

December 2, 2020

Hon. Bill Blair, P.C., M.P.
Minister of Public Safety and Emergency Preparedness
269 Laurier Avenue West
Ottawa, ON K1A 0P8

John Ossowski
President
Canada Border Services Agency
191 Laurier Avenue West, 6th Floor
Ottawa, ON K1A 0L8

Dear Minister Blair and President Ossowski,

RE: CBSA's Decision to Resume Removals

The Canadian Association of Refugee Lawyers ("CARL") is writing to express our serious alarm at the Canada Border Services Agency's ("CBSA") announcement, issued on November 30, 2020, that it will resume removals for all inadmissible foreign nationals in Canada. To our knowledge, this important change was made without prior consultation with external stakeholders and came into force on the day it was announced.

The announcement marks an abrupt change from CBSA's previous policy which had been in place since the beginning of the COVID-19 pandemic in March 2020. That policy limited removals to "serious" inadmissibilities - those inadmissible under s.34 (security), s.35 (human rights violations), s.36 (criminality) and s.37 (organized criminality) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("IRPA"). It struck a balance between protecting Canadians, on the one hand, and the serious risk inherent in forcing vulnerable people to uproot their lives and travel internationally in the midst of a global pandemic, on the other.

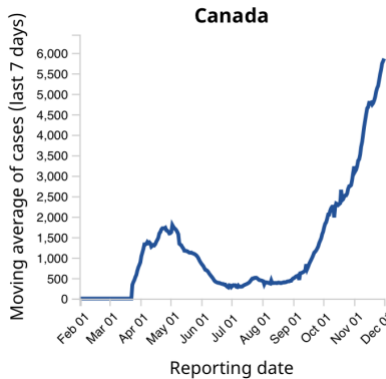
CBSA's decision to unilaterally abandon this policy is unsound and places public health in jeopardy. The policy should be reversed and the previous policy reinstated until the COVID-19 pandemic is better controlled and international travel is again recommended by public health officials.

i. *Canada is in the midst of the highest ever number of COVID-19 infections:*

On the same day that CBSA announced its resumption of all removals, public health officials were making another important announcement. On that day, 7861 COVID-19 infections were reported across the country - *the highest single-day count since the pandemic began*. And 98 people died from the virus, the highest daily death toll in almost six months. On November 20, 2020, Chief Public Health Officer Theresa Tam said in the worst-case scenario, a spike to 60,000 daily cases would

occur if people became more social. And even if current restrictions are maintained, new daily cases will jump to over 20,000 by December 31, 2020.ⁱ

These numbers underline that Canada is still grappling with a major public health emergency – one that has already killed more than 12,000 people in the country and is entering a ‘second wave’ of infections. This graph of COVID-19 infections, released by the Public Health Agency of Canada on December 1, 2020,ⁱⁱ presents a startling snapshot of the crisis:



It is alarming – and puzzling – that CBSA would choose *this* moment to return to ‘business as usual’ in respect of removals.

Some of the reasons stated in the announcement for the timing of the policy change are not grounded in the evidence about the current state of the pandemic. For instance, one reason listed is “the emergence of viable vaccination options” even though no such vaccine has been approved in Canada and there is no commitment to provide it to deportees prior to removal. The announcement also noted that “the decision to halt many removals during the pandemic was an exceptional measure that was not shared by the international community.” But deportations from the United States, which continued with removals throughout the pandemic, have now been connected with spreading the virus through deportees to India, Haiti, Guatemala and El Salvador.ⁱⁱⁱ Clearly, the consequences of countries not halting removals raise red flags. Canada must guard against spreading the virus by increasing removals.

In our opinion, CBSA has not identified any material change in circumstances that would warrant a decision to recommence removals of all foreign nationals – especially those subject to *non-serious* inadmissibilities – at the same time as the country is dealing with the worst days of the pandemic.

ii. International travel remains unsafe – for Canadians and non-Canadians alike:

Global Affairs Canada continues to recommend that individuals “[a]void non-essential travel outside Canada until further notice”.^{iv} And as recently as November 17, 2020, Prime Minister Trudeau publicly warned that individuals should “avoid international travel” this winter.^v This reflects the fact that international travel remains unsafe. In particular, maintaining physical distancing on airplanes is impossible. To legally compel individuals to board international flights

at this time – in many cases requiring them to remain in sealed spaces with upwards of hundreds of other individuals for hours on end – is dangerous and unnecessary.

The risks involved with recommencing removals for all inadmissible foreign nationals go beyond international air travel. Prior to their removal dates, such individuals must attend numerous pre-removal appointments in CBSA offices, many of which are located on the outskirts of cities near airports. For each appointment, many individuals will have to take long round-trip journeys to these offices on public transportation and wait to be seen in an area where social distancing is a challenge. And once removal is scheduled, these individuals will also have to make numerous trips within their community to prepare for deportation. This includes travelling to banks to close accounts; to doctors' offices to complete treatment and stockpile medications; and to family and friends' homes to say goodbye. This will be occurring at the same time that major urban centres like Toronto, Winnipeg, Vancouver and parts of Montréal have returned to 'lock-downs', instructing residents to avoid all non-essential movements and contact with anyone outside their homes.

In short, all of this travel occasioned by the return to full removals – both across borders and within Canadian communities – is contrary to basic public health advice. And in circumstances where it involves individuals who are subject to a non-serious inadmissibility, it is unnecessary and avoidable. It places deportees, including elderly individuals and those with underlying health conditions, in harm's way at a time when the government is telling everyone else to stay home to stay safe.

iii. *Refugee entry and removal should proceed in tandem:*

CBSA's decision that it is now safe to compel individuals to *leave* Canada is inconsistent with its parallel decision – made in conjunction with other agencies – that it is unsafe to allow most other individuals to *enter* Canada. The COVID-19 Orders-in-Council that have sealed Canada's borders to non-essential travel since March 2020 remain in place. Particularly troubling are the provisions within those Orders that close Canada's borders to virtually all asylum-seekers (absent some exceptions under the *US-Canada Safe Third Country Agreement*). These measures are matched by the recent decision of Immigration, Refugees and Citizenship Canada to cancel all in-person refugee eligibility interviews in the Greater Toronto Area in the past week.

The overall picture is a one-way ratchet in respect of asylum claimants – one in which the COVID-19 related risks of removing such individuals are ignored while the risks of permitting them to enter are unassailable. Such a policy is inconsistent with the objectives of the IRPA and with broader humanitarian values. The health and safety of asylum seekers should be a primary and consistent consideration, regardless of whether they are entering or leaving Canada's immigration system.

iv. *Measures suggested by CBSA are not meaningful or effective:*

In its November 30, 2020 announcement, CBSA states that individuals may still avail themselves of "various recourse mechanisms" such as "appeals, judicial reviews, and permanent resident applications on humanitarian & compassionate grounds". But none of those mechanisms can

legally address the short-term risks inherent in international travel during the COVID-19 pandemic. As such they are irrelevant to the announcement and are not appropriate recourse mechanisms in respect of the policy change.

The only mechanism relevant to the risk of removing individuals in the midst of the pandemic and mentioned in the announcement is a deferral request. But deferrals are meant to address highly particularized circumstances justifying a delay of a specific individual's removal. They are not an appropriate mechanism when the concern applies to *all* deportees in general and warrants a broad public policy approach to the issue. Furthermore, deferral requests are increasingly sophisticated applications, involving affidavit evidence and legal submissions. As such, the filing of one usually requires the retaining of a lawyer – an expensive prospect for many deportees and one that is further complicated by 'lock down' orders that have shuttered many small law offices. No doubt, for this reason, since March 2020, CBSA did not require individuals to file COVID-19 deferral requests in respect of their removals and instead simply deferred removals for all non-serious inadmissibilities. Nothing has changed in respect of the pandemic to warrant a change in that policy now.

iv. *New removals policy should be reversed:*

CBSA's previous removal policy struck a far more principled balance between protecting Canadians (by allowing removals for serious inadmissibilities to proceed) and the health and safety of foreign nationals (by deferring all other removals). Now is not the appropriate time to suddenly reverse this policy and to resume removals of all foreign nationals. Doing so needlessly places such individuals at risk and is contrary to public health advice. The policy should be reversed and the previous policy reinstated until the COVID-19 pandemic is better controlled and international travel is again recommended by public health officials.

Sincerely,



Maureen Silcoff
President

ⁱ Reuters, "Trudeau warns Canada's hospitals could be swamped, Toronto to enter COVID-19 lockdown", November 20, 2020.

ⁱⁱ Public Health Agency of Canada, "Coronavirus disease 2019 (COVID-19): Epidemiology update", December 1, 2020 [https://health-infobase.canada.ca/covid-19/epidemiological-summary-covid-19-cases.html].

ⁱⁱⁱ New York Times, "'It Was Like a Time Bomb': How ICE Helped Spread the Coronavirus", July 10, 2020 [https://www.nytimes.com/2020/07/10/us/ice-coronavirus-deportation.html]; New Yorker, "The Trump Administration's Deportation Policy Is Spreading the coronavirus", May 13, 2020 [https://www.newyorker.com/news/daily-comment/the-trump-administrations-deportation-policy-is-spreading-the-coronavirus].

^{iv} *Global Affairs Canada*, “Official Global Travel Advisories”, accessed on December 2, 2020
[<https://travel.gc.ca/travelling/advisories>].

^v *Globe and Mail*, “Trudeau says Canadians should avoid international travel this winter”, November 18, 2020.