

# Deportations ordered: Critical time for war resisters in Canada

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**By derrick**

***The fight for Iraq war resisters to remain in Canada is a two front war. This is a critical juncture for Iraq war resisters in Canada - with a series of deportation orders scheduled to start at the end of the month.***

The political front

On June 3, 2008, [Canadian Parliament voted in favour of allowing Iraq war resisters to seek permanent residence status in Canada](#) [1].

This non-binding motion called for the creation of a special government program to, “allow conscientious objectors and their families ... who have refused or left military service related to a war not sanctioned by the United Nations to apply for permanent resident status.”

One hundred and thirty-seven MPs from the Liberal party, the NDP and the Bloc Québécois voted in favour of the motion, while 110 Conservative MPs voted against.

While the motion was passed by a majority in Parliament, the minority Conservative government under Stephen Harper has yet to enact it; this despite constant lobbying from the [War Resister Support Campaign \(WRSC\)](#) [2], immigration rights groups and anti-war activists.

## **The judicial front**

Even though Canadian Parliament had passed the June 3, 2008, it is non-binding. Therefore the Canadian immigration system, through the Immigrant and Refugee Board (IRB), [has been issuing deportation orders](#) [3] to those resisters who have applied for refugee status.

These deportation orders are being contested in the Canadian judicial system as the Federal Court considers a series of IRB decisions and defendant appeals.

Canada’s immigration process includes both an [Humanitarian and Compassionate \(H + C\) application](#) [4] and a [Pre-Risk Removal Assessment \(PRRA\)](#) [5], to determine the impact of a deportation on the individual or if they would face undue hardship if returned to their home country.

## **Legal challenges**

There are a number of different resisters challenging their negative H + C and PRRA decisions, requesting an appeal or a new refugee application from the IRB.

One such case includes a Federal court judge's acceptance to review the deportation order of resister Jeremy Hinzman. This allows Hinzman and his wife and children to remain in Canada until the appeal of their negative PRRA is heard.

Despite an IRB ruling stating that Hinzman would face no undue hardship if returned to the United States to face a military trial for desertion, in (Federal Court) Justice Mosley ruling, he concluded that "[b]ased on the evidence and submissions before me, I am satisfied that the applicants would suffer irreparable harm if a stay were not granted pending determination of their leave application."

Lawyers for the resisters and the WRSC both assert that any soldier deported back to the US to stand trial would face undue hardship. They cite an emerging trend of prosecution in U.S. court marshal proceedings that considers speaking out publicly against the U.S. government and the Iraq war grounds for increased punishment.

This risk of harsher punishment - including prosecution with charges equal to a civilian felony conviction, prison sentences, denial of veteran benefits for themselves and their family and the military humiliation of receiving a dishonourable discharge - is at the heart of Hinzman's immigration case currently before the courts.

## **War refugees**

In recent days, Minister of Citizenship, Immigration and Multiculturalism Jason Kenney (replacing Diane Finley) has been catching heat for public statements made to the [Toronto Sun](#) [6] concerning US war resisters, spoken from his position as the minister directly in charge of immigration.

[Commenting](#) [7] after resister Kimberly Rivera received a negative IRB decision on January 7, 2009, he referred to Iraq war resisters as, "bogus refugee claimants" in [a later interview](#) [8] on Parliament Hill.

He went on to state, "I don't appreciate people adding to the backlog and clogging up the system whose claims are being rejected consistently 100 per cent of the time."

Minister Kenney also responded to [an article written by John Hogan in the Toronto Sun](#) [9] where Hogan questioned the independence of the IRB in light of the Conservative governments consistent negative stance towards US war resisters. In a response to this article, he wrote that, "war resistance is futile" and re-affirmed the IRB'S independence.

Critics of the minority Conservative government claim that Minister Kenney's comments prejudice any immigration hearings for war resisters.

Lee Zaslofsky, an organizer with the War Resister Support Campaign (WRCS), criticized Minister Kenney's comments as political interference on the supposedly independent IRB tribunal.

"Everyone, including war resisters, has the right to expect their applications will be dealt with in a fair and impartial manner," he wrote in [a statement](#) [9].

“Minister Kenney’s comments show the Harper government has a blanket policy of opposition against war resisters, which makes it nearly impossible for them to be treated on a ‘case-by-case basis’ as our government has been leading Canadians to believe.”

Criticism of Minister Kenney’s remarks were also laid down through an open letter by Elizabeth McWeeny, President of [the Canadian Council of Refugees](#) [10].

In the letter writ on January 8, 2009, she stated her concern surrounding Minister Kenney’s comments which she called, “highly inappropriate” since they “give the strong appearance of political interference.”

She was referring to the fact that the IRB re-appointments are made by Cabinet and IRB members might fear for their tenure if they do not toe a certain political line.

She wrote, “highly publicized cases such as the war resisters are always challenging for the IRB which must live up to its obligations to make fair, impartial and politically unmotivated determinations, based on jurisprudence and the evidence before it.”

Any political assertions otherwise, especially spoken from the minister responsible for immigration affairs, threatens the independence of the IRB and the right of war resisters to a fair immigration assessment.

McWeeny also refuted the Minister’s assumptions around the burden that war resisters supposedly place on the Canadian immigration system.

She was “shocked” that Minister Kenney would attribute the systematic delays in the refugee claim process to the war resisters, slamming the Minister for the lack of credibility to his argument since the number of war resister claims was “miniscule”.

Instead, she cited that the backlog was in fact a consequence of the Conservative government to appoint IRB members.

This slams shut the door on any Conservative government intentions to utilize a divide and conquer strategy between refugees.

The open letter ends with the Canadian Council of Refugees affirming its support for Iraq war resisters, “these are individuals who deserve our admiration for following their consciences and refusing to participate in wrongdoing, at significant cost to themselves.”

### **Critical juncture**

This is a critical juncture for Iraq war resisters in Canada – with a series of deportation orders scheduled to start at the end of the month.

We as a society must weight their struggle using both our hands. Carefully determine the possible outcomes to their fight to remain in Canada. Carefully determine the value of life and the cost of protecting it.

Jail time in a U.S. prison for refusing to kill or a new home in Canada for refusing to kill.

The cost of laying down one’s guns and refusing to fight is soon to be determined legally in our courts and morally in the hearts of Canadians across the country.

The price: freedom or deportation.

The War Resister Support Campaign has declared next week as [LET THEM STAY week, January 19 to 24](#) [11].

Below is a roll-call of Iraq War resisters who now face deportation starting by the end of the month.

Cliff Cornell: [US Army] was informed on December 17, 2008, that he had been ordered to leave Canada on December 24, 2008, or face deportation to the United States. On December 19, 2008, the War Resister Support Campaign learned that [his deportation date was actually that day](#) [12]. His lawyer went to court to win a deferral so he could finish the appeal process of the H + C and PRRA negative immigration decisions which had triggered the deport order. Cornell won and his case was deferred again until January 22, 2009.

Kim Rivera: On January 7, 2009, [US Army] Kimberly Rivera received a negative decision on her H + C and PRRA immigration applications. Because of this negative ruling, the Rivera family - Kim, her husband Mario, their son Christian (6 years) and daughters Rebecca (4 years) and Katie (6 weeks) must leave Canada by January 27, 2009 or face deportation to the United States.

[Patrick Hart](#) [13]: [US Army] Patrick Hart was informed on October 8, 2008, that he and his wife and son would have to leave Canada after a negative H + C and PRRA immigration decision. He was originally told he would have to leave the country by October 30, 2008. This deportation date has been deferred until January 29, 2009, where Hart's lawyer will be asking the Federal Court for a stay until an appeal can be heard.

Dean Walcott: [US Marine Core] Dean Walcott received a negative H + C and PRRA immigration decision on December 3, 2008, ordering him to leave the country or face deportation to the United States. He has appealed this decision and has received a temporary stay order until January 30, 2009.

[Jeremy Hinzman](#) [14]: [US Army] Jeremy Hinzman, after a series of Federal court battles to fight his deportation order to the United States, had received a deportation order on September 23, 2008. Federal court judge, Justice Mosley, granted a stay to Hinzman's deportation on September 23, 2008. A decision on whether the courts will consider his appeal of the negative H + C and PRRA decisions has been set for February 10, 2009. If the outcome of the appeal is positive, Hinzman may be allowed to make a new H + C and PRRA application. If negative, he will receive a new deportation date.

Joshua Key: [US Army] On July 4, 2008, Key won a Federal Court battle where it ruled that the Immigration and Refugee Board (IRB) had mistakenly dismissed Key's refugee claim which he based on his experiences in Iraq. The Federal Court disagreed with the IRB's opinion that that in order for Key to qualify as a legitimate refugee under Canada's immigration system, he would have had to have been forced by his commanding officers to commit systematic war crimes as a soldier serving in Iraq. His new refugee hearing is scheduled for March 13, 2009.

Matt Lowell: [Army] After a negative H + C and PRRA decision, Lowell was ordered to leave Canada by October 28, 2008, or face deportation. The courts granted him a stay on the deportation order on October 27, 2008, as the Federal court decides whether to hear his

appeal. This stay will allow his lawyer time to prepare a proper appeal for March 18, 2009, potentially leading to a new immigration hearing.

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