

May 12, 2022

To: Premier of British Columbia, John Horgan
Premier of Alberta, Jason Kenney
Premier of Manitoba, Heather Stefanson
Premier of New Brunswick, Blaine Higgs
Premier of Newfoundland, Andrew Furey
Premier of Nova Scotia, Tim Houston
Premier of Ontario, Doug Ford
Premier of Prince Edward Island, Dennis King
Premier of Québec, François Legault
Premier of Saskatchewan, Scott Moe

C.C.: Minister of Public Safety, Marco Mendicino
Minister of Immigration, Refugees and Citizenship Canada, Sean Fraser
Prime Minister of Canada, Justin Trudeau

Re: Request to stop the incarceration of immigration detainees in provincial jails

We are lawyers and legal representatives, as well as academic scholars with expertise in migration law and policy, refugee protection, human rights, prison law and policy, and criminology, from across Canada. We are joined by organizations working in these areas. We are writing to add our voices to the demand for an end to the incarceration of immigration detainees.

As you know, over the past several years, the Canada Border Services Agency (CBSA) has detained tens of thousands of non-Canadian citizens under the Immigration and Refugee Protection Act, most commonly because authorities believe they may not appear for an immigration or refugee proceeding. Immigration detainees include families and children, refugee claimants fleeing traumatic experiences and persecution, and persons with mental health conditions. Individuals from communities of colour are disproportionately represented in immigration detention and may face more restrictive conditions of confinement. Despite the non-criminal and purportedly non-punitive nature of immigration detention, many immigration detainees experience the most restrictive forms of incarceration in the country – including maximum security provincial jails and solitary confinement – and they do so without end in sight because Canada does not have a legislative cap on the length of time immigration detainees can be held.

We are gravely concerned that there are no laws or regulations governing when and under what circumstances an immigration detainee can be transferred to, and incarcerated in, a provincial jail. Instead, these vital decisions regarding immigration detainees' residual liberty rights are within the discretion of CBSA, which remains the only major law enforcement agency in Canada without independent civilian oversight. CBSA's decisions regarding where immigration detainees are incarcerated appear to be implemented in an ad hoc, inconsistent, and even discriminatory manner. Immigration detainees are rarely given any notice that they are going to be transferred to a jail;

they are provided with no disclosure of any evidence used to inform the transfer decision; they often receive no written reasons for why the transfer occurred; and they cannot challenge these decisions at detention review hearings. From one day to the next, a person fleeing to this country to seek safety could be wearing a prison jumpsuit behind bars in a maximum-security facility.

We are alarmed by what appear to be CBSA's arbitrary detention practices and we are committed to seeking substantial reform at the federal level. We are equally concerned that provincial authorities would agree to incarcerate anyone in a provincial jail for purely administrative matters under immigration law. There is no valid legal reason to justify such placements, and indeed, this practice is contrary to international law. This practice is particularly shocking when applied to immigration detainees who have a pre-existing mental health condition or disability. There is no legal basis on which to subject immigration detainees to criminal punishment, and yet immigration detainees in provincial jails are regularly handcuffed, shackled, endure lockdowns and constant surveillance, and even solitary confinement.

The conditions immigration detainees face in many provincial jails are profoundly disturbing. The data from medical literature and research is clear that immigration detention can cause serious harm, particularly when incarceration is prolonged and without end in sight. Immigration detainees can develop anxiety, depression, despair, psychological distress, psychosis, catatonic withdrawal, self-harm and suicidal ideation. The mental-health impacts of detention are so severe that even a relatively short hold in detention can be devastating to the mind and cause long-term – and sometimes permanent – damage. Immigration detainees experience these harms no matter where they are held, but the research has long confirmed that detainees are affected most acutely when they are held in jails.

In a scathing recent report, Human Rights Watch and Amnesty International called on authorities to acknowledge and address systemic racism within CBSA and the immigration detention system. The report raises serious concerns about the fact that immigration detainees from racialized communities, and in particular Black men, are confined in more restrictive conditions and for more prolonged periods of time. According to CBSA data, in 2019 most immigration detainees held for 90 days or longer were from countries in Africa or the Caribbean. And the longer people were detained, the more likely they were to be incarcerated in provincial jails rather than dedicated immigration detention facilities. Because there are no legal time limits on immigration detention, detainees may languish in jail for months or years.

Following the onset of the Covid-19 pandemic, immigration detainees were released at unprecedented rates. However, those who remained behind bars have been subjected to harsher conditions: in the year following the onset of the pandemic, CBSA has relied more heavily on provincial jails to incarcerate immigration detainees – doubling the portion of detainees held in those facilities as compared to the years before the pandemic – and the average length of detention also doubled.

Detention under the Immigration and Refugee Protection Act is a strictly federal domain; there is no requirement for provincial authorities to be involved or to provide jail cells for immigration detainees. But provincial involvement in this practice makes provincial authorities complicit in the human rights abuses immigration detainees endure in their facilities. In fact, in a 2016 decision,

the Ontario Superior Court found that the province was jointly and severally liable with the federal government for the treatment of immigration detainees in the province's jails.

We call on provincial governments to bring an end to this harmful practice immediately. We urge you to cancel the federal-provincial agreement that permits the incarceration of immigration detainees in provincial jails, and in the interim, during the one-year cancellation notice period, to immediately stop accepting transfers of any immigration detainees to these facilities.

We would be very pleased to meet with you soon to discuss these concerns, and look forward to your prompt reply.

Yours sincerely,

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Organizational endorsements:

1. *HIV & AIDS Legal Clinic Ontario (HALCO)*
2. *BC Poverty Reduction Coalition*
3. *Canadian Immigration Lawyers Association (CILA) / L'Association Canadienne des Avocats en Immigration (ACAI)*
4. *Landings LLP*
5. *Westcoast LEAF (Legal Education and Action Fund)*
6. *SWAN Vancouver Society*
7. *East Coast Prison Justice Society*
8. *HIV Legal Network*
9. *Centre for Gender & Sexual Health Equity*
10. *British Columbia Civil Liberties Association*
11. *Kinbrace Refugee Housing & Support*
12. *Justice For Girls*
13. *Canadian Civil Liberties Association*
14. *The Immigration and Refugee Legal Clinic*
15. *Heron Law Offices*
16. *Arenous Foundation*
17. *Living in Community*
18. *Migrante BC*
19. *Rainbow Refugee*
20. *Canadian Bar Association National Immigration Law Section*
21. *Canadian Association of Refugee Lawyers*