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September 21, 2023 21 septembre 2023		
Kadara Thompson		
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Court File No.

FEDERAL COURT

B E T W E E N:

F.J.

Moving Party
(Applicant)

and

THE ATTORNEY GENERAL OF CANADA

Responding Party
(Respondents)

NOTICE OF APPLICATION

Pursuant to section 18 and 18.1 of the *Federal Courts Act*

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 Ottawa.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step 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 Courts Rules and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the Federal Courts 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.

September 21st, 2023

Issued by: _____
(Registry Office)

Address of local office: Thomas D’Arcy McGee Building
90 Sparks Street, 5th floor
Ottawa, ON
K1A 0H9

TO: The Registrar
Federal Court

AND TO: The Attorney General of Canada
C/O Elizabeth Richards

Department of Justice Canada
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Ottawa, ON K1A 0H8

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APPLICATION

This is an application for judicial review in respect of a decision made by Global Affairs Canada (GAC), and communicated by Victoria Fuller, Director General of Consular Operations, not to extend extraordinary assistance to F.J., who is a Canadian citizen, currently detained with her six minor children in Al Roj camp, in the North-East region of the Syrian Arab Republic. The decision was communicated to the Applicant's counsel on June 21, 2023.

THE APPLICANT MAKES APPLICATION FOR:

1. The Applicant seeks an Order in the nature of mandamus pursuant to s. 18(1) and/or s. 44 of the *Federal Courts Act* that the Respondents comply with their statutory duties pursuant to:
 - (a) the *Canadian Charter of Rights and Freedoms* ("the *Charter*"); and
 - (b) the *International Convention of the Rights of the Child*;and extend the requested extraordinary assistance to the Applicant.
2. The Applicant also seeks a declaration that the Respondents failure to take all reasonable steps to repatriate F.J. violates her rights as guaranteed under sections 7, 9 and 12 of the *Charter*.
3. In the alternative, the Applicant seeks to claim certiorari.
4. Such further and other relief as counsel may advise and this Honourable Court permit.

THE GROUNDS FOR THIS APPLICATION ARE:

The legal basis for the Application

1. Given the stated threshold criteria of the Policy Framework under which the Applicant was assessed and pursuant to which the other Canadian women who have been repatriated under the same circumstances, the Government of Canada:
 - a. Failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe pursuant to s. 18.1(4)(b) of the *Federal Courts Act*. Specifically, GAC erred by failing to give intelligible reasons given the importance of the decision to the Applicant.
 - b. Erred in law in making a decision or an order, whether or not the error appears on the face of the record pursuant to s. 18.1(4)(c) of the *Federal Courts Act*. Specifically, GAC failed to render a decision consistent with the Policy Framework.
 - c. Based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it pursuant to s. 18.1(4)(d) of the *Federal Courts Act*. Specifically, GAC failed to consider both the options available to manage any risk posed by the Applicant and the success in managing that risk with other Canadian women repatriated under similar circumstances.
 - d. Acted in any other way that was contrary to law pursuant to s. 18.1(4)(f) of the *Federal Courts Act*. Specifically, GAC's decision is inconsistent with the *Charter*.

The factual basis for the application

2. F.J. is a Canadian citizen currently detained along with her six minor children in Al Roj camp, in the North-East region of the Syrian Arab Republic.
3. In January 2021, GAC adopted a Policy Framework called “Government of Canada Policy Framework to Evaluate the Provision of Extraordinary Assistance: Consular Cases in Northeastern Syria.” The stated purpose of the Policy Framework is to guide the Government of Canada’s decision-making regarding the potential extension of extraordinary assistance.
4. The Policy Framework required individuals to meet one or more of three threshold criteria before Canada would advance repatriation efforts.
5. The threshold criteria are as follows:
 1. The individual is a child who is unaccompanied;
 2. Extraordinary circumstances make it necessary for a child who is unaccompanied to be separated from their parent(s) leaving the child in a *de facto* unaccompanied state; and/or
 3. The Government of Canada has received credible information indicating that the individual’s situation has significantly changed since the adoption of the Policy Framework.
6. F.J. made a request for extraordinary assistance on December 6, 2021.
7. On November 24, 2022, F.J. was made aware that she and her children had met one of the threshold criteria set out in the Policy Framework, namely the third criteria to the effect that their circumstances had changed significantly since the adoption of the Policy Framework.

8. On May 12, 2023, the United Nations Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism sent a letter to the Canadian Government detailing F.J. and her children's 'change in circumstances,' namely deteriorating mental and physical health. The Special Rapporteur requested a response within 60 days. No response was ever received.
9. On June 21, 2023, Mr. Greenspon, counsel for the Applicant, was advised that the Government of Canada decided not to approve F.J.'s request for extraordinary assistance, but, offered to extend repatriation assistance to F.J.'s six minor children. The decision relayed was that:

“In reaching this decision, the Government of Canada has determined that your client is a threat to public safety and national security because she is assessed to adhere to extremist ideological beliefs which may lead her to act in a violence manner that would pose a security threat in Canada, and the government has no ability to ensure that no such conduct occurs.” [emphasis added]

10. GAC has agreed to repatriate the Applicant's six minor children, but NOT the Applicant.
11. GAC's claim that the “government has no ability to ensure that no such conduct occurs” is false, given that to date, the Respondents have repatriated eight Canadian women from North-east Syrian detention camps. Seven of the eight women have been the subject of strict bail conditions pending the Respondents application for terrorist peace bonds. In one such case, the peace bond was subsequently obtained, and conditions were continued without any breach. In all seven of these cases, the Respondent has demonstrated that they have the mechanisms in place to “ensure that no such conduct occurs.” There is no evidence that any of those seven women have breached any of the conditions they have been subject to since their return.

12. The effect of the June 21, 2023, decision is the continuing and indefinite detention of the Applicant contrary to s. 7, 9 and 12 of the *Charter* and is tantamount to exile.
13. If the Applicant had consented to the repatriation of their children without her, as GAC has given her the option to do, the June 21, 2023, decision would have resulted in the indefinite separation of the Applicant from her six children. This violates not only the *International Convention on the Rights of the Child* to which Canada is a signatory, but also violates the very Policy Framework which the Respondents applied to the Applicant in making their decision to deny extraordinary assistance. Specifically, item B of the Policy Framework, which reads: “Children will not be separated from their parents except pursuant to extraordinary circumstances.”
14. On August 24, 2023, an Order was made extending the time to serve and file this Application. Specifically, the Order provides that the Notice of Application must be served and filed within 30 days from the date of the Order.
15. That August 24, 2023, Order also granted the Applicant’s request to protect the identity of the Applicant through the use of initials, “F.J.” instead of the Applicant’s full name on any and all documents filed with the Court pertaining to this file. In addition, any information likely to identify the Applicant and/or their six minor children contained in any materials accessible to the public should be filed in a redacted format or under seal by the filing party.

How the policy framework has been applied to other similarly situated individuals who have been repatriated and resumed life in Canada without issue:

16. In their letter denying F.J. extraordinary consular assistance, the Government of Canada states that F.J. “is a threat to public safety and national security because she is assessed to adhere to extremist ideological beliefs which may lead her to act in a violent manner that would pose a security threat in Canada, and “the government has no ability to ensure that no such conduct occurs.” [emphasis added]
17. Importantly, the Respondents have, within the last year, repatriated eight Canadian women detained in the camps in the North-East region of the Syrian Arab Republic (Boloh 2, Boloh 2(a), Boloh 3, Boloh 4, Boloh 5, Boloh 6, Kimberly Polman, Boloh 15).
18. Seven of those eight women have been the subject of strict bail conditions pending the Respondents application for terrorist peace bonds. In one case, such a peace bond was subsequently obtained, and conditions were continued without any breach. In the other six of these cases, the Respondent has been successful to date in “ensuring that no such conduct occurs.”

The statutory basis for the application:

19. *Federal Courts Act*, RS 1985, c. F-7, sections 18(1), 18.1, 18.1(3)(a), and 44.
20. *Canadian Charter of Rights and Freedoms*, sections 7, 9, and 12.
21. *International Convention on the Rights of the Child*, Arts. 7.1, 7.2, 8.1, 8.2, 10.1, 10.2, 16.1, 16.2, 18.1, 18.2, 20.1, 20.2, and 20.3.
22. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIALS:

1. The Government of Canada Policy Framework to Evaluate the Provision of Extraordinary Assistance: Consular Cases in Northeastern Syria dated January 2021.
2. Letter from the Special Rapporteur dated May 12, 2023.
3. Letter from Victoria Fuller dated June 21, 2023.
4. Such further and other materials as counsel may advise and this Honourable Court permit.

Request for Certified Record

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

1. Any materials relied upon for the purposes of making the decision to deny extraordinary assistance.
2. The Applications by the Respondents for Peace Bonds of the seven Canadian women (Boloh 2, Boloh 2(a), Boloh 3, Boloh 4, Boloh 5, Boloh 6, Kimberly Polman, Boloh 15) that have been repatriated, their release/ bail conditions, and any Peace Bond which has been imposed and the results.

Dated at Ottawa this 21st day of September, 2023.



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