

Court File No.

ONTARIO SUPERIOR COURT OF JUSTICE

B E T W E E N:

**JULIE LASSONDE on behalf of
HERMAN EMMANUEL FANKEM**

Applicants

- and -

**MINISTER OF PUBLIC SAFETY & EMERGENCY PREPAREDNESS,
ATTORNEY GENERAL OF CANADA, ATTORNEY GENERAL OF ONTARIO, and
SUPERINTENDENT OF THE CENTRAL EAST CORRECTIONAL CENTRE**

Respondents

NOTICE OF APPLICATION

**APPLICATION UNDER THE HABEAS CORPUS ACT AND ss. 10(c) and 24(1) OF THE
CHARTER**

R.S.O 1990, ch.h.1.s.1.7; *Canadian Charter of Rights and Freedoms*

TAKE NOTICE that an application will be brought on the 21st day of December, 2018 at 10:00 am, at a to be determined Courtroom, at the Court House, 361 University Avenue, Toronto, for a writ of *habeas corpus* with *certiorari* in aid, pursuant to the s. 1(1) of the *Habeas Corpus Act* and sections 7, 9, 10, 12 and 24(1) of the *Charter of Rights and Freedoms*, 1982 on the ground that there are reasonable and probable grounds to believe that the Applicant’s continued detention is unlawful; and the following interlocutory orders:

- a. an order, pursuant to Section 7 of the *Habeas Corpus Act*, that the Applicant undergo a psychiatric assessment within 20 days of the date of filing, either at the institution in which he is detained or in a designated psychiatric hospital to be determined by the parties;
- b. an order, pursuant to Section 5 of the *Habeas Corpus Act*, for the release of documents in the possession of the Respondents' officials, including the Applicant's Canada Border Services Agency file, as well as the Applicant's personal medical and institution records at all the places of his detention since August 2013 (including but not limited to the Central East Correctional Centre), as well as the general institution records of each of the provincial institutions in which he has been held since August 2013, including the number of days the units in which the Applicant was held were on lockdown, available programming and outdoor time available to detainees;
- c. an order allowing the Applicant to file a factum of greater than 30 pages in support of his application on return on the writ.

AND upon issuance of the writ and on return thereof, the RELIEF SOUGHT IS:

- a. An order that the Applicant be released from detention pursuant to s. 10(c) of the *Charter*, subject to appropriate terms and conditions, as deemed necessary by this Court;
- b. Declarations that the Applicant's detention is unlawful and contrary to sections 7, 9, and 12 of the *Charter*;
- c. The Applicant's costs on a substantial indemnity basis; and
- d. Any other remedy this Court deems appropriate and just.

THE GROUNDS FOR THIS APPLICATION ARE:

1. The Applicant, Mr. Herman Emmanuel Fankem [hereafter the Applicant] is currently being detained by the Canada Border Services Agency at the Central East Correctional Centre (CECC) in Lindsay, Ontario, (CBSA) pursuant to the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) and *Regulations*, SOR/2002-227 (IRPR).

2. Ms. Lassonde was appointed as Designated Representative [DR] for the Applicant by the Immigration and Refugee Board [IRB] in September 2017. DR's are appointed by the IRB in the case of minors and individuals unable to appreciate the nature of proceedings against them. In this role Ms. Lassonde is charged with acting in what she considers to be in the best interests of the Applicant. For the reasons outlined below and detailed in her affidavit, Ms. Lassonde has initiated this application for a writ *habeas corpus* as the only viable means to secure the Applicant's release from detention.

3. The Applicant is a foreign national and has been detained by the Canada Border Services Agency [CBSA] since August 2013. The Applicant entered Canada on a French passport in October 2012 which has been deemed fraudulent. To date, the Applicant's nationality has not been conclusively established.

4. After his August 2013 detention, the Applicant had a 48-hour detention review, a 7-day review, and since that time monthly reviews of his detention. The reviews are conducted by members of the Immigration Division [ID] of the Immigration and Refugee Board [IRB]. Excepting one release order, the Applicant's detention has been continued more than 63 months, with each subsequent ID Member agreeing in substance with the previous month's decision.

5. Between August 2013 and April 2014, the Applicant attended some of his detention reviews, without representation. The Applicant has not attended any of his detention reviews since May 2014. He refuses to speak with CBSA officers who attempt to meet with him to investigate his identity for the purposes of removal from Canada. The Applicant has repeatedly been found to be uncooperative by the Minister and the ID.

6. The Applicant has no criminal convictions in Canada and is not considered to be a danger to the public. Nevertheless, he has been detained in the general population of a maximum-security prison for the vast majority of his time in detention.

7. There is *prima facie* evidence on the Record to at minimum raise serious concerns about the Applicant's ability to fully appreciate the nature of his immigration proceedings and which decisions are in his own best interests. The ID appointed a Designated Representative [DR] for the

Applicant in September 2017, who has brought this Application on his behalf. The Applicant's psychological fitness has never been formally assessed and Applicant's request for a transfer for this purpose has been denied. The ID, the CBSA and the CECC maintain that they do not have the power to order a transfer in these circumstances.

8. The Applicant's detention is for the purpose of effecting his removal from Canada but there is no telling where, when or if this removal will happen. The parties have been at a veritable stalemate in this matter for more than four years. The Minister maintains that without the Applicant's cooperation, they are unable to progress in their investigations, he is the cause of his own detention and that he must remain detained. The ID has adopted the Minister's reasoning and repeatedly found that the Applicant would be a flight risk if released, in the absence of a viable alternative to detention. In effect, the Applicant's imprisonment has become punitive in nature.

9. The Applicant asserts that his continued detention is unlawful because:

- a. The Applicant's perceived non-cooperation is not a reasonable basis on which to justify indefinite detention;
- b. His detention is both lengthy and of uncertain duration, and as it is a breach of his rights ss. 7, 9, and 12 of the *Charter* to continue his indefinite detention, he is entitled to release under ss. 10 and 24(1) of the *Charter*;
- c. Even if there are statutory grounds for detention, the continued detention of the Applicant on the facts of this case is contrary ss. 7, 9 and 12 of the *Charter* and he is entitled to release pursuant to s. 10 and s. 24(1) of the *Charter*.

IN SUPPORT OF THIS APPLICATION, THE APPLICANT RELIES ON THE FOLLOWING:

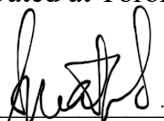
1. Affidavit of Julie Lassonde, sworn December 18th, 2018, with attached exhibits;
2. Such further and other material as counsel may advise and this Court permit.

THE APPLICANT MAY BE SERVED WITH DOCUMENTS PERTINENT TO THIS APPLICATION by service in accordance with Rule 5, at the office of his solicitor:

Swathi Sekhar
Barrister and Solicitor

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Dated at Toronto, Ontario, this ____ day of December, 2018.



Swathi Sekhar
LSO# 64601W
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Solicitor for the Applicant

TO: MINISTER OF PUBLIC SAFETY & EMERGENCY PREPAREDNESS,
MINISTER OF IMMIGRATION, REFUGEES & CITIZENSHIP, and the
ATTORNEY GENERAL OF CANADA
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Solicitor for the Federal Respondents

AND TO: THE ATTORNEY GENERAL OF ONTARIO
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Solicitor for the Provincial Respondent

AND TO: The Superintendent/Director of the Central East Correctional Centre
c/o Legal Branch
Minister of Community Safety & Correctional Services
501-655 Bay St
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Solicitor for the Correctional Facility Respondent