have not countered this finding of the RPD and, for the reasons that follow, I find it objectively unreasonable to conclude that the principal applicant would face the death penalty if court-martialled upon his return to the United States. As directed by the Federal Court of Appeal, I am not relying on the RPD's finding with respect to the likely punishment that the principal applicant would receive if court-martialled upon his return to the United States.[11]

The Federal Court of Appeal referred to statistics presented by Crown counsel, for which the applicants' counsel could not provide contrary evidence: "*Statistics adduced by the Crown indicate that approximately 94% of deserters from the U.S. Army have not faced prosecution and imprisonment, but have merely been dealt with administratively by being released from the military with a less-than-honourable discharge. Arguably, the chance of receiving an administrative discharge will be even higher for those who attempt to negotiate a discharge before deserting their units.*"[12] In addition, I note that the last time the death penalty was imposed on a U.S. soldier was in 1945, and prior to that, was during the civil war.[13] The applicants have made submissions which argue that the principal applicant will receive a harsher prison sentence than other soldiers in similar circumstances because of the high-profile nature of his case and his public speeches in opposition to the war in Iraq.

Counsel's submissions argue that a law of general application can be applied in a persecutory manner: "*It is therefore necessary to show that Mr. Hinzman would, on a balance of probabilities, experience differential treatment by the United States Army, specifically because of his political opinion with respect to the war in Iraq and that the laws of general application to military personnel, under the UMCJ, namely the rules for court-martial proceedings or the punishments for AWOL or desertion contained therein, would be applied in a persecutory manner to Mr. Hinzman. It is submitted that if Mr. Hinzman is returned to the United States and subjected to court-martial proceedings, that he will be treated differently and more harshly because of his religious belief and political opinion and his decision to speak out publicly regarding this opinion.*"

In support of this assertion, submissions include affidavits and letters from U.S. soldiers who believe they were treated differently and subjected to harsher treatment because of their decisions to publicly voice their opinions with respect to the war in Iraq. These submissions indicate that the soldiers were convicted of varying offences, including unauthorized absence, desertion and missing movement. They received prison sentences ranging from 6 to 15 months, demotions,

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[11] *Supra*, note 5 at para. 61.
[12] *Ibid.* at para. 58.
[13] See: The New York Times, 'Pvt. Eddie Slovik's Remains Are Found in San Francisco (11 July 1987), <http://query.nytimes.com/gst/fullpage.html?res=9B0DE4DF153CF932A25754C0A961948260>; also see the applicants' RPD decision.

forfeiture of pay, fines, and bad conduct discharges. Counsel's submissions note that some of these soldiers had submitted conscientious objector applications that were not processed. Further, submissions state that these soldiers' circumstances support that the principal applicant will be subjected to a court-martial proceeding and receive a harsher punishment than others who have committed similar offences. For the following reasons, I find that objective evidence does not support that the principal applicant will be subjected to persecutory punishment should he be charged and convicted in a court-martial proceeding upon his return to the United States.

I accept that the affidavits and letters provided by the applicants recounting the first-hand experiences of certain U.S. soldiers demonstrate that the U.S. military does, in some circumstances, prosecute soldiers for being AWOL, desertion, and missing movement. However, I do not find that this evidence supports that the principal applicant will suffer punishment amounting to persecution should he be charged and convicted. The specific affidavits and letters submitted by counsel all indicate that where soldiers were charged with an offence, they were afforded due process in the form of a court-martial proceeding. I note that the letter from Monica Benderman to the Honorable Supreme Court Justices, dated 13 November 2007, indicates that her husband's first court-martial proceeding was dismissed when the judge ruled that the investigating officer had shown implied bias. She also notes that as of the date of the letter, his case was on appeal at the military court level. In addition, I note that, unlike some of these soldiers, the principal applicant's conscientious objector application was processed by the U.S. Army and he did receive a hearing as prescribed by the regulations. There are avenues of appeal available to soldiers who are dissatisfied with the outcome of their conscientious objector application, however, the principal applicant chose not to exhaust these avenues. The principal applicant's past treatment indicates that he has received due process within the military justice system and evidence does not support that he would not receive due process in the future.

As noted by the Federal Court of Appeal: "*Although the United States, like other countries, has enacted provisions to punish deserters, it has also established a comprehensive scheme complete with abundant procedural safeguards for administering these provisions justly.*"[14] It is recognized that sentences imposed for any offences in democratic countries will vary depending on the individual circumstances of the case; it is also recognized that public opinion on these differing sentences will also vary. Nevertheless, the discretion afforded judges, including in court-martial proceedings, is an inherent component of an independent judiciary, unless it can be shown that the discretion has been applied in violation of the principles of natural justice, or imposed in disregard of accepted international standards. The possible punishments for the soldiers referred to in the applicants' submissions ranged from such punishment as a court-martial may direct, up to punishment by death.[15] Evidence does not support that the sentences imposed on the soldiers were disproportionately harsh because of their public opposition to the war in Iraq, or in disregard of accepted international standards. I have been provided with insufficient evidence to conclude that the UCMJ will be applied in a more severe manner against the principal applicant because of his personal circumstances.

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[14] *Supra*, note 5 at para. 47.
[15] *Supra*, note 10.

It is important to note that the possibility of prosecution under a law of general application is not, in and of itself, sufficient evidence that an applicant has a well-founded fear of persecution. The PRRA application is not an avenue to circumvent lawful and legitimate prosecutions commenced by a democratic country. There is a warrant for the arrest of the principal applicant for military desertion, however, evidence does not indicate that he has been charged with an offence in the United States. Nevertheless, accepting the applicants' submissions that he will face charges and prosecution upon his return to the United States, documentary evidence, and evidence personal to the principal applicant, indicates that he will be afforded due process and that state protection is available for his recourse. As a result, I find that the evidence does not support that the principal applicant would not receive due process if charged with being AWOL, desertion, or missing movement upon his return to the United States.

I recognize that the United States has been criticized by domestic, international and human rights organizations for, among other things, its detention of prisoners at Guantanamo Bay, military abuses such as the Abu Ghraib prison occurrences, interrogation techniques, and the death penalty. However, documentary evidence supports that the government is making serious efforts to address deficiencies in the system and to protect its citizens generally. For example, submissions made by the applicants include several news articles describing abuses by U.S. soldiers against Iraqi civilians; however, the articles also outline the convictions and sentences imposed on the soldiers for their crimes. In addition, I note that the applicants' submissions indicate that United Nations Committee Against Torture and Human Rights Committee describe the positive aspects of certain commitments made by the United States in the areas of torture and human rights abuses. The Federal Court of Appeal in *Villafranca* stated that: "*No government that makes any claim to democratic values or protection of human rights can guarantee the protection of all of its citizens at all times. Thus, it is not enough for a claimant merely to show that his government has not always been effective at protecting persons in his particular situation.*"[16]

Non-Judicial Punishment

The applicants also submit that the non-judicial punishment that the principal applicant would face upon returning to the United States places him at risk of cruel and unusual treatment or punishment. Specifically, counsel refers to excerpts of Army Regulation 27-10 included in the applicants' PRRA submissions and paraphrases: "*...a commander is given the authority to impose any non-judicial punishment that he or she deems appropriate upon a soldier under his or her command.*"

I accept that Army Regulation 27-10 provides for the imposition of non-judicial punishment by commanders on commissioned officers, warrant officers, and other military personnel of a commander's command.[17] However, I do not find that the existence of the regulation, in and of itself, demonstrates that it will be applied towards the principal applicant in a manner that amounts to cruel and unusual treatment or punishment.

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[16] *Minister of Employment and Immigration* v. *Villafranca* (1992) (F.C.A., Case No. A-69-90).
[17] See: Chapter 3 of U.S. Army Regulation 27-10, 'Legal Services Military Justice, unclassified (effective 16 December 2005), <http://www.fas.org/irp/doddir/army/ar27-10.pdf>.

The excerpts included in the applicants' submissions contain a small portion of the 22 pages of the regulation that pertain to non-judicial punishment. I note that the regulation provides for maximum punishments that can be imposed by specific grades of officers against enlisted members, and commissioned and warrant officers. The regulation also outlines the circumstances under which non-judicial punishment may or should be imposed, and direction with respect to the personal exercise of discretion. I also note that the regulation contains appeal rights and, specifically, section 3-31 of the regulation provides that: *"All appeals will be made on DA Form 2627 or DA Form 2627–1 and forwarded through the imposing commander or successor-in-command, when applicable, to the superior authority. The superior authority will act on the appeal unless otherwise directed by competent authority. The Soldier may attach documents to the appeal for consideration. A Soldier is not required to state reasons for the Soldier's appeal; however, the Soldier may do so. For example, the person may state the following in the appeal:*

> *a. Based on the evidence the Soldier does not believe the Soldier is guilty.*
> *b. The punishment imposed is excessive, or that a certain punishment should be mitigated or suspended.* (emphasis added)."[18]

The principal applicant's affidavit indicates that he fears he will suffer arbitrary and cruel and unusual punishment in the form of non-judicial punishment. Submissions do not indicate that he has experienced such treatment in the past; however, submissions include an affidavit of Christian Kjar, a former member of the Marine Corps who sought refugee status in Canada. His affidavit describes incidents of non-judicial punishment and the applicants state that the principal applicant's punishment would far exceed Mr. Kjar's treatment because of the principal applicant's notoriety and public stand against the occupation of Iraq. I do not find this conclusion to be supported by the evidence.

Admittedly, Mr. Kjar's affidavit describes humiliating and physically difficult forms of non-judicial punishments. However, I note that, unlike the principal applicant, Mr. Kjar did not file a conscientious objector application. Additionally, I note that the affidavit does not indicate that Mr. Kjar exercised any of his rights under Army Regulation 27-10 with respect to non-judicial punishment. As a result, it is difficult to consider this affidavit to be objective evidence as it provides a one-sided account of incidents that are not substantiated by any formal complaint process or corroborated by objective sources. I find that this affidavit is insufficient to lead me to conclude that the principal applicant would be subject to non-judicial punishment upon his return to the United States that would amount to cruel and unusual treatment or punishment because of the high-profile nature of his case. Regardless, I find the authority of commanders under Army Regulation 27-10 to impose non-judicial punishment to be a law of general application under which the principal applicant would be afforded due process, should it be improperly imposed.

State Protection

The Supreme Court of Canada in *Ward*[19] held that there is a presumption that nations are capable of protecting their citizens. This presumption is only rebutted if clear and convincing evidence is

[18] *Ibid.* at section 3-31.
[19] *Ward* v. *Attorney General of Canada*, [1993] 2 S.C.R. 689, 1993 CanLII 105 (S.C.C.) [cited to CanLII].

presented regarding a state's inability or unwillingness to provide protection. The burden rests with the applicants to demonstrate that they sought state protection. This burden is proportional to the level of democracy in the state; the more democratic the state in question, the more the applicants must do to exhaust the avenues available to them.[20] Where the state has political and judicial institutions that are capable of protecting its citizens, the refusal of certain police officers to take action does not itself render state protection unavailable.[21]

As noted by the Federal Court of Appeal, and supported by documentary evidence: "*The United States is a democratic country with a system of checks and balances among its three branches of government, including an independent judiciary and constitutional guarantees of due process. The appellants therefore bear a heavy burden in attempting to rebut the presumption that the United States is capable of protecting them and would be required to prove that they exhausted all the domestic avenues available to them without success before claiming refugee status in Canada.*"[22]

The United States is an independent, democratic, federal republic that was established under a constitution adopted 04 March 1789.[23] Freedom House assessed a score of 1 for political rights and civil liberties in the United States.[24] Freedom House reports: "*The United States is an electoral democracy with a bicameral federal legislature...All national legislators are elected directly by the voters in the districts or states they represent. The president and vice president are elected for four-year terms. By constitutional provision, the president is limited to two terms in office.*"[25] The same report notes that the government has three coequal centers of power-executive, legislative, and judicial branches. In addition, many powers rest with the state governments. The federal government has a high degree of transparency, including a substantial number of auditing and investigative agencies which function independently of party influence. The United States has a free, diverse, and constitutionally protected press. The law guarantees trade unions the right to organize and engage in collective bargaining. Judicial independence is respected.

With respect to religious freedom, Freedom House reports: "*The United States has a long tradition of religious freedom. Adherents of practically every major religious denomination, as well as many smaller groupings, can be found throughout the country, and both religious belief and religious service attendance is high.*"[26]

State protection in the United States can be accessed in numerous ways. Law enforcement is divided between federal, state and local levels. Individuals are free to approach any, or all, levels

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[20] See *N.K. v. Canada (Minister of Citizenship and Immigration)* [1996] F.C.J. No. 1376 (F.C.A.); also see *ibid.*
[21] *Ibid.*
[22] *Supra*, note 5 at para. 46.
[23] Banks, A.S., T.C. Muller & W.R. Overstreet, 'Political Handbook of the World: 2005-2006', (CQ Press).
[24] "Each country and territory covered in the survey is assigned two numerical ratings-- one for political rights and one for civil liberties--on a scale of 1 to7; a rating of 1 indicates the highest degree of freedom and 7 the least amount of freedom.", Freedom House, 'Freedom in the World Frequently Asked Questions', <http://www.freedomhouse.org/template.cfm?page=277>.
[25] Freedom House, 'Freedom in the World – United States of America (2007)', <http://www.freedomhouse.org/template.cfm?page=22&country=7298&year=2007>.
[26] *Ibid.*

of law enforcement. With respect to police officers that act contrary to their mandate, I note that there are several courses of redress such as: the American Civil Liberties Union,[27] Civilian Complaint Review Boards, and Amnesty International.[28]

Apart from the civilian justice system, the United States has a comprehensive and sophisticated military justice system. Specifically, I note that the U.S. military justice system provides the following avenues for those who object to military service: Army Regulation 600-43, "*...establishes uniform standards for processing conscientious objector applications during mobilization*"[29]; Department of Defense –Instruction Number 1300.06, '*...provides policy on uniform DoD procedures governing conscientious objectors and processing requests for discharge based on conscientious objection*"[30]; and appellate review rights and limited access to the U.S. Supreme Court under the UCMJ and the Manual for Courts-Martial.[31] The principal applicant availed himself of some of these avenues prior to seeking international protection, however, he did not exhaust all avenues available to him.

Counsel notes that the Federal Court of Appeal was not presented with evidence on the issue of state protection, and was therefore not privy to evidence that adequate state protection for the political beliefs of military personnel opposed to the war in Iraq is not available in the United States. Further: "*It is submitted that the new evidence available in Mr. Hinzman's PRRA application clearly demonstrates that state protection would be unavailable to Mr. Hinzman if returned to the United States. The evidence also demonstrates that the protections apparently available to persons in Mr. Hinzman's circumstances are illusory and ineffective.*" In addition, counsel notes that: "*Since Mr. Hinzman's RPD hearing, his aversion to war has intensified. Mr. Hinzman now believes himself 'to be a pacifist, and against all participation in war'.*"

The principal applicant states that his first conscientious objector application was not processed by the Army when it was submitted in August 2002. He submitted a second application later that same year prior to being deployed to Afghanistan. The principal applicant states that the timing of the second application gave the appearance that he wanted to avoid the deployment, rather than sincerely objecting to war. Nevertheless, his application was processed, including a hearing which was conducted in April 2003. The principal applicant had the option of requesting a deferral of the proceedings until he returned to the United States; he did not exercise this option, nor did he appeal the negative finding of the investigating officer.

Section 2-9 of Army Regulation 600-43 provides that a second and later formal application for conscientious objector status may be submitted and considered if: "*(1) They are not based upon substantially the same grounds, or (2) They are not supported by substantially the same*

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[27] See: 'The American Civil Liberties Union – Police Practices', <http://www.aclu.org/police/index.html>.
[28] Amnesty International, 'United States of America – Report 2007', <http://thereport.amnesty.org/eng/Regions/Americas/United-States-of-America>.
[29] U.S. Army Regulation 600-43, 'Personnel-General: Conscientious Objection', unclassified (effective 21 September 2006), <http://www.fas.org/irp/doddir/army/ar600-43.pdf>.
[30] U.S. Department of Defense, 'Instruction Number 1300.06' (May 5, 2007), <http://www.dtic.mil/whs/directives/corres/pdf/130006p.pdf>.
[31] See: Chapter XII – Appeals and Review, Manual for Courts-Martial United States (2008 Edition), <http://www.jag.navy.mil/documents/mcm2008.pdf>.

evidence, as a previously disapproved application."[32] Submissions indicate that the principal applicant's conscientious objector application requested that he be granted non-combatant status. Section 3.1.2 of Department of Defense Instruction 1300.06 defines a Class 1-A-O Conscientious Objector as: *"A member who, by reason of conscientious objection, sincerely objects to participation as a combatant in war in any form, but whose convictions are such as to permit military service in a non-combatant status."*[33] The principal applicant states that his aversion to war has intensified and that he now considers himself to be a pacifist. As a result, he has the option of submitting a subsequent conscientious objector application, including evidence to support his modified beliefs, upon his return to the United States, requesting a discharge under Class 1-O, which is defined as: *"A member who, by reason of conscientious objection, sincerely objects to participation in military service of any kind in war in any form."*[34] In addition to submitting a subsequent application, he is also entitled to exercise his appeal rights should his application be denied.

It is important to note that the principal applicant is not currently facing charges for military desertion, being AWOL, or missing movement in the United States. In addition, evidence does not indicate that the U.S. military has expressed its intention to charge the principal applicant with any of these offences upon his return. As noted in counsel's submissions: *"The Army's policy upon the return to its control of a soldier gone AWOL, is to return the soldier to its unit and attempt to rehabilitate and reincorporate the soldier into the ranks. The Command at the soldier's particular unit then makes the determination of whether or not to lay charges of AWOL or desertion under the UCMJ, or whether to simply continue 'rehabilitating' that soldier."* Nevertheless, assuming the principal applicant is charged upon his return, I find that state protection is available for his recourse and that he will be afforded due process.

Section 5-5 of Army Regulation 27-10 provides that an accused at a special or general court-martial proceeding must be afforded the opportunity to be represented by counsel.[35] In addition, the same regulation provides that the accused has the right to be represented in his or her defense by civilian or military counsel.[36] The applicants' submissions state that Carlos E. Mejia, a former Staff Sergeant in the U.S. Military, was denied due process, in part, by being prevented from speaking with his lawyer. I accept that Mr. Mejia'a affidavit indicates that he was told he could not leave the base to meet with his lawyer while waiting for his court martial. However, I also note that the affidavit states that Mr. Mejia sought the assistance of a civilian attorney months prior to the court-marital, and who represented him at the proceedings. The affidavit states: *"I was told I could not leave the base, event to meet with my attorney to discuss the case."* However, it is unclear whether he was permitted to meet with his attorney at the base as the affidavit also states that he was permitted to give interviews with reporters at the base. I find that, although Mr. Mejia may have had some difficulties in accessing his attorney on certain occasions, his treatment does not support that the principal applicant will not receive due process upon his return to the United States.

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[32] *Supra*, note 29 at s.2-9.
[33] *Supra*, note 30 at s. 3.1.2.
[34] *Ibid.* at s. 3.1.1.
[35] *Supra*, note 17 at s.5-5 (Chapter 5).
[36] *Ibid.* at s.5-7.

Submissions include a letter dated 12 March 2008 from Amnesty International Canada that states: "*Amnesty International (AI) believes that as an individual who deserted the United States military for reasons of conscience, there is significant risk Mr. Hinzman will be imprisoned upon his return to the United States, and as such he should not be forcibly removed to that country. If imprisoned, AI would consider him to be a prisoner of conscience.*" I afford this document some weight as it is from an internationally respected organization. However, based on my analysis of the available state protection for the principal applicant in the military justice system, I do not find that this letter provides clear and convincing evidence that the United States is unable or unwilling to provide protection to the principal applicant.

Discrimination amounting to persecution

Section 54 of the UNHCR Handbook states that persons receiving less favourable treatment are not necessarily victims of persecution: "*It is only in certain circumstances that discrimination will amount to persecution. This would be so if measures of discrimination lead to consequences of a substantially prejudicial nature for the person concerned, e.g. serious restrictions on his right to earn his livelihood, his right to practice his religion, or his access to normally available educational facilities.*"[37] Section 55 states that: "*Whether or not such measures of discrimination in themselves amount to persecution must be determined in the light of all the circumstances.*"[38]

Counsel's submissions states that the principal applicant would be subjected to differential and persecutory treatment from other soldiers in the United States Army and members of the general public. Specifically, counsel refers to the hate mail received by the War Resisters Support Campaign in Canada.

The RPD accepted that the principal applicant may face some employment and societal discrimination but that such discrimination did not amount to persecution in that the discrimination does not lead to a consequence of a substantially prejudicial nature. I recognize that the principal applicant has spoken out publicly against the war in Iraq and has been involved in numerous rallies, protests and documentaries in Canada. I accept that the applicants, particularly the principal applicant, will be the object of criticism and negative commentary from military personnel and members of the public. However, I also note that the First Amendment of the United States Constitution guarantees the right to free speech and the right to assemble peaceably. Documentary evidence supports that there have been numerous rallies and protests held across the United States with respect to the war in Iraq.[39] As a result, I do not find that the applicants have provided sufficient evidence to counter to the RPD's finding that the discrimination they may face upon returning to the United States does not amount to persecution.

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[37] UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, (Geneva, January 1992). <http://www.unhcr.org/publ/PUBL/3d58e13b4.pdf>.

[38] *Ibid.*

[39] See for example: CBC News, 'Rallies in Canada and U.S. protest Iraq war, Afghan mission' (17 March 2007), <http://www.cbc.ca/canada/story/2007/03/17/protest-afghanistan.html>; BBC News, 'Thousands in US anti-war protests', (28 October 2007), <http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/2/hi/americas/7065975.stm>.

In addition, I note that should the discrimination rise to the level of criminal behaviour in the form of threats, or violate the applicants' human rights, I find that state protection is available for their recourse.

Based on the evidence before me, the applicants have not met the burden of providing clear and convincing evidence that they are unable or unwilling to avail themselves of state protection, including the military and civilian justice systems, in the United States.

CONCLUSION

I find that the applicants face less than a mere possibility of persecution as described in section 96 of IRPA. Similarly, there are no substantial grounds to believe that the applicants face a risk of torture; nor are there reasonable grounds to believe they face a risk to life or a risk of cruel and unusual treatment or punishment as described in paragraphs 97(1)(a) and (b) of IRPA, if returned to the United States.

Protection Grounds Considered			
Section 96 (IRPA)	☒	Section 97 (IRPA)	☒
N/A – person described in 112(3)	☐		

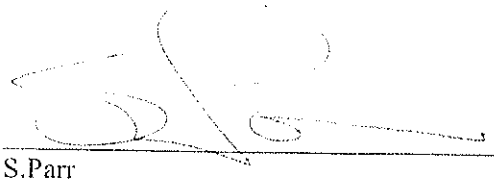
7. Oral Hearing

	Yes	No	
Oral hearing held?	☐	☒	Date of hearing:
Applicant represented?	☐	☐	Counsel:
Services of interpreter required?	☐	☐	Name of interpreter:

8. Results of Assessment

Following a review of all of the evidence, the applications for protection are **rejected**.

Summary	Yes	No
Risk of persecution under section 96 (IRPA)	☐	☒
Risk of torture under section 97(1)(a)	☐	☒
Risk to life or risk of cruel and unusual treatment or punishment under section 97(1)(b)	☐	☒
	Yes	**No**
Application allowed	☐	☒



S.Parr
Pre-Removal Risk Assessment Officer

Dated at Niagara Falls, Ontario on 25 July 2008.

9. Sources Consulted

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1. *Immigration and Refugee Protection Act*, S.O. 2001, c.27.
2. Immigration and Refugee Protection Regulations, SOR/2002-227.
3. Uniform Code of Military Justice, Articles 85-87.
4. Chapter 3 and 5 of U.S. Army Regulation 27-10, 'Legal Services Military Justice, unclassified (effective 16 December 2005), <http://www.fas.org/irp/doddir/army/ar27-10.pdf>.
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6. U.S. Department of Defense, 'Instruction Number 1300.06' (May 5, 2007), <http://www.dtic.mil/whs/directives/corres/pdf/130006p.pdf>.
7. Chapter XII – Appeals and Review, Manual for Courts-Martial United States (2008 Edition), <http://www.jag.navy.mil/documents/mcm2008.pdf>.

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1. *Kim v. Canada (Minister of Citizenship and Immigration)* 2005 FC 437.
2. *Hinzman v. Canada (Minister of Citizenship and Immigration),* 2006 FC 420.
3. *Hinzman v. The Minister of Citizenship and Immigration,* 2007 FCA 171.
4. *Perez* v. *Minister of Citizenship and Immigration* (2006 FC 1380).
5. *Raza v. The Minister of Citizenship and Immigration,* 2006 FC 1385.
6. *Minister of Employment and Immigration* v. *Villafranca* (1992) (F.C.A., Case No. A-69-90).
7. *Ward v. Attorney General of Canada*, [1993] 2 S.C.R. 689.
8. *N.K. v. Canada (Minister of Citizenship and Immigration)* [1996] F.C.J. No. 1376 (F.C.A.).

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1. Pre-Removal Risk Assessment applications and submissions.
2. H&C application and submissions.
3. Refugee Protection Division Decision and Reasons (TA4-01429; TA4-01430; TA4-011431), dated 16 March 2005.

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2. BBC News, 'Thousands in US anti-war protests', (28 October 2007), <http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/2/hi/americas/7065975.stm>.

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5. Hansard Debates (Number 104), 39th Parliament, 2nd Session (paras. 1510-1515), <http://www2.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&Parl=39&Ses=2&DocId=3543213>.
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