



May 15, 2020

Via email: Minister@cic.gc.ca, bill.blair@parl.gc.ca

The Honourable Marco Mendicino, P.C. M.P.
Minister of Immigration, Refugees and Citizenship
365 Laurier Avenue West
Ottawa, ON K1A 1L1

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

Dear Ministers Mendicino and Blair:

Re: COVID-19 and Irregular Asylum Seekers

I write on behalf of the Immigration Law Section of the Canadian Bar Association (CBA Section) to express further concerns about refugee claimants who cross the US-Canada border irregularly being returned to the United States. We urged you to reverse this order when it was first introduced,¹ and are troubled that refugee claimants arriving irregularly from the US continue to be denied access to protection.

The CBA is a national association of 36,000 members, including lawyers, notaries, academics and students across Canada, with a mandate to seek improvements in the law and the administration of justice. The CBA Section has approximately 1,100 members across Canada practising in all areas of immigration and refugee law.

There is no legal justification to close Canada's borders to any refugee claimants. Canada can take measures to protect the public health of its population, while continuing to meet its legal and humanitarian obligations to refugee claimants pursuant to its international commitments.

We urge Canada to disclose the text of the agreement reached with the US regarding the border closure, including any commitments American officials made about asylum seekers turned back to the US. Refusal to disclose the agreement breaches the principles of democracy, constitutionalism and the rule of law.² It also undermines the government's commitment to transparency and open

¹ [COVID 19 and Temporary Border Agreement Regarding Asylum Seekers](#), April 8, 2020

² Reference re Secession of Quebec, [1998] 2 S.C.R. 217

government.³ American officials have previously stated that asylum seekers would be detained and forcibly removed to their country of origin, which contravenes the right to non-refoulement. In the absence of a written agreement between the two countries that this will not happen, we remain concerned that Canada is violating its international legal obligations.

The most recent Order in Council restores most of the Safe Third Country Agreement's exemptions, allowing individuals to initiate a refugee claim at an official port of entry if they have a family member residing in Canada.⁴ While this is a step in the right direction, excluding other refugee claimants is arbitrary and unjustifiable. Those who enter Canada irregularly will be denied access to protection and returned to the US where they face detention and deportation. There may also be a greater risk to their health in the US due to the higher prevalence of COVID-19.

With warmer temperatures on the horizon, refugees in desperate circumstances in the US may enter Canada, potentially taking riskier paths and seeking assistance from people smugglers. The current suspension of all removals in Canada creates additional incentive for them to evade interception by Canadian authorities. The fear of imminent arrest and removal to the US may also increase the likelihood that individuals who enter irregularly without being intercepted make misrepresentations or use false identities. Asylum seekers who manage to enter Canada irregularly are likely to wait until IRCC offices are instructed to accept their inland claims. As they wait in hiding, they may not observe the requirements of the *Quarantine Act*, putting their own health and the health of other individuals in Canada at risk.

We urge you to immediately reverse the policy of returning asylum seekers entering Canada irregularly from the US. Canada can protect both the human rights of vulnerable asylum seekers and the public health of all those in Canada.

Yours truly,

(original letter signed by Nadia Sayed for Ravi Jain)

Ravi Jain
Chair, Immigration Law Section

³ Government of Canada, [Open Government](#).

⁴ [Order in Council](#), 2020-0263, April 20, 2020.