

November 19, 2022

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

Re: Request to stop the use of provincial jails for immigration detention

We are leading organizations from across Canada serving and working to protect the rights of migrants and refugee claimants, as well as other at-risk groups. We are writing to add our voices to the demand for an end to the incarceration of people in immigration detention.

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. People in immigration detention include families and children, refugee claimants fleeing traumatic experiences and persecution, and persons with mental health conditions. Despite not being held on criminal charges or convictions, many people in immigration detention 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 duration of immigration detention.

We are gravely concerned that there are no laws or regulations governing when and under what circumstances people in immigration detention can be transferred to, and incarcerated in, a provincial jail. Instead, these vital decisions regarding 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 people in immigration detention are incarcerated appear to be implemented in an ad hoc, inconsistent, and even discriminatory manner. People in immigration detention are rarely given any notice that they are going to be transferred to a jail; they are provided with no disclosure of 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. 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 human rights standards. This practice is particularly shocking when applied to people in immigration detention who have a pre-existing mental health condition or disability. There is no legal basis on which to subject people in immigration detention to punitive conditions, and yet they are placed in provincial jails, regularly handcuffed and shackled, and they endure lockdowns, constant surveillance, and even solitary confinement.

The conditions that people in immigration detention face 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. People in immigration detention can develop anxiety, depression, despair, psychological distress, psychosis, catatonic withdrawal, self-harm and suicidal ideation. The mental-health impacts of immigration 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. People in immigration detention experience these harms no matter where they are held, but the research has long confirmed that people are affected most acutely when they are held in jails.

A scathing report by Human Rights Watch and Amnesty International raised serious concerns about discrimination in the immigration detention system. For example, racialized people, and in particular Black men, are confined in more restrictive conditions and for more prolonged periods of time in immigration detention. According to CBSA data, in 2019 most people in immigration detention 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. The report also found that people with mental health conditions face discrimination throughout the immigration detention process and are subjected to disproportionately coercive treatment, including being incarcerated in provincial jails and placed in solitary confinement. Because there are no legal time limits on immigration detention, people may languish in jail for months or years.

Following the onset of the Covid-19 pandemic, people were released from immigration detention at unprecedented rates, calling into question whether people were truly detained as a last resort. In addition, those who remained behind bars were subjected to harsher conditions: in the year following the onset of the pandemic, CBSA relied more heavily on provincial jails to incarcerate people in immigration detention – doubling the portion of people 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 detention. Provincial involvement in this practice makes provincial authorities complicit in the human rights abuses that people in immigration detention 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 those held on immigration grounds in the province's jails.

In the span of four months, four provinces have decided to end their immigration detention agreements or arrangements with CBSA: British Columbia, Nova Scotia, Alberta, and Manitoba. When these decisions take effect, people will no longer be incarcerated in provincial jails based solely on immigration grounds in those provinces.

We call on the federal government to end this harmful and rights-violating practice immediately. We urge you to cancel the federal-provincial agreements and arrangements that permits the incarceration of people on immigration grounds in provincial jails. We also urge the government to invest in community-based organizations that provide tailored and compassionate support, including rights-respecting alternatives to detention, to ultimately end the practice of immigration detention.

Signatories:

1. British Columbia Poverty Reduction Coalition
2. West Coast LEAF
3. SWAN Vancouver
4. Immigration and Refugee Legal Clinic
5. Rainbow Refugee
6. Community Legal Assistance Society (CLAS)
7. Canadian Association of Refugee Lawyers (CARL)
8. Anti-Oppression Educators Collective
9. British Columbia Civil Liberties Association
10. Worker Solidarity Network
11. Migrant Workers Centre
12. Canadian Civil Liberties Association
13. East Coast Prison Justice Society
14. Coverdale Courtwork Society
15. Wellness Within
16. Canadian Centre for Victims of Torture (CCVT)
17. Vancouver Association for the Survivors of Torture (VAST)
18. HIV Legal Network
19. Matthew House Refugee Services Toronto
20. On These Shoulders Research Collaborative
21. Health and Immigration Policies and Practices Research Program
22. HIV & AIDS Legal Clinic Ontario (HALCO)
23. The Canadian Prison Law Association
24. Landings LLP
25. Reaching Out Assisting Refugees (ROAR)
26. Centre for Gender & Sexual Health Equity
27. Rainbow Refugee Association of Nova Scotia
28. Dalhousie Legal Aid Society
29. Elizabeth Fry Society of Mainland Nova Scotia
30. Halifax Refugee Clinic