

October 12, 2021

The Rt. Hon. Justin Trudeau, P.C., M.P.  
Prime Minister of Canada  
Office of the Prime Minister  
80 Wellington Street  
Ottawa, ON K1A 0A2

Via email: [Justin.Trudeau@parl.gc.ca](mailto:Justin.Trudeau@parl.gc.ca)

Dear Prime Minister,

**Re: Ministerial mandate letters**

On behalf of the Canadian Association of Refugee Lawyers (CARL), I wish to congratulate your government on its re-election for a third term in office. On September 20, 2021, the overwhelming majority of Canadians voted for parties that support robust action to protect refugees and an open and welcoming approach to migration. As your government sets its priorities for the upcoming session of Parliament, we encourage you to continue to work towards a more just and efficient immigration and refugee system that maintains fairness at its core.

In particular, we encourage you to take swift action on the following three critical issues:

**1. COVID-19 restrictions on refugee claimants at the U.S.-Canada border:** CARL recognizes the need to implement measures to ensure public health during the pandemic, and that these measures have involved travel restrictions. However, border restrictions eased for fully vaccinated foreign nationals on September 7, 2021. There is no justification to continue to deny entry to fully vaccinated refugee claimants seeking protection while allowing in foreign nationals for tourism purposes.

In fact, such a distinction is arbitrary and violates our obligations under international law.<sup>1</sup> Under various international law instruments to which Canada is a party, we are required to assess the protection needs of persons who make a claim inside our borders and cannot turn them away without an individualized assessment of the risks they allege. CARL strongly encourages the government to remove the COVID-19 prohibition on entry from the United States for the purpose of seeking refugee protection.

**2. Response to the deepening crisis in Afghanistan:** CARL recognizes Canada's efforts in response to the Taliban's swift takeover of Afghanistan, including evacuations from Kabul and the establishment of special programs. We encourage you to include the following priorities in ongoing efforts to resettle Afghan refugees to Canada:

- a. Commit to the rapid and transparent operationalization of the special humanitarian programs focused on resettlement of Afghan nationals who are still inside Afghanistan;

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<sup>1</sup> Article 14(1) of the [Universal Declaration of Human Rights](#) (UDHR), which was adopted in 1948, and which Canada has ratified, guarantees the right to seek and enjoy asylum in other country; Article 33(1) of the 1951 Convention, which Canada has ratified, provides: "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his [or her] life or freedom would be threatened on account of his [or her] race, religion.

- b. Issue Temporary Residence Permits (TRPs) to family members of Afghan nationals already in Canada who have immigration applications in process;
- c. Use all available tools to maximize the number of Afghan refugees that can be resettled to Canada, through the use of flexible definitions, inclusion of extended family, and additional allocation to SAHs.; and
- d. Waive the requirement of UNHCR recognition for Afghan nationals being resettled via private sponsorship and recognize the Afghan crisis as a *prima facie* refugee situation.
- e. Respect our existing global resettlement commitment and ensure all Government Assisted Refugee spaces are additional to those in the Immigration Levels Plan.

**3. CBSA oversight:** Re-introduce and make a parliamentary priority your government's Bill C-31<sup>2</sup> to establish an independent oversight body for the Canada Border Services Agency (CBSA). The CBSA remains the only major law enforcement agency in Canada without an external oversight body. As Minister Blair has advised Parliament, "among our allies, Canada is alone in not having a dedicated review body for complaints regarding its border agency. The CBSA is also the only organization within the public safety portfolio without its own independent review body."<sup>3</sup> For years your government has supported the creation of an oversight mechanism, and has twice introduced legislation to create a CBSA review body.<sup>4</sup> The need for an oversight body is urgent and long overdue.

Beyond these critical matters, CARL remains concerned about several immigration and refugee issues and makes the following recommendations which we hope will be included in the mandate letters issued to your new Ministers.

#### **Minister of Citizenship and Immigration**

- **Sustainable legal aid funding:** Coordinate with the Minister of Justice, and with provincial and territorial governments, to reach a sustainable solution for legal aid funding for immigration and refugee matters.
- **Permanent Residency pathways for COVID-19 essential workers:** Expand existing pathways and create new pathways to permanent residence for COVID-19 essential workers. New pathways are a relatively simple way to fuel economic recovery in the aftermath of COVID-19 and should not exclude those who have initiated a refugee claim or who no longer have status.
- **Climate migration:** Consider measures to admit individuals affected by climate change as they cannot return to areas where there is a high likelihood that climate change-related risks threaten human rights.<sup>5</sup> CARL also encourages the adoption of legislation defining a climate migrant.

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<sup>2</sup> Bill C-3, *An Act to amend the Royal Canadian Mounted Police Act and the Canada Border Services Agency Act and to make consequential amendments to other Acts*, 1<sup>st</sup> Sess, 43d Parl, 2020 (died on the *Order Paper* when 43d Parliament was prorogued in August 2020).

<sup>3</sup> Canada, Parliament, *Hansard*, 43d Parl, 1st Sess, No 10 (29 January 2020) at 1600 (Hon. Bill Blair).

<sup>4</sup> See *Bill C-3 supra* note 1; Bill C-98, *An Act to amend the Royal Canadian Mounted Police Act and the Canada Border Services Agency Act and to make consequential amendments to other Acts*, 1<sup>st</sup> Sess, 42d Parliament, 2019 (died on the *Order Paper* when Parliament dissolved in September 2019).

<sup>5</sup> On October 8, 2021, the United Nations Human Rights Council recognized for the first time that having a clean, healthy and sustainable environment is a human right. See [Statement by UNDP Administrator, Achim Steiner](#).

- **BIA refugee ineligibility provisions:** As recommended by the Standing Committee on Citizenship and Immigration, institute a review of the refugee ineligibility and pre-removal risk assessment (PRRA) provisions created in the 2019 *Budget Implementation Act* to assess whether the new PRRA system is proceeding efficiently and fairly.
- **DCO and DFN regimes:** Amend the IRPA to remove the defunct provisions instituted by the previous Conservative government including Designated Countries of Origin (DCO) and Designated Foreign Nationals (DFN). While we appreciate that all DCO countries have now been de-listed, we encourage the government to implement its previous commitment to repeal the policy through legislative change.
- **Family reunification:** Continue to prioritize the best interests of the child and family reunification in immigration matters:
  - Create a simple pathway to citizenship for children currently or previously in child protection care. Foster children face deportation for criminality in circumstances where they would not if they had obtained citizenship. Removals of children in care and adults formerly in care, now deemed removable on account of criminality, should be halted until a just solution can be implemented;
  - Promote family reunification for refugee children by amending the IRPA to allow minors who have been accepted as Convention refugees or protected persons to include their parents in their applications for permanent residence; and
  - Amend the *Immigration and Refugee Protection Regulations* (IRPR) to repeal R117(9)(d) and R125(1)(d). The cost of family separation greatly outweighs the benefits. Previously undeclared persons would still be subject to certain admissibility requirements in the IRPA.

#### **Minister of Public Safety and Emergency Preparedness**

- **Security and inadmissibility:** Modernize Canada's security and inadmissibility provisions to align them with recent Supreme Court of Canada jurisprudence.
- **Long-term permanent residents:** Develop a public policy regarding the referral for Admissibility Hearings of long-term permanent residents with deep roots in Canada, including those who immigrated as children, as previously existed.
- **Immigration detention:** Recognize that administrative detention is an extraordinary restraint on liberty and commit to the following:
  - End the use of provincial correctional facilities for administrative detention; and
  - Develop sufficient mental health and community resources to ensure alternatives to detention are meaningfully available for all, including persons with mental health disabilities.

#### **Minister of Justice and Attorney General of Canada**

- **Sustainable legal aid funding:** As noted above, coordinate with the Minister of Citizenship and Immigration, and with provincial and territorial governments to reach a sustainable legal aid model for immigration and refugee matters.

- **Appointment of diverse judges to the Federal Court, especially with a strong background in immigration and refugee law:** Continuing with your government's recent historic appointments of two women of colour to the Federal Court, continue to appoint judges to the federal judiciary who reflect the diversity of the country and who have professional experience in immigration and refugee law (and area of law which accounts for the majority of the Federal Court's docket).

We look forward to continuing to work with your government on these issues and more, and would like an opportunity to discuss these recommendations at your earliest convenience.

Yours Sincerely,



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