

11 December 2008

The Honourable Peter Van Loan
Minister of Public Safety and Emergency Preparedness Canada
269 Laurier Avenue West
Ottawa, Ontario K1A 0P8

Dear Minister,

We are writing this letter out of a deep concern about the Government of Canada's Statement of Defence recently filed in the Ontario Superior Court in the case of Benamar Benatta.

Mr. Benatta is a Convention refugee from Algeria. After coming to the Canadian border to claim refugee status on September 5, 2001, he was detained by Canadian officials pending inquiries into his identity. On the evening of September 12, 2001, Mr. Benatta was placed in the back of a car and driven over the border and handed to U.S. officials for investigation. This transfer took place without the benefit of a hearing on the merits of his refugee claim and without the benefit of counsel. Mr. Benatta was not told where he was going or why. He was terrified.

Mr. Benatta was held in a high-security wing of the Metropolitan Detention Centre in Brooklyn, New York, where he was accused of being a suspect in the September 11, 2001 terrorist attacks. Despite being cleared of any involvement in terrorist activities by the F.B.I. by November 2001, Mr. Benatta spent nearly five years in detention in the U.S. He was held in conditions that the U.N. Working Group on Arbitrary Detention found could be described as torture and suffered abuse that is well-documented by the U.S. Department of Justice. Canadian officials finally arranged for his return to Canada in July 2006. Mr. Benatta was granted refugee status in Canada in November 2007.

Mr. Benatta and members of the Benatta Coalition for a Public Review have long sought answers about the Government of Canada's involvement in what happened to Mr. Benatta. The Benatta Coalition members called on the Government to conduct a public review into the circumstances of his case, on how he came to be handed over to U.S. officials following the events of September 11, 2001. On April 19, 2007, then Minister for Public Safety, the Honourable Stockwell Day, announced in the House of Commons that Mr. Benatta would be given an "appeal" in his case. Such "appeal" never transpired and Mr. Benatta was forced to launch a law suit against the Government in July 2007 in order to preserve his legal rights.

We were dismayed to learn that the Government of Canada has filed a Statement of Defence in this matter, arguing that it did everything right in Mr. Benatta's case. The Statement of Defence adds insult to injury by gratuitously blaming Mr. Benatta for his ordeal.

The Statement of Defence is also disturbing because it advances legal arguments suggesting that the Government of Canada seeks to expand its powers to remove people from Canada without the benefit of any legal recourse or oversight. Through the Defence, the Government seeks to reduce the rights of people at our borders and even within our country (as Mr. Benatta had been in our country for seven days and nights at the time that he was unceremoniously handed over to U.S. officials).

The Statement of Defence offers no real attempt to shed any light on what actually occurred to result in Mr. Benatta's transfer on September 12, 2001, so that his questions are answered and lessons can be learned to avoid a repeat of this tragedy. On the contrary, the Defence actually obfuscates the case, by raising a new and non-credible account (something called a "direct-back"), which is contradicted by the record and inconsistent with all the previous uses of such "direct-backs". The "direct back" argument is even more troubling than the Government's earlier suggestion that Mr. Benatta "voluntarily withdrew" his claim for refugee protection. Neither explanation has an air of credibility. The Defence raises the strong appearance of an account being invented post-facto, in order to justify an illegal transfer of an innocent man to the U.S. in the wake of the events of September 11, 2001.

The Statement of Defence undermines public confidence in the Government's commitment to safeguarding human rights in the context of national security. The Defence further undermines the reports arising out of the Arar Commission and the Iacobucci Internal Inquiry, both of which demonstrate the need for oversight within our national security agencies. Mr. Benatta's case underlies the urgent need for a comprehensive, credible, independent and impartial review mechanism for all Canadian agencies involved in national security activities, including the Canada Border Services Agency, as recommended by Mr. Justice O'Connor in his report for the Arar Commission. The recommendations have gone unaddressed for too long.

Rather than contesting Mr. Benatta's court claim through a troubling Statement of Defence, which is in no way borne out by the evidence, the Government must provide Mr. Benatta with a full accounting as to why he was transferred to U.S. officials and must provide Mr. Benatta with appropriate compensation for the serious human rights violations that he experienced as a result of this transfer.

Yours sincerely,

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cc: The Honourable Jason Kenney
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