



Mission communautaire de Montréal
Montreal City Mission

1435, rue City Councillors
Montréal (Québec) H3A 2E4

Téléphone: (514) 844-9128

Fax: (514) 844-0067

E-mail: info@montrealcitymission.org

Website: www.montrealcitymission.org

URGENT

To:

Hon. Steven Blaney

Minister of Public Safety

By e-mail - Steven.Blaney@parl.gc.ca et ministerpublicsafety@ps-sp.gc.ca

February 3, 2014

Re: Support of request to stay deportation of Yvonne Hernandez

Dear Minister Blaney,

The Montreal City Mission is a Community Ministry of the United Church of Canada which assists refugees, new immigrants and other persons in need of assistance in the Montreal area. The Just Solutions Clinic, a program of the Mission, is a legal information and accompaniment clinic. We have assisted Ms. Yvonne Hernandez on a few occasions since she first contacted us in September 2012.

On behalf of the Montreal City Mission, we are writing to express our grave concern about Ms. Ivonne Hernandez's case. Ms. Hernandez is scheduled to be deported to Mexico this **Friday, February 7th**, despite the fact that an important hearing regarding the custody of her one year old son, Vincenzo, is scheduled for March 6th, 2014. Her son's father, who abused Ms. Hernandez (she has been living in a shelter for domestic violence survivors since December 2013), currently has custody of her son. Ms. Hernandez has been the primary caregiver of her son since his birth.

If Ms. Hernandez is not permitted to remain in Canada to exercise her rights at the March 6th hearing and finalize the custody arrangements for her son, we believe that her and her Canadian-born son's rights will be gravely and irreversibly affected.

For this reason (explained below in further detail), **we wholeheartedly support Ms. Hernandez's request to suspend her removal until the custody proceedings are finalized and her humanitarian situation has been adequately studied, taking into account her right to exercise her parental obligations as will be determined by a court of law.**

We also support her request to Minister Chris Alexander to **exercise his authority under Section 25.1(1) of IRPA and undertake a full consideration of Ivonne's humanitarian situation and to issue her a Temporary Residence Permit in the interim, to ensure she has a legal status in Canada throughout these essential custody and immigration proceedings.**

Custody proceedings and the Best interest of the Child

At a hearing on provisional measures that took place in January 2014, Ms. Hernandez temporarily lost custody of her son and was granted restricted access rights only. This interim order was based on Ms. Hernandez' imminent risk of deportation and not on her parental abilities. The actual custody hearing will take place on March 6th, 2014, after the date scheduled for Ms. Hernandez' removal. We consider that removing Ms. Hernandez before she is granted a fair opportunity to make representations regarding the optimal custody arrangement for her son would be a direct violation of the rights of both herself and her son under domestic and international legislation.

Article 32 of the *Civil Code of Quebec* clearly states that "[e]very child has a right to the protection, security and attention that his parents or the persons acting in their stead are able to give to him". In the family context, all decisions must respect a child's rights, as stipulated in article 33 of the *Civil Code of Quebec*:

33. Every decision concerning a child shall be taken in light of the child's interests and the respect of his rights.

Consideration is given, in addition to the moral, intellectual, emotional and physical needs of the child, to the child's age, health, personality and family environment, and to the other aspects of his situation.

Vincenzo's interests and rights will not be respected unless a court of law makes a full assessment of his situation, including his attachment to his mother, before ruling on the best custody arrangement for him. Ms. Hernandez must be able to remain in Canada until a final decision has been rendered on the custody of her son. To forcibly remove Ms. Hernandez at this stage would violate her parental rights as per article 599 of the *Civil Code of Quebec* and prevent her from fulfilling her parental obligations, contrary to Vincenzo's best interest. Ms. Hernandez's right to exercise those rights once a final order has been issued on the issue of custody must also be protected

The *Convention on the Rights of the Child*, to which Canada is a signatory state, protects the rights of children to be with their parents. Article 9.1. of the Convention clearly states that "States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child." Furthermore, section 9.2.

provides that in family proceedings, "all interested parties shall be given an opportunity to participate in the proceedings and make their views known."

As explained in the following section, it is critical to note that Ms. Hernandez has been Vincenzo's primary caregiver since birth and that there is no evidence of abuse or neglect. On the contrary, based on the evidence on file, Ms. Hernandez is a fully competent mother who loves her son dearly. To separate mother and child at this stage of Vincenzo's life would severely scar him, as demonstrated below.

The short and long term impact of mother-child separation:

In an article in the professional journal *Défi Jeunesse*¹, Quebec psychologist Michelle St-Antoine describes in detail the potentially devastating consequences of separation from one's mother on a child's development. She describes Dr. Paul Steinhauer's theory that:

"un enfant qui n'aurait pas développé avant deux ans sa capacité d'attachement conservera de graves séquelles, tant au plan social que cognitif. En effet, ce dernier prétend que c'est afin de maintenir ses liens à la figure maternelle, que l'enfant parvient à abandonner des comportements non désirables socialement mais qui lui procurent du plaisir".²

In a relevant study, Howard et. al. the researchers focused on the impact of mother-child separation that occurs when the child is 0-2 years old:

(...) because during that period children rely on physical proximity as the primary indicator of their mother's availability. Mothers who have left the home environment, even if available by phone, are perceived as unavailable. Maternal availability is particularly important within the first two years of life because of the infant's limited understanding of the reasons for maternal absence and the timing of her return. As a result, experiences of separation may be particularly salient.³ (our emphasis)

The researchers concluded that there is an association between the experience of an early separation and later child aggression and negativity, finding that "even relatively brief separation within the first 2 years of life can have implications for child well-being three years later".⁴ Howard et al. also theorized that the impact of separation may be

¹ St-Antoine, Michelle. « Les Troubles d'attachement », *Défi Jeunesse*, accessed online (January 29 2014) at: http://www.centrejeunessedemontreal.qc.ca/pdf/cmulti/defi/defi_jeunesse_9910/attachement.htm

² *Ibid.*

³ Howard, Kimberly; Martin, Anne; Berlin, Lisa; Brookes-Gunn, Jeanne. "Early Mother-Child Separation, Parenting, and Child Well-Being in Head Start Families", *Attachment and Human Development*, Vol. 13, Issue 1, 2011, Accessed online (January 29 2014) at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3115616/>

⁴ *Ibid.*

worsened when the mother's departure is involuntary (as is the situation in a case of deportation for immigration reasons).

It is important to note that this study's findings are based on a definition of separation that includes separations of at least one week. In the case of Ms. Hernandez, if she is deported before having the opportunity to exercise her parental authority and establish an acceptable custody arrangement, the separation from her child would most likely be permanent, as due to Ms. Hernandez's Canadian immigration history and personal profile, it would be nearly impossible for her to obtain the authorization and proper documentation to return to Canada in the future.

In her summary of the effects of separation on children from different age groups, child development specialist Susan Hois lists the following negative effects on the development of toddlers (1-3 years):

- The balance between age appropriate dependency and independency will be disrupted.
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- Interference with identity – with changes in family position, the child's ego development may be disrupted.
- The child's awareness of both internal and external stimuli may be dulled and there will likely be regression in terms of the most recently acquired skills.
- The normal acquisition of language may be temporarily interrupted with parental loss, especially if that parent was the child's "interpreter."⁵

For all of these reasons, we hereby support Ms. Hernandez's request to stay her deportation at least until her custody proceedings can be finalized.

We thank you in advance for your particular attention to this exceptional case, and remain available to answer any questions you may have about the nature of our support.

Sincerely,



Andrea Dawes



Yolaine Williams

Co-coordinators, Just Solutions Clinic, Montreal City Mission

⁵ Hois, Susan (2008). « Effects of separation and loss on a children's development », Family Development Resources, accessed online (January 29 2014) at <http://www.pcavt.org/assets/files/Articles/'s%20Development.pdf>