

September 15, 2005

Honourable Monte Kwinter
Minister of Community Safety and Correctional Services
Government of Ontario

Honourable Anne McLellan
Minister of Public Safety and Emergency Preparedness
Government of Canada

Honourable Joe Volpe
Minister of Citizenship and Immigration
Government of Canada

Re: Detention conditions of Mohammad Mahjoub

Dear Ministers,

As legal and medical professionals, we are writing to urge you to take immediate action to meet the legitimate demands of Mohammad Mahjoub, detained under a security certificate, now on Day 71 of a hunger strike to demand minimally decent conditions of detention. Mr. Mahjoub was already in poor health before beginning his hunger strike, and is at imminent risk of permanent, severe impairment or death. As of today, we are informed that Mr. Mahjoub is too weak to stand up, and his eyesight is failing. He needs to be hospitalized, and also to be assured that his demands will receive serious consideration so that he will put an end to his hunger strike.

Mr. Mahjoub has been detained for over five years at the Toronto West Detention Centre, a provincial remand facility normally intended for short-term detention for those awaiting trial, serving short sentences, or awaiting transfer to a penitentiary or reformatory after trial. For over a year, he has been placed in segregation for his own protection.

Indefinite detention without charge on the basis of secret evidence flies in the face of basic principles of justice and due process. In addition, Mohammad Mahjoub and other security certificate detainees are held in conditions that are far worse than those of most convicted criminals, despite the fact that they have never been charged with any crime, much less found guilty.

Mohammad Mahjoub's main demands include proper medical treatment for hepatitis C (a prescribed liver biopsy has been denied), proper medical care for a knee injury sustained at the jail, filling a prescription for eyeglasses, and touch visits with his young children once a month.

Depriving Mohammad Mahjoub of the right to periodic contact visits with his two young children for over five years is extraordinarily punitive and a form of psychological abuse, both for Mr. Mahjoub and his loved ones. This aggravates the severe, chronic stress to

which Mr. Mahjoub is subjected because he is being indefinitely detained without trial, and because he is under threat of deportation to Egypt where (according to a July 2004 assessment by Immigration Canada) he would probably “suffer ill-treatment and human rights abuses”.

We are particularly concerned about the denial of a liver biopsy, recommended in September 2004 by a gastroenterologist, Dr. Anderson, after having examined Mr. Mahjoub. For a person diagnosed with hepatitis C (as is Mr. Mahjoub), a liver biopsy is an essential test to determine how far the disease has progressed, and therefore what treatment should be provided. Treatment for hepatitis C is only effective in about 40% of cases and has very severe side effects, so treatment should not be undertaken unless clearly warranted. On the other hand, symptoms of liver damage due to hepatitis C may not be apparent for several years, by which time the damage can be considerable and even irreversible, often resulting in end-stage liver disease, cirrhosis and primary liver cancer. A liver biopsy is the only means to precisely establish the stage to which the hepatitis C has progressed in order to decide whether treatment should be initiated.

In a letter dated March 15, 2005, Dr. Roland Fuca of Citizenship and Immigration Canada overruled the treating gastroenterologist’s recommendation, without having personally examined Mr. Mahjoub. Dr. Fuca writes: “It was made clear to me by CBSA that any transfer of this patient did involve considerable security risks and necessarily would result in the deployment of significant resources”. Although informed that Mr. Mahjoub did not wish to initiate treatment without a biopsy, he concludes that “there does not exist a medical necessity to perform a liver biopsy on Mr. Mahjoub at this time”.

Overruling the recommendation of the treating specialist without even examining the patient, largely on the grounds that the security costs during hospitalization would be too high, is very dubious in terms of professional ethics.

More fundamentally, failure to provide appropriate medical treatment to detainees (including diagnostic testing) is unconscionable. It is also contrary to domestic law and international norms. More specifically, it is contrary to the following provisions:

Ministry of Correctional Services Act (Ontario)

24 (1) Where an inmate requires medical treatment that cannot be supplied at the correctional institution, the superintendent shall arrange for the inmate to be conveyed to a hospital or other health facility.

United Nations’ Standard Minimum Rules for the Treatment of Prisoners

22 (2) Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. (..)

United Nations’ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

Principle 24. (...) medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.

United Nations’ Basic Principles for the Treatment of Prisoners

9. Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.

We urge you to intervene without delay to ensure that Mohammad Mahjoub and other individuals detained under security certificates are treated in a way that fully respects their human rights and takes into consideration their status as long-term detainees, who have not been accused or convicted of any crime. More especially, we ask that you act immediately to make sure that Mohammad Mahjoub does not die or suffer permanent, irreversible damage to his health.

Sincerely,

Janet Cleveland, Ph.D., Psychologist and Research Associate, Canada Research Chair on International Migration Law, Université de Montréal

On behalf of:

Sharryn J. Aiken, Assistant Professor of Law, Queen's University

François Crépeau, Director of the Canada Research Chair on International Migration Law, Université de Montréal

Amir Khadir, M.D., Infectiology-Microbiology Department, Centre hospitalier Le Gardeur

Laurence Kirmayer, M.D., Director of the McGill Social and Transcultural Psychiatry Unit

Audrey Macklin, Associate Professor of Law, University of Toronto

CC Dr. Roland Fuca, CIC

Please direct your reply to:

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