

March 3, 2023

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

Re: Coroner's inquest into the death of Abdurahman Hassan and renewed request to stop the use of provincial jails for immigration detention

We are leading Canadian and international organizations serving and working to protect the human rights of migrants and refugee claimants, as well as other at-risk groups across Canada. In the aftermath of the coroner's inquest into the death of Abdurahman Hassan, a man who was jailed in the custody of the Canada Border Services Agency (CBSA) for three years pending his deportation to Somalia, we are writing to renew the request for an end to the incarceration of people in immigration detention.

Evidence presented at the coroner's inquest in February 2023 revealed shocking details about ongoing conditions of incarceration, including segregation, that people in immigration detention endure in provincial jails. The purpose of the inquest was to prevent similar deaths from taking place in the future, and the jury's recommendations provide a clear roadmap for the work ahead. In particular, the jury's first recommendation to the Government of Canada is telling:

“Seek and allocate resources to develop and implement a plan to end the practice of housing immigration detainees in provincial correctional facilities in Ontario.”

The jury's first recommendation to the Government of Ontario similarly calls upon the province to “Consider withdrawing from the immigration detention agreement between Ontario and Canada.”

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, among others, 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 continue to be 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, Canada's practice of incarcerating immigration detainees in provincial jails is a violation of [international human rights standards](#) as incarceration in these facilities is inherently punitive.

CBSA's arbitrary immigration detention practices are particularly shocking when applied to people 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. Since 2000, at least 17 people have lost their lives in immigration detention, including [two people last year](#) at the Immigration Holding Centres of British Columbia and Quebec.

A scathing 2021 [report](#) by Human Rights Watch and Amnesty International raised serious concerns about discrimination in the immigration detention system. For example, racialized people, particularly 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. However, 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. According to the latest figures, in fiscal year 2021-22, the number of people incarcerated in provincial jails on immigration grounds continued to rise.

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.

As of 2022, 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, starting in June 2023, people will no longer be incarcerated in provincial jails based solely on immigration grounds in those provinces. Last month, Alberta's public safety minister, Mike Ellis, [called on](#) other provinces to stop immigration detention in provincial jails, stating, "People who come to Canada for a fresh start and a new life deserve a better welcome than a jail cell while paperwork is sorted out."

We call on the federal government to end this harmful and rights-violating practice immediately. The coroner's inquest into the death of Abdurahman Hassan has uncovered disturbing details about the abhorrent conditions people in immigration detention endure while incarcerated in provincial jails, and the notion that they must do so without an end in sight is appalling. We urge you to cancel the federal-provincial agreements and arrangements that permits the incarceration of people on strictly 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. Action Réfugiés Montréal
2. Amnesty International
3. Angela Rose House
4. Association Québécoise des avocats et avocates en droit de l'immigration (AQAADI)
5. Black Legal Action Clinic (BLAC)
6. British Columbia Civil Liberties Association
7. British Columbia Poverty Reduction Coalition
8. Canadian Association of Refugee Lawyers (CARL)
9. Canadian Centre for Victims of Torture (CCVT)
10. Canadian Civil Liberties Association
11. Canadian Council for Refugees (CCR)
12. Centre for Gender and Sexual Health Equity
13. Christie Refugee Welcome Centre
14. Citizens for Public Justice
15. Community Legal Assistance Society (CLAS)
16. Community Legal Services of Ottawa
17. Coverdale Courtwork Society
18. East Coast Prison Justice Society
19. FCJ Refugee Centre
20. Global Detention Project
21. Halifax Refugee Clinic
22. HIV & AIDS Legal Clinic Ontario (HALCO)
23. HIV Legal Network
24. Human Rights Watch
25. Immigration and Refugee Legal Clinic
26. La ligue des droits et libertés
27. Landings LLP
28. Matthew House Refugee Ministry of Fort Erie
29. Matthew House Refugee Services, Toronto
30. Migrant Workers Centre
31. Migrante B.C.
32. Oak House
33. Pivot Legal Society
34. Rainbow Refugee
35. Romero House
36. SWAN Vancouver
37. Table de concertation des organismes au service des personnes réfugiées et immigrantes (TCRI)
38. The Centre for Refugee Children
39. Vancouver Association for Survivors of Torture
40. West coast LEAF