

Court File No. T-230-10



FEDERAL COURT

OMAR AHMED KHADR

Applicant

- and -

THE PRIME MINISTER OF CANADA,
THE MINISTER OF FOREIGN AFFAIRS and
THE MINISTER OF JUSTICE

Respondents

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED by the Applicant. The relief claimed by the Applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicant. The Applicant requests that this application be heard at Edmonton.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any steps in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Court Rules* and serve it on the Applicant's solicitor WITHIN 10 DAYS after being served with this Notice of Application.

Copies of the *Federal Court Rules* information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

February 17, 2010

**ORIGINAL SIGNED BY
G. CHAMPAGNE
A SIGNÉ L'ORIGINAL**

Issued by:

Registry Officer

I HEREBY CERTIFY that the above document is a true copy of the original issued out of / filed in the Court on the _____

day of FEB 17 2010 A.D. 20 _____

Address of local office:

Dated this _____ day of FEB 17 2010 20 _____

G. Champagne
**G. CHAMPAGNE
REGISTRY OFFICER
AGENT DU GREFFE**

Scotia Place
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TO:

Department of Justice Canada
211, 10199 – 101 Street
Edmonton, AB T5J 3Y4

Attention: Doreen Mueller

APPLICATION

This is an application for judicial review in respect of the Respondents' decision of February 16, 2010, to remedy the *Charter* violation identified in *Canada (Prime Minister) v. Khadr*, 2010 SCC 3 by sending the diplomatic note of February 16, 2010, and to provide no other remedy.

The Applicant makes application for:

- (1) An Order pursuant to ss. 6, 7, 12 and 24(1) of the *Canadian Charter of Rights and Freedoms* in the nature of *certiorari* setting aside the decision of February 16¹⁷, 2010;
GC.
- (2) An Order pursuant to ss. 6, 7, 12 and 24(1) of the *Canadian Charter of Rights and Freedoms* in the nature of *mandamus* requiring the Respondents to demand the repatriation of the Applicant from the custody of U.S. forces in Guantanamo Bay, Cuba;
- (3) In the alternative, an Order directing the Respondents to reconsider their decision of February 16, 2010, having first accorded the Applicant a fair opportunity to be heard;
- (4) Costs; and
- (5) Such further and other relief as the Court deems to be just and appropriate.

The grounds for the application are:

- (1) The Applicant is a Canadian citizen and has been held in unlawful detention by U.S. forces since July 27, 2002, when he was 15 years old;
- (2) The Respondents' policy and decisions with respect to the Applicant are patently unreasonable and perverse, and were formulated in bad faith;
- (3) The Respondents failed to give the Applicant reasonable, or any, notice of its intention to make their decision of February 16, 2010;
- (4) The Respondents failed to accord the Applicant an opportunity to present informed submissions prior to rendering their decision;
- (5) The Respondents failed to consider relevant considerations and considered irrelevant considerations;
- (6) The Respondents failed to provide adequate reasons for their decisions;
- (7) The Respondents' sudden and automatic decision without regard for the basic principles of fairness would raise a reasonable apprehension of bias in the mind of an informed and objective observer; and

(8) Such further and other grounds as this Honourable Court might allow.


This application will be supported by the following material: Such Affidavits and other material as counsel may advise and this Court may allow.

The Applicant requests the Respondent to send a certified copy of the following material that is not in the possession of the Applicant but is in the possession of the Respondent to the Applicant and the Registry:

Any and all material that may affect the decision that the Court will make on the application in accordance with the standards established in *Khadr v. Canada (Minister of Foreign Affairs)*, [2005] F.C.J. No. 160, 2005 FC 135.

February 17, 2010

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