



The Right Honourable Stephen Harper
Prime Minister of Canada
Langevin Block
Ottawa, Ontario
K1A 0A2

The Honourable Robert Nicholson
Minister of Justice and Attorney General of Canada
Department of Justice
284 Wellington Street
Ottawa, Ontario
K1A 0H8

The Honourable Peter Van Loan
Minister of Public Safety
Room 157, East Block
Ottawa, Ontario
K1A 0A6

July 20, 2009

Dear Prime Minister, Minister Nicholson and Minister Van Loan:

Re: Benamar Benatta

On behalf of the British Columbia Civil Liberties Association, I write to express our grave concerns about the conduct of Citizenship and Immigration Canada ("CIC"), the Canada Border Services Agency ("CBSA"), the Royal Canadian Mounted Police ("RCMP"), the Canadian Security Intelligence Service ("CSIS") and the Department of Foreign Affairs and International Trade ("DFAIT") with respect to Benamar Benatta, a Convention refugee from Algeria currently residing in Canada. We call on you to initiate an investigation into the Canadian government's conduct in delivering him to American officials on the evening of September 12, 2001, a week after he had come to the Canadian border seeking asylum.

The British Columbia Civil Liberties Association is the oldest and most active civil liberties organization in Canada. We have spent more than 40 years working

to preserve, defend, maintain and extend civil liberties and human rights in British Columbia and across Canada. We have longstanding and extensive involvement in working to ensure that national security concerns are balanced with respect for the rule of law and the rights of individuals.

Mr. Benatta's Removal from Canada

Mr. Benatta is an aeronautical engineer and was a member of the Algerian armed forces until his desertion in 2001 while participating in a training program in the United States. Like many other refugees, Mr. Benatta travelled to Canada under an assumed identity because he feared for his life if he was returned to Algeria. Mr. Benatta arrived at the Canadian border on September 5, 2001, seeking asylum. The Canadian authorities suspected that his documents were fraudulent and detained him at the Niagara Detention Centre pending further inquiries into his identity.

On September 12, 2001, Mr. Benatta appeared before an Immigration Adjudicator, who ordered Mr. Benatta's continued detention to permit further inquiries to confirm his identity and a further review within one week. According to Mr. Benatta, he was interviewed later that day by two individuals who he believed to be Canadian officials. He was questioned about whether he knew how to fly airplanes and whether he had ever participated in counter-terrorism training. After this interview, he was searched, fingerprinted, placed in the back of a car, and driven over the border to the United States, where he was handed over to American officials. This transfer took place without a hearing, due process, or access to counsel. According to Mr. Benatta, he was never informed that he was being returned to the United States, and in fact, the order issued by the Immigration Adjudicator earlier that day implied that he would remain in Canadian custody for at least another week. Mr. Benatta alleges that Canadian officials provided to U.S. authorities misleading and erroneous information linking him to terrorist activities, including suggesting that he was carrying a map of the World Trade Center, when in fact, according to Mr. Benatta, he was carrying documents related to his training in the United States, none of which were a map of the World Trade Center.

Mr. Benatta was held at an immigration centre in the United States and then transferred to the Batavia Detention Center in Buffalo, New York. He alleges that he was interrogated about his purported involvement in the September 11, 2001 terrorist attacks. On September 16, 2001, Mr. Benatta was transferred to the Metropolitan Detention Center in Brooklyn, New York, where he was held in a high-security wing and accused of being involved in the September 11 attacks. Despite being cleared by the Federal Bureau of Investigation of any involvement in terrorist activities, Mr. Benatta continued to be detained by U.S. authorities for nearly five more years. During his detention in the United States, he was subjected to treatment which the U.N. Working Group on Arbitrary Detention

found “could be described as torture”, and which is documented in two reports issued by the Office of the Inspector General of the U.S. Department of Justice.

Mr. Benatta was finally returned to Canada on July 20, 2006, after a series of challenges in the U.S. courts. Upon his return to Canada, he again stated his claim for refugee status, and was granted refugee status in November 2007.

Since his return to Canada, Mr. Benatta has sought further investigation and inquiry into the Canadian government’s conduct in connection with his removal from Canada and subsequent detention in the United States. In July 2007, Mr. Benatta was forced to launch a lawsuit against the government in order to preserve his legal rights. To this day, three years after Mr. Benatta’s return to Canada, there has been no indication from the government that any investigation into the conduct of any of the agencies involved in Mr. Benatta’s illegal transfer will ever take place.

If true, Mr. Benatta’s allegations show the Canadian government to be engaging in serious and troubling conduct. When he was removed from Canada on September 12, 2001, Mr. Benatta had already been in Canadian custody for seven days and had appeared before an Immigration Adjudicator, who had issued an order relating to his continued detention. Through these acts, Canada had assumed custody and jurisdiction over Mr. Benatta, and was accordingly obliged to afford him the protections of due process and procedure if it wished to remove him from its borders. Mr. Benatta, through his request for asylum, had sought the protections of the Canadian government. Mr. Benatta was afforded none of the protections he was entitled to at law or under humanitarian principles. Instead, Canadian authorities simply put him in the back of a car, drove him over the border, and handed him off to the Americans. Based on the documents that have been produced to date, it does not even appear that the United States had even sought to extradite Mr. Benatta from Canada.

Indeed, the Canadian government has offered little by way of satisfactory explanation for the events surrounding Mr. Benatta’s removal to the United States. In the past, the government has alleged that Mr. Benatta voluntarily withdrew his application for refugee status, an argument which it is now no longer advancing. In its statement of defence filed in Mr. Benatta’s lawsuit, the government takes the position that Mr. Benatta was removed to the United States pursuant to what is known as the “direct-back” provision of the (then) *Immigration Act*. This argument, however, is simply non-credible given the undisputed evidence. The “direct-back” provision permitted Canadian immigration officials to *temporarily* turn back an individual arriving from the United States if, at the port of entry, an immigration official had reason to believe that the individual should not be permitted entry and no senior immigration official was available to process the application for entry. The purpose of the provision is primarily an administrative one -- to manage the movement of persons when the Canadian border may be too busy or short-staffed. In practice,

the “direct-back” provision is designed to turn back an individual at the port of entry at the time of immediate entry. When Mr. Benatta was removed to the United States, he had already been in Canadian custody for seven days and had been subjected to the jurisdiction of an Immigration Adjudicator. The government’s argument that Mr. Benatta could still be removed pursuant to the “direct-back” provision because he was not “let into Canada in any meaningful way” is without merit.

Thus, the government’s accounts to date for how Mr. Benatta was removed to the United States without the benefit of a hearing on the merits of his refugee claim or any other process or procedure are inconsistent and non-credible, and appear to be little more than ex-post-facto justifications for an illegal removal of an innocent man claiming refuge in Canada.

The BCCLA Calls for an Investigation into the Government's Conduct

We call on you to initiate an investigation into the conduct of CIC, CBSA, the RCMP, CSIS, DFAIT, and any other Canadian government agencies involved in the removal of Mr. Benatta from Canada and his subsequent detention in the United States. We are deeply troubled by what appear to be serious infringements on Mr. Benatta’s rights to due process and security of person. We are also seriously concerned by the parallels between this case and those of Maher Arar, Abousfian Abdelrazik, Abdullah Almalki, Maouyyed Nureddin and Ahmad El Maati, where, as here, there were allegations that information provided by Canadian authorities either directly or indirectly resulted in the torture and mistreatment of the individuals involved.

The serious allegations in this case and the government’s incomplete and non-credible explanations for its conduct underscore the necessity for an inquiry into this matter. And given the allegations of government misconduct across our national security agencies, we reiterate our call for the establishment of a comprehensive, cross-agency review mechanism as recommended by the Arar Commission.

Mr. Benatta and the Canadian public are entitled to a full accounting of the government’s conduct in this affair, and on this third anniversary of Mr. Benatta’s return to Canada, we respectfully request that an investigation be launched without further delay.

Yours truly,



Carmen K. Cheung
Counsel for the BCCLA