

Date: 20071010

Docket: DES-3-03

Citation: 2007 FC 1037

Ottawa, Ontario, October 10, 2007

Present: The Honourable Mr. Justice Simon Noël

BETWEEN:

**IN THE MATTER OF a certificate
pursuant to subsection 77(1) of the *Immigration and Refugee Protection Act*,
signed by the Minister of Immigration
and the Solicitor General of Canada (the Ministers)
S.C. 2001, c. 27 (IRPA);**

**IN THE MATTER OF the filing of this certificate in
the Federal Court of Canada pursuant to subsection 77(1)
and sections 78 and 80 of the IRPA;**

**IN THE MATTER OF
the named party's motion for provisional release without conditions;**

**AND IN THE MATTER of
Mr. Adil Charkaoui**

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is a motion by Mr. Adil Charkaoui (Mr. Charkaoui) under sections 83 and following of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the IRPA) for provisional release without preventive conditions. In a judgment dated February 17, 2005 (*Charkaoui, (Re)*, 2005 FC 248), the Court ordered that Mr. Charkaoui be released provided that he comply with certain preventive conditions that he considered acceptable at that time. On the basis of reasonable grounds

to believe, the Court found that the danger associated with Mr. Charkaoui was neutralized and that it was not unlikely that he would appear at a proceeding and/or for removal (if necessary), but in order to ensure that the danger continued to be neutralized, the release should be subject to certain preventive conditions. In the same decision, it was stated that Mr. Charkaoui's credibility would not be determined on a detention review or a review of preventive conditions and that the reasonableness of the certificate would ultimately be decided once all the evidence is submitted. In a subsequent decision on the first motion to abolish the preventive conditions of the release

(*Charkaoui (Re)*, 2006 FC 555), the Court stated at paragraph 22:

Abolishing the preventive conditions, as Mr. Charkaoui is asking the Court to do, would amount to a decision favourable to Mr. Charkaoui on the merits of the case, namely the reasonableness of the certificate. How could I cancel the conditions without making a ruling on the validity of the Ministers' allegations against Mr. Charkaoui? This would be to act contrary to the stay of proceedings provided for by Parliament (subsection 79(1) of the IRPA), but more than that, I would thereby make a ruling on the merits of the case without having all the tools at my disposal, including the benefit of a hearing in which all the evidence is put forward by the parties so that an informed decision may be made. At the close of the hearing, I had informed the parties that I could not abolish the conditions for the reasons given above. However, I told them that Mr. Charkaoui could submit suggestions for adjustments that could be made and the Ministers could subsequently make their comments on these. I indicated that I would intervene if necessary and that I was keeping an open mind about amending the conditions of release so long as the foregoing comments were taken into account.

Since that decision, the preventive conditions have been mitigated and/or amended several times.

The recent decision of the Supreme Court, *Charkaoui v. Canada (Minister of Citizenship and Immigration)* 2007 SCC 9, stated that the conditions for release must be subject to "ongoing, regular" review that takes into account the factors laid down by the Court, which will be enumerated and discussed in the following paragraphs.

[2] For purposes of this motion, I intend to refer to certain judgments. I am listing them for subsequent reference:

- *Charkaoui (Re)*, 2003 FC 882 (1st detention review, July 15, 2003) (hereinafter *Charkaoui I*);
- *Charkaoui (Re)*, 2004 FC 107 (2nd detention review, January 23, 2004) (hereinafter *Charkaoui II*);
- *Charkaoui (Re)*, 2004 FC 1031 (3rd detention review, July 23, 2004) (hereinafter *Charkaoui III*);
- *Charkaoui (Re)*, 2005 FC 248 (4th detention review, February 17, 2005) (hereinafter *Charkaoui IV*);
- *Charkaoui (Re)*, 2006 FC 555 (first review of conditions) (hereinafter *Charkaoui V*);
- *Charkaoui v. Canada (Minister of Citizenship and Immigration)* 2007 SCC 9 (hereinafter *Charkaoui VI*);
- *Harkat v. Canada*, 2007 FC 508;

[3] As mentioned above, the conditions have been mitigated and/or amended several times since Mr. Charkaoui's release, often with the consent of the Ministers, in an attempt to meet Mr. Charkaoui's legitimate needs. He successfully completed a Master's degree in teaching French, became the father of a third child and took part in several public debates on subjects of general interest. He now works as a teacher, which allows him to have independent income.

[4] The history of the amendments to and/or mitigation of the conditions reveals an adaptation mechanism that evolved according to the identified needs and took into account the finding that the conditions exist to neutralize the danger associated with Mr. Charkaoui.

[5] Once again, Mr. Charkaoui believes that the time has come to cancel the preventive conditions attached to his release because they are not necessary to meet the objectives of the Act or the Court. He gives the following reasons:

- He is able and willing to comply with the Act;
- He has confidence in and respect for the legal system in determining his rights;
- He is determined to continue with his post-graduate studies;
- He is determined to support his family;
- He is willing to participate in Canada's democratic life;
- He has demonstrated that he deserves the Court's trust and has earned the trust of a number of influential members of the Canadian community;
- He has complied with the conditions of his release.

[6] In support of these reasons, his counsel submit in their memorandum and/or oral argument (summary of submissions) that:

- Reviewing the preventive conditions is necessary because, given the state of the file, they constitute a denial of justice and create irreparable harm;

- The Supreme Court in *Charkaoui VI* at paragraphs 111 and following recognized that a named party is entitled to regular detention reviews (in our case, reviews of the conditional release, paragraph 117) that take into account the following factors: reasons for detention, length of detention (conditional release), reasons for the delay in deportation (if necessary), anticipated future length of detention (conditional release) and the availability of alternatives to detention (conditional release);
- “The secret evidence” must be excluded from the danger assessment because this evidence is unconstitutional, cannot be tested and cannot be used, since doing so would constitute a breach of procedural fairness;
- The new evidence contradicts the original evidence that was before the Ministers about Mr. Ahmed Ressam (who claims to have recognized Mr. Charkaoui in Afghanistan in 1998), Mr. Abu Zubaida (who also claims to have recognized Mr. Charkaoui) and Mr. Noureddine Nafia (who allegedly identified Mr. Charkaoui as an active member of the Groupe Islamiste Combattant Marocain (GICM)). The new evidence led Mr. Ressam to deny that he had recognized Mr. Charkaoui. President Bush acknowledged that Mr. Zubaida had been subjected to “muscular interrogations” and, therefore, this information should not be accepted because it was obtained inhumanely. A document obtained from the news site <http://www.géopolitique.com> entitled [TRANSLATION] “Moroccan Services Report” does not mention Mr. Adil

Charkaoui as a member of the GICM. This new evidence must be read in conjunction with the earlier evidence filed by Mr. Charkaoui that confirms it;

- Since the Ministers have not submitted any evidence about the detention conditions or the interrogations of the witnesses, the reliability and credibility of those witnesses cannot be assessed;
- Mr. Charkaoui does not pose a danger to national security, he was detained and has been free on preventive conditions for more than two years now and has always complied with these conditions; the reasons for the delay in deportation (if necessary) are beyond his control, extending the conditional release appears inevitable and the alternatives to detention in his case have already been used.

[7] In return, the Ministers submit that:

- Although the Supreme Court declared that the security certificate scheme (sections 77 to 85 of the IRPA) is inconsistent with the Charter, the declaration was suspended for one year (see *Charkaoui VI*, at paragraph 140) and hence the procedure is still valid;
- The principle that confidential evidence submitted by the Ministers to the court may not be communicated to the named party was not challenged by the Supreme Court and, consequently, the Court can consider it;
- The Court has jurisdiction to review the preventive conditions for release;
- At the request of Mr. Charkaoui, the review of the reasonableness of the certificate has been suspended since March 22, 2005, pursuant to section 79 of

the IRPA. Accordingly, the Court does not have the benefit of the investigation into the serious allegations about Mr. Charkaoui that would allow it to determine the reasonableness of this certificate;

- The Court can only lift the preventive conditions if it can conclude, after reviewing the evidence, both public and undisclosed, that absent these conditions, the applicant is no longer a danger to national security or to the safety of any person;
- The criteria laid down by the Supreme Court in *Charkaoui VI* and those developed by the Court in *Harkat, supra*, do not support completely lifting the conditions for release;
- Mr. Ressam's about-face in retracting his statement that he saw Mr. Charkaoui in Afghanistan is not credible, and the Court must confine itself to Mr. Ressam's initial declaration, having regard to the other evidence surrounding this testimony;
- The Ministers acknowledge that it would be inappropriate at this stage of the proceeding to use Mr. Abu Zubaida's evidence, given the evidence surrounding the interrogations;
- Mr. Nouredine Nafia's allegations of mistreatment (that, the Ministers say, have not been confirmed other than by general allegations regarding how Morocco treats its prisoners) have not been proven; it is common practice for the Ministers to try to corroborate this type of information through other sources

before concluding that it is reliable and in this case, the allegations have been corroborated by other sources, and this information is reliable and trustworthy;

- The letter given to the journalist, Mr. Jean-François Lépine, by an unknown, unidentified and still unidentifiable woman on the TV program “Zone Libre” on April 12, 2005, has little probative value.

Issue

[8] Having regard to the criteria developed by the Supreme Court in *Charkaoui VI* and those identified by the Court in *Harkat, supra*, are the preventive conditions attached to Mr. Charkaoui’s release still relevant to ensure that the danger to national security associated with Mr. Charkaoui is neutralized?

The Supreme Court decision in *Charkaoui VI*

[9] In this decision, the Supreme Court upheld the Court’s use of confidential information submitted by the Ministers that has not been disclosed to the named party (see paragraphs 49 and 61, *Charkaoui VI*). However, the Court declared that the security certificate procedure is of no force or effect because it does not include the participation of a third party (to be determined by Parliament) to verify the confidential information (see paragraphs 65, 70 ..., *Charkaoui VI*). Having said that, the Court gave the government one year to remedy this deficiency and to propose amendments to Parliament that would be appropriate under the circumstances (see paragraph 140, *Charkaoui VI*). During this period, the IRPA and the security certificate procedure remain in effect. Paragraph 140 even indicates that if the Ministers want to go forward with the proceedings to

determine the reasonableness of Mr. Charkaoui's certificate, the IRPA would apply. However, the procedure for determining the reasonableness of the certificate under section 79 of the IRPA has been suspended since March 2005; the suspension will continue until a decision on the protection application is made and communicated or until Mr. Charkaoui requests that the suspension be lifted. At this time, it is impossible to proceed with reviewing the reasonableness of the certificate.

[10] The Supreme Court also upheld lengthy detentions and releases on preventive conditions provided that regular reviews are held (see paragraph 110, *Charkaoui VI*). These reviews must take into account the factors developed by the Court (see the second point under paragraph 6 of this decision). In *Harkat, supra*, at paragraph 9, the undersigned applied the Supreme Court's criteria and added the following:

- (a) Will the requested amendment fundamentally alter the conditions that were originally imposed? Can the requested amendment be more accurately described as a refinement of the original conditions?
- (b) Is the requested amendment proportionate to the nature of the threat posed by the named party and will it continue to neutralise this threat?
- (c) Is there a reason why the amendment was not requested originally?
- (d) At the time of the initial release, were there unknown facts not before the Court that could have altered the original conditions for release?
- (e) Does the evidence support the amendment being sought?
- (f) Are there new facts that did not exist when the original conditions were established?

- (g) Does the requested amendment constitute a reasonable alternative to the condition under review?
- (h) Is the amendment being sought because of differing interpretations of the original conditions?
- (i) Should the passage of time be taken into account in conjunction with the other factors?

These criteria will be subsequently considered in the analysis.

Analysis

[11] To assist in understanding these reasons, I will summarize the preventive conditions attached to Mr. Charkaoui's release that are intended to ensure that the danger is neutralised:

- Condition 1: sets the amount of bail and sanctions any breach of the conditions;
- Condition 2: fixes the respondent's curfew and provides for the appointment of supervisors to accompany him outside his apartment. The curfew is 10:00 p.m., 11:00 p.m. during Ramadan and sometimes 11:30 p.m. The Court initially appointed three supervisors, including, de facto, Mr. Charkaoui's mother. Two new supervisors were added for the workplace. The Court is prepared to favourably consider adding another supervisor, Mr. Charkaoui's spouse, provided that Mr. Charkaoui makes the request on motion and the motion is heard. The Court is also open to other suggestions on this point;

- Condition 3: states that Mr. Charkaoui must not use certain types of communication, in particular, the Internet and cellular telephones;
- Condition 4: provides that he must wear a GPS bracelet;
- Condition 5: provides that an employee of the Canadian Border Services Agency or any peace officer may enter Mr. Charkaoui's residence;
- Condition 6: requires Mr. Charkaoui to be present at Court hearings and at any place determined for removal, if applicable;
- Condition 7: provides that he surrender his passport to an officer of the Canadian Border Services Agency;
- Condition 8: requires that Mr. Charkaoui not possess any weapon, imitation weapon or explosive or chemical substances;
- Condition 9: provides that he cannot leave the Island of Montréal. There has been some travel outside of Montréal with the consent of the Court;
- Condition 10: states that he cannot communicate with certain named individuals or with any person who has a criminal record;
- Condition 11: requires Mr. Charkaoui to keep the peace and be of good behaviour;
- Conditions 12, 13 provides for incarceration if he does not comply with the conditions and provides that they may be amended on request;
- Condition 14: states that Mr. Charkaoui must report to the offices of the Canadian Border Service Agency once a week;
- Condition 15: provides for the possibility of a change of address, which has already occurred;

- Condition 16: specifies that a breach of these conditions constitutes an offence under section 127 of the *Criminal Code*, R.S.C. 1985, c. C-46.

[12] Mr. Charkaoui is requesting that all these preventive conditions be abolished. During his testimony, Mr. Charkaoui offered his opinion, without specifically being asked, that the preventive conditions as established would not have prevented him from committing a terrorist act:

[TRANSLATION]

At the risk of perhaps shocking the court, I am under oath, but I feel that these conditions are not conditions that would prevent terrorist acts or ensure national security. If I had been a terrorist, these conditions would not have prevented me from committing terrorist acts.

The Court considers this statement interesting for purposes of understanding Mr. Charkaoui's motion.

[13] Mr. Charkaoui, through his counsel, asks me to disregard "the secret evidence" for the reasons mentioned earlier. My reading of the Supreme Court decision in *Charkaoui VI* does not support this position. On the contrary, this decision permits such a procedure if a third party is participating to challenge the evidence. However, I note that the current security certificate scheme set out in the IRPA remains in full force and effect for a period of one year (February 25, 2008).

[14] During submissions, I invited counsel for Mr. Charkaoui to bring a motion to have an *amicus curiae* appointed to represent Mr. Charkaoui's interests at a hearing to be held in camera.

[15] The invitation was refused. Mr. Charkaoui's position is that if there is evidence obtained by the government that cannot be submitted at a public hearing, it should not be used for purposes of the security certificate procedure (see transcript, August 23, 2007, page 43, oral submissions of Dominique Larochelle).

[16] The IRPA requires that the security certificate procedure be dealt with "informally and expeditiously" (see subsection 78(c) of the IRPA). The history of this case shows that more than four years have elapsed since the proceedings began, and the reasonableness of the security certificate has not been determined. The numerous court proceedings associated with the procedure, the withdrawal by the Minister's delegate of the decision on the protection application in March 2005, the request to suspend the procedure for determining the reasonableness of the certificate under subsection 79(1) of the IRPA on March 22, 2005, which is still in effect, the delay incurred while waiting for another decision on the protection application—all this has resulted in time passing to the detriment of the statutory objective to proceed "expeditiously". On this motion, I am being asked to conduct a substantive analysis of the situation without having all the tools that would allow me to analyze the evidence in depth, tools that I would normally have at a hearing to determine the reasonableness of the certificate. Accordingly, I must analyze the evidence at my disposal on the basis of the element of danger that might be associated with Mr. Charkaoui, an exercise that I have had to do several times in the past. In assessing the evidence relevant to the danger on the reasonable grounds standard, I used the same legal framework that was followed in *Charkaoui IV* at paragraphs 30 to 33 inclusive for the standard of proof and paragraphs 35 to 40 inclusive for the danger. I invite the reader to consult them as references.

[17] I again reviewed the evidence on which I based my finding in February 2005 that although there had been danger, it had been mitigated to the point of being neutralized and that in order to ensure that this neutralization continued, certain preventive conditions had to be conceptualized to permit the release.

[18] I also considered the subsequent evidence and reviewed it, taking into account all the evidence in the docket and applying the reasonable grounds standard. I have concluded that preventive conditions must be attached to Mr. Charkaoui's release to ensure that the danger that existed in February 2005 remains neutralized.

[19] I have stated in the past that the Ministers' evidence was serious, which on at least three occasions justified a finding of continued danger associated with Mr. Charkaoui and consequently the dismissal of his motion for release (see *Charkaoui I, II, III*). This evidence was conveyed through summaries of the evidence, documentation and judgments. Again today, the Court is ready to give further information about a summary of the evidence that has already been provided, subsequent to articles published in the newspaper *La Presse*. This evidence was communicated orally to Mr. Charkaoui, but counsel for Mr. Charkaoui have asked me to not file it officially in the Court docket since making it public would add to the harm already suffered by Mr. Charkaoui as a result of the articles in *La Presse* and would affect another pending court proceeding, i.e., a motion to set aside the certificate procedure on the basis of abuse of process. For the moment, this new evidence will stay between the parties, subject to a subsequent determination by the Court. As

mentioned above, in February 2005, the Court found that the danger was neutralized but that conditions for release were necessary to ensure that this situation continued.

[20] The Ministers' allegations are to the effect that Mr. Charkaoui is a member of Osama bin Laden's al Qaeda network and that he should be inadmissible on security grounds under paragraphs 34(1)(c), 34(1)(d) and 34(1)(f) of the IRPA. Moreover, Mr. Charkaoui is allegedly connected to the GICM, an organisation linked to al Qaeda, which is allegedly responsible for deadly terrorist attacks. He reputedly gave \$2000 and a laptop computer to a senior official of the GICM. The Ministers believe that Mr. Charkaoui's past association with certain individuals indicates that he was involved at that time.

[21] The Ministers add that in early 1998, Mr. Charkaoui received military training and theological education at the Sharia institute in Khalden.

[22] In *Charkaoui I*, I identified three concerns arising from the record that required explanations:

- the respondent's life from 1992 to 1995 (in Morocco) and from 1995 to 2000 (in Canada) including all the trips;
- the respondent's trip to Pakistan (February to July 1998);
- Mr. Charkaoui's contact with, *inter alia*, Mr. Abdelrazik, Mr. Mohammed, Mr. Atmani, Mr. Hannachi and Mr. Ouzghar.

[23] Mr. Charkaoui testified on February 7, 2005, and on other occasions. His testimony is summarized in *Charkaoui IV* at paragraphs 15 to 19 inclusive. The undersigned reviewed this testimony for purposes of this motion.

[24] In that decision at paragraph 46, the following is stated:

I do not intend to decide on Mr. Charkaoui's credibility, which I will do when the hearing on the reasonableness of the certificate takes place and all the evidence has been presented. In order to answer the questions mentioned in paragraph 45, I intend to devote my analysis to the concept of "danger to national security" or "danger to the safety of any person" and whether it is likely that Mr. Charkaoui will appear at a proceeding or for removal, if necessary. A ruling on the reasonableness of the certificate will be made subsequently.

[25] As mentioned before, the same situation still exists today. However, the undersigned has taken into account all the evidence filed since then in assessing the danger, its neutralization and the preventive conditions associated with it, if necessary.

[26] The assessment of the danger and its neutralization must be based not only on the evidence of Mr. Ahmed Ressam and Mr. Noureddine Nafia but also on the totality of the evidence, including all the testimony. This comprehensive approach is essential if the appropriate determinations are to be made. For purposes of this motion, the undersigned, as indicated in the past, is not using Mr. Abu Zubaida's identification evidence, given the problem surrounding the interrogations.

[27] In light of all Mr. Ressam's evidence and only for the purposes of this motion, and given that the undersigned has not had the benefit of a hearing on the merits of this matter, I cannot conclude, based on the recent evidence, that Mr. Ressam lied when he said he recognized the person

in the two photographs (Mr. Charkaoui) as Zubeir Al-Maghrebi and that he had received training in an Afghan camp in the early summer of 1998. In making this finding, I considered the evidence of the journalist Fabrice de Pierrebouurg, the correspondence filed, the arrest warrant of the Service de police de la ville de Montréal and the testimony of the Forensic Identification Section etc.... I also took into account the testimony of Mr. A. Khadr. It should be noted that I had already stated that I was concerned about this aspect of the evidence and that I had explained that the interviews with Mr. Ressay had been conducted by the Canadian Security Intelligence Service in January 2002 in the presence of a lawyer and that at two separate times, Mr. Ressay had identified Mr. Charkaoui in two different photographs immediately, without hesitation, as Zubair Al-Mogherebi. Considering all the elements associated with this evidence, I have concluded that Mr. Ressay was not lying.

[28] With respect to the evidence of Mr. Noureddine Nafia linking Mr. Charkaoui to the GICM and to a contribution of \$2,000 and a laptop computer, the Court finds that this information from Morocco has been corroborated by “other sources”. That being said, the Court is still concerned by any allegations of torture associated with the evidence obtained through interrogations. The undersigned raised this concern from the beginning when this information was brought to light at the in camera hearings where Mr. Charkaoui and his lawyers were not present. The Court is aware of general documentary evidence about the reputation of the country on this issue. For the moment and without the benefit of a hearing on the reasonableness of the certificate, the Court’s view is that the information stands, since there is no evidence on which I could find that the interrogations were so “muscular” that the evidence based on this information would be inadmissible. The letter from Mr. Nafia that was given to journalist Jean-François Lépine was taken into account in assessing the

evidence, but considering all the evidence including the testimony, I cannot at this time dismiss the evidence implicating Mr. Charkaoui. Last, the document from the Web site géopolitique.com was also considered.

[29] Since Mr. Charkaoui's release on preventive conditions, they have been revised several times to take into account the specific needs of Mr. Charkaoui and his family. These requests for adjustments have always met with a favourable response. Today, for the second time, he is seeking the complete and unequivocal abolition of all the conditions that were developed to ensure the neutralization of the danger associated with Mr. Charkaoui.

Criteria for revising release conditions

[30] In the following paragraphs, I intend to use the criteria set out in *Charkaoui VI* and *Harkat, supra*, for purposes of the analysis.

[31] Since February 17, 2005, Mr. Charkaoui has been free on conditions. They have since been amended or mitigated. He was detained for 26 months. During that time, the Court reviewed the detention three times and upheld it because the Ministers' allegations and evidence were serious and supported a finding of danger associated with Mr. Charkaoui. At the fourth detention review, the Court found that the danger had diminished since the beginning of the incarceration to the point of becoming neutralized and that conditions were essential under the circumstances of the case.

[32] As of this date and based on the foregoing analysis, the “neutralized” danger must be controlled by appropriate preventive conditions.

[33] Deportation is the end result of the certificate procedure. Given the particular circumstances of this case, a date for removal (if that is the case) in the short term is difficult to imagine. There are many reasons for this situation:

- the numerous proceedings instituted in this case;
- the fact that the hearing to determine the reasonableness of the certificate was suspended on two occasions, and that one suspension is still in effect;
- the withdrawal of the first decision on the first protection application and the wait for the result of the second application;
- the period of one year offered by the Supreme Court to the government to submit statutory amendments in *Charkaoui VI*.

[34] The Court has already put forward alternatives to detention by developing preventive conditions for the release. These conditions have been applied, amended and mitigated since February 17, 2005. Despite this and without claiming that they are not restrictive, the Court finds that Mr. Charkaoui:

- successfully completed his Master’s degree in teaching French;
- became the father of a third child;

- took part in several public interest debates, thus participating in Canada's democratic life;
- has had several jobs, and currently is a full time teacher in a primary school in Montréal, which allows him to have independent income;
- moved to another residence;
- travelled occasionally outside of Montréal for personal or family reasons;
- The curfew has been adjusted as needed in accordance with the requests made;
- The number of supervisors has been increased to take into account Mr. Charkaoui's place of work.

[35] It is possible that some of the preventive conditions could be amended and/or mitigated in the future, taking into account Mr. Charkaoui's needs and the danger with which he was associated. The Court has always invited the parties to discuss this with the goal of reaching an agreement that could be ratified by the court. However, that is not the purpose of this motion. The Court is being asked to cancel all the conditions. This does not take into account the determination of the danger to be neutralized through the use of conditions. Such a solution is not proportional to the danger determination.

[36] The rule of proportionality between the danger to be neutralized and the imposition of preventive conditions must be applied concretely and be supported by the factual situation. It is not appropriate to impose this balancing exercise on the Court without providing all the factual evidence and the right to do so from both parties particularly when the request is for the total

cancellation of the conditions. The public and private file reveal facts that were not addressed on this motion. The testimony of Mr. Charkaoui acknowledged this.

[37] Taking into account the danger with which Mr. Charkaoui was associated and the importance of ensuring that this danger is and remains neutralized, preventive conditions for his release are still necessary and, therefore, it is not in the interests of justice to cancel all the conditions of his release.

[38] Given my conclusion that conditions must remain to ensure that the danger is neutralized, I cannot simply order Mr. Charkaoui's provisional release without any preventive conditions. Having said that, the Court once again repeats the invitation to the parties to discuss amending and/or mitigating the preventive conditions and if the parties are unable to agree, to submit everything to the court for determination. In that way, both the interests of justice and of Mr. Charkaoui will be adequately considered. In closing, the Court intends to review these preventive conditions again in the future if no request is made by the parties.

JUDGMENT

FOR ALL THESE REASONS, THE COURT ORDERS THE FOLLOWING:

- The motion by Mr. Charkaoui for provisional release without conditions is dismissed.

“Simon Noël”

Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET:

DES-3-03

STYLE OF CAUSE:

IN THE MATTER OF a certificate pursuant to
subsection 77(1) of the *Immigration and Refugee Protection Act*,
S.C. 2001, c. 27 (the *Act*) signed by the Ministers (the Ministers);

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AND IN THE MATTER OF
Mr. Adil Charkaoui ("Mr. Charkaoui")

DATE OF HEARING: Montréal, September 24, 2007

REASONS BY: The Honourable Mr. Justice Simon Noël

DATED: October 10, 2007

APPEARANCES:

Daniel Roussy
Luc Cadieux

FOR THE SOLICITOR GENERAL
OF CANADA

Daniel Latulippe

FOR THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

Dominique Larochelle
Johanne Doyon

FOR ADIL CHARKAOUI

Christian Leblanc
Chloé Latulippe

FOR THE INTERVENORS
JOËL BELLAVANCE
GILLES TOUPIN

SOLICITORS OF RECORD:

John H. Sims
Deputy Attorney General of Canada

FOR THE SOLICITOR GENERAL
OF CANADA AND THE MINISTER
OF CITIZENSHIP AND
IMMIGRATION

Des Lonchamps, Bourassa, Trudeau et Lafrance
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FOR ADIL CHARKAOUI

Fasken Martineau
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FOR THE INTERVENORS