

Federal Court rules in favour of U.S. war resister Jules Tindungan

Refugee Protection Division ignored evidence that U.S. military justice system fails to meet basic fairness standards

For Immediate Release

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TORONTO—On Friday February 1st, the Federal Court of Canada released a decision granting U.S. war resister Jules Tindungan a new hearing before the Immigration and Refugee Board (IRB). The Court found errors in the original IRB decision pertaining to issues which are at the heart of asylum claims by U.S. soldiers in Canada.

Mr. Tindungan is one of dozens of former U.S. soldiers who have sought asylum in Canada because of their objection to the wars in Iraq and Afghanistan. Tindungan refused to return to combat for the United States military in 2008 after serving a 15 month combat tour and seeing first-hand the breaches of the Geneva Conventions committed by U.S. forces.

Mr. Tindungan argued before the Refugee Board that he faces differential punishment in the U.S. because he has spoken out publicly against U.S. military actions in Iraq and Afghanistan. He also argued that he would not get a fair trial if returned because the U.S. court-martial system is not an independent and impartial tribunal as required under Canadian and International law.

After reviewing Tindungan's case, the Federal Court found that Tindungan "submitted voluminous documentary evidence from credible, third-party sources ... that suggest that the U.S. has not complied with its international obligations". However, the Refugee Board improperly ignored this evidence.

The Court further found that the U.S. court-martial system "fails to comply with basic fairness requirements found in Canadian and International Law", therefore impacting whether Tindungan would receive a fair hearing if returned to the U.S.

While Mr. Tindungan presented compelling evidence that the U.S. military justice system fails to meet basic fairness standards that are internationally recognized to be fundamental to any tribunal system, this evidence was not taken into consideration by the Refugee Protection Division (RPD).

The Court also found that the Refugee Board failed to deal properly with evidence that soldiers, such as Tindungan, who have spoken out publicly about their objections to U.S. actions in Iraq and Afghanistan are subjected to particularly harsh punishments because of having vocalized their political opinions.

"This decision underlines what individuals like war resister Kim Rivera have been raising all along – that soldiers who speak out against these wars face harsher punishment, and have no recourse within the U.S. military justice system," said Michelle Robidoux, spokesperson for the War Resisters Support Campaign.

On September 17th, 2012 a Federal Court judge denied Kim Rivera's request for a stay of removal, finding the possibility of her arrest and detention in the U.S. to be "speculative". Ms. Rivera was arrested three days later as she presented herself at the U.S. border. Rivera is now facing court martial at Fort Carson, Colorado, and likely incarceration.

In an open letter to Prime Minister Stephen Harper published January 26, 2013 in the Globe and Mail, prominent Canadians including broadcaster Andy Barrie, Alexandre Trudeau, Dr. John Polanyi and many others stated: "We respectfully call on the Minister of Citizenship, Immigration and Multiculturalism Jason Kenney to cease all deportation orders against U.S. Iraq War resisters and make provision for their permanent residence in Canada."

In July 2010, Citizenship and Immigration Canada, at the direction of Immigration Minister Jason Kenney, issued Operational Bulletin 202 which formalizes the bias against all U.S. war resisters in policy that immigration decision-makers must follow.

Amnesty International Canada and former IRB Chair Peter Showler have called for Citizenship and Immigration Canada (CIC) Operational Bulletin 202 to be rescinded because it "fails to recognize that military desertion for reasons of conscience is in fact clearly recognized as a legitimate ground for refugee protection" and it "misstates the law and seeks to intrude on the independence of both IRB members and Immigration Officers."

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BACKGROUND

Federal Court/Federal Court of Appeal decisions in favour of U.S. war resisters

Since 2008, there have been 11 Federal Court or Federal Court of Appeal decisions in favour of U.S. war resisters who are seeking permanent resident status in Canada:

1. Joshua Key - July 2008
2. James Corey Glass - July 2008
3. Jeremy Hinzman - September 2008
4. Matthew Lowell - September 2008
5. Dean Walcott - January 2009
6. Kimberly Rivera - March 2009
7. Kimberly Rivera - August 2009
8. Jeremy Hinzman - July 2010 (Federal Court of Appeal)
9. Dean Walcott - April 2011
10. Chris Vassey - July 2011
11. Jules Tindungan - February 2013

Key dates: U.S. war resisters in Canada

January 3, 2004: [Jeremy Hinzman](#), the first U.S. Iraq War resister to come to Canada, arrived along with his wife Nga Nguyen and their first child Liam.

May 2004: War Resisters Support Campaign founded in Toronto to advocate for a provision to be made to allow U.S. war resisters to the Iraq War to stay in Canada.

June 3, 2008: The House of Commons passed a [motion](#) directing the Government of Canada to immediately stop deportation proceedings against all U.S. Iraq War resisters and facilitate the resisters' requests for permanent resident status.

June 27, 2008: An [Angus Reid Strategies poll](#) reveals that the majority (two-thirds) of Canadians agrees with the decision to let U.S. Iraq War resisters stay in Canada as permanent residents.

July 15, 2008: [Robin Long](#) becomes the first U.S. Iraq War resister to be deported by the Harper government.

October 2, 2008: Prime Minister Stephen Harper reversed his previous support for the U.S.-led invasion and occupation of Iraq [stating](#) during the English-language leaders' election debate:

"It was absolutely an error. It's obviously clear the evaluation of weapons of mass destruction proved not to be correct. That's absolutely true and that's why we're not sending anybody to Iraq."

January 9, 2009: Jason Kenney was criticized by Amnesty International Canada and the Canadian Council for Refugees for biasing all U.S. resisters' cases with his public ["bogus refugee claimants" comment](#).

February 4, 2009: U.S. Iraq War resister [Cliff Cornell](#) was arrested when he crossed the border into the United States after exhausting all appeals to remain in Canada.

March 15, 2009: Members of Parliament Olivia Chow and Borys Wrzesnewskyj [met with U.S. Iraq War resister Robin Long](#) in the Naval Consolidated Brig Miramar near San Diego. Long was court-martialed and sentenced to 15 months in prison after being deported from British Columbia by the Harper government.

March 30, 2009: The June 3, 2008 [motion](#) was passed by Parliament a second time.

April 28, 2009: [Cliff Cornell](#) was sentenced to 12 months in prison and a bad conduct discharge after publicly expressing his conscientious objection to the Iraq War while in Canada. Prosecutors used footage of a television news interview with Cornell as evidence against him.

September 18, 2009: U.S. war resister and veteran [Rodney Watson](#) took sanctuary in the First United Church in Vancouver, BC, to avoid deportation by the Harper government. He [remains there](#) today.

July 6, 2010: Federal Court of Appeal issued its unanimous [ruling](#) in favour of Hinzman.

July 22, 2010: Citizenship and Immigration Canada, at the direction of Immigration Minister Jason Kenney, issued [Operational Bulletin 202](#) which formalizes the bias against all U.S. war resisters in policy that immigration decision-makers must follow.

September 2010: [Peter Showler](#), former Chair of Canada's Immigration and Refugee Board, and [Amnesty International Canada](#) call on Immigration Minister Jason Kenney to rescind CIC Operational Bulletin 202 because it, "misstates the law and seeks to intrude on the independence of both IRB members and Immigration Officers," and "implies that military deserters from the U.S. should be treated differently than deserters from other countries," despite there being, "no basis in law for that proposition."

April 5, 2011: Federal Court of Canada rules in favour of U.S. war resister and veteran Dean Walcott.

July 18, 2011: Federal Court of Canada rules in favour of U.S. war resister and veteran Chris Vassey.

August 30, 2012: Canadian government orders U.S. war resister Kim Rivera and her family to leave Canada by September 20th or face deportation. Kim is the first woman Iraq War resister to seek asylum in Canada. She and her husband Mario have four children, two of them born in Canada.

September 17th, 2012: Federal Court Justice Near denies Kim Rivera a stay of removal, stating that it is only "speculative" that Kim would be arrested and court martialled if she is forced to return to the U.S..

September 20th, 2012: Kim Rivera is arrested by U.S. authorities after voluntarily turning herself in at the border. She has been charged with desertion and is awaiting court martial at Fort Carson, Colorado.

September 20th, 2012: Conservative Members of Parliament break into applause upon the announcement of Kim Rivera's forced return to the United States.

January 26th, 2013: Prominent Canadians publish open letter to the Prime Minister in support of U.S. war resisters in the *Globe and Mail*

February 1st, 2013: Federal Court of Canada rules in favour of U.S. war resister and veteran Jules Tindungan.