

**Date: 20051205**

**Docket: DES-5-01**

**Citation: 2005 FC 1645**

**Ottawa, Ontario, December 5, 2005**

**PRESENT: THE HONOURABLE MADAM JUSTICE LAYDEN-STEVENSON**

**BETWEEN:**

**HASSAN ALMREI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION  
AND SOLICITOR GENERAL FOR CANADA**

**Respondents**

**REASONS FOR ORDER AND ORDER**

[1] This case deals with the detention of an individual as a result of a “security certificate”. Mr. Almrei, relying on subsection 84(2) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), requests an order releasing him from detention. In balancing the interests of national security and personal liberty, I conclude that his release is not appropriate at this time. I do so on the basis of the public record. For the reasons that follow, his application is dismissed.

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## BACKGROUND

[2] The history underlying this matter is well documented. See: *Almrei (Re)* (2001), 19 Imm. L.R. (3d) 297 (F.C.T.D.); *Almrei v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1394 (F.C.); *Almrei v. Canada (Minister of Citizenship and Immigration)* (2003), 245 F.T.R. 27 (F.C.); *Almrei v. Canada (Minister of Citizenship and Immigration)* (2004), 249 F.T.R. 53 (F.C.); *Almrei v. Canada (Minister of Citizenship and Immigration)* (2005), 251 D.L.R. (4th) 13, 330 N.R. 73 (F.C.A.) leave to appeal granted October 20, 2005, [2005] S.C.C.A. No. 223 (referred to throughout these reasons as *Almrei*); *Almrei v. Canada (Minister of Citizenship and Immigration)* 2005 FC 355. For context, a synopsis of the factual and procedural background is provided here.

[3] Mr. Almrei, a 31-year-old Syrian national, grew up in Saudi Arabia. Using a false United Arab Emirates passport, he arrived in Canada on January 2, 1999. Six months later, he filed a refugee claim and was found to be a Convention refugee.

[4] On October 16, 2001, a security certificate was signed by the Minister of Citizenship and Immigration and the Solicitor General of Canada (the Ministers) under subsection 40.1(1) of the now repealed *Immigration Act*, R.S.C. 1985, c. I-2 (the former Act). The Ministers were of the opinion that Mr. Almrei was inadmissible by reason of subparagraphs 19(1)(e)(iii), 19(1)(e)(iv)(c), 19(1)(f)(ii) and 19(1)(f)(iii)(B) of the former Act. Those provisions state that no person shall be granted admission if there are reasonable grounds to believe that the person will engage or has engaged in terrorism or is a member of an organization that there are reasonable grounds to believe will engage, is or was engaged in terrorism. In accordance with subsection 40.1(2) of the former Act, Mr. Almrei was detained on October 19, 2001. He has remained in detention since that date.

[5] The certificate, pursuant to subsection 40.1(4) of the former Act, was referred to a designated judge of the Federal Court Trial Division, as it then was, for a determination as to its reasonableness. On October 24, 2001, an *ex parte in camera* hearing was held before Madam Justice Tremblay-Lamer. A summary of the information submitted at that hearing was subsequently provided to Mr. Almrei and his counsel. Justice Tremblay-Lamer's decision (finding the security certificate to be reasonable) was rendered on November 23, 2001, on the basis that the evidence (including evidence that was not disclosed to Mr. Almrei) supported "the view that Mr. Almrei is a member of an international network of extremist individuals who support the Islamic extremist ideals espoused by Osama bin Laden and that Mr. Almrei is involved in a forgery ring with international connections that produces false documents".

[6] On December 5, 2001, Mr. Almrei received notice that the Minister of Citizenship and Immigration would be seeking an opinion that he was a danger to the security of Canada. Following an inquiry, Mr. Almrei (on February 11, 2002) was found to be inadmissible pursuant to paragraph 27(2)(a) of the former Act and a deportation order was issued.

[7] Later that year, on September 23<sup>rd</sup>, Mr. Almrei applied for a review of his detention under subsection 84(2) of the IRPA which came into force on June 28, 2002. The matter came before Mr. Justice Blanchard (a designated judge of the Federal Court Trial Division as it then was) and he held an *ex parte in camera* hearing in the absence of Mr. Almrei and his counsel to review updated information provided by the Ministers. Justice Blanchard was satisfied that the information submitted by the Ministers was relevant and that its disclosure would be injurious to national

security. He approved the release of a summary of the information and it was provided to Mr. Almrei's counsel on November 19, 2002. Public hearings began on November 25th and 26th.

[8] Early in the new year, a decision (dated January 13, 2003) to deport Mr. Almrei to Syria (pursuant to paragraph 115(2)(b) of IRPA) was made by a ministerial delegate on the basis that Mr. Almrei was a danger to the security of Canada. Mr. Almrei was informed of the decision three days later and he promptly sought leave to apply for judicial review and judicial review of the decision. He also sought a stay of the execution of the removal order pending the disposition of his application. On the Minister's undertaking that he would not be removed until his application was determined, the request for a stay was withdrawn. Additionally, the Minister consented to the granting of leave for judicial review of the danger opinion. Mr. Almrei agreed to suspend the detention review with the proviso that upon seven days notice, by him, the review hearing would resume. A consent order to this effect was issued on January 21, 2003.

[9] The Minister of Citizenship and Immigration acknowledged serious errors with respect to the danger opinion and consented to Mr. Almrei's judicial review application. Mr. Almrei then requested that the detention review be resumed. Mr. Justice Blanchard granted the application for judicial review, remitted the matter to a different ministerial delegate for reconsideration and ordered that the detention review continue on June 24, 2003. Following hearings on June 24<sup>th</sup> and 25<sup>th</sup>, the parties were provided time to prepare and file written submissions.

[10] On July 28, 2003, Mr. Almrei received notice that the Minister would be making a further determination, pursuant to paragraph 115(2)(b) of the IRPA, as to whether he should be removed

from Canada on the basis that he posed a threat to national security. Mr. Almrei requested and received an extension of time within which to make submissions regarding the risk that he would face if a danger opinion issued and he was, as a result, refouled to Syria. On October 23, 2003, a ministerial delegate determined that Mr. Almrei would not be at risk of torture if he were returned to Syria. In the alternative, the ministerial delegate found that any risk faced by Mr. Almrei in Syria was justified because of the danger he posed to the security of Canada. Mr. Almrei applied for leave and for judicial review of this decision.

[11] An affidavit, filed with the Federal Court on November 21, 2003, indicated that a date for Mr. Almrei's removal from Canada had been selected. The removal was scheduled to occur within two and a half weeks, but a specific date was not disclosed for security reasons. Mr. Almrei applied for and was granted a stay of the removal order pending the disposition of the application for leave and for judicial review of the second danger opinion.

[12] In the meantime, the detention review hearing resumed for another four days in late November 2003 and continued from January 5<sup>th</sup> to January 7<sup>th</sup>, 2004. Mr. Almrei requested and was granted an extension of time (until February 18, 2004) to file submissions.

[13] On March 19, 2004, Mr. Justice Blanchard dismissed the motion for statutory release from detention. An appeal of that decision was dismissed on February 8, 2005. An application for leave to appeal to the Supreme Court of Canada from the decision of the Federal Court of Appeal was granted on October 20, 2005.

[14] The hearing of Mr. Almrei's application for judicial review of the second danger opinion occurred on November 16 and 17, 2004. Supplementary submissions were made in January 2005. On March 11 of 2005, Mr. Justice Blanchard allowed the application and ordered that the matter be remitted for redetermination by another delegate of the Minister.

[15] On May 10, 2005, Mr. Almrei submitted a written request for a review of his detention and filed a sparse "applicant's motion record" on May 30<sup>th</sup>. The detailed chronology of the various steps and hearings in relation to this matter is attached as Schedule "A" to these reasons.

#### THE LEGISLATION

[16] The text of the relevant provisions of the former Act as well as the corresponding provisions of the IRPA are attached to these reasons as Schedule "B". For ease of reference, subsection 84(2) of the IRPA is reproduced here.

*Immigration Refugee Protection Act*,  
S.C. 2001, c. 27

84(2) A judge may, on application by a foreign national who has not been removed from Canada within 120 days after the Federal Court determines a certificate to be reasonable, order the foreign national's release from detention, under terms and conditions that the judge considers appropriate, if satisfied that the foreign national will not be removed from Canada within a reasonable time and that the release will not pose a danger to national security or to the safety of any person.

*Loi sur l'immigration et la protection des réfugiés*, L.C. 2001, ch. 27

84(2) Sur demande de l'étranger dont la mesure de renvoi n'a pas été exécutée dans les cent vingt jours suivant la décision sur le certificat, le juge peut, aux conditions qu'il estime indiquées, le mettre en liberté sur preuve que la mesure ne sera pas exécutée dans un délai raisonnable et que la mise en liberté ne constituera pas un danger pour la sécurité nationale ou la sécurité d'autrui.

#### JURISDICTION

[17] At the outset of the public hearing, counsel addressed the issue of the Court's jurisdiction to conduct a further detention review (a process not specifically provided for in the IRPA). The Ministers' submission is to the effect that the Federal Court of Appeal's decision in *Almrei* resolves



any uncertainty regarding the question of jurisdiction. In view of the prospect of indeterminate detention, the Court of Appeal, it is said, adopted a purposive and principled approach to the interpretation of subsection 84(2) of the IRPA to ensure that the detention review process complies with the principles of fundamental justice and that the Act does not give rise to indeterminate detention. Mr. Almrei's counsel agrees with the Ministers' submission.

[18] Mr. Justice Letourneau, writing for a unanimous Court, states at paragraph 36 of *Almrei*, that where there is new evidence, or evidence of a change of circumstances, the appropriate procedure is to make a new application for a review of detention on the basis of that evidence. Thus, it appears that subsection 84(2) is to be interpreted expansively and, provided that there is evidence of a material change in circumstances since the previous determination, the Court has jurisdiction to undertake a detention review.

#### THE PUBLIC EVIDENCE

[19] The public evidence is comprised of: the affidavits that were filed by the applicant; the Ministers' filed documents consisting of the public summary approved by the Court on June 17<sup>th</sup> and the accompanying reference index containing 36 entries; the further disclosure document that was served and filed on July 15<sup>th</sup> with an accompanying reference index containing 10 entries; the evidence provided by the witnesses at the public hearing; the documents tendered as exhibits during the public hearing; the documents from previous hearings that were referred to and relied upon during the public hearing; the further disclosure document that was ordered on October 14<sup>th</sup> with an accompanying reference index containing four entries; and a further affidavit filed thereafter. Additionally, at the request and direction of counsel, I have reviewed portions (as directed by

counsel) of the evidence of some of the witnesses who testified at earlier proceedings. A summary of the public testimony in this proceeding is contained in paragraphs 20 through 233 of these reasons. On the consent of the parties, on the first day of the public hearing, the Ministers' witnesses were called to testify first.

June 27, 2005

Mr. Louis Dumas

[20] Mr. Dumas is the Manager of the Security Review Division in the National Security Directorate of Canada Border Services Agency (CBSA) in Ottawa. He has been employed by the federal government for over fifteen years. He provided a history of his various past positions. He is now principally responsible for dealing with matters pertaining to section 34 (the inadmissibility provision that touches on issues of terrorism, subversion and espionage) of the IRPA.

[21] Mr. Dumas discussed the procedure surrounding the application of section 115 of the IRPA. He explained that the section applies to Convention refugees who have been determined to be inadmissible to Canada on security grounds. Such an individual, if ultimately found to constitute a threat to the security of Canada, may be removed notwithstanding that he or she is a Convention refugee. The process is normally referred to as a "danger opinion".

[22] The security review division is seized with making recommendations to the decision maker at Citizenship and Immigration Canada (CIC) and provides a body of work to the decision maker that addresses the issue of the threat to security. The process is a complex one. All of the evidence in relation to the individual in question is reviewed, including:

- the immigration documents;
- the different interactions the individual has had with immigration entities and authorities;
- the interviews that the individual might have had with CIC officials;
- the Canadian Security and Intelligence Service (CSIS) documents and appendices.

[23] After reviewing a multiplicity of sources and assessing their reliability, a 30-35 page document entitled a “danger memo” is prepared and submitted to the individual and counsel for comment. Fifteen days are provided for comment, but because the individual’s fate is at stake, extensions (normally an additional 15 days) are granted upon request. Requests for further extensions are viewed sympathetically having regard to the seriousness of the matter and the principles of basic fairness.

[24] Upon receipt of the individual’s comment, the memo and the comment are then forwarded to the Director General of Case Management Branch at CIC to initiate the decision-making process. The Director General is responsible for appointing a ministerial delegate, authorized to render section 115 decisions, and engaging that decision-maker in making a fair and well-documented decision. The CIC decision should be available within 90 days of delivery of the memo and comment. The process is a priority for CBSA and for the government in general because the IRPA does not allow for permanent detention.

[25] If a decision is made that the individual can be removed, it is important that the division is in a state of readiness to effect removal. CBSA was ready for Mr. Almrei's removal in 2003 and had leased a plane and secured travel documentation, but removal did not take place because the removal decision was to be judicially reviewed. Mr. Dumas stated that he knew of no impediment to a request from Mr. Almrei asking to leave Canada, that he could make such a request at any time, but has not done so.

[26] On cross-examination, Mr. Dumas acknowledged that individual circumstances may require that more than 90 days is needed for preparation of a removal decision although an effort is made to engage a decision maker who will be able to deliver within 90 days. Contingencies can arise. For example, where the Court orders further disclosure that, in turn, precipitates an invitation for further submissions, the decision may be delayed.

[27] In response to questions posed by Mr. Almrei's counsel, Mr. Dumas said that he did not believe that a ministerial delegate has ever disagreed with the division's recommendation. He could not recall a recommendation not to remove ever having been made with respect to an individual for whom a security certificate had been issued. When asked whether anyone detained under the security certificate provisions had ever been released from custody, he recalled one individual who chose to go to a third country. In such a case, the Ministers must agree to the proposed third country and the travel document becomes a key component. It can usually be obtained expeditiously.

[28] Regarding the conditions of Mr. Almrei's detention, Mr. Dumas was questioned as to whether CBSA has taken any steps to deal with the issues that had been raised. He stated that CBSA is made aware of difficulties and makes an effort to engage people at the regional level and within CIC to address the issues that are presented. However, Mr. Dumas had no direct personal knowledge of Mr. Almrei's conditions of detention. Regarding potential alternatives to detention in solitary confinement, Mr. Dumas opined that regard must be had to alternatives to removal and that this is something that "is being very, very actively discussed at the moment" but he is "not privy to the heart of the discussions". With respect to alternatives pending the removal decision, Mr. Dumas feels that while solitary confinement is not the preferable solution, the alternative of being within the general population is an important consideration that cannot be taken lightly. He was not aware of any request by Mr. Almrei to be removed from solitary confinement nor was he aware of any request for the work of the division to be expedited.

[29] I pause to note that by correspondence dated July 4, 2005, the Ministers notified the Court that Mr. Almrei and his counsel were served with the Security Review Division's memorandum and its appendices on June 30, 2005. Mr. Almrei's counsel stated in written submissions that the memorandum was disclosed to the applicant on July 4, 2005, and that pursuant to an agreement with CBSA, the applicant's submissions were completed on July 29, 2005.

P.G.

[30] P.G., a CSIS employee, is the Senior Middle East Analyst in a branch known as RAP (Requirements, Analysis and Production). He regularly provides training on the Middle East and

the nature of Islamic extremism to incoming intelligence officers. He has provided seminars on Islamic extremism to officials at the municipal, provincial, and federal levels across Canada.

[31] Among other things, he explained the distinction between intelligence officers and intelligence analysts. Officers are investigators who handle cases and investigate threats to the security of Canada. They are involved in resource recruitment and other activities. Analysts take a variety of information that has been made available from a variety of sources. The information is analysed and synthesized and, where required, papers are written that serve to outline the Service position on a particular matter. The papers are provided to senior Canadian government officials and they generally cover issues of national security.

[32] P.G. explained that the term “Al Qaeda” means three different things: Al Qaeda proper; Al Qaeda associated or affiliated; and Al Qaeda inspired. Historically, Al Qaeda was an organization founded in the late 1980s by Abdullah Azzam. He (Azzam) saw the organization as a vanguard to promote a particular version of Islam and to defend Islam from its perceived enemies. Upon Azzam’s death in 1989, Osama bin Laden, a Saudi national, took effective control of the organization and publicly declared his desire to carry out acts of violence in the defence of his version of Islam. Al Qaeda is known to have been responsible for the attacks of 9/11 in the United States and for a series of other attacks around the world. Since the attacks of 9/11 and the invasion of Afghanistan shortly thereafter, what was known as Al Qaeda has changed.

[33] “Al Qaeda proper”, or “core Al Qaeda”, is the slimmed-down version of the original organization and remains intent on carrying out acts of violence. It is still led by Mr. bin Laden and

by his second-in-command, an Egyptian named Ayman Al-Zawahiri. Although the group suffered from the attacks in Afghanistan and the loss of some of its leaders (who were killed or incarcerated), it still exists.

[34] “Al Qaeda associated or affiliated” relates to terrorist or extremist groups that have had links to Al Qaeda since the 1990s. Two examples are the Libyan Islamic Fighting Group known as the LIFG and the Indonesian group known as Jemaah Islamiyah. These groups have collaborated and worked with Al Qaeda in the past.

[35] “Al Qaeda inspired” refers to individuals or small groups that share the same ideology as Al Qaeda and are as committed to acts of violence and acts of terrorism as are the core and affiliated groups.

[36] P.G. referred to statements that had been made by Osama bin Laden. In 1998, he (bin Laden) issued a famous *fatwa* in which he called for a campaign against the Jews and Crusaders (Christians), because of their attacks on Islam. In that *fatwa*, he called upon all Muslims to kill Americans and Westerners (whether civilian or military), wherever they are located. A more recent statement, in October 2004, occurred when Mr. bin Laden went on television just prior to the American presidential election to explain his campaign as a defensive one in which he was defending Islam from its persecutors and its oppressors. On two occasions, Mr. bin Laden has named Canada specifically as a country that is contributing to what we call the war on terrorism (what Al Qaeda would call a war on Islam) and, as a participant in that war, Canada is a viable target for retribution.

[37] The term “Osama bin Laden network”, P.G. defined as: individuals who have pledged fealty or loyalty to bin Laden himself (core Al Qaeda); individuals who belong to groups that take their direction from Al Qaeda (Al Qaeda-affiliated); and individuals who belong to the larger network of individuals or small groups who believe or have adopted the wider ideology of bin Laden (Al Qaeda inspired). In a sense, the network consists of a variety of individuals with varying degrees of connectedness to Osama bin Laden himself or to Al Qaeda.

[38] It is the view of the Service that the capture or death of Osama bin Laden would have a negligible effect on the larger movement, whether it be core or inspired, for the simple reason that Al Qaeda is more than one individual. It was created to provide an example. The word “Al Qaeda” in Arabic means “the base”, not in the military sense, but in the sense of something upon which to build. While we might welcome Mr. bin Laden’s capture or demise, it would have a negligible effect on the desires, the intents, or the plans of these groups of extremists that fully intend to continue their campaign of terrorism.

[39] P.G. testified that Al Qaeda, as defined by the tripartite definition, constitutes a direct threat not only to Canada but to our closest allies. This threat has not diminished since 9/11. It has not diminished since the war on terrorism began in October 2001. The Service believes that the threat posed by Al Qaeda will be with us for the foreseeable future.

[40] P.G. described Ibn Khattab as an individual who fought in Afghanistan and who later devoted his efforts to Chechnya where the Chechens were fighting against the Russians for



independence. He would place Mr. Khattab in the category of Al Qaeda affiliated as opposed to Al Qaeda core and stressed that Chechen affairs are not his specialty. Mr. Khattab was killed a number of years ago by, it is believed, Russian forces.

[41] In relation to Mr. Almrei, P.G. familiarized himself with the public summary just prior to the hearing. His evidence in relation to the particular allegations specific to Mr. Almrei was couched in general, rather than specific, terms.

[42] Regarding the allegation that Mr. Almrei is involved in the procurement of false documentation, P.G. explained the importance that such an activity has in the Al Qaeda or Osama bin Laden network operations. He stated that since 9/11, there has been increased international cooperation on the sharing of information with respect to Islamic extremists. Al Qaeda and affiliated and inspired organizations and individuals are aware of this. Hence, there is, if anything, an increased need for fraudulent documentation (such as passports, identity cards, birth certificates) to thwart the efforts to provide lists of known terrorists around the world. He pointed to the example of Mr. Ahmed Ressay (an Algerian-Canadian extremist who was arrested in Washington State trying to cross the border to carry out an act of terrorism in Los Angeles) who was able to procure false documentation based on a fraudulent Quebec birth certificate that allowed him to evade security officials and travel relatively easily. The Al Qaeda network, he stated, will continue to seek to acquire false documentation to facilitate its operations worldwide.

[43] With respect to whether the identification of an individual, as one who may be a terrorist, has any impact on his or her usefulness, P.G. stated that the notoriety or public divulgence of one's

name has little or no effect on that individual's usefulness to extremist organizations. When a person is committed ideologically to a cause such as that of Al Qaeda, the mere inconvenience of being identified publicly has no effect. By way of example, he referred to the well-known and well-publicized case of Mr. Ahmed Sayed Khadr, who was arrested in 1995 in Pakistan for his role in an attack on the Egyptian embassy in Islamabad. His release was granted after pressure from the Canadian government. Despite the notoriety and the fame that Mr. Khadr had gained throughout his arrest and trial, he returned to terrorism and was killed by Pakistani forces in 2004. Despite the fact that he was very well known to a large number of people, it had no effect on his desire and intent to engage in acts of terrorism.

[44] On the notion of "commitment", P.G. testified that people who believe wholeheartedly in the ideology and aims of an organization such as Al Qaeda essentially devote their lives to that cause. Their "devotion to the cause is not shaken with any degree of certainty". It is a choice that they have made; it is something they believe in fervently; and it is something that they will remain committed to as long as they live.

[45] The path that an individual adopts in embracing an ideology of terrorism or extremism can take place in a number of different ways. Individuals who, throughout the 1980s and 1990s, travelled to Afghanistan and lived or trained in camps that were either Al Qaeda or Al Qaeda affiliated received instruction on the ideology, its purpose, and its goals. These individuals would have pledged allegiance to these goals. With the demise of the camps in Afghanistan, there are other ways to learn about the ideology and to embrace it. There are individuals who have returned from Afghanistan and who seek to spread their ideology. Or, it could be as simple as going onto

the internet and reading sources, reading statements, reading papers that explain the ideology, its goals and its intent. It is not possible to define a linear process through which a given individual will commit himself or herself to a movement of Islamic extremism.

[46] It is the belief of the Service that an individual who is alleged to have been involved in *jihad* in the 1990s and who is alleged to have had experience in document forgery would return to those activities upon release from detention, perhaps not immediately, but in time, and would adopt the same activities that had been engaged in previously. Detention does not operate as a deterrent to future activities. A number of individuals who had been incarcerated in Guantanamo Bay, upon their release, returned to the Afghanistan/Pakistan area and took up where they left off and engaged in operations against coalition forces in Afghanistan before they were captured. There are other examples in Morocco, Russia, and Indonesia where individuals who have spent time in prison or in detention have returned to their terrorist activities upon release. Mr. Lamari (a Spaniard of Algerian origin who was incarcerated in Spain in the late 1990s or early 2000s because of his membership in an extremist group) openly stated while in prison that he would seek retribution on the Spanish government for incarcerating him. He is believed to have been one of those involved, if not the mastermind, in the attacks in Madrid in March 2004. It is the Service's assessment that detention does not act as a deterrent and does not serve to neutralize or make individuals less useful to the wider Islamic extremist movement.

[47] In summary, P.G. stated that the Service is of the opinion that Mr. Almrei continues to pose a threat to the security of Canada. That is based, in part, on his past activities both in having participated in a *jihad* and in his participation in document forgery. Secondly, given his belief, "his

adoption of the ideology associated with Al Qaeda, based on those particular incidents and ideologies, [the Service] considers him to be a threat to the security of Canada”.

[48] On cross-examination, P.G. initially agreed that it was a “fair assumption to make” that there are many individuals who took part in campaigns in Afghanistan and perhaps even Tajikistan who did not ultimately become supporters of Al Qaeda or the Osama bin Laden network and such groups. He later qualified his response (in speaking of Mr. Gar Pardy’s evidence during the Arar inquiry) and said that, by itself, the fact of having been in Afghanistan, taken as an isolated act, in and of itself, does not constitute a threat. There is, he stated, “a very big difference between being in Afghanistan and participating in campaigns in Afghanistan”.

[49] Regarding the commitment to the ideology, P.G. was asked if it was “impossible ever to renounce such a commitment”. He replied that nothing is ever impossible. It is just highly improbable that individuals who have embraced this ideology so fervently would choose at one point to renege or to abandon that philosophy. He later explained that, from the perspective of Al Qaeda, the people are engaged in a war of survival. They see themselves on the defensive in a long-standing campaign against Islam and against Muslims. Hence, the commitment to the cause is a commitment for one’s faith and in essence one’s existence.

[50] While maintaining that he was not aware of any individual (who had been detained in Guantanamo Bay or similar facilities) who was released but did not take up terrorist activities following the release, he acknowledged that he was not aware of every individual who had been

detained but released from Guantanamo Bay. He also acknowledged that the adoption of the ideology is pivotal. The following exchange occurred during cross-examination:

- Q. There is also the adoption of the Al Qaeda ideology, which was also reflected in your evidence?
- A. That is correct.
- Q. That is really a concern that informs the others. If he didn't show that ideology any more, his participation in jihad would be essentially irrelevant?
- A. I would have to say that the adoption of the ideology is a driver for specific activities, yes.
- Q. Similarly with the document forgery ring. Without the driving force of the ideology, the concern around national security tends to dissipate. I am not going to suggest that it disappears completely, but it tends to dissipate?
- A. I certainly could not exclude the possibility of document forgery but, in the absence of the ideology, it would no longer be an issue of national security. That is correct.

[51] In response to various questions by counsel regarding surveillance, mobility restrictions, house arrest and the like, P.G., while not conceding that they would act as impediments to clandestine behaviour and activities, acknowledged that they could do so.

June 28, 2005  
Alexandre Trudeau

[52] Mr. Trudeau is the son of the late Prime Minister. He met Mr. Almrei at the Metro West Toronto Detention Centre while doing research for a potential documentary on the issue of security certificates. Mr. Trudeau visited Mr. Almrei twice and talked to him once on the telephone. He (Mr. Trudeau) was sympathetic to Mr. Almrei's condition.

[53] Mr. Trudeau stated that he has had substantial contact with Muslim communities in Canada, in the Middle East, and in other parts of the world. He has travelled to the Middle East since childhood and, over the past few years, has been doing documentary or journalistic work on issues in Iraq, Israel and Palestine. Mr. Trudeau found Mr. Almrei to be a man of faith and tolerance. He would place Mr. Almrei within the “centre of the spectrum” of followers of Islam.

[54] Mr. Trudeau feels that he has an instinct for knowing whom he can trust. Mr. Trudeau’s issue is not to know what Mr. Almrei has done. He presumes that Mr. Almrei is innocent because he has not been charged or found guilty. Mr. Trudeau is prepared to post a conditional bond in the amount of \$5,000. He understands that if Mr. Almrei were released on conditions and were to breach any one of the conditions, that he would be required to pay \$5,000. Mr. Trudeau also understands that if he knew that Mr. Almrei breached a condition, he would be obliged to report the breach to the appropriate authority. Mr. Trudeau additionally indicated his willingness to act as an individual who could accompany Mr. Almrei, if Mr. Almrei were allowed out during the day.

[55] Mr. Trudeau’s expressed motive for being a surety is “his country”. He does not feel that it is in Canada’s interest to detain people who have not been charged. He also believes that when people seek refuge, they do so under a certain amount of duress. The process, to a certain extent, requires lying. People facing torture, Mr. Trudeau stated, are willing to do a lot to escape the torture. Some lie and some do not.

[56] Mr. Trudeau said that he has never met Nabil Al Marabh, Ahmed Al-Kaysee, or Hoshem Al-Taha. He signed a letter supporting the release of Adil Charkaoui.

[57] On cross-examination, Mr. Trudeau related that he has never met Mr. Almrei's parents or any members of his family. He was not aware if any member of Mr. Almrei's family had ever put up any money for his release. Mr. Trudeau has met Mr. Almrei only in Canada and only since Mr. Almrei has been detained.

*Diana Ralph*

[58] Dr. Ralph, a Canadian citizen, lives in Toronto in a triplex house that she and her wife, Ms. Jean Hanson, own. Dr. Ralph is on permanent disability leave from her position as Associate Professor of Social Work at Carleton University. She holds a Ph.D. in psychology and an M.S.W. Ms. Hanson has a Master's degree in counselling psychology.

[59] Dr. Ralph testified that she has known Mr. Almrei since she first offered to stand as a bail surety for him in June 2003. At that time, she had not met him. Her motive for offering to stand as a surety was a matter of principle. She viewed the fact that five Muslim men were being held "without due process" as unjust. She determined that the best way to be a surety would be to actually supervise him in her own home. For that reason, Dr. Ralph offered to have Mr. Almrei live in her home with her and her wife. Since then, she has developed a strong relationship with Mr. Almrei and sees him "mostly every week" and talks to him almost daily.

[60] Dr. Ralph is very fond of Mr. Almrei and describes him as a wonderful man. She stated that he is "gentle and kind and intelligent and funny and thoughtful". Their relationship is deep

and, after “probably thousands of hours of conversation”, she feels that she probably knows Mr. Almrei better than she knows her son. He has, “in fact, become like a son to [Dr. Ralph]”.

[61] Dr. Ralph reiterated her offer to have Mr. Almrei live in their home. She and her wife have a basement apartment with a separate entrance that was renovated specifically for Mr. Almrei at a cost of \$32,000. It is a one-bedroom apartment with a combined living/dining room/ kitchen area and a bathroom. An additional \$6,000 was recently expended, in contemplation of Mr. Almrei’s release, to move Dr. Ralph’s counselling office from the basement to the main floor of the house.

[62] In addition to offering their home, Dr. Ralph and Ms. Hanson are prepared to post a bond in the amount of \$10,000. Dr. Ralph trusts Mr. Almrei not to breach any conditions imposed by the Court because he has “consistently demonstrated his highly principled integrity and thoughtfulness”. Dr. Ralph understands that if Mr. Almrei were released on conditions and he were to breach a condition, the \$10,000 would be forfeited. She also understands that she would be obliged to report any breach.

[63] Dr. Ralph also provided the names of others (most of them from her neighbourhood) who would be prepared to accompany Mr. Almrei if he were to be allowed out. She testified that she has informed these people about the CSIS allegations against Mr. Almrei.

[64] Mr. Almrei and Dr. Ralph have talked about what he would do if he were released. For the first couple of months, he would require adjustment. She reported that he is hoping to get a job and to improve his written English. Dr. Ralph would like to see him in the Transitional Year Program



(TYP) at the University of Toronto (a program designed to assist adults without a valid high school diploma to gain entrance to university). She thinks that he would be eligible.

[65] Dr. Ralph was adamant that she is not being hoodwinked by Mr. Almrei. She has had training in assessing and working with people. She has worked as a social worker, as a university professor teaching social workers and as a psychology professor. She has worked in psychiatric hospitals, with people in the corrections system, and with people in the child welfare system. She believes that she has a good “capacity to assess people and to tell when I am being conned”. She does not believe that she has been conned by Mr. Almrei or that he has “in any way ever tried to con [her]”. It is not possible, in her view, to fake the kindness, gentleness, or the compassion, that she has seen Mr. Almrei consistently display. For example, he has accepted that Dr. Ralph is a Jewish lesbian and has said that it is “up to God to judge people”.

[66] Dr. Ralph stated that all devout Muslims are not fanatics. Mr. Almrei’s family, for instance, valued the education of girls, for all of his sisters are educated. She believes that Mr. Almrei loved Canada right from the minute that he came here, that he hoped to bring his family here and has been looking for a wife here. He is a “guy who is engaged in Canada”. Even in view of the treatment that he has received, he is someone who would be eager to be a good citizen here. Dr. Ralph believes that he is a most honest person and she is aware of his lies.

[67] When questioned as to whether she has a political agenda that might impact on her assessment of Mr. Almrei’s character, Dr. Ralph answered that she has strong beliefs that it is important to stand up for people who are being unjustly targeted and that the security certificate law

violates international law and many principles of due process. That said, Dr. Ralph stressed that she would not lie or cover up for Mr. Almrei. She does not believe that there is any need to do so because he presents himself as an open book. Even if he had posed a danger (and she does not believe that he did), the best way to approach that is to talk to him. The best way to change someone is by having a relationship with that person.

[68] Dr. Ralph described Mr. Almrei's present living conditions as 24 hours a day in a "frigidly cold 9 x 12 cell". She regards his wish to remain in solitary confinement (rather than being housed in the range) as complex. Fear is one of the factors because he has been labelled a terrorist. The other factor is that he has worked very hard to establish a relationship with the guards and they have come close to being friends. At this point, Dr. Ralph feels that it is hard for Mr. Almrei to imagine going anywhere else, within the detention centre, safely.

[69] Dr. Ralph stated that, medically, Mr. Almrei's eyesight has gotten much worse, his knees are really painful and his back hurts. He has not been getting the exercise that the doctor ordered for his knees. He is having nightmares. Dr. Ralph says that he has been holding himself together by chewing gum. The hopelessness and despair just build up. It is his humour, his faith and his self-discipline that have held him in good stead.

[70] On cross-examination, Dr. Ralph acknowledged that neither she nor the individuals that she had canvassed could speak Arabic. When confronted by counsel with the fact that she would not be able to understand if Mr. Almrei were speaking in Arabic, on the telephone or elsewhere, she

replied that she did not think that she “would be listening in on his conversations anyway”.

Regarding a computer, she stated that she would not allow him to use her computer.

[71] When questioned about a statement in her affidavit wherein Dr. Ralph states that the “case CSIS lays out in its summary against Mr. Almrei is groundless, based on ignorance and racist misunderstanding of innocent actions”, Dr. Ralph indicated that she believes that “most CSIS officers are white, non-Arabic-speaking men whose knowledge about other countries incorporates a lot of racist biases and ignorance about the subtleties”. Her observations in the courtroom led her to conclude “that these guys have very little training, that they rely on translation at best or not at all, that they misinterpret a whole bunch of things”.

[72] When questioned about a trespassing conviction for which Dr. Ralph was fined \$50 (arising out of her refusal to leave a building during a demonstration), she stressed that she was “a law-abiding citizen except in matters of civil disobedient (sic) principles. This is quite different from in any way endorsing [Mr. Almrei] doing anything criminal”.

### Hassan Ahmed

[73] Mr. Ahmed, a Canadian citizen, is originally from Eritrea. He is of Muslim background and met Mr. Almrei, through a friend, in 1999, after Mr. Almrei came to Canada. He considered Mr. Almrei to be a friend. Before Mr. Almrei’s detention, Mr. Ahmed saw him, if not daily, every other day. He visited Mr. Almrei during the first month of his detention.

[74] Mr. Ahmed stated that for about a year, he did not visit Mr. Almrei. He said that he was scared to visit him because his (Mr. Ahmed's) apartment was raided around the same time as Mr. Almrei's apartment was raided. The RCMP and CSIS asked him many, many questions such as which mosque he attended as well as questions about Mr. Almrei.

[75] Mr. Ahmed testified that he is prepared to post a \$3,000 conditional bond and is willing to be one of the people that Mr. Almrei could go outside with, if he were released from detention. He stated that he is so willing because he has known Mr. Almrei to be very trustworthy, because he believes that he (Mr. Almrei) is innocent and because he believes that Mr. Almrei would not do any harm to anyone.

[76] On cross-examination, Mr. Ahmed said that he was not concerned about the fact that Mr. Almrei went to Afghanistan. When questioned as to whether Mr. Almrei told him he had been to Afghanistan and Tajikistan, Mr. Ahmed replied that Mr. Almrei "never spoke much of his visits..." In relation to training in the use of an AK-47 (a *Kalashnikov*), Mr. Ahmed stated that he assumed, if Mr. Almrei was in Afghanistan in *jihad*, that he had to be trained. Mr. Ahmed said that Mr. Almrei did not tell him that he went on scouting missions of Russian positions and did not tell him that during those missions, he was under the command of Ibn Khattab. He could not recall if Mr. Almrei ever spoke about Mr. Khattab.

[77] Mr. Ahmed acknowledged, on cross-examination, that he did not offer to be a surety at the time of Mr. Almrei's previous detention review. He confirmed that he understood that if Mr. Almrei were to violate or breach a condition of release, he (Mr. Ahmed) would lose the money. He

also revealed that it is very hard for him to come up with the money now but “if ever the occasion arose that he breaks these conditions, yes, I would”.

[78] Mr. Ahmed’s motivation for his willingness to be a surety is his trust of Mr. Almrei. He indicated that if Mr. Almrei engaged in any activities of concern to the Canadian government, of a criminal or security nature, that he would not support his release. When confronted with Mr. Almrei’s admission of having procured false documentation for Mr. Al Marabh, Mr. Ahmed’s response wavered, but his final position was that he discounted that activity because it preceded Mr. Almrei’s detention. Mr. Ahmed remains willing to stand as a surety.

John Delarge

[79] Mr. Delarge is a correctional officer at the Toronto West Detention Centre (Metro West). Except for approximately eight months, his entire 18-year career has been at Metro West. He is currently stationed in the segregation secure isolation area of the jail. Mr. Delarge’s evidence related to: the nature of a remand centre; the duration of stays in such a centre; the distinction between remand centres and correctional facilities; the conditions of segregation; and his observations regarding Mr. Almrei.

[80] Mr. Delarge explained that Metro West is a maximum security remand centre that houses remanded prisoners and immigration detainees. When persons are arrested for a crime, they are brought to a remand holding centre and held in custody until dealt with by the courts. After they are sentenced, they go to a correctional centre or a federal institution. The duration of their stay depends on the severity of the case and the charges. It can range from one day for a bail hearing to

a couple of years in a murder case or in a case of immigration holds, such as this one, three to four years. The latter is not common.

[81] A correctional institution in the provincial system could only house prisoners for up to two years. Metro West is a maximum security remand so it has the highest level of preparedness in case of emergency. It is a “little more disciplinarian” in terms of what inmates are allowed to do. There are no rehabilitation programs available at Metro West. There is no library. There is a library volunteer who comes sporadically and it could be a year between book exchanges. There are no educational programs although there are some correspondence courses through the Chaplaincy.

[82] Segregation is an area centrally located in the jail containing 20 cells that vary in size. Inmates are placed in segregation for a variety of reasons. Sometimes, it is because of the notoriety of the case (such as a sexual assault or a murder). It could be because it involves a high-profile person in the community (such as a police officer). It could be for medical reasons (for instance, someone coming off drugs or alcohol). It could be for violence within the institution itself. Some inmates go on their own request. It is also used for discipline. More control is exercised in the segregation area than anywhere else in the jail. Usually, its role is “to fix people to go back to the population where they will behave”.

[83] Mr. Delarge described Mr. Almrei’s cell as one of the smallest cells. There is a window that stands about three feet tall with three sets of bars that go the full length of it. The window faces a courtyard that is concrete. The door of the cell has two hatches. One is to enable the guards to look into the cell and it can be opened and closed by the guards. The other hatch is for providing

food and it is about a foot wide and six inches tall. There is a metal writing desk in the cell.

Because of a suicide, all stools for the writing desks had to be removed. There is a concrete bed with a metal frame, a mattress, and blankets. Mr. Almrei also has something to pray on. The heat situation has improved dramatically since Mr. Almrei's application to the Ontario Court.

[84] Mr. Delarge testified that he believes that Mr. Almrei would be hurt if he were to go to the general range. Mr. Almrei's name is well-known throughout the jail and his reputation precedes him. He has been a cleaner in segregation so, in a sense, he has helped the guards. On one occasion, he assisted an officer who was being assaulted. He helped pull an inmate off of the officer and then hit the blue button to get an emergency response. Even though it was two years ago, the inmates still know about that and the stigma will persist.

[85] Regarding Mr. Almrei specifically, Mr. Delarge stated that he knew nothing of Mr. Almrei's past. He commented on Mr. Almrei's characterization of the guards as his "friends". Mr. Delarge stated, "I don't believe we are friends. We have a professional understanding that I am his keeper and he is a prisoner". Mr. Delarge said that, initially, he did not have much leniency for Mr. Almrei. Over a long period of time, he trusted him as an inmate (as far as trust between an inmate and a guard would go) and maybe a little more trust than with the average inmate. There has been good rapport and if Mr. Almrei had a legitimate need, Mr. Delarge would make sure that he took care of responding to it by contacting the appropriate person or writing a report. He described Mr. Almrei as amenable to the discipline of the jail although he (Mr. Almrei) found it frustrating, at times.

[86] Mr. Delarge testified that Mr. Almrei does not have access to television. He, through subscriptions, does get three newspapers and a magazine. Mr. Almrei has access to medical and dental care through the guards and through security. He has had access to the doctor and to physiotherapy for a problem with one of his legs. Mr. Almrei is supposed to walk to exercise his leg, but Mr. Delarge cannot let him walk in the courtyard alone and he has responsibility for 20 inmates and can't just take him out for a walk around the jail.

[87] When questioned as to whether Mr. Almrei had communicated with Mr. Majoub (a security certificate detainee in segregation at Metro West), Mr. Delarge said that he didn't think they had even talked. He had not personally heard them talk and he would pay attention to something like that.

[88] Mr. Delarge testified that it is a rare occurrence to see an immigration official at Metro West. Usually, it is for the purpose of a deportation or having an inmate sign for an extension of a stay. Mr. Delarge could not recall ever seeing an immigration official for any other reason.

[89] In concluding his testimony, Mr. Delarge stated that he has not yet thought that Mr. Almrei has taken advantage of his (Mr. Delarge's) trust.

[90] On cross-examination, Mr. Delarge agreed that inmates are very conscious of the fact that the jail is a highly-controlled and regulated environment. He said that Mr. Almrei had never asked him about being removed from segregation. He responded, when asked by counsel, that it is true that the guards do the best they can within the strict rules that prevail within the institution to ensure



that Mr. Almrei is accorded as much humanity as he can be, in the circumstances in which he finds himself.

John O'Connor

[91] Mr. O'Connor has worked at Metro West for 20 years. He has worked in all units in the facility and has been in the segregation unit for the past four years. Mr. O'Connor described Mr. Almrei as an unusual inmate in that he is not part of the criminal subculture because he has been in segregation for most of his time at the West. For someone who has been in segregation for four years, he (Mr. Almrei) has held it together better than anybody. Mr. O'Connor stated that Mr. Almrei is usually "pretty up" and "pretty friendly". He was the cleaner (a trusted position) for a while and he came to the rescue of a guard who was attacked by an inmate.

[92] Mr. O'Connor stated that he has dealt with thousands of inmates and has never felt that Mr. Almrei was not truthful or that his demeanour was not genuine. He said that Mr. Almrei told him his reason for lying to immigration officials and that it made perfect sense to him (Mr. O'Connor) at the time. Mr. O'Connor stated that he finds Mr. Almrei amenable to discipline and finds that he follows requests or orders. Mr. O'Connor believes that he [Mr. Almrei] goes a little too far in his adherence to the rules. For example, when Mr. Almrei wanted shoes, the guards offered "to slip him some shoes, which was against the institution rules, and he (Mr. Almrei) had to go to court to make sure that he got them legally".

[93] Regarding Mr. Almrei's hunger strikes, Mr. O'Connor stated that he sensed that Mr. Almrei perceived, as personal, that he wasn't receiving the things that he thought he should be receiving.

Mr. O'Connor did not think that was the case. Rather, he stated that the bureaucracy "falls apart a lot of times".

[94] Mr. O'Connor has observed very little communication between Mr. Almrei and Mr. Majoub. He did see Mr. Almrei say a little bit to Mr. Majoub when he was out cleaning and passed his cell. Mr. Almrei has talked to Mr. O'Connor a bit about the past. It would not cause Mr. O'Connor concern if Mr. Almrei was his neighbour.

[95] On cross-examination, Mr. O'Connor agreed that his knowledge of Mr. Almrei was "limited to the way he has conducted himself within this highly-regulated and controlled environment". Except as a member of the public, he has not been made aware of the allegations against Mr. Almrei. Mr. Almrei has never approached Mr. O'Connor about leaving segregation.

David Goba

[96] Mr. Goba has been employed at Metro West for five and a half years. He has been assigned to segregation and health care for the duration of his tenure. He testified that he has never had any problems with Mr. Almrei. He stated that the guards talk to Mr. Almrei a lot. He (Mr. Almrei) has always been polite and straightforward. He has never had a misconduct in segregation.

[97] Mr. Goba testified that Mr. Almrei has not had any contact with Mr. Majoub. Mr. Goba rated Mr. Almrei as a very low level risk. He expressed his belief that, because Mr. Almrei activated the alarm in segregation during a fight, he would be marked if he were to go to the range. He stated that Mr. Almrei has been pretty level the whole time he has been in segregation. Mr.

Goba did not approve of the hunger strikes and believes that there has to be a different way to handle the situation. He said that he has told Mr. Almrei so.

[98] On cross-examination, Mr. Goba agreed that Metro West is a highly-controlled and disciplined environment and that guards are vigilant in ensuring that inmates follow the rules of the institution. Mr. Goba stated that any information that he had regarding Mr. Almrei and the allegations against him was acquired primarily as a result of his attendance at the public hearing. He agreed that he was not at the hearing to express any opinion as to whether Mr. Almrei should be released from detention.

July 18, 2005

J.P.

[99] J.P. has been a CSIS intelligence officer for 15 years. He is currently the Deputy Chief of Counterterrorism and Counterproliferation in the Ottawa Regional Office. He explained the functions of a CSIS intelligence officer.

[100] An analyst intelligence officer is responsible for processing, corroborating, and packaging information that is received into a form that allows the Government of Canada to be advised on issues of threats to security. Basically, it takes the form of threat assessments and intelligence bulletins that are processed through the Privy Council Office. The analyst also prepares the affidavits that are submitted to the Federal Court regarding target authority requests to enable investigations to be performed.

[101] The investigator intelligence officer is responsible primarily for interviewing subjects of interest or members of the public, for recruiting human sources and for running those human sources against mandated targets.

[102] J.P. testified that the term “counterterrorism” is self-explanatory. It involves the investigation of a number of groups that participate in activities that are terroristic. Of significant interest, at the moment, are Al Qaeda and other terrorist organizations that have developed a reputation over the past few decades. “Counterproliferation” involves investigations that are geared more to countering the proliferation of weapons of mass destruction (ranging from nuclear to biological to chemical weapons).

[103] The witness discussed the meaning of “*jihad*”. He stated that, in Islam, the word is a subjective term “ranging from defining a personal struggle to make one a better individual and a better Muslim and to follow the tenets of Islam all the way to offensive use of violence in defence of Islam, a holy war in other words”. The holy war is the most frequently accepted definition.

[104] He described the statements made by Osama bin Laden in much the same terms as his colleague P.G. had done earlier during the public hearing. He discussed Ayman Al-Zawahiri, an Egyptian Islamic terrorist leader, who went to Afghanistan in the late 1980s, joined what was then the rebellion against Soviet occupation, and became aligned with Mr. bin Laden. He became Osama bin Laden’s right-hand man. He is currently “on the run”. Gulbiddin Hekmatyar is an Afghan warlord who has been a figure among Afghan extremists since the 1970s. He earned notoriety in the war against the Soviets. Ibn Khattab (now deceased) was a Saudi who joined the

anti-Soviet rebellion in Afghanistan and from there moved on to lead his own group into operations in Tajikistan and Chechnya (aimed at fighting the Russians who were seeking to prevent the independence of these regions). The two major players in Chechnya were Khattab and Shamil Basayev (who has been linked to the Beslan massacre).

[105] The global struggle against terrorism, J.P. testified, has significantly disrupted the Al Qaeda organization in its formal sense. The network of training camps in Afghanistan has been wiped out and the finances of the organization have been severely disrupted. The old guard officers have been taken out of action (either killed or detained). Since 9/11, the Al Qaeda organization has been reeling, but it has managed to reconstitute itself and to adapt to its circumstances. It has had a measure of success in continuing its operations and also in enlisting other groups in the name of its cause. The Iraqi experience is a case in point.

[106] The witness explained that Al Qaeda has adapted because it is adaptable. Osama bin Laden was a wanted man before the war in Afghanistan. His network was under significant surveillance. There were a number of operations run against Al Qaeda and it survived because it managed to withstand these pressures by adopting secretive practices and operational security (operating with individuals in whom it had confidence). It is an organization – by its very nature and because of the work that it does – that has the ability to withstand the impact of something as devastating as the invasion of Afghanistan.

[107] The organization has constantly sought the support of other extremist Islamic groups around the world. Because of its ability to draw people into Afghanistan for training, it was able to

cultivate contacts with individuals who would attend the camps and then return to their home countries to conduct operations. In doing so, it expanded its influence. Hambali, the mastermind of the Bali bombing, was a graduate of Osama bin Laden's training camps. The Jemaah Islamiyah of Indonesia (a group that participates in the continuation of what it views as the struggle of Muslims against western oppression) is Al Qaeda affiliated or associated (rather than formally connected).

[108] Al Qaeda-inspired groups are perhaps the most sinister manifestation of Islamic extremism today because they usually consist of small cells of individuals who have no set group affiliation and who come together for a very short period of time in order to mount an operation. Usually, these individuals attempt to conduct one-off operations and, upon completion, scatter. It appears, at this point, that the July 2005 London bombings are the most recent example.

[109] The significance (of the training camps) is that they were the main hubs of dissemination of the Al Qaeda message for recruiting individuals into the network and for setting them loose upon the world. There are hundreds of individuals who were trained in handling weapons and explosives who could then be called upon by Al Qaeda to assist, if need be. They were central to the architecture of the movement. Al Qaeda depended almost entirely on its training camps to bring people into the organization and to seed operatives around the world to assist in future terrorist operations. Afghanistan, he said, is the starting point in terms of involvement in international *jihād*. It is where one earned the stripes. It is where the entry camps and the basic training were available to new recruits. It is where "you proved yourself and determined for yourself if you were in it for real or if this wasn't exactly what you had planned". It was a stepping-stone and a major front in the global *jihād* at the time that the Soviets were occupying Afghanistan. It is quite significant for

an individual to have gone to Afghanistan, to have been trained, and to have returned a number of times.

[110] Tajikistan was the subfront of the conflict in Chechnya in the former Soviet Union. It was an area of active operations in the early 1990s. To join that rebellion, as a non-Chechen or a non-Tajik, one would be welcomed because of experience in Afghanistan or because one was trusted by the organization and was referred to the rebellion.

[111] J.P. stated that the capture or killing of Osama bin Laden would have no diminishing effect whatsoever on the organization. Rather, it would increase his mythical status and he would be viewed as something of a martyr.

[112] The Service position is that Al Qaeda presently constitutes a viable threat for the West and the regions in which it has traditionally operated such as East Africa, the Middle East, and Southeast Asia. Canada is viewed as a target.

[113] Regarding Mr. Almrei specifically, the witness testified that Mr. Almrei has a pedigree as an individual who has been in Afghanistan, who has been through training camps, who has been a member of the paramilitary forces of Ibn Khattab in Tajikistan and has experience as a foot soldier. He has a reputation that he can trade on and that would provide automatic credibility amongst extremists. Additionally, his expertise in the document-forgery business makes him a valuable resource. He would also possess a certain operational discipline that goes along with being a *mujahideen* in places like Tajikistan and being involved with forged documents.

[114] Regarding Mr. Almrei's earlier evidence (that he had gone on scouting missions of Russian positions but was not engaged in combat and was not armed), J.P. expressed skepticism. Scouting would probably be just one of an individual's functions. The structure of the organizations is such that they don't have the luxury of specializing individuals into specific functions. It is likely that everyone would have pitched in (in one way or another) doing a multitude of things. The witness stated, "I have a hard time imagining that an individual would just be a scout, go out with a pair of binoculars, take notes, take pictures or whatever, come back, tell his unit what he had seen, and then sit back while everybody else heads off to the front line and does the dirty work".

[115] J.P. testified that Mr. Almrei, if he chose, could re-integrate into Chechen extremism. It would be entirely up to him to decide how he would return to such an organization. More probable, is his value to the organization in relation to forged documents for, no matter how individuals go about it, at some point, they do need to travel and there needs to be physical contact among parties to a terrorist plot. The witness noted that Mr. Almrei has had a fairly lengthy severance from his network and may have a diminished ability to resume such activities. He would have to spend a little more time hooking into a network or hooking up with some associates. He certainly has the ability to contact people, if he wishes.

[116] The Service believes that Mr. Almrei's release would pose a danger to national security or the safety of persons. Incarceration, J.P. stated, does not deter individuals from rejoining their movements. There are concrete examples of this in relation to the Provisional Irish Republican Army (IRA) and there are numerous examples in the case of Palestinian terrorism. There is a high



rate of recidivism. The IRA is different from Islamic extremism in the sense that the IRA was motivated by political objective and sought to attain it through force. The expectations in relation to the political objective can be framed and it is possible to negotiate within those parameters. Al Qaeda, in contrast, is a religious and ideological movement. The ultimate goal is the takeover of the world by Islam. While that may sound a little fantastic and hyperbolic, essentially, it does come down to the eradication of the infidel and the creation of a puritan form of Islam for the world.

[117] The cross-examination of J.P. was detailed. It began on July 18<sup>th</sup> and continued for the duration of the July 19<sup>th</sup> portion of the public hearing. For convenience, the summary of the cross-examination is included under the July 19<sup>th</sup> date.

July 19, 2005  
J.P.

[118] J.P. acknowledged that he had never met or interviewed Mr. Almrei. In relation to one of the allegations in the public record – that Mr. Almrei’s perfume and honey business provided him with the opportunity to travel to Pakistan in the early 1990s when much *mujahideen* activity was taking place and that honey was a popular method of concealing explosives – the witness agreed that Mr. Almrei had disclosed his involvement in the honey business.

[119] Regarding the question as to whether he has any reason to doubt the legitimacy of Mr. Almrei’s business and his description that it was a kind of a one-man shop, J.P. stated that he did not doubt that would have been the case nor was it unreasonable that Mr. Almrei may have done that. He qualified this comment by noting that every time that he (Mr. Almrei) “travels over to Pakistan and goes to Afghanistan one of these one-time honey ventures appears, which speaks to a

pattern of pretext business affording a plausible reason for having travelled to these countries and hiding the fact that he was going over there to participate in *jihad* activities”. The witness conceded that Mr. Almrei had admitted his involvement in *jihad*. Additionally, he (J.P.) acknowledged that he had no knowledge of any financial or corporate records associated with Mr. Almrei’s business and that he had no evidence that Mr. Almrei concealed explosives in honey.

[120] J.P. did not know that one of the media articles contained in the public reference index, based on anonymous government sources, was authored by a journalist whose record of accuracy of assertions, made in articles based on such sources, had been called into question. He agreed that participation in the honey business, in and of itself, ought not to be taken as an indicator that one is engaged in acts of terrorism and he acknowledged that Saudi Arabia is a lucrative market for honey.

[121] In relation to the Chechen conflict, J.P. acknowledged that Mr. Almrei disclosed that he had met Ibn Khattab. In response to counsel’s question that, given Khattab’s demise, Mr. Almrei could not re-establish contact with him, the witness stated that the significance of the association is not diminished by Mr. Khattab’s death. He maintained that because of Mr. Almrei’s experience in dealing with illicit networks, he would be able to access (the organization) by knowing which people to contact (to point him in the right direction) and that he could, even in Canada, contribute to the cause in a number of ways. The witness agreed that all of the possibilities provided by the Service, in relation to Mr. Almrei re-establishing contact, would be dependant upon Mr. Almrei being so inclined and that he had no evidence that he (Mr. Almrei) is today so inclined.

[122] When pressed by counsel regarding Mr. Almrei's involvement in Tajikistan (as Mr. Almrei described it), J.P. remained steadfast and stated that the Islam insurgents were fully engaged against the Russians at that time and it would be foolhardy for someone to think – with regard to any mission or foray into Tajikistan – that they were just going in there as part of a scouting group and would not have the potential to encounter Russian forces. The witness described it as a “fairly hot area”. Individuals involved in the missions would have been trained to take care of themselves in those circumstances. J.P. admitted that he was without personal knowledge regarding Mr. Almrei's specific involvement and therefore could not contradict Mr. Almrei's contention. He also admitted that he had no evidence of any connection between Mr. Almrei and the remaining insurgents in Chechnya (now a fragmented movement) although he felt that the forces under Basayev would provide a good fit.

[123] In relation to forgery, the witness acknowledged Mr. Almrei's admission that he had provided assistance to Mr. Nabil Al Marabh and was unable to say how many false documents Mr. Almrei provided to him. He (J.P.) appeared to accept as accurate that Mr. Almrei procured, rather than created, the documents. He acknowledged that the R.C.M.P. had conducted an investigation and had not charged Mr. Almrei. He stated that he did not know what role Mr. Almrei played in raising bond money for Mr. Al Marabh. He also agreed that Mr. Al Marabh was arrested by the F.B.I. regarding the 9/11 attacks and, notwithstanding considerable publicity that Mr. Al Marabh was associated with Al Qaeda or Islamic extremism, Mr. Al Marabh was deported from the United States to Syria.

[124] Regarding J.P.'s assertion that Mr. Almrei has the expertise and experience and is able to resume his activities involving forged documents, he acknowledged that the sources may no longer exist because they may be dead, detained, out of business or just have disappeared. When queried as to whether he could provide any examples of forgery, other than the one provided by Mr. Almrei, the witness referred to the various documents found in Mr. Almrei's apartment. In response to counsel's question about the whereabouts of Mr. Almrei's Yemeni passport, the following exchange occurred:

Q. Do you have any personal knowledge of the whereabouts of that Yemeni passport?

A. No I do not. I understand that he travelled under a Syrian passport when he went to Afghanistan and Pakistan – to Pakistan. Typically, people going from the guest houses into Pakistan do not use a passport. Sorry, from Pakistan to Afghanistan, typically one does use a passport. The passport is retained by the manager of the guest house, the reason being that it is desired that people go to Afghanistan anonymously, without identification. The second reason is that, if Mr. Almrei were to be killed in combat, this passport could then be surrendered to the organization, to Al Qaeda or the Khattab organization, and they could then use it for other members, alter it and photo-substitute it, or whichever.

Q. Assuming that the guest house where Mr. Almrei was in fact associated with Al Qaeda?

A. It was.

Q. This was which guest house?

A. The Betalanzar in Peshawar.

Q. At what time did it become associated with Al Qaeda?

A. Since 1984.

Q. The Afghan camp that Mr. Almrei describes going to was associated with Al Qaeda?

A. Yes, by the relationship that Abdul Sayyaf had with Osama bin Laden.

Q. What was that relationship?

- A. He is generally acknowledged as a close associate in the Afghan *jihad*.
- Q. Was that camp not also closely associated with the Northern Alliance?
- A. The Northern Alliance did not come into being until the Taliban moved into Afghanistan in 1995. So, no, it was not at the time that he was there.
- Q. The last time that Mr. Almrei was in Afghanistan, at least as indicated in the public record, was in approximately 1995?
- A. That's correct. The Taliban did not arrive in Afghanistan until later in the year. Kandahar was their first major victory, and that was in November, 1995. Kabul fell quickly thereafter, and by 1996 they had control of the country except for the northeastern enclave which was under the control of the Northern Alliance.
- Q. It was at that time in 1996 that Osama bin Laden actually returned and took up residence in Afghanistan. Is that correct?
- A. That's correct.
- Q. Prior to that, while he had been perhaps an occasional or regular visitor there, he was based primary in Sudan?
- A. He was based in the Sudan between 1992 and 1996, yes.

[125] Later, the witness explained that after 1992, the coalescence of the movement seemed to unravel and the *mujahideen* were fighting among themselves. This continued until the Taliban assumed control of most of the country. The Al Qaeda infrastructure, established in the 1980s was there and it never went away.

[126] Following considerable discussion regarding Mr. Almrei's acquisition of a false Syrian passport from the Muslim Brotherhood, J.P. acknowledged that he was not able to point to the existence of any occasions, over and above those disclosed by Mr. Almrei himself, where Mr. Almrei used false passports for personal travel.

[127] Regarding the alleged forgery ring and Mr. Almrei's Thailand connection, J.P. was not aware of any efforts made by Canadian authorities to identify that individual. He was also unable to point to anything in the public record that would add to the information disclosed by Mr. Almrei. He acknowledged that he could not speak to Mr. Almrei's current personal motivation to engage in the distribution of false documents.

[128] The witness stated that he had no evidence that Mr. Almrei personally perpetrated acts of violence in or outside of Canada or that he facilitated or assisted in the perpetration of acts of violence by others in Canada. On re-examination, J.P. clarified that the Service has never alleged that Mr. Almrei would engage in violent attacks in Canada. It is not necessary for an individual to be involved in direct violent action in order for his actions to contribute to a violent act. When queried on cross-examination as to what evidence, if any, in the public record provided a basis for the allegation that Mr. Almrei supported the Islamic extremist ideals espoused by Osama bin Laden, the witness pointed to Mr. Almrei's association with Ibn Khattab, his attendance at the Al Qaeda guest house in Pakistan and the ideological consistency between Khattab and bin Laden.

[129] Regarding the allegation of Mr. Almrei's alleged preoccupation with security and his use of clandestine methodology, J.P. acknowledged that there was a link between engaging in clandestine methodology and the ability to monitor Mr. Almrei. He also acknowledged that the public record did not contain any examples or specifics related to the Service allegation.

[130] With respect to Mr. Almrei's alleged associations with Mr. Al-Taha and Mr. Al-Kaysee, the witness was not aware of the current whereabouts of either individual nor did he know whether

either had ever been charged with any offence in relation to Al Qaeda or any other form of terrorist activity.

[131] Counsel questioned the witness regarding the Service position that empirical evidence suggesting that individuals who have been detained return to their nefarious activities upon release. J.P. maintained that prison does not act as a deterrent or neutralizing factor for dedicated Islamic extremists. A demonstrated decision to renounce the belief can happen, but the Service is not aware of too many of those cases. He explained that although detention does not dissuade the extremist, it does not necessarily harden the person. Essentially, the beliefs are deeply ingrained in the core of the individual. It revolves around the interpretation of a religion that is really fundamental to an individual who tends to view incarceration as a sacrifice for the cause, a cost of doing business, something that the individual expects to endure.

[132] Regarding Mr. Almrei's lack of truthfulness, J.P. acknowledged that: it is not uncommon for people who arrive in Canada either as refugees or claiming refugee status to be travelling on false documents; it would not be surprising that individuals fleeing persecution in another country that did not observe the rule of law might be distrustful of authority; and it would not be surprising if individuals – whose only experience with security agencies was with agencies that do not follow the sorts of practices and principles of those in Canada – might find it difficult to shake off their fears and suspicions of security officers.

[133] In addressing the Service position regarding potential release, the following exchange occurred:

Q. Just to try to bring things to a close, as I understand the Service's position on Mr. Almrei's release, which is really what we are concerned about here today, what is driving the Service's concerns over his release is his past record of behaviour in conjunction with what the Service sees as his allegiance to an Islamic extremist ideology. Is that fair?

A. That's fair.

Q. In trying to predict his future behaviour, which is really what this is all about, one looks to the past to see what happened in the past. Is that fair?

A. Yes.

Q. Would you agree with me that at no time has Mr. Almrei ever been in the community under conditions of bail or restrictions of that nature?

A. I am not aware of any such case, no.

Q. So, we can't say that he has a track record, whether positive or negative, of compliance with terms of bail per se.

A. No, we cannot. We can only speak to the potential and the ability to circumvent conditions.

Q. How easy it is to circumvent conditions would depend in part on what those conditions were?

A. In part, and also on the subject's desire to circumvent them.

Q. And on the ability to monitor compliance?

A. To an extent, yes.

Q. By "monitoring compliance", I don't mean to focus only on the Service.

A. I know. You can talk about ankle bracelets and that sort of thing.

Q. And reporting and things of that nature?

A. Reporting and schedules, yes.

Q. The Service's concerns about Mr. Almrei turn on association – that is, people with whom he might become associated should he be released?

A. In part.



Q. He has no track record that has been disclosed of personally engaging in acts of violence. Is that correct?

A. That's correct.

Q. If we are looking to past behaviour to predict the future, there is no indication of a track record that would suggest a disposition to violence that would render him a specific threat to the safety of individuals directly. Is that true?

A. I would debate that to a certain extent. His record of having engaged in *jihad* for an extended period of time, from 1993 to 1995, repeatedly travelling to Afghanistan of his own volition, assuming the tremendous risks to his personal security in doing so, demonstrate a certain level of dedication which is not typical of an individual who is a peaceful member of society.

Q. He lived as a peaceful member of society once he came to Canada?

A. I can't really venture into that.

Q. Certainly nothing has been disclosed that suggests any act of violence or subversion against Canadian interests?

A. I would say that procuring the false Canadian passport for someone like al-Marabh is not in the interest of the country. He has admitted to that.

Q. Indeed. If he were restricted from association with such individuals – and I know we are going to get into a debate about what is a guarantee and what is not. I would assume that you would not view a court order as completely meaningless and ineffectual?

A. No, I would not view it as completely meaningless and ineffectual.

Q. It could control somebody's behaviour?

A. It (sic) the person chooses to abide by the conditions, yes.

July 20, 2005

Hassan Almrei

[134] Mr. Almrei, on the 29<sup>th</sup> day of a hunger strike (protesting his conditions of detention) when he testified, had been in detention for 3 years and 10 months. All but 2 ½ days of that time, he has

been in segregation. For the first 15 months, the segregation was imposed, but after a brief exposure to the general population, he requested segregation.

[135] Mr. Almrei described his cell as being 9 x 12 feet with a concrete bed, a small desk in the corner attached to the wall, a sink and a toilet seat. He has a prayer mat for praying in his cell and he uses his disclosure as a chair. He also has some books and magazines.

[136] He stated that a typical day begins at 7:00 a.m. and breakfast is served at 8:00 a.m. Five-minute showers start around 9:00 a.m. In the afternoon, there are five minutes of fresh air in the fresh air area (four concrete walls open to the sky). Recently, he has had 20 minutes of fresh air rather than five. Showers and fresh air time do not occur during lockdown or if there is a staff shortage. The remainder of the day is spent in his cell. He has visitors once per week. He chose one visit so that it could be 40 minutes long. He can request access to a phone and can make calls from his cell.

[137] Mr. Almrei did some cleaning within the segregation unit, but he stopped two years ago because of pain in his knee and "other issues". He does not have access to any education programs and there is no library. Mr. Almrei said that he has been able to cope because of his religion and because he has a good relationship with the guards.

[138] In reference to the allegation that he has an allegiance to the ideology of Osama bin Laden and his network, Mr. Almrei testified that: while in Afghanistan he did not fight alongside Osama bin Laden; he did not have any association with Osama bin Laden; he was not loyal to Osama bin

Laden; he did not work with Osama bin Laden in any form; he does not and never did share the goal to unite all Muslims and establish governments which follow Islamic law and eliminate all Western influence; he did not support the use of violence to achieve those goals; he does not believe that it is the individual duty of all Muslims to kill American citizens and their allies (it is against the Islam religion to do this); and he has never held that belief.

[139] The witness said that, to his knowledge, the camps that he attended in Afghanistan were not related to Osama bin Laden or under his control. The camps did not, to his knowledge, share the ideology which Osama bin Laden appears to have articulated some time after he was in Afghanistan. He does not hold an ideology of hate for Western values and if he did, he wouldn't have come to Canada. He does not share the common objective of establishing fundamentalist Islamic states. He was not recruited by bin Laden for the fight against the Soviet occupation of Afghanistan and he does not share bonds with individuals from the training camps and has not demonstrated support for both the Osama bin Laden network and its followers.

[140] Mr. Almrei also stated that he does not agree that a *jihad* or a holy war is an acceptable means for overthrowing secular Islamic governments in order to create Islamic states based on an extremist interpretation of Islamic law. He does believe in the *jihad* that occurred in Afghanistan against the Russians. He explained that "the Russians invaded this Muslim country and they occupied this country and it is a duty for all Muslims to defend this country, to defend these people in Afghanistan. I believe in that *jihad*, yes". Otherwise, he does not believe in any kind of bin Laden *jihad*.

[141] He explained that the comment in the psychologist's report that he felt happy for people who were killed in *jihad* in Afghanistan was in response to a question from Dr. Bagby. Dr. Bagby asked whether Mr. Almrei had seen someone die in Afghanistan and he responded that he had. When Dr. Bagby asked if Mr. Almrei had nightmares or felt scared, Mr. Almrei told him, "[n]o, I feel he is a martyr and I would be happy for him. We believe that, if you die in that *jihad*, you will be a martyr and you will go to Paradise." He said that he did not believe that one would be a martyr and would go to Paradise if one died as a participant in Osama bin Laden's *jihad*.

[142] Mr. Almrei went to Tajikistan for the same reasons he explained regarding Afghanistan. He heard of Tajikistan's situation from the media and from the mosque. He met people from Tajikistan, most of whom were refugees and he met "some of their leadership". They were refugees because they had been invaded by the Russian government in their country and they were forced to leave their country and go to Afghanistan as refugees. At that time, no one had even heard about Chechnya.

[143] Mr. Almrei said that he had never and never will view Osama bin Laden as a spiritual guide and he had never, to his knowledge, had loyalty to an individual leader within the bin Laden network. He first heard about Ibn Khattab when he went to Tajikistan in 1994. He met Khattab there and spent some time in his camp at Khunduz. They lived in the same house. He views Khattab as a good Muslim man; he likes him and respects him. Khattab also fought in Afghanistan. When the *mujahideen* there started fighting each other, Mr. Almrei stopped supporting any of them and chose to go to a different cause, like Tajikistan, to fight the Russians.

[144] The witness stated that he was not involved in the battles that were growing amongst the various *mujahideen* groups in Afghanistan. "We can't fight Muslim to Muslim." He would never support that. Nor did he ever support the Taliban. He did not believe there was any relationship between Khattab and bin Laden.

[145] Mr. Almrei testified that he came to Canada to live in a peaceful world. He was never instructed to establish himself in Canada to engage in terrorist activities of any kind and has never attempted to establish himself in Canada for the purpose of carrying out terrorist activities. He chose Canada over other countries because he learned a lot about it and how good it is.

[146] Regarding false passports, he said that he did not have a real passport. He acknowledged that he provided false travel documents to Mr. Al Marabh. He admitted that it was wrong, but does not and will never believe that Mr. Al Marabh had anything to do with terrorism. He had no information about that when he provided him with the false documentation. He did not provide false documents to anyone else and he denied that he was part of a forgery ring. There was no link between his ability to get false documents in Saudi Arabia and what he did for Mr. Al Marabh. The Saudi documents were obtained through his family. His father is a member of the Muslim Brotherhood and most Muslim Brotherhood from Syria use such passports because they cannot get passports from their government.

[147] Mr. Almrei reiterated that he had never and never will demonstrate a devotion to Osama bin Laden's cause and that his participation in *jihad* had nothing to do with the ideals or cause of Osama bin Laden. He did not even know bin Laden.

[148] Insofar as re-establishing connections is concerned, he stated that he has no desire to establish connections with anyone involved in terrorism and never had a connection with such people before.

[149] With respect to responsibilities if he were to be released, Mr. Almrei stated that he knew that he would have to respect any conditions that were ordered. He would respect them and would be “more than stupid” if he broke any conditions because he “would be in the same cell” at the West Detention Centre. He stated that if he failed to obey a condition, the sureties would lose their money and “they will lose their name”. He would not jeopardize their reputations or their names. If released, he wishes to live at the home of Diana Ralph. He would be willing to abide by a curfew and would further be willing to be under house arrest and be permitted out only in the company of an approved person. He would be willing to report by whatever method was ordered.

[150] Mr. Almrei stated that he would not flee or go underground or disappear. He said that he had no money to support himself if he went underground. He claimed that he would never own another cell phone or computer again and that he would never use either at any time. He said that he was prepared not to have any direct or indirect contact with any person whom he knows or suspects to have been involved with any extremist Islamic organization and would be more than happy to have some names to make sure not to contact them in any way.

[151] Regarding Mr. Al Marabh, Mr. Almrei stated that he does not know where Mr. Al Marabh is except that, from what he reads in the newspaper, he is in jail. He is not a close friend. Mr.

Almrei would not have any means of finding or communicating with Mr. Al Marabh if he were released. Mr. Almrei said that he does not know and never did know Mr. Al-Taha. He would have no means of contacting him. Mr. Al-Kaysee used to be his (Mr. Almrei's) friend in Toronto. His last contact with him was a few days before his (Mr. Almrei's) arrest. Mr. Al-Kaysee is not one who Mr. Almrei knew to be involved in Islamic extremism. Mr. Almrei no longer respects him in any event because he (Mr. Al-Kaysee) hasn't even phoned his (Mr. Almrei's) friends and asked how he is doing.

[152] In response to his counsel's question as to whether his contacts in the Muslim Brotherhood could help him escape from Canada if he were released, Mr. Almrei said "[t]hey would be stupid if they did...I don't think the Jordanians would let them do so, and they don't like to put themselves in these situations". He stated that he was not aware of any Syrian Muslim Brotherhood presence in Canada. He has no desire to have any connection to the Muslim Brotherhood at this time and the only member of the Muslim Brotherhood with whom he wishes to speak is his father. He has spoken to his family through three-way calling facilitated by Dr. Ralph. He would be prepared to forfeit the calls if he were required to do so. His family members would never try to help him flee from Canada.

[153] In terms of why he does not share the ideology of Osama bin Laden, Mr. Almrei testified that he does not believe that it is the Islamic way. Mr. Almrei believes that you can live peacefully with anyone, with any religion. He said that the Prophet's neighbour was Jewish and he did not instruct anyone to kill him because he was Jewish. The religion "asks us to treat people fairly in the

same (sic) we like them to treat us, no matter what is their religion or their belief”. These are the principles that Mr. Almrei said he tries to live by.

[154] On cross-examination, Mr. Almrei confirmed that his family has not offered to provide any bond money and has not attempted to assist him in any way in this matter. He stated that he did not know where Mr. Al-Kaysee is, but he knows that he is in Toronto. He acknowledged that Mr. Al-Kaysee had been a participant in *jihad* in Afghanistan and that he (Mr. Almrei) was aware of that. He claimed not to have ever known Mr. Al-Taha although he agreed that he had listed him as a person that he knew in Canada when completing his application for a visitor visa in 1998. He explained that he had obtained Mr. Al Taha’s name from a friend and had used it because he (Mr. Almrei) thought it would help his chances of obtaining the visa.

[155] Mr. Almrei confirmed that he had profited by providing Mr. Al Marabh with false documentation (\$2,000) and that Mr. Al Marabh had contacted him, from the United States, regarding the possibility of obtaining a second false passport. He acknowledged that he met Mr. Al Marabh in 1994 at Ibn Khattab’s guesthouse in Khunduz. He agreed that Mr. Al Marabh identified himself as Abu Adnan and that Mr. Almrei had introduced himself as Abu Al-Hareth. He stated that “Abu Al-Hareth” was a “respect name” since childhood, but he didn’t ask Mr. Al Marabh about the name “Abu Adnan”. It “could be the name that he chose to call himself”. He met Mr. Al Marabh in Canada at his (Mr. Al Marabh’s) uncle’s print shop. Mr. Almrei visited Mr. Al Marabh when he was detained in Thorold (after being apprehended at the U.S. border) and also lent him money (\$2,500) for his release bond.



[156] Mr. Almrei reiterated his belief that he had been under surveillance in Saudi Arabia because the Intelligence asked his friends questions about his status in Saudi Arabia, his beliefs, his travels to Afghanistan, and his business. In relation to Canada, he did not know if he was followed before 9/11 although he thought maybe a little. It was after 9/11 that questions were asked of his friends, that he realized that someone was following him, and that he suspected that his phone was being monitored. He acknowledged that his cell phone was not registered in his name.

[157] When questioned, Mr. Almrei agreed that there was violence involved in *jihad* in Afghanistan and he said that he agreed with that violence. He explained that there was a war, so you had to use violence. Shooting the enemy, but not people in a village, is acceptable. The people who died in *jihad*, he regarded as martyrs and he was happy for them for they would be in Paradise. He acknowledged that he had pictures of persons who he felt were martyrs (from Chechnya) on his computer. When referred to the photographs, he said that he didn't know any of the individuals personally, but he believed that they were martyrs.

[158] Regarding the Muslim Brotherhood, Mr. Almrei heard, a long time ago, that they had been accused of terrorist acts. He did not say that he believed that the organization had engaged in terrorism. He acknowledged that his father was and remains a member of the Muslim Brotherhood.

[159] Counsel spent considerable time questioning Mr. Almrei regarding his time in Pakistan and Afghanistan. Mr. Almrei acknowledged that he had been in the training camp in Jalalabad. He also acknowledged that he had been at the Bait al Ansar guest house on more than one occasion. In this respect, the Ministers' counsel took Mr. Almrei to the evidence of the witness Jamal Ahmed al-Fadl

during the trial concerning the bombings of the American embassies in Kenya and Tanzania in 1998 (*United States of America v. Osama bin Laden et al.*) Mr. al-Fadl, a former *mujahideen*, described the process that occurred upon arrival at a guest house. Briefly, he stated that at the guest house, an individual “gives them his stuff and they put it in envelope and they give you nickname”.

[160] Mr. Almrei stated that he did not know Mr. al-Fadl but he knew of him from the newspaper. When Mr. Almrei was questioned about the described process, he stated that “they will save your money and passport for you” (and had for him on his first trip) but he denied that names were issued.

[161] Mr. al-Fadl also testified that the Bait al Ansar guest house housed individuals who had returned from inside the fight. Mr. Almrei reiterated that he had visited this particular guest house more than once, but he was not asked to comment on the accuracy of Mr. al-Fadl’s description of it.

[162] Mr. Almrei also acknowledged that when he attended the camp in Jalalabad he was under the command of Abdul Rasul Sayyaf. Counsel referred to articles from the websites of global security.org, the Council on Foreign Relations, Inc. and Human Rights Watch that provided descriptive narratives regarding Mr. Sayyaf’s reputation and activities. Mr. Almrei agreed that Sayyaf was an active member of the *mujahideen* coalition and that he was a hard-line Islamic fundamentalist and a member of the Muslim Brotherhood. He said that he did not know that Sayyaf had been described as anti-West, anti-American. When questioned about the statement that Sayyaf had a close relationship with Osama bin Laden during the *jihad* against the Soviets and that they established a network of training camps that were later used by Al Qaeda personnel, Mr.

Almrei stated that he would not be surprised if Osama bin Laden had a relationship with all Afghan leaders. He was not aware that the camps were used by Al Qaeda personnel.

[163] Mr. Almrei stated that the group that Sayyaf commanded, and to which he belonged, was called *Ittihad-i-Islami*. The Human Rights Watch document refers to the Sayyaf group as *Ittihad-i-Islami Bara-yi Azadi Afghanistan* (Islamic Union for the Liberation of Afghanistan). When referred to the document, Mr. Almrei noted that he did not know the meaning of the last two words, but he believed that the reference was to Mr. Sayyaf's group.

[164] When questioned about a raid by Sayyaf's group in West Kabul on February 11, 1993, during which seventy to one hundred civilians were killed and others were raped, Mr. Almrei stated that he was not in Afghanistan at that time. In relation to reports by global security.org of atrocities, specifically that "[t]his group was known to engage in radical Islamic practices, such as throwing acid in the faces of unveiled women", Mr. Almrei stated that he had never heard of that. Mr. Almrei was also referred to a statement from the Human Rights Document that "Sayyaf's men had been fighting for years, first against the Soviet Union, after it invaded Afghanistan in 1979, and then, once the Soviets fled, against other *mujahideen* groups. Even among Afghan fighters, Sayyaf's private army stood out. It included more militant Arabs than the other factions and boasted closer financial links to Saudi Arabia; it even had offices in the desert kingdom". When asked to comment, Mr. Almrei stated that other than that Sayyaf had an office in Saudi Arabia and had links to Saudi Arabia, he did not believe it.

[165] When questioned about Ibn Khattab, Mr. Almrei again acknowledged that he was under Khattab's command during his two trips to Tajikistan. He said that the first trip was a scouting mission only and that he was not armed. During the second trip, the group established a camp, but did not encounter any Russians. Mr. Almrei said that he had no religious function on these missions. He agreed that he maintained contact with Khattab by telephone and faxes after he (Mr. Almrei) stopped going to *jihad*. He supported the Khattab efforts in Chechnya. He stated that he knew many people who knew Khattab and that he had contact with some of them in Saudi Arabia after he returned. He denied ever having sent money to Khattab after arriving in Canada. He agreed that he had pictures of Khattab (one with Basayev) on his computer and that he had monitored the Chechen situation through the internet.

[166] Regarding the "forgery ring", Mr. Almrei maintained that he did not procure false documents for anyone other than Mr. Al Marabh. His own false documents originated in the Middle East. He talked freely in the community about getting false documents, but did not actually act. Ghaled, the man in Thailand, was a human smuggler and while Mr. Almrei spoke with him after his arrival in Canada about getting false passports, he did not get any.

[167] Mr. Almrei acknowledged that he had lied (when applying for a visitor visa) to Canadian authorities before coming to Canada. He admitted that he lied to CIC and CSIS after coming to Canada. He admitted that he affirmed his declaration disclosing his previous activities, for the first time, only after he had been detained and the security certificate had been found to be reasonable. He admitted that when he completed his declaration, he withheld information regarding Tajikistan and regarding Ghaled. In response to counsel's questions as to whether he was withholding, from

the Court, any information regarding: false documentation; participation in *jihad*; his relationship with Ibn Khattab or Nabil Al Marabh; where he travelled in the world; and his use of clandestine methodology, Mr. Almrei responded “[n]ot at all” to each inquiry.

[168] Mr. Almrei stated that he had lied because he was afraid. Even as he was being interviewed by CSIS in his lawyer’s office, he was afraid because of 9/11 and his association with Mr. Al Marabh. Insofar as his declaration being incomplete, he claimed that he had told the whole story to his lawyer, but the whole story is not there. He stated that he did not consciously or deliberately save pictures on his computer.

#### The Psychological Assessment Report

[169] The psychological assessment report of Dr. R. Michael Bagby dated July 19, 2005, in relation to Mr. Almrei was filed as Exhibit A-2 in the public record. Dr. Bagby holds a Ph.D. in clinical psychology and has had post doctoral training. He is a registered member of the College of Psychologists of Ontario. His curriculum vitae is nearly 30 pages long. His qualifications and expertise are not in issue. The Ministers’ counsel chose not to cross-examine him.

[170] Dr. Bagby conducted two personal private interviews with Mr. Almrei. He also reviewed the affidavit of Hassan Almrei dated November 10, 2002, the affidavit of Hassan Almrei dated October 16, 2003, the affidavit of Diana Ralph sworn October 19, 2003 and he conducted telephone interviews with Mr. Robert Ewing (security manager at Metro West) on June 24, 2005 and with Diana Ralph on July 12, 2005. Additionally, he administered the following instruments:

- Structured Clinical Interview for DSM-IV Axis I Disorders (SCID-I/P) - A semi-

structured interview of the DSM-IV Axis I Diagnoses;

- Structured Clinical Interview for DSM-IV Axis II Disorders (SCID-II) - A semi-structured interview of the DSM-IV Axis II Personality Disorder Diagnoses;
- Miller Forensic Assessment of Symptoms Test (M-FAST) - A structured interview designed to provide information regarding the probability a respondent is malingering a psychiatric illness;
- Beck Depression Inventory-II (BDI-II) - A self-report questionnaire of depressive symptomology;
- Wide Range Achievement Test 3 (WRAT3), Reading Subtest - A measure of written decoding (i.e., recognition, naming and pronunciation) of letters and words out of context. This test provides standard and grade scores, as well as percentile rankings, which help assess the client's English reading abilities.

[171] The M-FAST was administered to detect manipulation in the outcome of test results (possible exaggeration of psychiatric symptoms). The results indicated that it was unlikely that Mr. Almrei has an over-endorsing style when responding. Dr. Bagby determined that Mr. Almrei was either unaware or reluctant to admit to experiencing psychiatric symptomatology.

[172] The DSM-IV AXIS I yielded the following results:

- Mood Disorders - Mr. Almrei met the criteria for Depressive Disorder Not Otherwise Specified (NOS), spontaneously endorsing partial symptomology of

Major Depressive Disorder of a mild intensity.

- Psychotic Disorders - There were no indications of any frank psychotic processes.
- Substance Use - Predisposition towards substance abuse or dependency was denied.
- Anxiety Disorders - Mr. Almrei did not meet the criteria for any Anxiety Disorder, including Generalized Anxiety Disorder or Posttraumatic Stress Disorder.
- Somatoform Disorders - Mr. Almrei did not meet the criteria for any Somatoform Disorders, including Pain Disorder.
- Eating Disorders - Mr. Almrei did not meet the criteria for any Eating Disorders.

[173] The DSM-IV AXIS II indicated that Mr. Almrei did not meet the criteria for any Personality Disorders. Mr. Almrei's score on the BDI-II placed him in the mild range of clinical depression, a severity of which is consistent with a diagnosis of Depression (NOS). The WRAT-3 assessment result showed that Mr. Almrei was reading at a grade 5 level in English. He was deemed incapable of completing a full battery of psychological tests, including the MMPI-2.

[174] The CLINICAL INTERVIEW IMPRESSIONS, overall, suggested that Mr. Almrei was "either denying serious psychopathology by underreporting the problems, or he is actually relatively free of serious psychiatric symptoms...he is still surprisingly well-adjusted psychologically and still coping quite effectively with the stresses in his daily life".

- Moods - Mr. Almrei does meet diagnostic criteria for a less severe form of depression, namely Depressive Disorder Not Otherwise Specified. He can be stubborn, emotionally labile and oppositional.
- Cognition - His concentration skills and memory are not overtly impaired.
- Interpersonal Relations - Mr. Almrei is gregarious, outgoing and sociable even though his interpersonal relationships may be superficial.
- Health Concerns - Mr. Almrei indicated some concern about the functioning of his body with endorsement of vague somatic complaints regarding a wide variety of physical symptoms and pain in a number of locations, not readily accounted for by physical problems. He may develop physical symptoms in response to stress and may use his somatic complaints to avoid responsibility.

[175] The COLLATERAL CONTACTS:

- Mr. Robert Ewing - He spoke sympathetically and said that Mr. Almrei is prone to misinterpret innocuous events, often attaching hostile meaning to standard institutional operating procedure. Although superficially affable, Mr. Almrei seems quick to rise to provocation, real or imagined, from certain guards. He agreed that Mr. Almrei's open-ended situation is intolerable and that local detention centres are not physically equipped to accommodate long-term, indefinite sentences. Mr. Almrei has never been especially problematic from a behaviour management perspective.
- Dr. Ralph indicated that Mr. Almrei's mood is subject to marked lability. She claimed to have witnessed aspects of hypomanic behaviour including irritability,



mild euphoria, pressured speech, grandiosity, reduced need for sleep and psychomotor acceleration. By contrast, she has also witnessed Mr. Almrei exhibit a range of depressive symptomatology, including general malaise, lethargy, hopelessness, loss of appetite, sleep disruption and dysphoric (black) moods. Dr. Ralph's description of the "manic behaviour" coupled with depressed moods, suggest a possible bipolar disorder. However, the diagnostic interview and family history do not support such a diagnosis at this time.

[176] DSM-IV Multi-axial Diagnoses - Mr. Almrei meets DSM-IV criteria for the following disorder:

- Axis I Depressive Disorder Not Otherwise Specified
- Axis II No Diagnosis
- Axis III Bilateral leg, eye and lumbar pain, complaints of chronic hypothermia
- Axis IV Prolonged incarceration in administrative segregation; social and sensory deprivation; stress associated with uncertainty of his case; concerns regarding personal safety; social isolation
- Axis V GAF = 65-70

[177] Dr. Bagby commented that the relationship between the relative contribution of arrest and incarceration to Mr. Almrei's current psychological problems is direct. Contemporary scientific literature indicates that even short periods of solitary confinement can result in increased psychopathology whereas inmates incarcerated in solitary confinement for up to a year show a much higher incidence of psychopathology, including paranoia, increased feelings of depression,

hopelessness, powerlessness and fearfulness of their surroundings. It is axiomatic that prison does not enhance mental health and solitary confinement is the “most psychologically impactful and deleterious form of incarceration”. Remarkably, in psychiatric terms, the “effect of Mr. Almrei’s prolonged incarceration appears only moderate in degree”. It is reasonable to assume that continued prolonged incarceration may ultimately lead to a breakdown of his current coping style, which would likely lead to the onset of more serious psychiatric problems.

#### The Affidavits

[178] The affidavits filed in this proceeding, for the most part, relate to the willingness of various individuals to act as sureties. There is no useful purpose to be served in detailing the contents of the affidavits. Elaboration with respect to the sureties will follow later in these reasons.

#### Previous Testimony

[179] At the request and direction of Mr. Almrei’s counsel, I have also reviewed – in addition to the evidence of other witnesses who testified in previous proceedings as recapitulated in more detail below – Mr. Almrei’s testimony (both public and *in camera*) given on November 25, 2002, and January 6 and 7, 2004, as well as his solemn declaration affirmed November 10, 2002. Reference will be made to Mr. Almrei’s previous testimony only when required for purposes of my analysis.

#### Frank Geswaldo

[180] Mr. Geswaldo is security manager at Metro West. The evidence to which I have been directed described the reasons for placing an individual in solitary confinement. Mr. Geswaldo stated that because Mr. Almrei is “very high profile, being in the newspapers, on the radio and T.V.,

there is potential for him to be harmed in the general population”. Basically, he is in solitary confinement for his own protection.

Peter Dietrich

[181] Mr. Dietrich is a regional program adviser and acting Director of Enforcement Issues, Ontario region. He explained that low-risk immigration detainees are placed in hotels. Where there is an immigration detention of an individual who is not in a low-risk situation, the province provides the detention facility and the choice of where the individual will be detained rests with the provincial ministry.

[182] CIC has an unwritten *ad hoc* working relationship with the Province of Ontario for the province to provide access to the provincial facilities. CIC has no agreement with Corrections Canada. Mr. Dietrich did not know the reason why there is no relationship or agreement with Corrections Canada.

[183] The witness was not aware of any preconditions or standards of detention set by the federal government. Any concerns regarding the conditions standards would have to be raised with the province. Once the individual goes to the provincial facility and is detained at that facility, issues relating to security or anything else are governed by provincial guidelines and law.

[184] Mr. Dietrich was not aware of any discussions among immigration officials responsible for detainees within the Ontario region regarding the conditions under which the detainees are detained. There have been discussions in an effort to define a facility for immigration purposes. Those

discussions were not successful. Mr. Dietrich was not aware if there had been discussions on this issue in Ottawa.

Frank Lloyd Showler

[185] Mr. Showler is a Canadian citizen and a retiree. He testified on June 24, 2003, regarding his willingness to provide a \$10,000 conditional bond to secure Mr. Almrei's release. He has since, on September 25, 2005, sworn an affidavit.

[186] Mr. Showler does not know Mr. Almrei personally. He does know Matthew Behrens who is his personal and trusted friend of over 20 years. Mr. Showler has complete faith in Mr. Behrens' judgment about Mr. Almrei. He knows and trusts Dr. Diana Ralph in a similar way.

[187] Mr. Showler has been active, for many years, in human rights activities through the United Church. He has followed Mr. Almrei's case, has participated in vigils outside Metro West and has attended court. He does not visit Mr. Almrei but is kept informed of the details by Mr. Behrens.

Matthew Behrens

[188] Mr. Behrens is employed as an editor and is a volunteer with a number of civil rights groups. He testified, in June 2003, that he was prepared to monitor Mr. Almrei's activities should he be released. He stated that the motivation for his offer is because Mr. Almrei's detention offends his sense of justice and what it means to be a Canadian.

[189] On cross-examination, Mr. Behrens indicated that he would supervise Mr. Almrei through regular contact either "via phone or meetings on an ongoing basis, having lunch together". He

recognized that he did not possess sufficient knowledge to ascertain whether Mr. Almrei was associating with individuals who are members of the Osama bin Laden network.

Diana Ralph

[190] Much of the evidence provided by Dr. Ralph in June 2003 is now outdated. At that time, she had not met Mr. Almrei, but indicated her willingness to have a relationship with him. That she has done. She stated that, as the daughter of an international lawyer for the Nuremberg War Crimes trials, she developed a commitment to resist, due to fear and prejudice, the mistreatment of a whole people.

Aly Hindy

[191] Dr. Aly Hindy is a Canadian citizen of Egyptian origin. He is well-educated and holds a Ph.D. in engineering mechanics from Western University. He is a retiree who works as a consultant. He is the *imam* at the Salahaddin mosque in Scarborough and the director of the Canadian Islamic Congress in Toronto.

[192] As is the case with Dr. Ralph and Mr. Showler, much of the previous testimony of Dr. Hindy is superseded by his affidavit sworn September 22, 2005. Dr. Hindy attests that in June 2003, he did not know Mr. Almrei personally. He has since met him and has ongoing contact with him over the phone. He regards Mr. Almrei as a good, kind and trustworthy person. He is prepared to assist Mr. Almrei and act as a surety. He states that he and his congregation are in a position to ensure that Mr. Almrei is monitored for compliance with any conditions of his (Mr. Almrei's) release. Even if Mr. Almrei were to reside with Dr. Ralph, Dr. Hindy would actively assist in his supervision, and provide religious and ongoing emotional support.

Dr. Kamal Tawfik el-Helbawy

[193] Dr. el-Helbawy, originally from Egypt, was a spokesperson for the Muslim Brotherhood in the United Kingdom from 1995 to 1997. He has been involved in activities relating to the education of people about Islam. Specifically, he has been a lecturer in university, a teacher, and a trainer and “guide to young men to know their religion and faith and to stay away from extremism”. Dr. el-Helbawy testified on January 5, 2004 by way of teleconference.

[194] He stated that Syrians who are in exile because of a relationship with the Muslim Brotherhood cannot get a passport or any document from the Syrian government, not even from the embassies in Canada or the United States. Those who cannot get passports from the Syrian government either get them from other countries or “some of them manage to forge some documents and go to some country to get in as refugees where the human rights are respected”.

[195] When asked when the *jihad* in Afghanistan started to develop, Dr. el-Helbawy explained that when the monarchy of 1933 to 1973 was overthrown, “some freedoms were returned to communists who were banned during the time of King Zahir Shah”. The return of these freedoms eventually led to the communists taking control in 1978. They “dealt with the Soviets who sent more than 100,000 soldiers in December 1979”. The *mujahideen* responded. The Americans, too, were interested in supporting the Arabs in Afghanistan because they had a “good interest in defeating the Soviet Union and bringing the Cold War to an end”.

[196] Regarding the young people who went to Afghanistan, the witness stated that the majority, “as far as I know”, were working in humanitarian agencies and many of them concentrated on

education. Most of them who went to help the *mujahideen* in Afghanistan stayed in Pakistan.

There was a real war going on, but on the border and in Pakistan, the government allowed young men to come and help the children and the orphans and the clinics.

[197] In terms of defending themselves, Dr. el-Helbawy said that they were trained with some very primitive tools and primitive guns and primitive machines. For the majority, very few were anxious to get into the conflict or get into the war. Some did become extremists. When they did, it was because of injustice, the attacks by the Soviet Union, the communists and other reasons. Islam teaches that innocent people cannot be killed, but if you are attacked, you have to defend yourself.

[198] The young men who followed Al Qaeda were of two types. The very radical group thought that Al Qaeda was helping them and the *jihad* and the other group developed extremist ideas because of a lack of hope for proper change for many years in Afghanistan. Not everyone who was linked to Al Qaeda, whose name will be found on documents, is a terrorist. Many of them are Muslims or Christians, good people who went to Afghanistan to help its people out of their adversity.

[199] Dr. el-Helbawy stated that there were some problems for some young men who returned to their countries after *jihad*. Countries like Syria, Iraq, Egypt, Libya, Tunis and Algeria did not welcome them. It was strange because it was a contradicting policy. At one time, they encouraged people to go to help the *mujahideen*. After the *jihad* came to an end, they regarded them as terrorists and extremists. Saudi Arabia treated the people nicely until it began to face some local problems and the different interpretation of Islam. The ultimate problem was the crisis in New

York, 9/11. Before that, it was not a problem for any Saudis who went to Afghanistan to come back.

[200] On cross-examination, counsel asked Dr. el-Helbawy whether he agreed that Osama bin Laden is an extremist and a terrorist. The witness responded that he disagreed with some of his (bin Laden's) ideas and did not appreciate them, as a Muslim. Extremist actions are something different from extremist ideas. He "can't believe or disbelieve that bin Laden is a terrorist". Dr. el-Helbawy believes that "everyone is innocent until he is proven guilty". Until proven to be a terrorist, the witness does not believe anyone is a terrorist. His comments regarding bin Laden applied to Dr. Zawahiri as well.

[201] Dr. el-Helbawy stated that Mr. Hekmatyar was one of the well-known figures in the Afghanistan war who was well received by most of the government. He was the leader of the *Hezb-e-Islami*. He was one of the earlier leaders who started *jihad* for the war against the communists. Dr. el-Helbawy knew him personally. Abdul Rasul Sayyaf was another leader of another group, the *Ittihad-i-Islami*. He was attacked by the Taliban and the Taliban wanted to get rid of him. He was a very good man and was very moderate but he was working very hard to liberate his country from Soviet occupation. He was one of the seven leaders who started *jihad*. All these leaders knew Osama bin Laden. "You can say that Osama bin Laden is related to the *mujahideen* in Afghanistan, but not vice versa. Osama is a Saudi citizen who went to Afghanistan to help the *mujahideen*. He is related to them; they are not related to him".



[202] Regarding the training camps, Dr. el-Helbawy had not been to a training camp; he had worked in a care centre. He did not know “what was running inside exactly”. Some of the Arabs who went there were not happy with the extremist ideas. He had no personal knowledge as to the security measures that Osama bin Laden put in place for dealing with persons who were participating in his camps.

[203] Dr. el-Helbawy does not know Mr. Almrei personally. He did know people like him and “some of them did not like to mention their proper names in this area...they call themselves Abu so-and-so...you would not know their proper name because even in the old country, not only during the war, they know each other by nicknames”. The witness had never communicated with Mr. Almrei and his knowledge of him came from the material forwarded to him by Mr. Almrei’s counsel.

Dr. Khaled M. Abou el Fadl

[204] Dr. el Fadl also testified by way of teleconference. Although regularly employed at the UCLA School of Law, when he testified, he was a visiting professor of law at Yale. He has written extensively on Islamic law, on human rights issues in relation to Islam and Muslim minorities, on *jihad* and moderate perspectives on Islam. He was appointed by the current President Bush to serve a two-year term on the United States Commission on International Religious Freedoms. The Commission’s mandate is to issue recommendations to Congress regarding countries that should be designated as habitual religious persecutors, or are discriminatory against religious freedom. If Congress adopts the recommendations and so designates a country, the country becomes subject to economic sanctions. Dr. el Fadl teaches United States National Security Law and Immigration Law. He has dealt with national security issues in the context of the American system.

[205] He explained the Afghani war against the Soviet Union and said that the war of the *mujahideen* started after the Soviet Union invaded Afghanistan claiming that it had been invited by the national government of the day to provide security. Internationally, the world community regarded it as an invasion. Both the United States and a number of Muslim countries supported groups collectively known as the *mujahideen*, formed of numerous groups, which commenced a protracted war against the Soviet invasion that lasted for about 10 years, until the Soviets left the country.

[206] In Kuwait, Saudi Arabia, various Gulf countries, and Egypt and Jordan, there were calls for two things, financial support of the *mujahideen* and volunteers who would go and fight with the *mujahideen*. The consensus in the Muslim world, with the exception of a few countries like Syria, was that the Soviet invasion was a bad thing and that it was a commendable act to volunteer to repulse that invasion. Fairly large numbers of Muslims from various parts of the world, most notably Saudi Arabia, Egypt, United Arab Emirates, Algeria, and Jordan volunteered and went, first, to train and, then, to participate in the war effort.

[207] Dr. el Fadl explained that in several Muslim countries, the government provided at least a ticket and some “logistical assistance with getting there and some cash amount”. In the case of governments like Saudi Arabia and Kuwait, there was further assistance. Those who went two years after the invasion eventually saw fighting. “A lot of the people who went later, by the time they went to training camps, they never actually saw combat or even the war”. Additionally, many of those people really had no military background, did not know the topography of Afghanistan and

would have needed a considerable amount of training to get into shape to participate with the *mujahideen*. They went because in Islam there is a very strong belief that you must come to the aid of your Muslim brother or sister. At the time, the prevailing mood was that this was a communist state invading a Muslim country. Muslims equated communism with atheism. The Muslim country was being invaded by an atheist regime.

[208] Regarding the training received, the witness stated that almost all who went to Afghanistan did not undertake serious, rigorous training that would have qualified them for actually joining the *mujahideen*. They would have received basic elementary military training, necessary for their safety in Afghanistan. Many of them learned hand-to-hand combat and learned to shoot a *Kalashnikov*, but that is “not what I think of when I think of training for terrorist organizations”. They did not get training in explosives, in how to shoot an RBJ, in the manufacture of time bombs, or the training necessary to control suicide bombers. If they wanted to survive in Afghanistan, especially at night, they needed to know how to use a *Kalashnikov* and to carry one. Terrorist training would be far more rigorous.

[209] On the topic of Osama bin Laden, Dr. el Fadl said that, during the war against the Soviets, while he did take part in some battles, bin Laden was not seen as a major player. At that time, he was seen as someone who was pro-Saudi government and was rumoured to have dealings with the CIA. After the war ended and after the Soviets were gone, Osama bin Laden started using his forces to dominate Afghans themselves. It is clear that he was acting before the Soviets left, but he was not a major player. He did not really come to prominence or become a serious figure in the field until quite late, in late 1995 or 1996.

[210] In response to a question as to whether he would characterize the young people as extremists for going to Afghanistan, the witness responded that the majority of those who went had strong religious convictions, but they were not necessarily extremists. There were some of those who were overall very extremist in their convictions, but a “good portion of the kids who went were believing, practising Muslims”. They were stepping into something of a hero status by volunteering to go to Afghanistan. Many of them saw combat; some did not.

[211] One of the serious tragedies of this “whole fiasco” was that, as the war ended, the same countries that had initially encouraged young men to go were viewing them with a tremendous amount of suspicion because these countries feared that they had become radicalized in Afghanistan. In Egypt, everyone coming back from Afghanistan was arrested and detained in a summary fashion. The practice was quite similar in Kuwait. In all of the Gulf countries, including Kuwait and Saudi Arabia, citizenship comes from both parents being citizens of the country. Those who did not hold citizenship were not reintegrated into society. In practice, they would attempt to come back and they would be arrested with serious human rights violations taking place. Some were detained for periods of up to six, seven, and eight years.

[212] From Dr. el Fadl’s studies and experience, his sense is that those, who had become radicalized and attempted to return back to their native countries, would not exceed 15 percent. A lot of those who became radicalized never attempted to return home especially after the rumours came out, in the first year of return, that Arab governments were detaining their returnees. Those who were not radicalized and were not recruited by the extremist groups like Al Qaeda, or some of

the other marginal ones at the end of the war, with the drying up of funding, really had no other choice but to come back. They could not live very well in Afghanistan without coming under the protection of some tribe or another, or some organization like the Taliban.

[213] When asked how he would characterize those who had become radicalized, he described them as “those who became convinced that, when the revolution defeated the Soviet empire, the revolution should extend from defeating the Soviet empire to bringing down other infidel empires and they were thinking the United States”. In other words, they had grown to believe that the *jihad* can continue, that the *jihad* had won its battle against the Soviets and now the *jihad* can win its battle against the Americans. They were not content with just getting an education and going to a job and earning a salary and so on. They believed that their mission had to continue.

Dr. el Fadl stipulated that there is no correlation between opposing the United States invasion of Iraq and holding an extremist point of view.

[214] Counsel questioned the witness regarding honey business distributors or owners being involved with Osama bin Laden. He responded that there was a business infrastructure that bin Laden supported. He had extensive business relations in the truck trade and didn't seem to have branched out into any other legitimate businesses. Speaking specifically to the honey trade, Dr. el Fadl said that in some countries, like Yemen and the Gulf countries generally, it is very widespread. It has a low profitability margin, but Muslims believe that honey has curative effects and a lot of people consume honey as a religious act. One finds a lot of honey traders on the side of the roads. It is a business for poor people because of the very low margin of profit. Egypt has tried to regulate it, but that is not common. In Jordan, Yemen, or Saudi Arabia, in the area of a mosque, you will

find honey sellers on the side of the road. They are usually supplied by local farmers. You can't get rich from selling honey; there is just too much of it on the market.

[215] Regarding the impact of 9/11 on young male Muslims in the United States or western countries, the witness said that it has been enormous, particularly in the field of immigration, whether in visa delays or the denial of discretionary relief. There is a lot of anxiety about being unfairly targeted by law enforcement as well as the anxiety that all others, who are citizens, feel about being the victims of terrorist attacks. The condition of Muslims in the United States is not a bad one, but a lot of people don't feel as secure about their futures.

[216] In discussing Mr. Almrei's profile, as he understood it, Dr. el Fadl commented that people who have become members of Al Qaeda, or of one of the other terrorist organizations, tend to have different experiences. Specifically, they receive more extensive training. People who belong to Al Qaeda have tended to remain in Afghanistan for a longer period of time (as opposed to attempting to return home shortly after the Soviet withdrawal). Engaging in commercial activity that produces profits in pennies is not usually true of someone who has worked with these organizations. The closer model is seen in 9/11 individuals who, for instance, were in the United States for a long time and did not have any liquidity problems, who were able to pay their bills, and have their education paid for. Instructing school children in Koranic memorization is unusual for someone who has been recruited by Al Qaeda.

[217] Dr. el Fadl was also asked if it was typical for one (like Ressam), who had been detained, to admit involvement with an extremist organization. He answered that the typical behaviour that he

has encountered has been of two distinct types. Those who are ideologically committed, those who join al Qaeda, have certain ideological beliefs that they are proud of and that they brag about. That empowers them to be quite defiant. There are other situations where the government apprehends a group of people and accuses the group's members of planning a terrorist attack, in other words, a terrorist cell. In this situation, in his experience, the witness said that "they will deny everything and they continue to deny to the very end, even after obtaining a conviction".

[218] On cross-examination, Dr. el Fadl readily agreed that Osama bin Laden and Dr. Zawahiri would be classified as individuals who have a distinctive creed of violence. The witness acknowledged that: he did not know Mr. Almrei; he had never spoken with Mr. Almrei; he had never corresponded with Mr. Almrei; he did not know any member of Mr. Almrei's family; he had never communicated, in any way, with any member of Mr. Almrei's family; and he did not know Mr. Almrei's associates or friends. Dr. el Fadl's information regarding Mr. Almrei was acquired from reading Mr. Almrei's counsel's e-mail containing a summary of the basic information from Mr. Almrei's declaration and the nature of the allegations.

[219] In response to a question as to how many training camps operate under Osama bin Laden, or his instruction or organization, in the world today, the witness answered that in Afghanistan, the most accepted estimate was 15 camps (about 30, but 15 of them inactive). Regarding security measures implemented by Osama bin Laden, or those associated with him, for determining who could participate in one of his training camps, Dr. el Fadl's only knowledge consisted of academic research. In that regard, he stated that there is quite a bit of material about the recruitment tactics of Al Qaeda and what types of safety measures they took, what they did with people that they

suspected were agents and so on. There were methods of trying to ensure that people who participated in his camps shared the same objectives that he did.

[220] In relation to training camps outside of Afghanistan, the witness stated that he could not say whether Osama bin Laden had such camps. He had read that there were suspected training camps in Somalia and Yemen and a few other places, but linkages with bin Laden were not established conclusively. Sudan was another place suspected of having a camp. The witness agreed that there were people who were associated with Osama bin Laden who went to countries other than Afghanistan.

[221] As to whether people associated with bin Laden would resort to clandestine methods regarding their activities, Dr. el Fadl again referred to the literature and stated that after going through the period of training and indoctrination, they are stationed in what are called sleeper cells that can remain inactive for years and then be activated. The members of the cells try to blend in. They do nothing to stand out, nothing distinctive. For instance, the people in 9/11 would appear like very regular people. They are supposed to be inconspicuous and not draw attention to themselves.

[222] When asked on re-examination about the number of training camps in Afghanistan during  *jihad* , Dr. el Fadl commented that he was not sure because there were a variety of training camps in Afghanistan operated by various  *mujahideen*  organizations. He had not read that anyone claimed conclusively that a particular set of camps in the  *jihad*  were linked to bin Laden. Osama bin Laden, at that time, co-operated with Saudi Intelligence and was not a major player. At the time of the



*jihad* itself, there were numerous camps, many of them run by various *mujahideen* organizations, or various ethnic groups. Many of them had no links to any type of terrorist organization or activity.

### The Sureties

[223] The proposed sureties are listed below. I will not repeat the information with respect to those whose evidence has been summarized earlier in these reasons.

- (1) *Diana Ralph and Jean Hanson, jointly* \$10,000 cash bond  
Both are prepared to act in a supervisory capacity.
- (2) *Dr. Aly Hindy* \$ 8,000 cash bond  
He is prepared to act in a supervisory capacity and \$20,000 conditional bond  
to arrange accommodation, if required.
- (3) *Matthew Behrens* \$ 2,500 cash bond  
Mr. Behrens is also prepared to supervise Mr. Almrei.
- (4) *Alexandre Trudeau* \$ 5,000 conditional bond  
Mr. Trudeau is prepared to accompany Mr. Almrei, if released, for the purpose of the preparation of Mr. Trudeau's documentary. Mr. Trudeau is ordinarily resident in Montreal.
- (5) *Hassan Ahmed* \$ 3,000 conditional bond  
Mr. Ahmed is willing to act in a supervisory capacity.
- (6) *Frank Showler* \$10,000 conditional bond  
Mr. Showler is not in a position to supervise Mr. Almrei.
- (7) *Elizabeth and Francis Barningham, jointly* \$10,000 conditional bond  
There is no affidavit from these individuals. There is an affidavit of law clerk, Patricia Vettraino, sworn July 18, 2005. Exhibited to it as "B", is an e-mail from Mr. and Mrs. Barningham indicating that Mrs. Barningham is a 53-year-old retired teacher and Francis (aka Barney) is a 72-year-old whose many jobs have included providing limo service. They reside in Durham, Ontario, have corresponded with Mr. Almrei for over a year and have spoken to him on the telephone. They would maintain regular telephone contact with him,

if he were released.

- (8) Heather Mallick \$ 100 cash donation  
 Ms. Mallick is a journalist and a friend of Mr. Behrens. Correspondence indicating her willingness to donate \$100 is Exhibit “A” to the June 24, 2005 affidavit of Patricia Vettraiño.
- (9) Alexa McDonough \$ 100 cash donation  
 Ms. McDonough is the Member of Parliament for Halifax, Nova Scotia. Her e-mail indicating symbolic support for Mr. Almrei in the cash amount of \$100 is exhibited as “A” to the July 18<sup>th</sup> affidavit of Patricia Vettraiño.
- (10) Sharon Aiken \$ 1,000 conditional bond  
 Ms. Aiken is described in Ms. Vettraiño’s affidavit of July 18<sup>th</sup> as “a law professor at Queen’s University, who has also advised us that she is prepared to put up \$1,000 as a conditional bond to support Mr. Almrei’s application for release”. There is no further information.
- (11) Others  
 Ms. Vettraiño’s July 18<sup>th</sup> affidavit also states that the amounts indicated (for the individuals listed) have been deposited in the trust account of Jackman & Associates and are held for the purpose of supporting Mr. Almrei’s application for release. There is no further information.
- Dave Epstein \$ 50 cash donation  
Terrence Walker \$ 100 cash donation  
Peter Marmorek \$ 100 cash donation

[224] There is also correspondence from Diana Ralph dated June 28, 2005 (Exhibit A-28 in the public record) stating:

The following neighbours have also agreed to accompany Hassan Almrei when he is outside the home.

Randa Zabal-Loughmiller: 1029 St. Clair Ave. West, Toronto, M6E 1A3, 416-875-2391  
 Susan Chernin and John Gross: 52 Crang Ave., Toronto 416-653-8768  
 Sam and Schuster Gindin: 89 Glenholme Ave. Toronto, M6H 3B2 416-651-4736

[225] On October 14, 2005, previously undisclosed information was released to Mr. Almrei. Among other things, the disclosure revealed that the Service “believes that Ibrahim Ishak worked at the Eat-A-Pita Restaurant in Toronto.” Further, the Service “believes that in 2001, Mr. Ishak was detained by U.S. authorities at the Detroit airport and had in his possession thirteen packages of identity and other documents including passports for individuals other than himself”. The list of the packages of documents, cell phones, and crimping machine seized from Mr. Ishak was disclosed. In response, on November 9<sup>th</sup>, Mr. Almrei submitted a further affidavit. The evidence contained in that affidavit is summarized here.

[226] Mr. Almrei met Mr. Ishak at the Jami Mosque in Toronto in 1999. Although they did not become close friends, they were acquaintances and spoke or met from time to time, until January or February 2001. There has been no contact between them since then.

[227] Mr. Almrei knew only what Mr. Ishak told him about Mr. Ishak’s background. Among other things, Mr. Almrei believed that Mr. Ishak worked for a Bosnian immigration consultant in Toronto.

[228] In January of 2000, Mr. Almrei and Hassan Ahmed purchased Eat-A-Pita (sold in August 2000). Mr. Ishak would drop by the restaurant. Zaineb Awymer (ph), from Lebanon, was working at the restaurant “under the table”. She asked Mr. Almrei if he could find someone to marry and sponsor her so that she could obtain legal status in Canada. She was prepared to pay the person to marry her.

[229] Mr. Almrei approached Mr. Ishak because he (Mr. Almrei) knew that Mr. Ishak needed money. Ms. Awymer paid Mr. Ishak \$4,000 to marry and sponsor her. The couple were married at City Hall and at a mosque in Toronto. Mr. Almrei was a witness on both occasions. Although Mr. Ishak never worked at Eat-a-Pita, Mr. Almrei provided a letter saying that he had been employed there in order to facilitate the sponsorship application.

[230] Mr. Ishak was stopped at the Detroit airport on January 14, 2001, while en route to Canada, from Bosnia. He later told Mr. Almrei that he had forgotten that he had in his luggage (when he was stopped) the passport of the woman he had married while in Bosnia. He said nothing to Mr. Almrei of any other documents.

[231] Sometime between January or February and October of 2001, Mr. Almrei learned that Mr. Ishak had withdrawn his sponsorship of Ms. Awymer. Mr. Almrei felt responsible and personally re-paid Ms. Awymer the \$4,000 she had paid to Mr. Ishak as well as some of the expenses associated with the sponsorship application. One week before Mr. Almrei's arrest, he learned that Mr. Ishak was in jail in Bosnia for defrauding individuals by holding himself out as an immigration consultant and accepting payment for services that he did not provide. Mr. Almrei was not surprised by this information in view of Ms. Awymer's experience.

[232] Apart from what was disclosed, Mr. Almrei has no knowledge with respect to the package of documents seized from Mr. Ishak at the Detroit airport. Mr. Almrei knew that Mr. Ishak assisted individuals in obtaining Ontario drivers licences using G-1 licences from Ontario and the State of

Michigan. Mr. Almrei referred two individuals to Mr. Ishak for this purpose and was compensated for the referrals.

[233] Mr. Almrei has no knowledge of Mr. Ishak's present whereabouts, has no means to contact him, and has no interest in having further contact with him.

#### ISSUE

[234] Mr. Almrei identifies the subject of contention as follows: "The sole issue before this Honourable Court is whether the applicant should be released from detention on appropriate terms and conditions pursuant to subsection 84(2) of the *Immigration and Refugee Protection Act*".

#### PRELIMINARY OBSERVATION

[235] The Federal Court of Appeal in *Almrei*, at paragraph 15, stated that time and the behaviour of the parties are of the essence of a subsection 84(2) application for judicial release from detention (also at paragraph 5). The objective of the subsection, broadly speaking, is to ensure that due diligence will be exercised by the authorities in removing a foreign national who has been detained for security reasons (paragraph 28). Removal within a reasonable time is the central question (paragraph 34) and evidence of removal within a reasonable time is the key element (paragraph 35). The primary focus of a subsection 84(2) application for judicial release is whether or not the foreign national will be removed within a reasonable time (paragraph 33). It is only if there is evidence that the removal will not take place within a reasonable time that it is necessary to consider whether the release of the foreign national would pose a danger to national security or to the safety of any person. At that time, a review of the order maintaining detention may require a review of the secret

evidence but this is necessary only if the evidence on the public record appears insufficient to support the order (paragraph 33).

[236] Counsel (for both parties) approached this matter within the parameters established by the Court of Appeal. No submissions or arguments were made in relation to:

- (a) the constitutionality of any provision of the legislation;
- (b) alleged breach or breaches of fundamental justice;
- (c) the lawfulness of the detention; or
- (d) the holding of *ex parte in camera* hearings.

In relation to (d), Mr. Almrei's counsel implored the Court to be vigilant in its review of the classified information and asked that it keep an open mind with respect to further disclosure, wherever possible. That, the Court has done.

[237] In sum, the evidence and argument were confined exclusively to the issues of "removal within a reasonable time" and "danger to national security or to the safety of any person".

## REMOVAL WITHIN A REASONABLE TIME

### The Law

[238] The Court of Appeal, in *Almrei*, enunciated a number of propositions relevant to the assessment of the issue of "removal within a reasonable time". I regard the trilogy set out below to be particularly significant.

1. The concept of "removal within a reasonable time" requires a measurement of the

time elapsed from the time the security certificate was found to be reasonable, and an assessment of whether that time is such that it leads to the conclusion that removal will not occur within a reasonable time (paragraph 55).

2. The judge must consider the delay and the causes of the delay. Judicial remedies must be pursued diligently and in a timely fashion. This applies as well to the Ministers' responses and to the judicial hearing of the application for release (paragraph 57).
3. The test is forward-looking, that is, it is future-orientated. Evidence must be provided that the applicant will not be removed within a reasonable time (paragraph 81).

#### The First Detention Review

[239] The issue of the delay and its causes in this matter for the time period encompassing October 19, 2001, until March 19, 2004, is fully canvassed in the reasons of the Court of Appeal, specifically at paragraphs 84 through 106. I do not intend to repeat what has been stated. Synoptically, the Court arrived at the conclusions delineated below.

- (a) The initial proceedings were conducted rapidly. A deportation order was issued less than three months after the decision was rendered on the reasonableness of the certificate.
- (b) Thirteen months elapsed before the danger opinion was issued by the Minister. Some of the delay in preparing the first danger opinion may have been attributable to limited institutional resources. Additionally, the IRPA came into force on June 28, 2002 and

created a dynamic of its own which generated some institutional delays which can be considered normal in the circumstances. However, the major sources of delay during that period originated with Mr. Almrei. More specifically:

- (i) once Mr. Almrei was informed that a danger opinion would be sought with a view to deporting him to Syria, he recanted his story;
  - (ii) in a statutory declaration in November 2002, Mr. Almrei divulged information that, since his arrival in Canada in January 1999, he had concealed from his counsel and from Canadian authorities;
  - (iii) this information, newly revealed in opposition to the danger opinion and a possible removal to Syria, necessitated careful analysis. Authorities saw the need to closely investigate the new facts and justifications provided by Mr. Almrei for his travels and behaviour.
- (c) The Court of Appeal concluded that the time taken to prepare the first danger opinion was not such that a finding that the delay was unreasonable was warranted.
- (d) The delay occurring after January 17, 2003, was determined to be the product of Mr. Almrei's applications for judicial review and motion to stay his removal until judgment was rendered on the applications. Judgment on the first application for judicial review and the motion to stay the removal occurred within four months. Mr. Almrei received notice from the Minister that a second determination of his risk to the security of Canada and of the possibility of his removal from Canada would be sought and the second opinion was provided less than three months from the time of the notice given to Mr. Almrei.



- (e) Mr. Almrei again applied for judicial review of the danger opinion. The Court of Appeal concluded that, excluding the period of nine months for the leave application to be determined, during which time Mr. Almrei was in detention, the delay was not unreasonable or unusual. Mr. Almrei could and should have been more aggressive in moving his file forward.
  
- (f) Mr. Almrei could have put an end to his detention if he had shown a willingness to leave the country. He could, at any time, have made an application to the Minister for release pursuant to subsection 84(1) indicating which countries other than Syria he would be willing to go to (his parents live in Saudi Arabia, his sister lives in Lebanon, and he had travelled freely to Pakistan, Afghanistan, Jordan and other countries). The Minister would have had to investigate the possibility of a safe removal to these countries. Mr. Almrei made no such effort or inquiry.
  
- (g) The Court of Appeal affirmed the conclusion of Mr. Justice Blanchard that Mr. Almrei had not established that removal would not occur within a reasonable time within the meaning of the statute.

[240] The Court of Appeal's decision was rendered shortly after the hearing of Mr. Almrei's judicial review application when judgment with respect to the judicial review was pending. On March 11, 2005, after receiving supplementary submissions in January, Mr. Justice Blanchard

allowed Mr. Almrei's application, set aside the decision of the Minister's delegate and remitted the matter (the danger opinion) for reconsideration.

### The Present Proceeding

[241] Within two months of Justice Blanchard's decision, Mr. Almrei notified the Court of his intention to seek a further review of detention. Three weeks later, he filed his motion record.

[242] As far as I am aware, the paragraph 115(2)(b) danger opinion is outstanding. The memorandum of the Security Review Division and appendices were received by Mr. Almrei not later than July 4<sup>th</sup> and his submissions were completed on July 29<sup>th</sup>.

[243] Mr. Almrei cannot be removed from Canada until the opinion from the Minister's delegate is completed unless the Minister permits him to leave Canada destined for a country, of his choice, willing to receive him. Failing that, he must remain in detention unless released by the Court.

[244] Regarding the present proceeding, the hearing was scheduled for the earliest date that all counsel were available, that being the last week of June 2005. After two days, the hearing was adjourned, at Mr. Almrei's request, to a date to be scheduled. Mr. Almrei's counsel was awaiting receipt of a psychological assessment regarding Mr. Almrei and the disclosure of further information that was to be forthcoming. Additionally, Mr. Almrei, at that time, was on a hunger strike and was not, given the time of day, in a condition to give evidence. Counsel requested that his right to testify be reserved. Mr. Almrei's counsel also made two additional requests: that the Court accept a list of questions, thought to be relevant by Mr. Almrei, to be put to the Ministers

during the *ex parte in camera* hearings that were to be conducted at a time to be scheduled in early July; and that the Court order the attendance of a CSIS witness familiar with the specific allegations in relation to Mr. Almrei. On the consent of counsel for the Ministers, the hearing was adjourned pending the receipt of the psychological assessment.

[245] On July 8<sup>th</sup>, the Court issued a direction requiring the Ministers, upon the resumption of the public hearing on a date to be set, to produce a CSIS witness, informed on all facts and matters relied upon (in the public summary) by the Ministers. A further direction required counsel for the Ministers and a knowledgeable witness, who could give evidence and answer questions from the Court, to appear *ex parte in camera* on July 13, 2005 to respond to the Court's inquiries with respect to further disclosure of information contained in the confidential record and the Court's inquiries regarding the source of each item in the confidential record relied upon by the Ministers as well as the presence or absence of independent corroborating evidence. Additionally, the Court initiated a teleconference with counsel for the parties to discuss potential dates for the resumption of the public hearings.

[246] Mr. Almrei's counsel forwarded their list of questions prior to the *ex parte in camera* hearing. That hearing proceeded as scheduled, on July 13<sup>th</sup>. Further disclosure was ordered and provided. The public hearing resumed for three days on July 18<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup>. At the end of the hearing on July 20<sup>th</sup>, counsel requested the opportunity to jointly suggest a schedule for the filing of written submissions. The Court directed that the proposed schedule be filed by July 25, 2005.

[247] On July 25<sup>th</sup>, the Court approved the proposed schedule for the filing of submissions. The applicant's submissions were filed on August 10<sup>th</sup>, the respondent Ministers' submissions on August 25<sup>th</sup> and Mr. Almrei's reply submissions on August 30<sup>th</sup>. Thereafter, the Court again directed the Ministers' counsel to appear *ex parte in camera* for the purpose of receiving further questions to which the Court required answers. Mr. Almrei's counsel were subsequently advised of this direction and were requested to provide clarification first, regarding their request of the Court to review previous transcripts and second, clarification with respect to Mr. Almrei's proposed sureties. Mr. Almrei's counsel requested an extension of time, which was granted, within which to provide further evidence with respect to proposed sureties. On September 24<sup>th</sup> and October 14<sup>th</sup>, further *ex parte in camera* hearings were conducted for the purpose of receiving the responses to the Court's questions provided to the Ministers' counsel on September 2<sup>nd</sup>. Further disclosure was ordered to be provided to Mr. Almrei's counsel on October 14<sup>th</sup>. Also, on October 7<sup>th</sup>, the Ministers provided written submissions to the Court detailing the Ministers' concerns in relation to Mr. Almrei's evidence regarding updated sureties.

[248] On October 25<sup>th</sup>, Mr. Almrei's counsel requested a teleconference to address issues arising out of the further disclosure of October 14<sup>th</sup>. A direction issued approving the schedule proposed by counsel, on consent, for the presentation of written questions and responses as well as the preparation of a statutory declaration by Mr. Almrei. Another *ex parte in camera* hearing was conducted and a further order issued regarding responses to questions posed by Mr. Almrei's counsel. Mr. Almrei's affidavit was forwarded on November 9, 2005 and the Ministers' submissions in response were received on November 14<sup>th</sup>.

[249] To date, this matter has proceeded expeditiously with the possible exception of the time taken by the Ministers to provide responses to the Court's questions. As noted, the questions were provided on September 2<sup>nd</sup>, three days following the Court's receipt of the final submissions of the parties. Most, but not all, of the responses were provided on September 24<sup>th</sup>. Further responses were forthcoming on October 14<sup>th</sup>. While I would not categorize this delay as abnormal and I do not suggest that the responses could have been obtained earlier, this delay cannot be attributed to Mr. Almrei.

#### The Positions of the Parties

[250] Mr. Almrei notes that two previous danger opinions have been set aside by this Court and he refers to the extant time-lines following each of the Court's orders. The target date, set by Mr. Dumas for a decision by the Minister's delegate, is said to be stated in the abstract without the benefit of either the memorandum of advice or Mr. Almrei's submissions. Counsel notes the circumstances of Maher Arar's imprisonment and treatment in Syria and states that Mr. Arar's experiences were of sufficient severity to warrant the appointment of a Commission of Inquiry to examine the actions of Canadian officials with respect to Mr. Arar's deportation from the United States to Syria. Recent similar revelations regarding Syria's treatment of Ahmad El Maati and Abullah Almalki raise serious questions regarding the permissibility of removal in the face of a risk to torture or other serious human rights abuses. No decision has been made to remove Mr. Almrei and it cannot be presumed that the decision will ultimately be that he will be removed.

[251] The Ministers submit that Mr. Almrei's reliance on the fact that two prior danger opinions have been set aside is misplaced because it does not lead to a conclusion that removal will not occur

within a reasonable time. Mr. Dumas testified that Mr. Almrei's case is a priority and he believed that a final decision would be available by the end of October. Mr. Almrei has not requested an expedited decision and he has not asked to be removed to a third country.

[252] Mr. Almrei provides a detailed account of the evidence describing the conditions of his detention and says that nothing has changed. The conditions are such that the test of urgency is met. Regarding voluntary departure, Mr. Almrei claims that it is self-evident that he will not choose to return to Syria, "a country with an appalling record of treatment of those sharing the 'profile' [he] is said by the Canadian government to possess". The Ministers do not suggest where he might go. Moreover, the Minister (Citizenship and Immigration) must approve release for departure under subsection 84(1) and there is no evidence that the Minister will approve removal to any country other than Syria.

[253] The Ministers assert, in relation to the conditions of detention, that the psychological assessment indicates that the effect of Mr. Almrei's prolonged incarceration in administrative segregation appears only moderate in degree. Further, the testimony of the guards discloses that they respect Mr. Almrei; they trust him as an inmate; they respond to his needs; he is not being mistreated; he has access to medical and dental care; he is provided with food and personal hygiene facilities; he has held a cleaner position; he is able to make telephone calls and receive visitors; he receives reading material; and he has the opportunity to pray.

### Analysis

[254] The determination in *Ahani v. Canada (Minister of Citizenship and Immigration)* (2000), 261 N.R. 40 (F.C.A.) leave to appeal dismissed, [2001] 1 S.C.R. v. – that the onus of proof rests with the person who brings the application for judicial release and it has to be discharged on a balance of probabilities – was confirmed in *Almrei* (paragraph 39). The Court of Appeal described the burden as an evidentiary one. The applicant has to file some evidence that the removal will not be effected within a reasonable time and that his release will not pose a danger to national security or to the safety of any person. That evidence must be answered. The Crown cannot sit idle. The judge will assess the evidence adduced by both parties and determine whether the conditions of subsection 84(2) are met.

[255] I am satisfied, on a balance of probabilities, that Mr. Almrei will not be removed within a reasonable time.

[256] The evolution of this matter has been recounted. Mr. Almrei has been in detention for more than four years. The security certificate was found to be reasonable on November 23, 2001. In my view, it is evident that the time required to effect Mr. Almrei's removal has been elongated primarily as a result of his pursuit of legal remedies to thwart his removal. The Court of Appeal has concluded that the determination of whether a delay has become unreasonable requires examination of five different factors (paragraph 57) that, in the end, amounts to having regard to the totality of the circumstances.

[257] If credible and compelling evidence of an imminent removal is produced, both the conditions of detention and the time already served lose much of their significance (paragraph 81).

The history of events is relevant in the sense that it may provide reason to doubt the reliability of evidence that the moment of removal is close at hand and to question how much further delay is reasonable (paragraph 82).

[258] Where delay ensues, as a result of an applicant's efforts to prevent his removal, the Court has a discretion to discount, in whole or in part, the resulting delay (paragraph 58). The conditions of detention may be such, especially when coupled with a lengthy detention, that the phrase "within a reasonable time" takes "another significance, one of urgency" (paragraph 82). The removal must then be effected even more expeditiously in order to be in compliance with the requirements of subsection 84(2). It is in this light that, where necessary, the length and conditions of past detention must be looked at by the judge along with the operative causes of delay (paragraph 83). Thus, alone or in combination, lengthy detention and oppressive conditions can make the matter one of urgency and the standard of reasonableness a stringent one.

[259] There is no debate that the detention, at this point, is a lengthy one. I repeat that Mr. Almrei was detained on October 19, 2001 and has been in detention ever since. The security certificate, signed by the Ministers on October 16, 2001, was found to be reasonable by Madam Justice Tremblay-Lamer on November 23, 2001.

[260] As to the conditions of Mr. Almrei's detention, with the exception of a transient experience with the general population, he has been in solitary confinement for the duration of his tenure at the Metro West. The uncontroverted and unanimous evidence of the institution's employees is that



segregation is essential because Mr. Almrei's personal safety would be at risk in the general population.

[261] In segregation, he is confined to his cell for approximately 23 1/2 hours per day. During the other half-hour, he showers and has 15-20 minutes of exercise. If there are lock-downs or staff shortages, he cannot shower or exercise. He is permitted visitors for a total of 40 minutes each week and is permitted telephone calls.

[262] Mr. Almrei occupies his time by praying and by reading newspapers and magazines to which he subscribes. Occasionally, he receives books from individuals such as Dr. Ralph. There is nothing else available to him.

[263] It was also the uncontroverted evidence of the Metro West employees that the institution is a remand facility designed for short term incarceration for individuals awaiting trial or sentencing. It is not only ill-equipped, it is not designed for long-term detainees. The federal government takes a "hands-off" approach once immigration detainees are lodged at Metro West. The appearance of federal personnel in relation to these detainees is, for all intents and purposes, non-existent. No evidence was furnished as to the reason for this state of affairs.

[264] Dr. Bagby's psychological assessment stated that "solitary confinement is the most psychologically impactful and deleterious form of incarceration".

[265] I have no hesitation in concluding that the conditions under which Mr. Almrei has been held, for the length of time that he has been held, are unacceptable and fall far short of what one would expect of Canada. The recent disclosure (on October 17<sup>th</sup>, during the hearing before Mr. Justice MacKay in relation to Mr. Jaballah) of the proposed plan to move the long-term immigration detainees from Metro West to a federal institution where conditions will, as I understand it, be more analogous to those of federal inmates, should ameliorate the frailties inherent in the present arrangement, but it does nothing to assist me in my resolution of this matter.

[266] In the exercise of my discretion, I decline to discount any delay that can be attributed to Mr. Almrei, from March 14, 2004, to the present time, in determining whether there will be “removal within a reasonable time”.

[267] Next, I note Mr. Almrei’s counsel’s submissions regarding the allegations of Messrs. Arar, El Maati and Almalki describing their respective experiences in Syria and the fact that it cannot be presumed that the Minister’s delegate’s decision will be that Mr. Almrei can be removed. These arguments merit consideration to the extent that they will also have been made to the Minister’s delegate and will undoubtedly be closely studied by that individual.

[268] The Supreme Court of Canada has not determined what circumstances could exist to justify deportation to face torture. In *Mahjoub v. Canada (Minister of Citizenship and Immigration)*, [2005] 3 F.C.R. 334 (*Mahjoub*), at paragraph 64, Madam Justice Dawson expressed the view (with which I concur) that there are powerful indicia in *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3 (*Suresh*) that deportation to face torture is conduct fundamentally

unacceptable, conduct that shocks the Canadian conscience, and therefore violates fundamental justice in a manner that cannot be justified under section 1 of the *Charter*.

[269] It is reasonable to assume that the Minister's delegate will exercise the utmost circumspection in the preparation of the risk analysis portion of the danger opinion. In this regard, it has been stated (initially by Madam Justice Dawson) and repeated by this Court and the Court of Appeal, that where a risk of torture is asserted by a person who has been found to be a Convention refugee, more time, rather than less, will be required.

[270] That said, the issue that confronts me is not one where I am called upon to review the risk analysis portion of the danger opinion because the decision of the Minister's delegate has not yet been made. However, Mr. Almrei's submissions do inform the question of "removal within a reasonable time" because it is clear to me, in view of these submissions, that Mr. Almrei will undoubtedly seek leave to apply for judicial review and, if necessary for a stay of deportation, if the Minister's delegate should determine that he can be removed from Canada.

[271] Additionally, as acknowledged earlier, leave has been granted with respect to *Almrei*. The hearing of the appeal is, at this point, several months away. Speculation as to when a decision may be rendered is nothing more than that. It is at least arguable that Mr. Almrei will not be removed before the Supreme Court makes its determination in relation to his appeal.

[272] In the result, and for the reasons stated, I conclude that Mr. Almrei has established that his removal is not imminent; it is not a "done deal"; and it will not occur within a reasonable time.

DANGER TO NATIONAL SECURITY OR TO THE SAFETY OF ANY PERSON

The Law

[273] Again, I turn to *Almrei* as the starting point for my consideration of this issue. The Court of Appeal determined that it is only if there is evidence that the removal will not take place within a reasonable time that it is necessary to consider whether the release of the foreign national would pose a danger to national security or to the safety of any person. At that time, a review of the order maintaining detention may require a review of the secret evidence but this is necessary only if the evidence on the public record appears insufficient to support the order (paragraph 33).

[274] The onus of proof is on the person who brings the application for judicial release and it has to be discharged on a balance of probabilities (paragraph 39). It is for Mr. Almrei to establish that his release would not pose a danger to national security or to the safety of any person (paragraph 41). The burden is an evidentiary one, as articulated in *Almrei* (paragraph 42) and recapitulated at paragraph 245 of these reasons.

[275] A decision on the reasonableness of the security certificate is not a decision that is conclusive proof that the person is a danger to the security of Canada (paragraphs 48 and 62 of *Almrei* citing *Suresh*).

[276] As to the meaning of the phrase “danger to the security of Canada”, guidance is derived from the comments of the Supreme Court in *Suresh*. Although decided in a context different than that which is before me, in my view, the Court’s statements are nonetheless instructive. Distilled,

the Supreme Court's pronouncements divulge that the phrase is difficult to define, but requires a fair, large and liberal interpretation in accordance with international norms. The determination of what constitutes a "danger to the security of Canada" is highly fact-based and political in a general sense. Such a determination requires a deferential standard of judicial review. To insist on direct proof of a specific threat to Canada as the test is to set the bar too high. There must be a real and serious possibility of adverse effect to Canada, but the threat need not be direct; rather, it may be grounded in distant events that indirectly have a real possibility of harming Canadian security. The phrase demands proof of a potentially serious threat. The unanimous Court developed, at paragraph 90, an enunciation of the following test:

[A] person constitutes a "danger to the security of Canada" if he or she poses a serious threat to the security of Canada, whether direct or indirect, and bearing in mind the fact that the security of one country is often dependent on the security of other nations. The threat must be "serious" in the sense that it must be grounded on objectively reasonable suspicion based on evidence and in the sense that the threatened harm must be substantial rather than negligible.

[277] Consequently, as noted by Madam Justice Dawson in *Majoub*, at paragraph 65:

[F]or the purpose of subsection 84(2), evidence which grounds an objectively reasonable suspicion of substantial threatened harm would establish a danger to national security. Because the onus is on the applicant for release to satisfy the Court, on a balance of probabilities, that his or her release will not pose a danger to national security or the safety of any person, the onus upon the applicant may be difficult to meet given that an objectively reasonable suspicion of substantial threatened harm may establish the danger.

[278] My determination as to whether Mr. Almrei is a danger to national security should, to the extent that it is possible, be founded on the public record. If that evidence is insufficient, then regard must be had to the confidential information (*Almrei*, at paragraph 33).

[279] It is useful, at this juncture, to recall that the interest of the state in protecting national security and the need for confidentiality in national security matters was recognized in *Chiarelli v.*

*Canada (Minister of Employment and Immigration)*, [1992] 1 S.C.R. 711 (*Chiarelli*) at p. 745 and reaffirmed in *Ruby v. Canada (Solicitor General)*, [2002] 4 S.C.R. 3 (*Ruby*). In *Ruby*, at paragraph 54, Madam Justice Arbour, writing for the Court, stated that the protection of information which could reasonably be expected to be injurious to Canada's national security is a pressing and substantial concern. She also noted that it is important to understand that information withheld from an applicant may "appear quite innocuous to the applicant but, rather, reveal the interest of a government institution in other persons or groups or reveal the source of the information" (paragraph 50).

[280] Similarly, in *Suresh*, the Supreme Court, at paragraph 122, recognized the safeguarding of confidential public security documents as a valid reason for reduced disclosure. Mr. Justice Letourneau, in *Almrei*, at paragraph 68 – citing *Charkaoui (Re)*, [2005] 2 F.C.R. 299 (F.C.A.) – explained that the right of access to information that could be harmful to national security is no less serious, present and genuine if the person seeking access is a permanent resident as opposed to a Canadian citizen or a foreign national.

[281] The treatment of confidential information in security certificate cases has been the subject of judicial comment. At paragraphs 93 through 99 of her reasons in *Harkat (Re)* (2005), 261 F.T.R. 52 (F.C.) aff'd 2005 FCA 285 (*Harkat*), Madam Justice Dawson discusses both the commentary and the manner in which the Court deals with confidential information. Those paragraphs bear repeating and are set out here.

93 In my assessment of the confidential information, I have adopted and applied the principles articulated by my colleague Mr. Justice Blanchard in *Almrei v. Canada (The Minister of Citizenship and Immigration)*, [2004] 4 F.C.R. 327; aff'd 2005 FCA 54; [2005] F.C.J. No. 213. Although Justice Blanchard was writing in the context of a detention review conducted pursuant to subsection 84(2) of the Act, the nature of the exercise a designated judge must perform when

confidential information is received by the judge in the absence of a party and their counsel remains the same whether the judge is determining the reasonableness of a security certificate or reviewing detention under subsection 84(2) of the Act. At paragraphs 59 and 60, Mr. Justice Blanchard wrote:

59. [...] Since the evidence must be received in the absence of the applicant or counsel it is incumbent on the designated judge to rigorously and critically scrutinize this evidence in reaching any determination regarding its relevance to the issues, its reliability and proper weight.

60. In testing evidence which cannot be disclosed for security reasons, the designated judge must adopt a principled approach to the exercise. To that end the presence or absence of corroboration, consistency of the evidence, and whether it is hearsay, are among factors to consider. To test the reliability of the evidence the judge may probe into the credibility and reliability of the source of the information. This may be done by the designated judge putting questions directly to affiants and possibly to other persons. In addition the judge may question counsel representing the Service on their submissions.

To similar effect are the comments of my colleague Mr. Justice S. Noël in *Charkaoui (Re)*, [2004] 3 F.C.R. 32 (F.C.) at paragraphs 100 to 102.

94 While not in any way commenting upon the source or sources of confidential information before the Court in this case, I believe that, generally, if any confidential information is provided by a human source, some relevant inquiries and areas for examination by the Court of one or more witnesses under oath may include matters such as the following: the origin and the length of the relationship between the Service and the human source; whether the source was paid for information; what is known about the source's motive for providing information; whether the source has provided information about other persons, and, if so, particulars of that; the extent to which information provided by the source has been, or is, corroborated by other evidence or information; the citizenship/immigration status of the source and whether that status has changed throughout the course of the source's relationship with the Service (to the extent that such status touches upon the source's security within Canada and their vulnerability to duress); whether the source has been subject to any form of pressure to provide information, and if so, why and by whom; whether the source was or is under investigation by the Service or any other intelligence agency or police force; whether the source has a criminal record or any outstanding criminal charges in Canada or elsewhere; the nature of any relationship between the source and the subject of the investigation; whether there is any known or inferred motive for the source to provide false information or otherwise mislead the investigation in any way. This list is not exhaustive and the matters outlined here may not be relevant or applicable in every case.

95 Similarly, if any confidential information is provided from another intelligence agency, some relevant inquiries and areas for examination may include: the manner in which the Service assesses the reliability of information provided by that agency and its conclusion as to the reliability; to what extent has, or is, information from such agency corroborated; is there any suggestion the agency may have a motive for colouring the information provided; what is the human rights record of the agency and the agency's home country; how does the foreign agency itself assess the reliability of the information it has provided; is the agency a mere conduit for information originating from a less reliable agency. Again, this list is not intended to be exhaustive.

96 If any confidential information is provided that is obtained through technical sources such as electronic surveillance, relevant inquiries may include: the accuracy of any document that

records intercepted information; the accuracy of any translation (if applicable); the objectivity or bias of any summary made of intercepted information; and how the parties to any conversation are identified.

97 Regardless of the source of the evidence, questions should be posed as to the existence of any exculpatory evidence.

98 In summary, the designated judge must inquire into the source of all information contained within the confidential information upon which the Ministers rely to establish the reasonable grounds for their belief that the person concerned is inadmissible to Canada upon security grounds. Once the source of the information is identified, the designated judge should consider what the written record discloses and what any relevant witness can testify to about the reliability of the information and extent to which the information, or other information from that source, is corroborated. Throughout, the judge must remain vigilant and mindful of his or her obligation to probe the reliability of all evidence. The potential for error caused by such things as mis-identification, mistake, deception, incompetence or malevolence must be considered. As stated earlier, it is important that questions be directed to whether there is exculpatory information in the possession of the Service.

99 It is only through this demanding exercise that the Court can properly assess the evidence tendered on behalf of the Ministers and the person named in the certificate. A rigorous, objective determination is required in order to protect the interests of the person named in the certificate as well as the legitimate interests of the state.

### The First Detention Review

[282] In upholding the reasonableness of the security certificate, Justice Tremblay-Lamer, not having evidence from Mr. Almrei, determined: “The confidential information, which I am unable to disclose, strongly supports the view that Mr. Almrei is a member of an international network of extremist individuals who support the Islamic extremist ideals espoused by Osama bin Laden and that Mr. Almrei is involved in a forgery ring with international connections that produces false documents”.

[283] Mr. Almrei applied for a detention review in September 2002. The proceeding was protracted for reasons that are detailed in *Almrei*. Mr. Justice Blanchard conducted the detention review and determined that Mr. Almrei had not established that he would not be removed from



Canada within a reasonable time. He did not have to determine whether Mr. Almrei, at that time, constituted a danger to national security or to the safety of any person. Nonetheless, because of Mr. Almrei's lengthy detention, much of it in solitary confinement, Justice Blanchard considered the question. In *obiter*, he concluded at paragraphs 129 and 130 of *Almrei v. Canada (Minister of Citizenship and Immigration)*, [2004] 4 F.C.R. 327 (F.C.) as follows:

129 I have found Mr. Almrei's testimony before this Court not to be credible. I have also made the following determinations with respect to Mr. Almrei, (1) that he used clandestine methodologies; (2) that he supports the extremist ideals expressed by Usama bin Laden; (3) that he is not credible with respect to his Arab-Afghan connections; (4) that he is not credible with respect to his [page 381] involvement in jihad; and (5) that he was involved in a forgery ring with international connections that produces false documents.

130 I am satisfied that, should Mr. Almrei be released, there is a strong likelihood that he will resume his activities and become re-acquainted with his connections in the forgery ring and those Arab-Afghans connected to the Usama bin Laden network. Having regard to the nature of the threat posed, I have not been satisfied by Mr. Almrei that the proposed, or similar conditions, would be effective to ensure that his release would not pose a danger to national security or to the safety of any person.

[284] The Court of Appeal in *Almrei* dismissed Mr. Almrei's appeal on the basis that Mr. Almrei had failed to satisfy the first criterion [removal within a reasonable time] and declined to speculate on "whether his release would or would not pose a threat to national security".

### The Present Proceeding

[285] I have described the present proceeding earlier in these reasons, specifically at paragraphs 241 through 249. A detailed chronology is provided in Schedule "A". I will not repeat what has been said. I will say that I conducted the *ex parte in camera* hearings in accordance with the process described in *Harkat*, and cited earlier.

[286] Counsel were informed of each of the *in camera* hearings. Counsel for the Ministers were recalled, more than once, to respond to questions with respect to whether any further information

contained in the confidential record might be summarized and provided to Mr. Almrei. Three supplemental disclosures were provided to Mr. Almrei. Following those disclosures, I was satisfied that the public record could not contain any further detail without comprising the integrity of the information.

[287] Counsel for the Ministers were required, more than once, to produce a knowledgeable witness to give evidence and answer questions from the Court regarding: the source of each item of evidence in the confidential record relied upon by the Ministers to support the conclusion that Mr. Almrei's release from detention would pose a danger; and, the presence or absence of independent, corroborating evidence.

[288] Mr. Almrei's counsel's request to forward questions, thought by Mr. Almrei to be relevant, to be asked of the Ministers' witness, was granted. The questions were asked to the extent that they related to the confidential information that was before me.

[289] Subsequently, as Madam Justice Dawson did in *Mahjoub v. The Minister of Citizenship and Immigration and the Solicitor General of Canada*, 2005 FC 1596, I thoroughly and extensively reviewed the entire confidential record to analyse and arrive at my conclusions regarding the reliability of the information before me. The exercise was time-consuming and taxing. It necessitated review of the information provided by each source, consideration of what was known about the accuracy of each source, and determination of the extent to which information provided by any source was corroborated by other sources.

The Positions of the Parties

[290] Because of the onus and the evidentiary burden at play, it is useful to set out the submissions of each of the parties in some detail.

*Mr. Almrei's Submissions*

[291] In addressing the second criterion (whether he is a danger to national security or the safety of any person), Mr. Almrei argues that he is at a significant disadvantage because none of the evidence on the public record is capable of showing that he poses even the slightest danger. He contends that the entirety of the respondents' case on the danger he is said to pose today is secret and leaves him completely unable to respond to the specifics of the allegations against him. Specifically, apart from matters which he does not dispute, none of the respondents' allegations (whether public or secret) have been proven in court. Crucially, the determination that the Ministers' certificate is reasonable is not, in itself, a finding that he constitutes such a danger.

[292] Mr. Almrei does not accept that he poses any danger to national security or the safety of persons. He submits that, nevertheless, should the Court find that there is a basis for concern in this regard, whatever danger he is said to pose can be kept within acceptable limits by the imposition of appropriate terms and conditions. In this respect, it is open to the Court to craft terms and conditions that restrict his movements and associations to whatever degree is found to be justified.

[293] Compliance with the terms of any order for his release would be monitored not only by his sureties but also, presumably, by the police and security agencies. Mr. Almrei says that he has given his word to the Court that he would comply with the terms of any order for his release. He

has no criminal record or any history of failures to comply with court orders. He testified unequivocally that he would never risk the honour, reputation, or money that his sureties are prepared to put forward on his behalf.

[294] Moreover, he states that there is nothing in his psychological makeup (as reflected in Dr. Bagby's report), in the opinions of his friends and associates, or in the observations of the jail guards that would give the Court "reason to doubt that he could or would comply with any order for his release". His case has attracted significant publicity in Toronto and across Canada so his ability to act in a clandestine fashion is severely compromised even assuming that he was so inclined (which he expressly denies). Similarly, it is difficult, if not impossible, to imagine that anyone engaged in illegal activities would want anything whatsoever to do with him given the close scrutiny he would presumably be under if released.

[295] Mr. Almrei says that there is no evidence that he has ever acted violently against Canada or Canadian interests. There is no evidence that he has ever aided anyone in acting violently against Canada or Canadian interests. He has expressly denied that he has any intention of ever so acting, if released.

[296] According to Mr. Almrei, the key premise underlying the respondents' contention that he poses a danger, if released, is the allegation that he supports the extremist ideology of Osama bin Laden and Al Qaeda. Whatever evidence there may be to support this claim has been kept from him so he has no way to respond other than to deny this allegation categorically. The allegation is

contradicted by all individuals who have come to know him in recent years. His associations, friendships, and conduct belie the respondents' allegations about his beliefs.

[297] Mr. Almrei asserts there is no basis to find that his participation in *jihad* in Afghanistan and Tajikistan, a decade and more ago, under a unique set of political circumstances, renders him a danger to Canadians and Canadian interests today and that the closest the respondents come to making a specific allegation against him is to say that if he were released he could engage in activities in aid of Al Qaeda or related groups. He has expressly denied that he has any intention of doing so.

[298] Regarding the allegation that he is linked to an international network of document forgers and these links could be used to aid Al Qaeda or related groups by serving as a procurer of false travel documents, Mr. Almrei claims, with one exception, that he only obtained false documents for himself (all of which actions he has admitted). He denies being part of a forgery network. But, even if he once was, he has now been detained for more than four years. There is no evidence that any such contacts, as he may once have had, still exist or would be accessible to him, even if he were inclined to seek them out again (which he expressly denies).

[299] In sum, Mr. Almrei argues that his release on appropriate terms and conditions is not likely to pose a danger to national security or to the safety of any person. The question is whether, and for how much longer, he can justifiably be detained without charge or conviction. Under subsection 84(2), his detention must be necessary to control the threat that he personally poses to Canada's national security or the safety of any person. The advancement of this objective must be

proportionate to the severe restrictions placed on his rights while he remains in detention. The conditions under which he is detained must also be justifiable on this basis and there is no basis for his continued detention. The only just and humane solution is to order his release on appropriate terms and conditions.

### *The Ministers' Submissions*

[300] The Ministers maintain that Mr. Almrei has failed to demonstrate that his release will not pose a danger to national security or to the safety of any person. They contend that his submission that none of the evidence on the public record is capable of showing that he “poses even the slightest danger” is without foundation. The Ministers point to the reasons of the Court in concluding that the certificate was reasonable and argue that notwithstanding that it does not constitute a finding that he is a danger for the purpose of subsection 84(2), it is a factor to be considered in any determination as to whether he does constitute a danger to the security of Canada. The certificate is conclusive proof that he is inadmissible. Further public evidence is the decision of the Court regarding Mr. Almrei’s prior application for release and the findings therein with respect to the danger.

[301] Despite these findings by the Court, Mr. Almrei totally failed to provide any evidence or submissions which address the threat posed by Osama bin Laden, Al Qaeda, or the Osama bin Laden network. In the absence of evidence from Mr. Almrei, the Ministers say they have provided credible and salient evidence demonstrating that extremist individuals who support the extremist ideals espoused by Osama bin Laden continue to pose a clear and present threat to Canada and the

international community of nations. The Ministers rely heavily on the testimony of P.G. and J.P. in this respect.

[302] Since the denial of Mr. Almrei's application for release on March 19, 2004, the Ministers claim that:

- (a) Canadians Al-Jiddi and Boussora (individuals who support the extremist ideals espoused by Osama bin Laden) have eluded capture by law enforcement officials and are still prepared to participate in *jihād* against the west. Video-taped statements by Al-Jiddi and Boussora in which they stated their intention to die as martyrs in a suicide attack were found in Afghanistan;
- (b) Individuals who support the extremist ideals espoused by Osama bin Laden have committed tragic terrorist acts in Russia, Spain, Pakistan, Iraq, Qatar, and Saudi Arabia that have resulted in numerous civilian casualties and fatalities. The methods employed included the bombings of mass transportation systems, buildings and other public facilities, the hijacking and bombing of civilian aircraft, and mass hostage taking.

[303] The Ministers contend that the fact that Mr. Almrei is a member of an international network of extremist individuals who support the extremist ideals espoused by Osama bin Laden, and the clear and present danger that this network poses to Canada and the international community of nations, demonstrate that he is a danger to national security or to the safety of any person. His release will place him in a position to contact and support those who support the extremist ideals of Osama bin Laden. In the Ministers' view, Mr. Almrei's own testimony demonstrates that he is

such a danger and his application for release should be denied either because his evidence is not credible or because it confirms the danger that his release will pose. His testimony concerning his involvement in false documentation, his participation in *jihad*, his Arab-Afghan connections, his support for Osama bin Laden and his use of clandestine methodology demonstrate that he is a danger to national security and to the safety of any person.

[304] In relation to false documentation, the Ministers submit that Mr. Almrei testified that his experiences were limited to obtaining documents to facilitate his own travels and on one occasion assisting Nabil Al Marabh in obtaining a false Canadian passport. This testimony is not credible because he admitted that he knew individuals in Montreal who could obtain false documents; he profited from the Canadian passport he obtained for Mr. Al Marabh; he had a reputation in the community for obtaining false documents; he obtained false identification in the Middle East to make his fraudulent identity more authentic; in 1998, he travelled to Thailand and befriended an individual named Ghaled who was involved in human smuggling; he contacted Ghaled about false passports after he came to Canada; and he withheld information from Canadian authorities, the Refugee Division and his lawyer about his involvement with false documentation.

[305] Referring to a specialized study used to prepare sections of the *9/11 Commission Final Report* (June 8, 2005 Reference Index, tab 13) the Ministers submit that the article states that terrorists rely on forged passports and fake visas to move around the world unimpeded and undetected. The report provides examples of the use of fraudulent travel documents by those such as the nineteen 9/11 hijackers, Ramzi Yousef who was involved in the 1993 World Trade Centre Bombing, Ali Mohammed, a *jihadi* who fought in Afghanistan against the Soviets and assisted in



the movement of individuals involved in the August 1998 bombings of the U.S. Embassies in Tanzania and Kenya, and Ahmed Ressam (a Canadian who was involved in the 1999 millennium bombing plot in the United States). Al-Jiddi and Boussora have been reported to have been involved in fraudulent document activities.

[306] In addition to the documentary evidence, P.G. testified that, since 9/11, there is an increased need, amongst Al Qaeda and affiliated and inspired groups, for fraudulent documentation in the form of passports, identify cards or birth certificates to thwart the increased international cooperation in the sharing of information with respect to Islamic extremists. The Al Qaeda network will continue to seek to acquire false documentation to facilitate its worldwide operations and Mr. Almrei continues to pose a threat to the security of Canada because of his participation in document forgery.

[307] The Ministers are aware that security agencies worldwide and the international community of nations are concerned about the strong likelihood of future terrorist attacks already in the advanced planning and preparation stages. Mr. Almrei's release would place him in a position to re-establish his associations and activities concerning false documentation in support of individuals like himself who support the extremist ideals of Osama bin Laden.

[308] In relation to *jihad*, Mr. Almrei claims that his participation was limited to working as an *imam*. The Ministers contend that this testimony is not credible. They say that Mr. Almrei claims to have been proud of his role as an *imam* but did not disclose it to Canadian authorities until November 10, 2002; he received weapons training on the AK-47; at all times that he went to *jihad*

in Afghanistan and Tajikistan he was prepared to engage in combat; he believes in the use of violence in *jihad*; he funded his own travels to participate in *jihad* in Tajikistan in 1994 after the loss of popular support for *jihad* from the Gulf and after the *jihad* in Afghanistan; he volunteered to serve with Ibn Khattab; he stayed at a Khattab guest house; he went on scouting missions with Khattab; and he withheld information from Canadian authorities, the Refugee Division and his lawyer about his participation in *jihad*.

[309] With respect to Khattab, the Ministers refer to Mr. Almrei's testimony that, in addition to association with Khattab in Afghanistan and Tajikistan, he received faxes from and communicated by satellite telephone with Khattab; lost contact with him after he left the Middle East; had not supported Khattab financially or otherwise; admired Khattab; supported the Chechen extremist cause; had pictures of Khattab on his computer; and visited Chechen extremist websites.

[310] The Ministers claim that Mr. Almrei's submission that Khattab's death demonstrates his release would not be injurious is without foundation and ignores the current state of Chechen extremism. Current leaders of the Chechen extremist movement, such as Shamil Basayev, who served under Khattab, continue to inflict numerous civilian casualties and fatalities. Basayev claimed responsibility for two suicide bombing attacks on civilian aircraft in Russia in 2004 and the hostage taking in Beslan. Current leaders continue to conduct terrorist operations and Mr. Almrei's release would place him in a position to establish associations with those who supported Khattab and Chechen extremists such as Basayev.

[311] Regarding Mr. Al Marabh, for whom Mr. Almrei obtained a false Canadian passport, Mr. Almrei also provided Mr. Al Marabh's uncle with a \$2,500 loan for Al Marabh's CIC release bond and he visited Mr. Al Marabh while he was in detention. It is reported that Al Marabh, who was deported from the United States to Syria in January 2004, lived without status in Canada and the United States in the 1990s; he is an Afghanistan-trained *mujahideen*; he was placed on a Federal Bureau of Investigation watch list; he has used a forged Canadian passport and citizenship card; he admitted that he violated United States immigration laws; he violated Canadian immigration laws; he was detained in Canada and the United States for violating immigration laws; and he has been alleged to have links to members of the Osama bin Laden network.

[312] The Ministers refer to Mr. Almrei's testimony (on January 6, 2004) that he was informed by Canadian authorities that Mr. Al-Taha was a criminal and to his evidence (on July 20, 2005) where Mr. Almrei admitted that, by using Mr. Al-Taha's name as a contact on a visa application, he provided untruthful information to Canadian officials before ever entering Canada. Further, say the Ministers, Mr. Almrei testified (on July 20<sup>th</sup>) that Mr. Ahmed Al-Kaysee was his friend, that Mr. Al-Kaysee had been in *jihad* in Afghanistan and that he lives in Toronto. Mr. Almrei's testimony that he no longer has any respect for Al-Kaysee because Al-Kaysee has not telephoned Mr. Almrei's friends or asked how Mr. Almrei is doing is not credible. If released, Mr. Almrei will be in a position to re-establish contact with Mr. Al-Kaysee.

[313] The Ministers note Mr. Almrei's evidence on July 20<sup>th</sup> and say this evidence – that he did not support Osama bin Laden's violent philosophies; he never had any association with or met Osama bin Laden while in Afghanistan; he does not support the use of violence to overthrow

secular governments; he never attended any camps in Afghanistan related to or under the control of Osama bin Laden; he has never demonstrated support for Osama bin Laden or the network; and he has never been loyal to an individual leader within the network – is not to be believed. The Court has twice determined that Almrei supports the extremist ideals espoused by Osama bin Laden.

[314] The Ministers claim that Mr. Almrei's testimony is internally inconsistent. While in Afghanistan, he was in the camp of and under the command of Usta Abdul Rasul Sayyaf (Sayyaf), a hard-line Islamic fundamentalist, who had close ties to bin Laden during the *jihad* in Afghanistan and who established a network of training camps, bunkers, and emplacements with Osama bin Laden in Jalalabad. While Mr. Almrei claimed not to support the use of violence to overthrow secular governments, he supported Khattab and the Chechen extremist cause which employs terrorism and the killing of civilians. He also believed in the use of violence and guns in *jihad*. Further, Mr. Almrei was loyal to Khattab (who was linked to bin Laden) and testified that Khattab was a "good Muslim man" and he respected him.

[315] Referencing Dr. Bagby's psychological report, the Ministers point to the excerpt that refers to Mr. Almrei's statement (when he witnessed bombs falling on people during the holy war in Afghanistan) that "when I saw people die, they died as martyrs and went to paradise, so it did not bother me". Also, he testified that he had pictures of individuals, whom he believed to be martyrs in the Chechen conflict, on his computer. The Ministers indicate that Al-Jiddi and Boussora believe in martyrdom.

[316] A further expression of Mr. Almrei's support for Islamic extremism is, according to the Ministers, demonstrated by his evidence concerning the Muslim Brotherhood. He testified that he accepted a passport from the Muslim Brotherhood even though he was aware of allegations that the Muslim Brotherhood was involved in violence. His father was a member of the Muslim Brotherhood. J.P. testified that the Muslim Brotherhood has a significant track record of conducting terrorist attacks in Egypt and that one of its ideologues, Sayyid Qutb, was one of the innovators of the Islamic extremism concept and violence and one of the architects of the modern *jihad*. Shiekh Abdullah Azzam, a co-founder of Al Qaeda, was also a member. The Muslim Brotherhood runs as a common streak among many modern *jihadist* groups today. Gulbuddin Hekmatyar, since 2001, has pledged allegiance to Osama bin Laden and Al Qaeda.

[317] Mr. Almrei's purchase and sale of honey in the Middle East should not be forgotten. The honey business has been used by the network as a means to provide money and cover for operations such as the concealment of weapons or explosives. It is telling that Mr. Almrei failed to disclose to the Refugee Division and failed to disclose in his statutory declaration that, on one occasion, he purchased 500 kilos of honey in Pakistan. He had no reason to disagree that he failed to disclose this to the Service.

[318] Although Mr. Almrei testified that he did not use clandestine methodology, he has used three-way calling while in detention. This provides him with an opportunity to speak to individuals other than his family. Additionally, prior to being detained, his cellular telephone was registered to Hassan Ahmed.

[319] In sum, the Ministers urge that Mr. Almrei is a threat to the national security or to the safety of persons and, if he were released from detention, it would be difficult to ensure that he abides by any terms or conditions that may be imposed. Moreover, there are no terms or conditions that can address the danger to the national security or to the safety of persons that, in the Ministers' view, Mr. Almrei's release will pose.

*Mr. Almrei's Reply*

[320] Mr. Almrei responds by pointing to *A(FC) and others (FC) v. Secretary of State for the Home Department*, [2004] UKHL 56, a case concerned with the indefinite detention of foreign nationals deemed to be threats to national security in the United Kingdom. Specifically, it is cited in support of the propositions that: it makes no sense to consider a person such a threat to the life of the nation that he must be locked up without trial, but released almost immediately if he leaves for another country; and, the choice of an immigration measure to address a security problem has the inevitable result of failing adequately to address that problem.

[321] No issue is taken with the Ministers' characterization of Al Qaeda and similar or related organizations. Nor does Mr. Almrei feel that he is in any position to contradict the assessment of the actual threat such organizations pose to Canada and Canadian interests given that most of the evidence said to support this assessment is secret. The point, he submits, is that all of this evidence, however compelling, is irrelevant if the Court is satisfied either that he has no intention of forming associations that would be detrimental to Canada's national security or that, if such intentions cannot be ruled out, his conduct could nevertheless be controlled by appropriate terms, conditions and supervision upon release from detention.

[322] Mr. Almrei construes the Ministers' arguments as speculative, claims that they require extraordinary leaps of logic and determine guilt by association. They (the Ministers) ask the Court to infer from his past association with the now-deceased Khattab that his release would place him in a position to establish associations with those who supported Khattab and Chechen extremists (such as Basayev) when there is no evidence that: he ever associated with Basayev; he now has any ability to establish such associations with this individual or others; he has any ongoing interest in events in Chechnya; or that he even has any interest in establishing such associations.

[323] Accusations are levied that the Ministers are highly selective in their assessment of Mr. Almrei's evidence. Mr. Almrei says that when it suits their purposes, the Ministers are content to rely on his admissions, but any evidence that he provided in an effort to answer the case against him (as he knows it) is dismissed as "not credible". This, in turn, is then said to demonstrate that he is a danger. It is plain that nothing he could say would satisfy the Ministers whose position "verges on the dogmatic".

[324] Mr. Almrei claims that the Ministers frame allegations against him that are completely unsupported by the evidence. For example, they refer to the honey business as a means to provide money and cover for operations such as the concealment of weapons or explosives as if it were a proven fact when the only "evidence" supporting this claim is a single newspaper article based on anonymous sources and authored by a journalist with a questionable track record for accuracy and reliability. It was Mr. Almrei who disclosed his involvement in the honey business. The Ministers imply that he ought to have disclosed a 500 kilogram purchase of honey on every occasion when he

might have done so but do not explain why. It is the “sheerest speculation” to suggest that his involvement in the honey business was anything other than what he said it was.

[325] The Ministers place great emphasis on the fact that Mr. Almrei withheld some details of his past when dealing with Canadian authorities. He has explained why he did not always give a full account of his past. Many details that he is now accused of withholding are completely immaterial but some, such as his activities in Afghanistan and neighbouring countries, may be significant. He is a Convention refugee. J.P. agreed that someone who was fleeing persecution in another country that did not observe the rule of law might be distrustful of authority and that it would not be surprising that one who had experiences with security agencies in such countries might find it difficult to shake off his fears and suspicions of security officials in Canada. Mr. Almrei says that he has explained, especially in the post-9/11 atmosphere, that he feared that his past would be used (erroneously) to paint him as a terrorist (a fear that has proved to be entirely well-founded). The Ministers go so far as to assert that he withheld evidence from the Refugee Division that was not even in existence at the time he made his claim. The procurement of the passport for Mr. Al Marabh occurred after his refugee claim was heard and the Refugee Division was aware that he had come to Canada on false documents.

[326] Regarding those individuals the Ministers refer to as being linked to Al Qaeda, they are not before the Court and are not in a position to defend themselves against such accusations. Equally, Mr. Almrei is unable to call them as witnesses. He maintains that references to Al-Jiddi and Boussora are devoid of any link to him at all and are of questionable value. The effort to link him to the Muslim Brotherhood is misconceived. It was his father who belonged and the only benefit he



derived was obtaining a passport from the organization. The references to Qutb and Azzam, both Egyptians, indicate no link between them and Mr. Almrei.

[327] The contention that he will establish contacts with individuals who support the extremist ideals of Osama bin Laden, if released, is based on speculation. He has been detained for more than four years. During this time, there is no indication that he attempted to contact people like Mr. Al-Kaysee whose name and past contact with him were not part of the public allegations against him at the reasonableness hearing or even when the first release application was heard. It was only in 2003, when the Minister's delegate referenced Mr. Al Kaysee in her reasons, that his name was disclosed. While there may be secret evidence about the passport forger in Montreal (one contact, not several, as the Ministers assert), there is nothing in the record to indicate that he was anything other than a criminal forging passports for financial gain.

[328] Mr. Almrei claims that the Ministers' implicit suggestions that all *ihadists* support Osama bin Laden is gross stereotyping. As Dr. el Fadl and even J.P. noted, thousands went to support the *ihad* in Afghanistan. By no means did even the majority become supporters of Osama bin Laden nor were they all trained by him since he did not run all the many camps set up by the various leaders fighting against the communists. A belief in *ihad* does not translate to a belief in the killing of civilians or to violence outside the context of an armed conflict. To say otherwise is to engage in discrimination against Muslims *per se* because *ihad* is part of Islam.

[329] Additionally, admiration for martyrs does not mean that a person believes in suicide bombers attacking civilians. There are many kinds of martyrs, including those fighters who died in

Afghanistan. Abdullah Almalki and Ahmed Abou Elmaati are Canadians. Both participated in the *jihād* in Afghanistan. Mr. Elmaati drove a truck and was trained in the use of an AK-47. Mr. Almalki worked for a charity under Ahmed Said Khadr (said to have sent his sons to train at an Osama bin Laden camp) who was killed in 2003. While detained and tortured in Syria, neither man has ever been detained or subjected to a *Criminal Code* investigative hearing. Mr. Almrei argues that this highlights the fact that being in Afghanistan does not automatically make one an evil or dangerous person.

[330] The Ministers characterize Sayyaf as a hard-line Islamic fundamentalist. Sayyaf, on the evidence before the Court, was part of the Northern Alliance that fought the Taliban. All of the Northern Alliance commanders, even Massoud, were Islamists. Mr. Almrei contends that this does not mean that they were under the control of, or even agreed with, Osama bin Laden. There is nothing in the record to indicate that Sayyaf's training camps were part of the bin Laden operations.

[331] Mr. Almrei states that he has made three-way calls. The record indicates that he did this not only with Dr. Ralph but with his lawyer. When teleconferences are held with the Court, the calls are three-way and often more. There is nothing secret or clandestine about three-way calls. He cannot call long distance directly. There is no need for three-way calls if he is released. If the Court is concerned about this, it can impose restrictions, terms, and conditions. There is no evidence in the record that his use of Hassan Ahmed's cell phone was secretive. His landing application lists this phone number.

[332] While the Ministers urge the Court not to consider the possibility of release on terms and conditions, Mr. Almrei argues that Parliament has clearly contemplated the release of individuals in his circumstances. Otherwise, subsection 84(2) would not have been enacted. He maintains that he has provided a sufficient basis for the Court to find that any threat he poses can be kept within reasonable limits by appropriate terms and conditions, compliance with which would be the responsibility not only of him, but also his sureties, and the enforcement of which could be ensured by the vigilance of police and security agencies.

[333] Mr. Almrei claims that the Ministers are speculating when they assert that none of the people who have come forward as sureties have met or are aware of individuals with whom he associated in the past. Mr. Ahmed and Dr. Hindy are both from the same community and Mr. Ahmed testified that he continued to support him in the face of knowledge about his past.

#### Analysis

[334] It is important at the outset to define precisely the parameters of the Ministers' position that Mr. Almrei constitutes a danger to national security or to the safety of any person. While alleging a number of grounds in support of their position, and maintaining those grounds in their written submissions, I am satisfied, on the basis of the evidence before the Court, that not all of the grounds are sustainable. I will have more to say about this later. It is clear that there is no allegation that Mr. Almrei has participated or, for that matter, that he will participate directly in an act of violence in Canada.

[335] Rather, on the basis of the evidence and specifically the evidence of P.G. and J.P., I find that it is Mr. Almrei's alleged adoption of the Islamic extremist ideology espoused by Osama bin Laden, his participation in *jihad* and his participation in a network of document forgery that constitutes the thrust of the Ministers' assertion. It is the combination of these factors that comprise the alleged danger and the driving force is the commitment to Islamic extremist ideology. The threat, while indirect, is nonetheless real because Mr. Almrei is empowered in the sense that he has the ability and capacity to facilitate the movement of others who also harbour such beliefs and ideals and to position them to perpetrate violence on foreign or Canadian soil. The Ministers maintain that while Mr. Almrei's detention may have diminished the severity of the threat, it did not negate it.

[336] Mr. Almrei insists that he does not and never has been a danger to national security or to the safety of any person. It seems to me that my first task is to examine the evidence relied upon to support the Ministers' belief that Mr. Almrei is such a danger. I pause here because this is Mr. Almrei's second detention review. Mr. Justice Blanchard, in dealing with the first detention review, determined that Mr. Almrei had not established that he would not be removed from Canada within a reasonable time. He included, in *obiter*, his comments as to whether Mr. Almrei posed a danger to the security of Canada or to the safety of any person.

[337] This is a new application and consequently, the question – whether Mr. Almrei is a danger to national security or to the safety of any person – must be determined afresh on this application. If the evidence before me cannot support a finding of danger, Mr. Almrei will have met his onus and it follows that he must be released.

[338] If I determine otherwise, the second task is to ascertain whether, as a result of the passage of time and his detention, the danger has been neutralized at least to the extent that he could be released on conditions.

[339] In short, the first determination will be made on the basis of the evidence and without regard to the fact that he was not released on his prior application. It is only if I conclude that he is a danger to the security of Canada or to the safety of any person that I need determine whether the passage of time has, or the imposition of conditions will, neutralize the danger.

[340] Before turning to the identified tasks, I make two preliminary observations. The first is Mr. Almrei's repeated comment that he is unable to respond to the allegations against him because they are secret. In my view, that is not so. Mr. Almrei has been provided with disclosure of the substance of the Ministers' position. The only information that has been withheld is that which the Court has determined (in the manner described earlier) would be injurious to national security or to the safety of any person, if disclosed. Information not initially disclosed, which can no longer be seen to be injurious to national security or to the safety of any person, has been provided. These reasons contain some 88 pages of evidence taken at public hearings or submitted in the form of affidavits. Those pages do not include a summary of Mr. Almrei's evidence from earlier public proceedings, although I have also considered that evidence. I regard Mr. Almrei's suggestion that he does not know the case against him as fallacious. To the extent that his comments are intended to imply the existence of a breach of fundamental justice, a formal argument addressing the issue, rather than one founded on innuendo, is required.

[341] Second is Mr. Almrei's argument that the Ministers' "public" case consists only of evidence that he himself has given. This position is problematic. It fails to acknowledge that none of Mr. Almrei's admissions were made until after public disclosure of the substance of the Ministers' position and evidence had been provided to him. Consequently, he knew the essence of what the Ministers knew before tendering any evidence. The explanations and details that he offered were reactive. Thus, it is unrealistic to suggest that the case against him is derived from his own evidence. Additionally, Mr. Almrei's position implicitly assumes that his explanations are both honest and complete. It will be apparent later in these reasons that I do not find that to be so.

[342] I turn now to the issue of whether the evidence supports a finding that Mr. Almrei is a danger to national security or to the safety of any person.

[343] Islamic extremist ideology, as earlier noted, is the force that drives the Ministers' case. When reduced to its bare bones, the Ministers' position is founded largely on Mr. Almrei's participation in *jihād*. I will approach the issue of the "danger to the security of Canada or to the safety of any person" under two subheadings: participation in *jihād* and participation in document forgery. Before doing so, I will address some of the issues raised with respect to certain aspects of the Ministers' evidence.

[344] The Ministers' reliance on Mr. Almrei's honey and perfume business to conceal his true purpose in travelling to various locations in the Middle East is speculative. There is no evidence that Mr. Almrei used the honey business to conceal or transport explosives and I attach no weight to this submission.

[345] The allegation that Mr. Almrei is preoccupied with security and behaves in a clandestine fashion to avoid authorities is weak. Aside from the fact that participation in a document forgery ring (if established) would necessarily involve clandestine behaviour, the only public evidence to support this allegation is that Mr. Almrei's cell phone was not registered in his name. The evidence in the confidential record is similarly equivocal and I attach little weight to it.

[346] Mr. Almrei's point regarding Messrs. Al-Jiddi, Boussora and Ressam is well taken. There is nothing in the evidence to link Mr. Almrei to these individuals. However, in fairness to the Ministers, I take the references, at their highest, to be for the purpose of illustrating the difficulty confronting authorities in their efforts to apprehend those travelling with false documentation, and the capability of the bearers of such documents to elude the authorities in search of them.

(i) Participation in *jihad*

[347] Mr. Almrei does not dispute the Ministers' characterization of Al Qaeda and similar or related organizations. In relation to the threat that Al Qaeda poses, there is documentation in the public record that discusses the federal government's establishment of the Integrated Threat Assessment Centre (ITAC) which has been operational since October 15, 2004. ITAC produces threat assessments for the Government of Canada that are distributed within the intelligence community and to relevant first responders such as law enforcement.

[348] A threat assessment, dated May 2005, was prepared at the request of the Service in support of the G8 Lyon Roma Group meeting. It examines the current Islamic extremist threat environment

in North America. The unclassified portion of the document indicates that the preeminent terrorist threat to North America emanates from the *jihadist* movement and Muslim extremist sympathizers who may take up *ihadism* or support terrorist operations. Concerns over the presence of operational Al Qaeda cells in North America have persisted since the events of September 11, 2001. It is clear that Islamic extremists remain intent on attacking targets on U.S. soil and in Canada. According to media reporting, a growing number of Canadian mosques and Islamic schools have come under the influence of Wahhabi radical Islamists. North American security measures implemented since 2001 to address the threat to North America have disrupted some of these attack plans. However, security achievement to date does not guarantee that future attacks will necessarily be thwarted.

[349] P.G. testified that Osama bin Laden has twice identified Canada as a viable target for retribution. He also testified that Al Qaeda, as defined by the tripartite definition, constitutes a direct threat not only to Canada but to its closest allies and that the threat posed will persist for the foreseeable future.

[350] This evidence stands uncontroverted and I find that Al Qaeda (as currently defined: paragraphs 32-37) can also be described as Islamic extremism and that it constitutes a threat or danger to the security of Canada or to the safety of any person.

[351] The Ministers' assertion that Mr. Almrei espouses this Islamic extremism ideology is primarily because of his participation in *ihad*. The *ihadist* training camps, according to the Ministers, are the root of the dissemination of the bin Laden fundamentalist ideology. This



statement (in relation to the training camps) was not contradicted. A careful examination of the evidence relative to Mr. Almrei's participation in *jihad* is required.

[352] Faced with the Ministers' declarations in October 2001, regarding: Mr. Almrei's participation in the training camps and their purpose; information regarding Al Qaeda, its ideology, methodology and sleeper tactics; information regarding Ibn Khattab and Nabil Al Marabh; Mr. Almrei's travel and status in Canada; the allegation of his participation in document forgery; and a statement in relation to the R.C.M.P. search of his premises, Mr. Almrei submitted his responsive statutory declaration of November 10, 2001, and provided explanations for his travels and details regarding his *jihadist* endeavours.

[353] Succinctly, Mr. Almrei states that he went to training camps and guest houses for a period of five years between 1990 and 1995. On his first trip, he remained in Pakistan (although he had intended to go to Afghanistan) because he was ill. After several months, he returned and subsequently made a number of trips to Pakistan and Afghanistan. During these sojourns, he was under the command of Abdul Sayyaf, stayed at his guest house, and attended his camp. In 1994, he travelled from Sayyaf's guest house in Babhi to Ibn Khattab's camp in Khunduz. He went twice to Tajikistan.

[354] Mr. Almrei asserts that he never adopted the fundamentalist ideology. He served as an *imam* at the Afghanistan camps (having memorized the Koran at an early age) and did not train for battle. Everyone at the camps was trained to use the AK-47, but he fired only at training targets. He was involved in skirmishes, but not conflicts. Although many camps were financed by bin

Laden or Al Qaeda, it doesn't follow that every attendee followed bin Laden or became a member of his organization. Osama bin Laden was not "such a big thing then". In relation to Tajikistan, Mr. Almrei claims that he was not armed or expected to engage in combat. He went on a scouting mission once, and on another occasion a camp was established, but they did not encounter Russians. He felt badly accompanying Khattab on the mission because he (Mr. Almrei) relied on others to protect him.

[355] The thrust of Mr. Almrei's position is Osama bin Laden's lack of prominence until 1996. He relies on the confirmatory evidence of Drs. el-Helbawy and el Fadl to the effect that while massive numbers of young men attended the training camps, most did not become extremists. Mr. Almrei claims to be one of the masses and says that to say otherwise amounts to guilt by association.

[356] The undisputed evidence is that Osama bin Laden assumed control of Al Qaeda in 1989, had training camps in Afghanistan in the early 1990's, and was affiliated with some of the major *mujahideen* leaders. His prominence in Afghanistan emerged in 1996 when he moved his entire operation there. The evidence of P.G., J.P. and Drs. el-Helbawy and el Fadl is totally consistent in this respect.

[357] Mr. Almrei was under the command of two individuals during his involvement in *jihad*: Abdul Rasul Sayyaf and Ibn Khattab. While in Pakistan and Afghanistan, Mr. Almrei spent his time in Sayyaf's guest house and training camps and was under his command. While in Tajikistan, he stayed in Khattab's guest house and was under his command.

[358] There is some debate regarding Sayyaf. J.P. claimed that the Sayyaf guest house had been associated with Al Qaeda since 1984 by virtue of Sayyaf's relationship with bin Laden. Mr. Almrei's written submission states that, on the record before the Court, "Sayyaf was part of the Northern Alliance that fought against the Taliban" and that "there is nothing to indicate that Sayyaf's training camps were part of the Osama bin Laden operation". Mr. Almrei also, in his written submission, requested that I consider the entirety of his evidence from the previous detention review.

[359] On January 6, 2004, in discussing his relationship with Sayyaf, Mr. Almrei was asked what happened after the Communists were gone. He replied that seven Afghani groups took over Kabul but they started to fight each other. When asked what happened with the Taliban, he explained that there was no Taliban in 1992 or 1993. They started to hear about the Taliban later on "when they started from Kandahar in about 1994 or 1995". This evidence is consistent with that of J.P. who testified that Kandahar was the first major Taliban victory in November 1995. Mr. Almrei's submission that Sayyaf was fighting the Taliban when Mr. Almrei was in Afghanistan is contradicted by his own evidence.

[360] Any attempt to determine whether Mr. Almrei was one who adopted Islamic extremism, or was merely one of the masses, during his *jihadist* years requires some understanding of the personae of those to whom he answered. His commanders were his teachers. Who were these men? The evidence discloses that there were many *mujahideen* leaders. Who was Abdul Sayyaf? Who was Ibn Khattab?

[361] Documents tendered from the websites of reputable sources, including Human Rights Watch, provide information regarding Abdul Sayyaf. Sayyaf is described as a Wahhabi Pashtun warlord:

- who was prominent in the *mujahideen* war against the Soviet occupation as the leader of the *Ittihad-i-Islami*;
- who was an active member of the *mujahideen* coalition “Unity of Seven”;
- who was conservative, anti-West, anti-American and a hard-line Islamic fundamentalist;
- who was a member (unlike most Afghans) of the strict Wahhabi sect of Islam;
- who was a member of the radical group Akhwan-ul-Muslimeen (Muslim Brotherhood) based in Afghanistan with strong links to the Muslim Brotherhood in Egypt;
- who had a strong relationship with Osama bin Laden during the *jihad* against the Soviets and together they established a network of training camps, bunkers and emplacements in the Jalalabad area (the facilities were later used by Al Qaeda personnel);
- whose private army, even among Afghan fighters, stood out (it included more militant Arabs than other factions, boasted closer links to Saudi Arabia, had offices in the desert kingdom and included Arab volunteers supported by Saudi entrepreneurs);
- whose faction (on February 11, 1993) conducted a raid in West Kabul killing and “disappearing” ethnic Hazara civilians and committing widespread rape (estimates of those killed ranged from 70 to more than 100).

[362] On each of his journeys to *jihad* between 1990 and 1994, Mr. Almrei was under Abdul Sayyaf’s command. Mr. Almrei stayed at his guest house and attended his training camps.

[363] Regarding Ibn Khattab, Jane's Sentinel Security Assessment, dated May 25, 2005, entitled "Chechen Republic" provides a comprehensive report that tracks the destruction of Chechnya's infrastructure. It includes an examination of the internal and external affairs, an historical background that includes the wars, a description of the security forces, foreign forces, geography, natural resources, demography, and so on. In discussing the rivalry among Chechen militants, it states that Aslan Maskhadov (a moderate separatist), before his assassination, probably had control over approximately one third of the rebel movement. Two excerpts from the report, relevant to Khattab, are set out below:

Of the rest, some are independent warlords, other extremist Islamist guerilla groups, including some linked to Al-Qaeda. The latter were bitterly opposed to Maskhadov for his moderate Islamic views and his willingness to accept Chechen autonomy within the Russian Federation instead of outright independence. They tried several times to assassinate him and, as a result, there were times when Maskhadov's forces and the Russians quietly found common cause against the extremists, such as the successful Russian operation to assassinate the most important extremist warlord, Khattab. It is these extremist forces that were behind most bombings in Moscow.

[...]

'Wahhabi' groups. Otherwise known as the extremists and led by 'war-lords' such as Basayev and Khattab (killed in March 2002). These groups are responsible for major incidents such as Budennovsk, Kizlyar, the attack of Dagestan and the Moscow theatre seige. They are the best funded and equipped elements in the Chechen resistance and have links with other terrorist organizations, especially in the Arab world. These groups are the greatest obstacles to a negotiated peace. It is Russian policy to put all the Chechen resistance into the extremist category for propaganda purposes.

#### Foreign Forces

There is no doubt that a number of the rebel fighters come from outside Chechnya, although a significant proportion of these are ethnic Chechens from the Diaspora in the Middle East. The presence of Arab fighters in Chechnya has been confirmed by both Russian and US intelligence sources. Some Chechens fought with the Mujahideen against the Soviet army in Afghanistan in the 1980s and this support has been repaid. It was reported in 2000 that Osama bin Laden was supplying funds for Khattab's group.

[364] Mr. Almrei went twice to Tajikistan under the command of Ibn Khattab. He lived in Khattab's guest house with Khattab.

[365] Mr. Almrei's evidence regarding a relationship between Abdul Sayyaf and Osama bin Laden is equivocal. During the first detention review, he testified that bin Laden was very wealthy and "helped all the Afghani groups, whether Sayyaf or Hekmatyar or Rabbini, all of them". He claimed that he visited, but did not stay in, a bin Laden guest house that was known as the Al Qaeda guest house. On cross-examination, he said that Osama bin Laden financed many of these camps but did not necessarily claim them as his or Al Qaeda's own. During the hearing of this application, he testified that, to his knowledge, the camps that he attended were not related to or controlled by bin Laden. He also said that the camps did not share bin Laden's ideology. On cross-examination, he claimed to be unaware of any conservative, anti-West or anti-American beliefs held by Sayyaf. He stated that he "would not be surprised" if bin Laden had a relationship with all of the Afghan leaders. He said that he was not aware of Al Qaeda's use of the Jalalabad camps.

[366] In relation to Ibn Khattab, Mr. Almrei said that, until 1997 or 1998 (after his time in *jihad*), he was not aware of any relationship between Khattab and bin Laden. Mr. Almrei had been of the impression that Khattab and bin Laden did not get along and he claimed that Khattab did not share Osama bin Laden's views.

[367] It is impossible to reconcile Mr. Almrei's evidence (in the two detention reviews) as to when or where he became associated with Ibn Khattab. Asked when he met Khattab, Mr. Almrei provided the following (non-exhaustive) answers:

- I first heard about Ibn Khattab when I went to Tajikistan in about 1994;
- I hadn't even heard of his name in Afghanistan;

- I went first to the same guest house in Babhi [Sayyaf's guest house]. I asked around, and an Arabic guy by the name of Ibn Khattab at that time was at a guest house in Babhi, too, and he lived out in Tajikistan;
- I will say one thing about Khattab. In his guest house in Babhi or even in Peshawar in Pakistan there are different Muslim groups from several countries. Everybody has his own belief, his own opinion. If one came to live in Khattab's guest house, and if one started to talk about some government, that they were a corrupt government or an infidel government, he would ask them to leave his house. That happened right in front of me.

[368] Mr. Almrei's association with Nabil Almarabh will be explained in more detail later in these reasons. For present purposes, it is sufficient to state that Mr. Almrei did have a relationship with Mr. Al Marabh in Canada. Mr. Almrei claims that they originally met in Khunduz when serving under Khattab's command. Upon meeting in Canada, Mr. Al Marabh identified himself as Abu Adnan and Mr. Almrei identified himself as Abu Al-Hareth

[369] The evidence establishes that Mr. Al Marabh is alleged to be an Afghanistan-trained *mujahideen* who was listed on the Federal Bureau of Investigation watch list as a suspected terrorist. Mr. Al Marabh was detained in the United States ostensibly in relation to allegations that he intended to martyr himself in an attack against the United States. He was ultimately deported to Syria without being prosecuted.

[370] I accept as fact that both Sayyaf and Khattab were hard-line Islamic fundamentalists and were acknowledged as such during the time frame when Mr. Almrei was in attendance at *jihad*.

Mr. Almrei was at a young and impressionable age when he was under their command. Mr. Almrei claims that he did not adopt the ideology. Is this probable?

[371] Mr. Almrei says that he did not come from a fundamentalist family because his sisters were educated. Yet, his father was forced to flee Syria and move his family to Saudi Arabia because of his membership in the Muslim Brotherhood. While there is no suggestion that Mr. Almrei is or was a part of the Muslim Brotherhood, his father remains a member.

[372] Mr. Almrei claims that during *jihad* he was an *imam*, yet he acknowledges that he had no religious function in Tajikistan. Even accepting that he fulfilled the function of an *imam* in Afghanistan, it was in a Wahhabi fundamentalist guest house and camp.

[373] In relation to Tajikistan, I accept the evidence of J.P. over that of Mr. Almrei. Mr. Almrei claimed that his first mission was a scouting mission and that he was not armed. J.P. testified that Tajikistan was the subfront of the Chechen conflict and that the Islamic insurgents were fully engaged against the Russians at the time when Mr. Almrei was there. He described it as a “fairly hot area” and said that it would be foolhardy for someone to think that he was just going in as part of a scouting group. Individuals involved in any foray would have been trained to take care of themselves. I agree.

[374] I also accept J.P.’s uncontradicted evidence that one would be welcomed to the conflict in Tajikistan because of experience in Afghanistan, trust, or referral to the rebellion.



[375] I accept that Abdul Sayyaf was affiliated with Osama bin Laden. Mr. Almrei's equivocal evidence in this respect is not persuasive. I also find that the acts attributed to Sayyaf's forces occurred during the time frame (in years) that Mr. Almrei was returning to and from *jihad*.

[376] I attach significance to the fact that Mr. Almrei was not a one-time attendee in Afghanistan and Tajikistan. After his first trip in 1990, he returned repeatedly. His Tajikistan ventures occurred after the loss of popular support for *jihad* from the Gulf. Nowhere in the evidence can I find so much as a hint of a suggestion that the masses of young men who went to *jihad* returned regularly and consistently for five years.

[377] P.G. testified that those who attended Al Qaeda and Al Qaeda-affiliated camps in the 1990s would have received instruction on the ideology, its purpose and its goals, and would have pledged allegiance to those goals. I accept that evidence insofar as it relates to those who repeatedly returned to the training camps.

[378] I have no reason not to accept Mr. Almrei's evidence that Khattab was not directly affiliated with Osama bin Laden when Mr. Almrei was in Tajikistan. If Mr. Almrei is correct, then it is evident that bin Laden did not provide funding to all *mujahideen* leaders in Afghanistan. In any event, affiliation or not, bin Laden and Khattab were ideologically consistent.

[379] I also attach significance to the fact that Mr. Almrei stayed in touch with Ibn Khattab after returning from Tajikistan and communicated with him by satellite telephone. He received faxes from Khattab. Mr. Almrei claims that Khattab would communicate with anyone who wanted to be

kept up to date regarding the conflict. It is reasonable to conclude that Khattab would communicate with those who shared his ideals. It is unfathomable that he would do so with those who did not.

[380] Equally, if not more, disturbing is Mr. Almrei's evidence on this application that he views Khattab as a good Muslim man. After Mr. Almrei's arrival in Canada, he visited Chechen extremist websites for updates on the Chechen insurgency. His hard drive contained images of Osama bin Laden, Ibn Khattab, Khattab with Basayev, and others who died during the Chechen conflict whom Mr. Almrei regarded as martyrs. Mr. Almrei was aware of Khattab's activities. To profess that Ibn Khattab is a "good Muslim man", in the face of Khattab's pursuits, is antithetical to Mr. Almrei's description of true Islam.

[381] I refer to Dr. Bagby's report. When conducting his psychological assessment of Mr. Almrei, Dr. Bagby was attempting to detect any signs of psychological trauma. Mr. Almrei reported having witnessed "bombs falling on people" during the "holy war" in Afghanistan, resulting in serious injuries and death, but stated that these people were "warriors". Dr. Bagby reports that Mr. Almrei stated: "When I saw people die, they died as martyrs and went to paradise, so it did not bother me". Although I do not assign significant weight to the images of Osama bin Laden and the nine images related to the events of 9/11 that were retrieved from Mr. Almrei's hard drive, I do not ignore them either.

[382] In the circumstances as I have described them and in view of the findings that I have made, I conclude that Mr. Almrei's participation in *jihad* (specific to him) gives rise to an objectively reasonable suspicion that Mr. Almrei did adopt the Islamic extremist ideology espoused by Osama

bin Laden. This standard does not require proof of the existence of the facts. It requires reasonable grounds to believe. There must be a serious possibility that the facts exist based on reliable, credible evidence. However, I arrive at the same result on a balance of probabilities standard. My conclusion is reinforced by reference to evidence contained in the confidential information, a copy of which is attached as Schedule "A" to an order signed contemporaneously with these reasons and order (the confidential order).

(ii) Document Forgery

[383] Earlier reference has been made to the Ministers' documentary evidence detailing the reliance that terrorists place on false documentation to facilitate travel around the world unimpeded and undetected (paragraph 305). I need not repeat its contents. The Ministers have provided various examples of individuals involved in acts of terror who have travelled on false documentation. P.G. testified that the demand for false documentation has escalated since 9/11 because of the need to thwart the increased international cooperation in the sharing of information with respect to Islamic extremists.

[384] Mr. Almrei did not take issue with the Ministers' position in this respect. I therefore accept that there is a need for false documentation and, for the reasons provided by P.G., that the need has increased since the events of 9/11.

[385] There is much common ground in relation to this issue. Mr. Almrei, in his written submission, denied that he was part of a forgery network. He claimed that with one exception, he

“only ever obtained false documents for himself”. The submission was made prior to the October 14<sup>th</sup> disclosure and it is not totally accurate.

[386] The Ministers properly noted that Mr. Almrei had also admitted that: he knew [and had contact with] an individual in Montreal who could obtain false documents; in 1998, he travelled to Thailand and befriended an individual named Ghaled who was involved in human smuggling; he contacted Ghaled about false passports after he came to Canada; he told people in the community that he could obtain false documents; and he had a reputation in the community for being one who could obtain false documents.

[387] For his part, Mr. Almrei asserted that although this was the state of affairs, he did not obtain any documentation from Ghaled and he did not obtain any false documents for anyone other than Mr. Al Marabh. He also admitted that he made a profit of \$2,000 from the transaction with Al Marabh and that he took advantage of the fact that he overestimated the cost of the document when he quoted the price to him. Additionally, he acknowledged having received a telephone call from Mr. Al Marabh from the United States seeking another passport, but Mr. Almrei says that he did not provide one.

[388] The Ministers did not insist that Mr. Almrei acted other than as a procurer of false documentation. There is no evidence that he was a manufacturer.

[389] I would have been inclined on the basis of this evidence alone to conclude that the evidence does give rise to an objectively reasonable suspicion that Mr. Almrei did participate in the

procurement of false documents. I consider that when an individual holds himself out and is known in the community as a procurer of false documentation and the same individual has both a domestic and an international connection in relation to the acquisition of false documentation, there exist reasonable grounds to believe on reliable evidence that the individual is involved in some kind of network.

[390] On October 14<sup>th</sup>, further disclosure was ordered. The chronology of events surrounding the disclosure and Mr. Almrei's response to it are detailed in paragraphs 225 through 233 and it is not necessary to belabour them. Some aspects though bear repeating.

[391] At the conclusion of Mr. Almrei's cross-examination in this application, the following exchange occurred:

- Q. Are you withholding any information from this Court about your involvement in false documentation?
- A. Not at all.

[392] Mr. Almrei, in his affidavit of November 14, 2005, while denying any knowledge of the false documentation seized from Mr. Ishak when he was apprehended by the F.B.I. in Detroit, made some revelations.

[393] Specifically, Mr. Almrei approached Mr. Ishak to elicit Mr. Ishak's participation in a sham marriage between Mr. Ishak and Mr. Almrei's former employee for the purpose of procuring a false sponsorship application for immigration purposes. Mr. Almrei was a witness to the "marriage" both at City Hall and at the mosque in Toronto. Mr. Ishak was paid \$4,000 for his services.

[394] Mr. Almrei arranged for an individual, who had assisted him from time to time, to prepare the sponsorship application. To authenticate and facilitate it, Mr. Almrei provided a letter stating that Mr. Ishak worked at Mr. Almrei's restaurant, although Mr. Ishak had never worked there.

[395] Mr. Ishak, while in Toronto, assisted individuals in obtaining Ontario driver's licences using G-1 licences from Ontario and licences from the State of Michigan. The obtained licences were in the true names of the bearers. Mr. Almrei was compensated for referring individuals to Mr. Ishak for this purpose.

[396] I have no hesitation in concluding that the totality of the evidence provides reasonable grounds to believe and gives rise to an objectively reasonable suspicion that Mr. Almrei participated in a network involved in forged documentation. Indeed, I am satisfied on a balance of probabilities that this is so. My conclusion is reinforced by reference to evidence contained in the confidential information, a copy of which is attached as Schedule "B" to the confidential order.

[397] This brings me to the final aspect of this stage of the inquiry. The Ministers contend that it is the combination of Mr. Almrei's participation in *jihad*, adoption of the Islamic extremist ideology espoused by Osama bin Laden, and participation in a network involved in forged documentation that constitutes the danger to the security of Canada or to the safety of any person. The adoption of the Islamic extremist ideology is the driver. I have determined that Mr. Almrei has adopted the Islamic extremist ideology of Osama bin Laden, as that term is defined today, and that he participated in a network involved in forged documentation. His participation in *jihad* has long

been established. His participation in *jihad*, in the circumstances specific to him, is the foundation for the finding that he is an individual who adopted the Islamic extremist ideology.

[398] The combination of the factors leads to a situation whereby Mr. Almrei, even if he personally has no intention of committing a direct act of violence in Canada, has the potential to facilitate the movement of others who also harbour such beliefs and ideals and to position them to perpetrate violence on foreign or Canadian soil. This threat is substantial and it is serious. The factors giving rise to the finding of danger have been assessed individually and it necessarily follows that the same result is applicable to their combination. I conclude, on a balance of probabilities, that Mr. Almrei constitutes a danger to national security or to the safety of any person and that he has not discharged his onus to establish that he is not such a danger.

[399] Before turning to the final issue, I am mindful of Mr. Almrei's submission that he has provided reasonable explanations for his errors and omissions. For example, he maintained that it was not unusual for individuals claiming refugee status to provide false documentation. He relied upon the fact that the Ministers' witnesses (P.G. and J.P.) agreed with this proposition. While it is not uncommon for those fleeing persecution to resort to whatever means are available to them to seek safe haven, I do not accept that those individuals, upon arrival in Canada, fail to disclose the true nature of their claims. Mr. Almrei's only explanation for failing to tell the truth at his refugee hearing was that his interpreter advised him against it. Further, he provided no explanation for lying about the destruction of his United Arab Emirates passport.

[400] Mr. Almrei also explained that he was afraid to tell the truth because of his fear that he would be labelled a terrorist after the events of 9/11. Mr. Almrei was aware, well before the events of 9/11, that CIC was conducting further investigation regarding him after uncovering the UAE passport, among others, that he claimed to have destroyed. It was open to Mr. Almrei to tell the truth then.

[401] Finally, I note that when Mr. Almrei decided that it was time to disclose (on the eve of his deportation), he omitted to include significant “details” in his statutory declaration. When pressed by the Ministers’ counsel for an explanation in this respect, he claimed that his lawyer was to blame for he had told her everything.

[402] I said earlier that Mr. Almrei’s disclosures were reactive to the allegations levied by the Ministers. Mr. Almrei revealed the particulars of his activities only when he deemed it necessary and only to the extent that he felt the circumstances required. He economized the truth and continued to do so throughout this application.

(iii) Has the danger been neutralized?

[403] Mr. Almrei argues that his detention of four years has neutralized any threat that may have existed. There is no evidence that any contacts that he may once have had still exist or would be accessible to him, even if he were inclined to seek them out again (which he has expressly denied). He refers specifically to the death of Ibn Khattab as being illustrative of his inability to contact individuals of concern to the Ministers.



[404] He contends that whatever danger he is said to pose can be kept within acceptable limits by the imposition of appropriate terms and conditions. In this respect, he states that it is open to the Court to craft terms and conditions that restrict his movements and associations to whatever degree is found to be justified. Compliance would be monitored not only by the sureties, but presumably, by the police and security agencies.

[405] Mr. Almrei submits that he gave his word to the Court that he would comply with the terms of any order for his release and he testified unequivocally that he would never risk the honour, reputation, or money that his sureties are prepared to put forward on his behalf. There is nothing in his psychological makeup, as reflected in Dr. Bagby's report, or in the opinions of his friends and associates, or the jail guards, that could give the Court reason to doubt that he could or would comply with any order for his release. His case has attracted significant publicity and his ability to act in a clandestine fashion has been severely comprised, even assuming that he was so inclined (which he expressly denied). There is no evidence that he has acted violently against Canada or Canadian interests and there is no evidence that he has aided anyone in acting violently against Canada or Canadian interests. He explicitly denied that he has any intention of ever so acting if released.

[406] In sum, Mr. Almrei contends that his release, on appropriate terms and conditions, would alleviate any danger to national security or to the safety of any person that might exist.

[407] The Ministers maintain that there are no terms or conditions that can address the danger to national security or to the safety of any person that Mr. Almrei poses. The documentary and

witness evidence tendered by the Ministers demonstrates that it is unlikely that detention will have caused Mr. Almrei to renounce his support of the Islamic extremist ideology of Osama bin Laden or that publicity will diminish the danger that he poses.

[408] In the Ministers' view, each of the individuals who testified in support of Mr. Almrei as a surety either has never met Mr. Almrei, did not know Mr. Almrei before he came to Canada, has met him only while he was detained, or would be unable to ensure that he complies with any terms or conditions ordered. Any release order will place Mr. Almrei in a position to re-establish his associations and activities with individuals who support the extremist ideals espoused by Osama bin Laden.

[409] In short, the Ministers submit that no amount of money, no surety, and no conditions can address the danger that Mr. Almrei poses. It is probable, given his history of untruthfulness, that he will not abide by the terms or conditions imposed.

[410] The debate boils down to a question of whether the passage of time combined with a severance of contact has, or the imposition of conditions will, neutralize the danger that Mr. Almrei poses to the security of Canada or to the safety of any person.

[411] Mr. Almrei claims that notoriety is a factor and the Ministers' witness P.G. claims that, beyond inconvenience, it is not. It seems to me that the Minister, Mr. Almrei, or for that matter the Court, is in no position to predict what impact, if any, the publicity surrounding Mr. Almrei's situation will have. I regard "notoriety" as a neutral factor because it is dependent on context.

[412] P.G. also testified that individuals who lived and trained in Al Qaeda or Al Qaeda affiliated camps would have pledged allegiance to the goals of the ideology. Those who are committed are fervent in their beliefs and will not be shaken. They remain committed for life. The documentary evidence, relied upon in support of this proposition, is a CSIS Current Intelligence Brief 2004/05 entitled “Islamic Extremists and Detention: How long does the Threat Last?” In relation to the individuals who have trained in the camps to which P.G. referred, the report states “[g]iven the nature of the ideology impact, those who spent time in these camps do not, as a rule, choose to abandon their cause”.

[413] In a large number of cases (specific examples are referred to in the brief) and, perhaps a majority of cases, that may be so. Nonetheless, the thesis uses a broad brush. P.G., on cross-examination, conceded that although it was improbable that such an individual would abandon the ideology, it was not impossible and individual cases could vary. The document, upon which the theory rests, appears not to have been subjected to any empirical analysis. Rather, it consists of an opinion derived from the observations of those regarded as possessing expertise in the analysis of extremist Islamic ideology. Justice Dawson, in the recent *Mahjoub* decision, was confronted with a similar submission. She found that such evidence falls short of being accurate in every case. I concur with that comment.

[414] However, there is no doubt that Mr. Almrei exhibits patience, strength, determination, endurance and self-discipline and is not easily diverted from his objectives. He has undertaken an estimated seven hunger strikes since his incarceration. When he testified in court for a full day on

this application, he was on the 29<sup>th</sup> day of a hunger strike, refusing everything but water and juice.

He did not end his hunger strike until day 73.

[415] Mr. Almrei appears intent on remaining in Canada although he has no family ties here. He is not married and has no dependants. He has nine siblings. With the exception of one sister, his family lives in Saudi Arabia. In the psychological assessment, Dr. Bagby noted, in spite of a lengthy detention, that Mr. Almrei “is surprisingly well-adjusted psychologically and still coping quite effectively with the stresses in his daily life”. He referred to Mr. Almrei’s “sufficient personal positive self-image, adaptability and, perhaps most important, a superficial attachment style that enable him to formulate interpersonal relationships”. His “characterological attributes” (affable nature and attachment style) and “resolute faith-based coping mechanisms” appear to be “holding depressive symptoms in check”.

[416] I consider the absence of any expression of renunciation of the fundamentalist ideology from Mr. Almrei to be significant. His suggested solution, in the event that the Court should find him to be a danger to the security of Canada or to the safety of any person on the grounds alleged by the Ministers, is not the renunciation of the ideology, should he be found to possess it. Rather, he contends that he should nonetheless be released with the imposition of conditions.

[417] Regarding the submission that he has had no contact with those of concern to the Ministers and his reference to Ibn Khattab’s death, Mr. Almrei misconstrues the Ministers’ position. They have not suggested that Mr. Almrei will necessarily re-establish contact with the specific, known associates of the past. Rather, the Ministers submit, relying on the evidence of J.P. – that Mr.

Almrei has a pedigree that he can trade on and is a valuable asset to Al Qaeda, as it is presently defined, and it is just a matter of time before he will resume his former activities – that detention may diminish, but will not negate, the threat. Justice Dawson, when confronted with a similar argument by Mr. Mahjoub, was not satisfied that it is reasonable to conclude that the Service is, or was, aware of all of his potential contacts. I am of the same mind.

[418] Having considered these factors – the impact of notoriety, the lack of renunciation and the uncertainty of the extent of his contacts – Mr. Almrei has not satisfied me that the danger he poses to the security of Canada or to the safety of any person has been neutralized.

[419] Mr. Almrei contends that even in the face of such a finding, release on restrictive conditions can neutralize such danger. He says that he has provided his assurances that he will comply with any and all conditions that the Court sees fit to impose. Mr. Almrei has not been forthright in this matter. His evidence has been self-serving throughout and I am inclined to think his assurances as to compliance are of a quality similar to his evidence. Nonetheless, it may well be that if the conditions were very restrictive, the threat might be neutralized.

[420] Release on even the most stringent conditions is contingent upon mechanisms being in place to ensure compliance with such conditions. It is here where Mr. Almrei fails. Mr. Almrei has gathered monetary support, some symbolic in nature and some tangible. More than \$49,000 (conditional) and \$20,500 (cash) has been pledged or paid for the posting of a bond. Of the various sureties, only six have agreed to act in a supervisory capacity. Of these, one resides in Montreal. All are proposing (including Mr. Almrei) that he reside in the home of Dr. Diana Ralph and her

wife. The peripheral comment of Dr. Aly Hindy that he is prepared to assist with accommodation, if necessary, cannot be regarded as a specific and concrete plan or proposal.

[421] I am not satisfied that Dr. Ralph is an acceptable or appropriate surety in the circumstances of this matter. I am sure that Dr. Ralph means well and has Mr. Almrei's interests at heart. However, she is completely lacking in objectivity.

[422] Dr. Ralph is a member of the Campaign to Stop Secret Trials in Canada. Its purpose is to abolish the security certificate process. She had not met Mr. Almrei when she made her initial offer for him to live with her and her wife. Her offer was made on principle. In contemplation, she set about renovating her home and constructed an apartment in the basement with its own separate entrance. She has recently expended an additional \$6,000 to move the counselling office, from the basement to the main area of the house, in anticipation of Mr. Almrei's arrival.

[423] The relationship between Dr. Ralph and Mr. Almrei began after she offered her home to him. She testified that she speaks (and has for the last while) to him daily on the telephone and visits him weekly. She sends him books and magazines. She regards him as a son and claims that in many ways, she knows him better than her biological son. It became clear to her, "very quickly", what a wonderful man he is. When she first met him, he carried some endemic assumptions about Jews, but never treated her badly. He has welcomed Dr. Ralph's wife as his other mother, and accepts that it is up to God to judge people. Dr. Ralph assesses Mr. Almrei to be totally honest.

[424] I am not at all satisfied that Dr. Ralph possesses the requisite objectivity or necessary impartiality to stand as the primary supervising surety. She has had no experience with Mr. Almrei except when he was in a highly-regulated and controlled environment. I do not fault her positive and protective views regarding Mr. Almrei, nor do I suggest that a surety must assume a purely neutral attitude. However, I find Dr. Ralph's judgment to be clouded by her political beliefs. I am not convinced that she appreciates the onerous task that she has offered to assume. For example, when questioned as to her knowledge of the Arabic language, she candidly stated that she did not understand Arabic. However, in her view, it is of no moment because she would not listen in on Mr. Almrei's telephone calls in any event.

[425] Dr. Ralph describes herself as a law-abiding citizen except in matters of civil disobedience. She has previously encountered difficulty in this area. I have no idea how she defines the term "civil disobedience". More importantly, I am not confident that she exhibits respect for the Court, as an institution, given her comments on the hearing of this application (June 28, 2005 transcript, p. 273). Respect for the Court and its orders, in my view, is a condition precedent to credible presentation of oneself as a surety. Otherwise, how can the Court be confident that the surety will endeavour to ensure that its orders are honoured. I am not convinced that law enforcement personnel, in the absence of an appropriate surety, can ensure compliance with the Court's order.

[426] Because I am not satisfied that mechanisms are in place to ensure Mr. Almrei's compliance with any conditions that the Court could order, it follows that he cannot be released. Other comments that I have with regard to this particular issue are contained in Schedule "C" attached to the confidential order.

## CONCLUSION

[427] I echo the comments of my colleague, Madam Justice Dawson in *Mahjoub v. The Minister of Citizenship and Immigration and the Solicitor General of Canada*, 2005 FC 1596 that “issues of significant concern to Canadian society are posed” whether, in this case, Mr. Almrei, “continues in detention or is released. This is so because detention of uncertain duration is anathema to the principles which govern our judicial system”.

[428] Mr. Almrei insists that the legislation does not contemplate the present circumstances. The Ministers’ witness, Mr. Dumas, stated that the IRPA does not provide for indefinite detention. The Federal Court of Appeal has stated that the Act does not provide for indefinite administrative detention without good reason: *Almrei* at para. 118; *Ahani* at para.14. While it is arguable that when prolonged detention occurs, the legislation has diverted from its stated goal, any lacunae existing in the IRPA are matters for Parliament to resolve.

[429] On November 23, 2001, Mr. Almrei was conclusively determined to be inadmissible to Canada. The most fundamental principle of immigration law stated in *Chiarelli v. Canada (Minister of Employment and Immigration)*, [1992] 1 S.C.R. 711 – that non-citizens do not have an unqualified right to enter or remain in Canada – was reaffirmed in *Medovarski v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 51. Chief Justice McLachlin noted that the objectives, as expressed in the IRPA, indicate an intent to prioritize security.



[430] Mr. Almrei does not want to be returned to Syria where he claims that he will be tortured. A determination under paragraph 115(2)(b) of the IRPA has yet to be made. In the interim, Mr. Almrei claims that both deportation to Syria and continuing detention constitute a contravention of Canada's international human rights obligations. The collision between the *Chiarelli* principle and Canada's international obligations with respect to deportation is not the issue before me. I have been assigned the responsibility of determining whether Mr. Almrei is a danger to national security or to the safety of any person and I have determined that he is.

[431] I have also concluded, in balancing the interests of national security and personal liberty, that his release on conditions is not appropriate at this time for the reasons that I have given. That is not to say that the conditions under which he is detained are acceptable for, in my view, they are not. However, as earlier noted, the present arrangement is about to change.

[432] Mr. Almrei's application for release is brought under subsection 84(2) of the IRPA and the onus of proof is on him to establish, on a balance of probabilities, that he will not be removed within a reasonable time and that he is not a danger to national security or to the safety of any person. He has premised his application wholly on the grounds that he will not be removed within a reasonable time and that he is not such a danger. The statutory criteria in the provision are conjunctive. Mr. Almrei has met one criterion but not the other. The statute mandates that his application be dismissed. It remains open to him to apply again for release at any time that he is able to establish a substantial change in circumstances. It also remains open to him, under subsection 84(1) of the IRPA, to apply to the Minister for release for removal to a country other than Syria.

**ORDER**

**THIS COURT ORDERS that** the application is dismissed.

“Carolyn Layden-Stevenson”

Judge

**SCHEDULE "A"**  
**to the**  
**Reasons for order and order dated December 5, 2005**  
**in**  
**HASSAN ALMREI**  
**and**  
**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**  
**AND SOLICITOR GENERAL FOR CANADA**

**DES-5-01**

May 30, 2005	Notice of motion filed with supporting affidavit requesting an order releasing the applicant from detention.
June 1, 2005	Notice of motion requesting an order for Mr. Almrei's attendance at hearing.
June 2, 2005	Order issued for the attendance of Mr. Almrei at the hearing scheduled for June 27, 2005.
June 8, 2005	Teleconference (at the Court's initiative) with counsel to discuss and establish structure for the hearing.
June 8, 2005	The Ministers file confidential information and reference index pertaining to the application for release.
June 13-16, 2005	Court reviews the Ministers' documents.
June 16, 2005	<i>Ex parte in camera</i> hearing to question counsel regarding the confidential information.
June 17, 2005	Order for release of public summary of evidence and service on Mr. Almrei's counsel.
June 24, 2005	<i>Ex parte in camera</i> hearing to further question counsel regarding specific issues related to classified material.
June 24, 2005	Teleconference (at Court's initiative) with counsel to finalize scheduling and conduct of public hearing scheduled to begin June 27, 2005. Mr. Almrei's counsel informed of <i>ex parte in camera</i> hearing and informed that further disclosure will be forthcoming.
June 27, 2005	Public hearing begins.

- June 28, 2005 Public hearing continues. Adjourned, at applicant's request, to a date to be scheduled.
- July 4, 2005 Court receives correspondence dated June 30, 2005 containing notification from the Ministers that Mr. Almrei and his counsel were served with the Security Review Division's memorandum and its appendices on June 30, 2005.
- July 8, 2005 Direction that the Ministers - upon the resumption of the public hearing on a date to be set - produce a CSIS witness, informed on all facts and matters relied upon (in the public summary) by the Ministers.
- Direction requiring counsel for the Ministers and knowledgeable witness who can give evidence and answer questions from the Court to appear *ex parte and in camera* on July 13, 2005. The Court's inquiries will relate to:  
whether further information contained in the confidential record may be summarized and provided to Mr. Almrei;  
the source of each item in the confidential record relied upon to support the conclusion that Mr. Almrei's release from detention would pose a danger to national security; and  
the presence or absence of independent corroborating evidence.
- Teleconference (at the Court's initiative) with counsel to discuss dates for the resumption of the public hearing. Counsel undertakes to advise in this regard.
- July 11, 2005 Facsimile correspondence of Mr. Almrei's counsel dated July 8, 2005 listing questions and concerns that counsel would like the Court to explore during the *ex parte in camera* hearing.
- July 13, 2005 Receipt of correspondence with amended questions from Mr. Almrei's counsel.
- July 13, 14, 2005 *Ex parte in camera* hearing.
- July 14, 2005 Receipt of correspondence from counsel for the Ministers indicating service of supplementary disclosure on Mr. Almrei's counsel.
- July 15, 2005 Supplementary information and reference index for public disclosure filed. Letter from Mr. Almrei's counsel advising of counsel's availability to resume public hearing.
- July 18, 19, 20, 2005 Public hearing. Upon conclusion, Mr. Almrei's counsel requests the

opportunity for counsel to jointly suggest a schedule for the filing of written submissions. Direction by the Court that the proposed schedule be filed by July 25, 2005.

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|--------------------|---|
| July 25, 2005      | Receipt of joint submission of counsel detailing the proposed schedule for the filing of submissions.   |
| July 26, 2005      | Order approving and confirming the proposed schedule for filing of submissions.   |
| August 10, 2005    | Applicant's written submissions filed.  |
| August 25, 2005    | Respondent Ministers' written submissions filed.  |
| August 30, 2005    | Applicant's reply submissions filed.  |
| September 1, 2005  | Confidential direction to the Ministers' counsel to appear <i>ex parte in camera</i> on September 2, 2005 for the purpose of the Court providing further questions to which it requires responses.  |
| September 2, 2005  | <i>Ex parte in camera</i> hearing wherein the Court provides the Ministers' counsel with its questions.   |
|                    | Receipt of correspondence from Mr. Almrei's counsel advising the Court of Mr. Almrei's fragile state of health due to his hunger strike and requesting the Court's decision.  |
| September 5, 2005  | Oral direction advising Mr. Almrei's counsel:<br>(a) of the "Confidential" Direction dated September 1, 2005;<br>(b) the <i>ex parte in camera</i> hearing on September 2, 2005;<br>(c) requesting clarification with respect to Mr. Almrei's counsel's request of the Court to review previous transcripts; and<br>(d) requesting clarification from Mr. Almrei's counsel regarding proposed sureties. |
| September 7, 2005  | Receipt of correspondence from Mr. Almrei's counsel informing the Court that Mr. Almrei has terminated his hunger strike and the urgency is, as a result, somewhat "mitigated".   |
| September 12, 2005 | Receipt of correspondence dated September 12, 2005 from Mr. Almrei's counsel providing clarification regarding the request in relation to the Court's review of previous transcripts and requesting an extension of time within which to provide further evidence with respect to proposed sureties.  |
| September 14, 2005 | Oral direction granting Mr. Almrei until September 28, 2005 to  |

provide updated proposed sureties and to serve and provide evidence in this regard.

Receipt of correspondence from the Ministers' counsel requesting the opportunity to address the appropriateness of the applicant's updated proposed sureties.

- September 24, 2005 *Ex parte in camera* hearing for the purpose of the Court receiving responses to the questions it provided to the Ministers' counsel on September 2, 2005.
- September 28, 2005 Receipt of Mr. Almrei's updated proposed sureties (date stamp indicates material was filed September 23, 2005)
- September 29, 2005 Oral direction granting the Ministers until October 6, 2005 to respond to the applicant's evidence served September 23, 2005 and filed September 28, 2005 pursuant to the Direction of September 14, 2005.
- October 7, 2005 Receipt of the Ministers' submissions regarding the applicant's updated proposed sureties.
- October 14, 2005 *Ex parte in camera* hearing for the purpose of receiving responses that remained outstanding from the hearings conducted on September 2 and 24, 2005.  
Order for further disclosure issued.
- October 24, 2005 Oral direction requesting that Mr. Almrei indicate whether he intends to submit further evidence or arguments with respect to the further disclosure ordered October 14, 2005.
- October 25, 2005 Receipt of correspondence from Mr. Almrei's counsel requesting a teleconference with the Court and counsel for the parties at the Court's earliest convenience.
- October 26, 2005 Teleconference with counsel.  
Direction issued approving a schedule proposed by counsel, on consent, to the provision of written questions, responses and a statutory declaration by Mr. Almrei.
- November 1, 2005 Receipt of request from the Ministers' counsel for an *in camera* hearing.
- November 2, 2005 Direction scheduling *in camera* hearing for November 3, 2005 at

10:00 a.m.

November 3, 2005

*In camera* hearing.  
Order issued with Schedules 1, 2 and 3 attached.

November 9, 2005

Receipt of correspondence from Mr. Almrei's counsel.  
Receipt of affidavit of Hassan Almrei sworn November 9, 2005.  
Receipt of correspondence from the Ministers' counsel responding to the contents of the correspondence of Mr. Almrei's counsel.

November 14, 2005

Receipt of correspondence from the Ministers' counsel containing:  
(a) notification that the Ministers do not intend to cross-examine Mr. Almrei on his affidavit sworn November 9, 2005;  
(b) submissions regarding the noted affidavit.

**SCHEDULE “B”**  
**to the**  
**Reasons for order and order dated December 5, 2005**  
**in**  
**HASSAN ALMREI**  
**and**  
**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**  
**AND SOLICITOR GENERAL FOR CANADA**

**DES-5-01**

*Immigration Act,*  
R.S.C. 1985, c. I-2

*Loi sur l'immigration,*  
L.R.C. (1985), ch. I-2

19. (1) No person shall be granted admission who is a member of any of the following classes:

19. (1) Les personnes suivantes appartiennent à une catégorie non admissible :

[...]

[...]

(e) persons who there are reasonable grounds to believe  
(iii) will engage in terrorism, or  
(iv) are members of an organization that there are reasonable grounds to believe will  
(C) engage in terrorism;  
[...]

e) celles dont il y a des motifs raisonnables de croire qu'elles :  
(iii) soit commettront des actes de terrorisme,  
(iv) soit sont membres d'une organisation dont il y a des motifs raisonnables de croire qu'elle :  
(C) soit commettra des actes de terrorisme;  
[...]

(f) persons who there are reasonable grounds to believe  
(ii) have engaged in terrorism, or  
(iii) are or were members of an organization that there are reasonable grounds to believe is or was engaged in  
(B) terrorism,

f) celles dont il y a des motifs raisonnables de croire qu'elles :  
(ii) soit se sont livrées à des actes de terrorisme,  
(iii) soit sont ou ont été membres d'une organisation dont il y a des motifs raisonnables de croire qu'elle se livre ou s'est livrée :  
(B) soit à des actes de terrorisme,

27(2)(a) An immigration officer or a peace officer shall, unless the person has been arrested pursuant to subsection 103(2), forward a written report to the Deputy Minister setting out the details of any information in the possession of the immigration officer or peace officer indicating that a person in Canada, other than a Canadian citizen or permanent resident, is a person who

27(2)(a) L'agent d'immigration ou l'agent de la paix doit, sauf si la personne en cause a été arrêtée en vertu du paragraphe 103(2), faire un rapport écrit et circonstancié au sous –ministre de renseignements concernant une personne se trouvant au Canada autrement qu'à titre de citoyen canadien ou de résident permanent et indiquant que celle-ci, selon le cas :

(a) is a member of an inadmissible class, other than an inadmissible class described in paragraph 19(1)(h)

a) appartient à une catégorie non admissible, autre



or 19(2)(c);

40.1 (1) Notwithstanding anything in this Act, where the Minister and the Solicitor General of Canada are of the opinion, based on security or criminal intelligence reports received and considered by them, that a person, other than a Canadian citizen or permanent resident, is a person described in subparagraph 19(1)(c.1)(ii), paragraph 19(1)(c.2), (d), (e), (f), (g), (j), (k) or (l) or subparagraph 19(2)(a.1)(ii), they may sign and file a certificate to that effect with an immigration officer, a senior immigration officer or an adjudicator.

(2) Where a certificate is signed and filed in accordance with subsection (1),

(a) an inquiry under this Act concerning the person in respect of whom the certificate is filed shall not be commenced, or if commenced shall be adjourned, until the determination referred to in paragraph (4)(d) has been made; and

(b) a senior immigration officer or an adjudicator shall, notwithstanding section 23 or 103 but subject to subsection (7.1), detain or make an order to detain the person named in the certificate until the making of the determination.

(3) Where a certificate referred to in subsection (1) is filed in accordance with that subsection, the Minister shall

(a) forthwith cause a copy of the certificate to be referred to the Federal Court for a determination as to whether the certificate should be quashed; and  
(b) within three days after the certificate has been filed, cause a notice to be sent to the person named in the certificate informing the person that a certificate under this section has been filed and that following a reference to the Federal Court a deportation order may be made against the person.

(4) Where a certificate is referred to the Federal Court pursuant to subsection (3), the Chief Justice of that Court or a judge of that Court designated by the Chief Justice for the purposes of this section shall

(a) examine within seven days, *in camera*, the

que celles visées aux alinéas 19(1)h) ou 19(2)c);

40.1 (1) Par dérogation aux autres dispositions de la présente loi, le ministre et le solliciteur général du Canada peuvent, s'ils sont d'avis, à la lumière de renseignements secrets en matière de sécurité ou de criminalité dont ils ont eu connaissance, qu'une personne qui n'est ni citoyen canadien ni résident permanent appartiendrait à l'une des catégories visées au sous-alinéa 19(1)c.1)(ii), aux alinéas 19(1)c.2), d), e), f), g), j), k) ou l) ou au sous-alinéa 19(2)a.1)(ii), signer et remettre une attestation à cet effet à un agent d'immigration, un agent principal ou un arbitre.

(2) En cas de remise de l'attestation visée au paragraphe (1) :

a) l'enquête prévue par ailleurs aux termes de la présente loi sur l'intéressé ne peut être ouverte tant que la décision visée à l'alinéa (4)d) n'a pas été rendue;

b) l'agent principal ou l'arbitre doit, par dérogation aux articles 23 ou 103 mais sous réserve du paragraphe (7.1), retenir l'intéressé ou prendre une mesure à cet effet contre lui en attendant la décision.

(3) En cas de remise de l'attestation prévue au paragraphe (1), le ministre est tenu :

a) d'une part, d'en transmettre sans délai un double à la Cour fédérale pour qu'il soit décidé si l'attestation doit être annulée;

b) d'autre part, dans les trois jours suivant la remise, d'envoyer un avis à l'intéressé l'informant de la remise et du fait que, à la suite du renvoi à la Cour fédérale, il pourrait faire l'objet d'une mesure d'expulsion.

(4) Lorsque la Cour fédérale est saisie de l'attestation, le juge en chef de celle-ci ou le juge de celle-ci qu'il délègue pour l'application du présent article :

a) examine dans les sept jours, à huis clos, les renseignements secrets en matière de sécurité

security or criminal intelligence reports considered by the Minister and the Solicitor General and hear any other evidence or information that may be presented by or on behalf of those Ministers and may, on the

request of the Minister or the Solicitor General, hear all or part of such evidence or information in the absence of the person named in the certificate and any counsel representing the person where, in the opinion of the Chief Justice or the designated judge, as the case may be, the evidence or information should not be disclosed on the grounds that the disclosure would be injurious to national security or to the safety of persons;

(b) provide the person named in the certificate with a statement summarizing such information available to the Chief Justice or the designated judge, as the case may be, as will enable the person to be reasonably informed of the circumstances giving rise to the issue of the certificate, having regard to whether, in the opinion of the Chief Justice or the designated judge, as the case may be, the information should not be disclosed on the grounds that the disclosure would be injurious to national security or to the safety of persons;

(c) provide the person named in the certificate with a reasonable opportunity to be heard;

(d) determine whether the certificate filed by the Minister and the Solicitor General is reasonable on the basis of the evidence and information available to the Chief Justice or the designated judge, as the case may be, and, if found not to be reasonable, quash the certificate; and

(e) notify the Minister, the Solicitor General and the person named in the certificate of the determination made pursuant to paragraph (d).

(5) For the purposes of subsection (4), the Chief Justice or the designated judge may, subject to subsection (5.1), receive, accept and base the determination referred to in paragraph (4)(d) on such evidence or information as the Chief Justice or the designated judge sees fit, whether or not the evidence or information is or would be admissible in a court of law.

(5.1) For the purposes of subsection (4),

ou de criminalité dont le ministre et le solliciteur général ont eu connaissance et recueille les autres éléments de preuve ou d'information présentés par ces derniers ou en leur nom; il peut en outre, à la demande du ministre ou du solliciteur général, recueillir tout ou partie de ces éléments en l'absence de l'intéressé et du conseiller le représentant, lorsque, à son avis, leur communication porterait atteinte à la sécurité nationale ou à celle de personnes;

b) fournit à l'intéressé un résumé des informations dont il dispose, à l'exception de celles dont la communication pourrait, à son avis, porter atteinte à la sécurité nationale ou à celle de personnes, afin de permettre à celui-ci d'être suffisamment informé des circonstances ayant donné lieu à l'attestation;

c) donne à l'intéressé la possibilité d'être entendu;

d) décide si l'attestation est raisonnable, compte tenu des éléments de preuve et d'information à sa disposition, et, dans le cas contraire, annule l'attestation;

e) avise le ministre, le solliciteur général et l'intéressé de la décision rendue aux termes de l'alinéa d).

(5) Pour l'application du paragraphe (4), le juge en chef ou son délégué peut, sous réserve du paragraphe (5.1), recevoir et admettre les éléments de preuve ou d'information qu'il juge utiles, indépendamment de leur recevabilité devant les tribunaux, et peut se fonder sur ceux-ci pour se déterminer.

(5.1) Pour l'application du paragraphe (4) :

a) le ministre ou le solliciteur général du

(a) the Minister or the Solicitor General of Canada may make an application, *in camera* and in the absence of the person named in the certificate and any counsel representing the person, to the Chief Justice or the designated judge for the admission of information obtained in confidence from the government or an institution of a foreign state or from an international organization of states or an institution thereof;

(b) the Chief Justice or the designated judge shall, *in camera* and in the absence of the person named in the certificate and any counsel representing the person,

(i) examine that information, and

(ii) provide counsel representing the Minister or the Solicitor General of Canada with a reasonable opportunity to be heard as to whether the information is relevant but should not be disclosed to the person named in the certificate on the grounds that the disclosure would be injurious to national security or to the safety of persons;

(c) that information shall be returned to counsel representing the Minister or the Solicitor General of Canada and shall not be considered by the Chief Justice or the designated judge in making the determination referred to in paragraph (4)(d), if

(i) the Chief Justice or the designated judge determines

(A) that the information is not relevant, or

(B) that the information is relevant and should be summarized in the statement to be provided pursuant to paragraph (4)(b) to the person named in the certificate, or

(ii) the Minister or the Solicitor General of Canada withdraws the application; and

(d) if the Chief Justice or the designated judge determines that the information is relevant but should not be disclosed to the person named in the certificate on the grounds that the disclosure would be injurious to national security or to the safety of persons, the information shall not be summarized in the statement provided pursuant

to paragraph (4)(b) to the person named in the certificate but may be considered by the Chief Justice or the designated judge in making the determination referred to in paragraph (4)(d).

Canada peuvent présenter au juge en chef ou à son délégué, à huis clos et en l'absence de l'intéressé et du conseiller le représentant, une demande en vue de faire admettre en preuve des renseignements obtenus sous le sceau du secret auprès du gouvernement d'un État étranger, d'une organisation internationale mise sur pied par des États étrangers ou de l'un de leurs organismes;

b) le juge en chef ou son délégué, à huis clos et en l'absence de l'intéressé et du conseiller le représentant :

(i) étudie les renseignements,

(ii) accorde au représentant du ministre ou du solliciteur général la possibilité de lui présenter ses arguments sur la pertinence des renseignements et le fait qu'ils ne devraient pas être communiqués à l'intéressé parce que cette communication porterait atteinte à la sécurité nationale ou à celle de personnes;

c) ces renseignements doivent être remis au représentant du ministre ou du solliciteur général et ne peuvent servir de fondement à la décision visée à l'alinéa (4)d), si :

(i) soit le juge en chef ou son délégué détermine que les renseignements ne sont pas pertinents ou, s'ils le sont, devraient faire partie du résumé mentionné à l'alinéa (4)b),

(ii) soit le ministre ou le solliciteur général retire sa demande;

d) si le juge en chef ou son délégué décide qu'ils sont pertinents mais que cette communication porterait atteinte à la sécurité nationale ou à celle de personnes, les

renseignements ne font pas partie du résumé mais peuvent servir de fondement à la décision visée à l'alinéa (4)d).

(6) A determination under paragraph (4)(d) is not subject to appeal or review by any court.

(7) Where a certificate has been reviewed by the Federal Court pursuant to subsection (4) and has not been quashed pursuant to paragraph (4)(d), (a) the certificate is conclusive proof that the person named in the certificate is a person described in subparagraph 19(1)(c.1)(ii), paragraph 19(1)(c.2), (d), (e), (f), (g),(j), (k) or (l) or subparagraph 19(2)(a.1)(ii); and

(b) the person named in the certificate shall, notwithstanding section 23 or 103 but subject to subsection (7.1), continue to be detained until the person is removed from Canada.

(7.1) The Minister may order the release of a person who is named in a certificate that is signed and filed in accordance with subsection (1) in order to permit the departure from Canada of the person, regardless of whether the Chief Justice or the designated judge has yet made the determination referred to in paragraph (4)(d).

(8) Where a person is detained under subsection (7) and is not removed from Canada within 120 days after the making of the removal order relating to that person, the person may apply to the Chief Justice of the Federal Court or to a judge of the Federal Court designated by the Chief Justice for the purposes of this section for an order under subsection (9).

(9) On an application referred to in subsection (8) the Chief Justice or the designated judge may, subject to such terms and conditions as the Chief Justice or designated judge deems appropriate, order that the person be released from detention if the Chief Justice or designated judge is satisfied that

(a) the person will not be removed from Canada within a reasonable time; and

(b) the person's release would not be injurious to national security or to the safety of persons.

(10) On the hearing of an application referred to in subsection (8), the Chief Justice or the designated judge shall

(a) examine, *in camera*, and in the absence of the person making the application and any counsel

(6) La décision visée à l'alinéa (4)d) ne peut être portée en appel ni être revue par aucun tribunal.

(7) Toute attestation qui n'est pas annulée en application de l'alinéa (4)d) établit de façon concluante le fait que la personne qui y est nommée appartient à l'une des catégories visées au sous-alinéa 19(1)c.1(ii), aux alinéas 19(1)c.2), d), e), f), g), j), k) ou l) ou au sous-alinéa 19(2)a.1(ii) et l'intéressé doit, par dérogation aux articles 23 ou 103 mais sous réserve du paragraphe (7.1), continuer d'être retenu jusqu'à son renvoi du Canada.

(7.1) Le ministre peut ordonner la mise en liberté de la personne nommée dans l'attestation afin de lui permettre de quitter le Canada, que la décision visée à l'alinéa (4)d) ait ou non été rendue.

(8) La personne retenue en vertu du paragraphe (7) peut, si elle n'est pas renvoyée du Canada dans les cent vingt jours suivant la prise de la mesure de renvoi, demander au juge en chef de la Cour fédérale ou au juge de cette cour qu'il délègue pour l'application du présent article de rendre l'ordonnance visée au paragraphe (9).

(9) Sur présentation de la demande visée au paragraphe (8), le juge en chef ou son délégué ordonne, aux conditions qu'il estime indiquées, que l'intéressé soit mis en liberté s'il estime que :

a) d'une part, il ne sera pas renvoyé du Canada dans un délai raisonnable;

b) d'autre part, sa mise en liberté ne porterait pas atteinte à la sécurité nationale ou à celle de personnes.

(10) À l'audition de la demande visée au paragraphe (8), le juge en chef ou son délégué :

a) examine, à huis clos et en l'absence de l'auteur de la demande et du conseiller le représentant, tout élément de preuve ou

representing that person, any evidence or information presented to the Minister in relation to national security or the safety of persons;

(b) provide the person making the application with a statement summarizing the evidence or information available to the Chief Justice or designated judge in relation to national security or the safety of persons having regard to whether, in the opinion of the Chief Justice or the designated judge, as the case may be, the evidence or information should not be disclosed on the grounds that the disclosure would be injurious to national security or to the safety of persons; and

(c) provide the person making the application with a reasonable opportunity to be heard.

(11) For the purposes of subsection (10), the Chief Justice or the designated judge may receive and accept such evidence or information as the Chief Justice or the designated judge sees fit, whether or not the evidence or information is or would be admissible in a court of law.

*Immigration Refugee Protection Act,*  
S.C. 2001, c. 27

33. The facts that constitute inadmissibility under sections 34 to 37 include facts arising from omissions and, unless otherwise provided, include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur.

34. (1) A permanent resident or a foreign national is inadmissible on security grounds for

(a) engaging in an act of espionage or an act of subversion against a democratic government, institution or process as they are understood in Canada;

(b) engaging in or instigating the subversion by force of any government;

(c) engaging in terrorism;

(d) being a danger to the security of Canada;

d'information présenté au ministre concernant la sécurité nationale ou celle de personnes;

b) fournit à l'auteur de la demande un résumé des éléments de preuve ou d'information concernant la sécurité nationale ou celle de personnes dont il dispose, à l'exception de ceux dont la communication pourrait, à son avis, porter atteinte à la sécurité nationale ou à celle de personnes;

c) donne à l'auteur de la demande la possibilité d'être entendu.

(11) Pour l'application du paragraphe (10), le juge en chef ou son délégué peut recevoir et admettre les éléments de preuve ou d'information qu'il estime utiles, indépendamment de leur recevabilité devant les tribunaux.

*Loi sur l'immigration et la protection des réfugiés,* L.C. 2001, ch. 27

33. Les faits — actes ou omissions — mentionnés aux articles 34 à 37 sont, sauf disposition contraire, appréciés sur la base de motifs raisonnables de croire qu'ils sont survenus, surviennent ou peuvent survenir.

34. (1) Emportent interdiction de territoire pour raison de sécurité les faits suivants :

a) être l'auteur d'actes d'espionnage ou se livrer à la subversion contre toute institution démocratique, au sens où cette expression s'entend au Canada;

b) être l'instigateur ou l'auteur d'actes visant au renversement d'un gouvernement par la force;

c) se livrer au terrorisme;

d) constituer un danger pour la sécurité du

(e) engaging in acts of violence that would or might endanger the lives or safety of persons in Canada; or

(f) being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b) or (c).

(2) The matters referred to in subsection (1) do not constitute inadmissibility in respect of a permanent resident or a foreign national who satisfies the Minister that their presence in Canada would not be detrimental to the national interest.

Canada;

e) être l'auteur de tout acte de violence susceptible de mettre en danger la vie ou la sécurité d'autrui au Canada;

f) être membre d'une organisation dont il y a des motifs raisonnables de croire qu'elle est, a été ou sera l'auteur d'un acte visé aux alinéas a), b) ou c).

(2) Ces faits n'emportent pas interdiction de territoire pour le résident permanent ou l'étranger qui convainc le ministre que sa présence au Canada ne serait nullement préjudiciable à l'intérêt national.

76. The definitions in this section apply in this Division.

"information" means security or criminal intelligence information and information that is obtained in confidence from a source in Canada, from the government of a foreign state, from an international organization of states or from an institution of either of them.

"judge" means the Chief Justice of the Federal Court or a judge of that Court designated by the Chief Justice.

76. Les définitions qui suivent s'appliquent à la présente section.

« juge » Le juge en chef de la Cour fédérale ou le juge de cette juridiction désigné par celui-ci.

« renseignements » Les renseignements en matière de sécurité ou de criminalité et ceux obtenus, sous le sceau du secret, de source canadienne ou du gouvernement d'un État étranger, d'une organisation internationale mise sur pied par des États ou de l'un de leurs organismes.

77. (1) The Minister and the Solicitor General of Canada shall sign a certificate stating that a permanent resident or a foreign national is inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality and refer it to the Federal Court, which shall make a determination under section 80.

(2) When the certificate is referred, a proceeding under this Act respecting the person named in the certificate, other than an application under subsection 112(1), may not be commenced and, if commenced, must be adjourned, until the judge makes the determination.

77. (1) Le ministre et le solliciteur général du Canada déposent à la Cour fédérale le certificat attestant qu'un résident permanent ou qu'un étranger est interdit de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux, grande criminalité ou criminalité organisée pour qu'il en soit disposé au titre de l'article 80.

(2) Il ne peut être procédé à aucune instance visant le résident permanent ou l'étranger au titre de la présente loi tant qu'il n'a pas été statué sur le certificat; n'est pas visée la demande de protection prévue au paragraphe 112(1).

78. The following provisions govern the determination:

(a) the judge shall hear the matter;

(b) the judge shall ensure the confidentiality of the

78. Les règles suivantes s'appliquent à l'affaire :

a) le juge entend l'affaire;

b) le juge est tenu de garantir la confidentialité des renseignements justifiant le certificat et des

information on which the certificate is based and of any other evidence that may be provided to the judge if, in the opinion of the judge, its disclosure would be injurious to national security or to the safety of any person;

(c) the judge shall deal with all matters as informally and expeditiously as the circumstances and considerations of fairness and natural justice permit;

(d) the judge shall examine the information and any other evidence in private within seven days after the referral of the certificate for determination;

(e) on each request of the Minister or the Solicitor General of Canada made at any time during the proceedings, the judge shall hear all or part of the information or evidence in the absence of the permanent resident or the foreign national named in the certificate and their counsel if, in the opinion of the judge, its disclosure would be injurious to national security or to the safety of any person;

(f) the information or evidence described in paragraph (e) shall be returned to the Minister and the Solicitor General of Canada and shall not be considered by the judge in deciding whether the certificate is reasonable if either the matter is withdrawn or if the judge determines that the information or evidence is not relevant or, if it is relevant, that it should be part of the summary;

(g) the information or evidence described in paragraph (e) shall not be included in the summary but may be considered by the judge in deciding whether the certificate is reasonable if the judge determines that the information or evidence is relevant but that its disclosure would be injurious to national security or to the safety of any person;

(h) the judge shall provide the permanent resident or the foreign national with a summary of the information or evidence that enables them to be reasonably informed of the circumstances giving rise to the certificate, but that does not include anything that in the opinion of the judge would be injurious to national security or to the safety of any person if disclosed;

(i) the judge shall provide the permanent resident or the foreign national with an opportunity to be heard regarding their inadmissibility; and

(j) the judge may receive into evidence anything

autres éléments de preuve qui pourraient lui être communiqués et dont la divulgation porterait atteinte, selon lui, à la sécurité nationale ou à la sécurité d'autrui;

c) il procède, dans la mesure où les circonstances et les considérations d'équité et de justice naturelle le permettent, sans formalisme et selon la procédure expéditive;

d) il examine, dans les sept jours suivant le dépôt du certificat et à huis clos, les renseignements et autres éléments de preuve;

e) à chaque demande d'un ministre, il examine, en l'absence du résident permanent ou de l'étranger et de son conseil, tout ou partie des renseignements ou autres éléments de preuve dont la divulgation porterait atteinte, selon lui, à la sécurité nationale ou à la sécurité d'autrui;

f) ces renseignements ou éléments de preuve doivent être remis aux ministres et ne peuvent servir de fondement à l'affaire soit si le juge décide qu'ils ne sont pas pertinents ou, l'étant, devraient faire partie du résumé, soit en cas de retrait de la demande;

g) si le juge décide qu'ils sont pertinents, mais que leur divulgation porterait atteinte à la sécurité nationale ou à celle d'autrui, ils ne peuvent faire partie du résumé, mais peuvent servir de fondement à l'affaire;

h) le juge fournit au résident permanent ou à l'étranger, afin de lui permettre d'être suffisamment informé des circonstances ayant donné lieu au certificat, un résumé de la preuve ne comportant aucun élément dont la divulgation porterait atteinte, selon lui, à la sécurité nationale ou à la sécurité d'autrui;

i) il donne au résident permanent ou à l'étranger la possibilité d'être entendu sur l'interdiction de territoire le visant;

j) il peut recevoir et admettre en preuve tout élément qu'il estime utile — même inadmissible en justice — et peut fonder sa décision sur celui-ci.

that, in the opinion of the judge, is appropriate, even if it is inadmissible in a court of law, and may base the decision on that evidence.

79. (1) On the request of the Minister, the permanent resident or the foreign national, a judge shall suspend a proceeding with respect to a certificate in order for the Minister to decide an application for protection made under subsection 112(1).

(2) If a proceeding is suspended under subsection (1) and the application for protection is decided, the Minister shall give notice of the decision to the permanent resident or the foreign national and to the judge, the judge shall resume the proceeding and the judge shall review the lawfulness of the decision of the Minister, taking into account the grounds referred to in subsection 18.1(4) of the Federal Courts Act.

80. (1) The judge shall, on the basis of the information and evidence available, determine whether the certificate is reasonable and whether the decision on the application for protection, if any, is lawfully made.

(2) The judge shall quash a certificate if the judge is of the opinion that it is not reasonable. If the judge does not quash the certificate but determines that the decision on the application for protection is not lawfully made, the judge shall quash the decision and suspend the proceeding to allow the Minister to make a decision on the application for protection.

(3) The determination of the judge is final and may not be appealed or judicially reviewed.

81. If a certificate is determined to be reasonable under subsection 80(1),

(a) it is conclusive proof that the permanent resident or the foreign national named in it is inadmissible;

(b) it is a removal order that may not be appealed against and that is in force without the necessity of holding or continuing an examination or an admissibility hearing; and

79. (1) Le juge suspend l'affaire, à la demande du résident permanent, de l'étranger ou du ministre, pour permettre à ce dernier de disposer d'une demande de protection visée au paragraphe 112(1).

(2) Le ministre notifie sa décision sur la demande de protection au résident permanent ou à l'étranger et au juge, lequel reprend l'affaire et contrôle la légalité de la décision, compte tenu des motifs visés au paragraphe 18.1(4) de la Loi sur les Cours fédérales.

80. (1) Le juge décide du caractère raisonnable du certificat et, le cas échéant, de la légalité de la décision du ministre, compte tenu des renseignements et autres éléments de preuve dont il dispose.

(2) Il annule le certificat dont il ne peut conclure qu'il est raisonnable; si l'annulation ne vise que la décision du ministre il suspend l'affaire pour permettre au ministre de statuer sur celle-ci.

(3) La décision du juge est définitive et n'est pas susceptible d'appel ou de contrôle judiciaire.

81. Le certificat jugé raisonnable fait foi de l'interdiction de territoire et constitue une mesure de renvoi en vigueur et sans appel, sans qu'il soit nécessaire de procéder au contrôle ou à l'enquête; la personne visée ne peut dès lors demander la protection au titre du paragraphe 112(1).



(c) the person named in it may not apply for protection under subsection 112(1).

82. (2) A foreign national who is named in a certificate described in subsection 77(1) shall be detained without the issue of a warrant.

84. (1) The Minister may, on application by a permanent resident or a foreign national, order their release from detention to permit their departure from Canada.

(2) A judge may, on application by a foreign national who has not been removed from Canada within 120 days after the Federal Court determines a certificate to be reasonable, order the foreign national's release from detention, under terms and conditions that the judge considers appropriate, if satisfied that the foreign national will not be removed from Canada within a reasonable time and that the release will not pose a danger to national security or to the safety of any person.

82. (2) L'étranger nommé au certificat est mis en détention sans nécessité de mandat.

84. (1) Le ministre peut, sur demande, mettre le résident permanent ou l'étranger en liberté s'il veut quitter le Canada.

(2) Sur demande de l'étranger dont la mesure de renvoi n'a pas été exécutée dans les cent vingt jours suivant la décision sur le certificat, le juge peut, aux conditions qu'il estime indiquées, le mettre en liberté sur preuve que la mesure ne sera pas exécutée dans un délai raisonnable et que la mise en liberté ne constituera pas un danger pour la sécurité nationale ou la sécurité d'autrui.

**FEDERAL COURT**  
**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** DES-5-01

**STYLE OF CAUSE:** HASSAN ALMREI v.  
THE MINISTER OF CITIZENSHIP & IMMIGRATION  
and SOLICITOR GENERAL OF CANADA

**PLACE OF HEARING:** Toronto and Ottawa, Ontario

**DATES OF HEARING:** June 16, 24 (Ottawa)  
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October 14 (Ottawa)  
November 3, 2005 (Ottawa)

**REASONS FOR ORDER AND ORDER:** LAYDEN-STEVENSON J.

**DATED:** December 5, 2005

**APPEARANCES:**

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