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Friday, November-19-21

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**Re: Request to Stay Removal Orders, Reinstate Permanent Resident Status, and Create Pathway to Citizenship**

The undersigned request that:

1. The Minister of Public Safety immediately suspend the enforcement of any removal order against a foreign national who came to Canada as a child and spent any period of their childhood in Canada’s child welfare system;

2. The Minister of Immigration, Refugees and Citizenship immediately reinstate the permanent resident status of any former permanent resident in Canada who came to Canada as a child and spent any period of their childhood in Canada's child welfare system, or in the alternative immediately grant such persons Temporary Resident Permits and waive any associated fees;
3. The Minister of Immigration, Refugees and Citizenship provide a path to citizenship for all current and former permanent residents who are currently in or have spent any period of their childhood in Canada's child welfare system; and
4. The Minister of Immigration, Refugees and Citizenship and the Minister of Public Safety meet with the signatories of this letter to discuss these issues by January 2022.

In 2020, the Immigration Division of the Immigration and Refugee Board issued removal orders against 686 people on the basis of criminality.<sup>1</sup> A number of the people facing removal orders came to Canada as children and were involved in Canada's child welfare system as children and youth. While they were involved in the child welfare system, the state had a legal obligation to provide them with the care, guidance, and other services generally expected of parents, including a responsibility to seek Canadian citizenship on their behalf. Because the state failed to meet its obligations, these people did not become Canadian citizens, and are now facing deportation.

An example of this is the case of Abdoul Abdi, a Black Muslim man, who was involved in the child welfare system as a child, and in 2018 faced deportation due in part to the failure of the state to obtain citizenship on his behalf. Had it not been for the unrelenting organizing and activism of Black communities throughout Canada, Abdi would have been deported. Abdi still has not received permanent residency.<sup>2</sup>

The majority of recent immigrants are racialized.<sup>3</sup> Given the nature of immigration, and the systemic racism and anti-Black racism in the criminal justice system, racialized people in general, and Black people in particular, are more likely to be punished twice by serving a criminal sentence and being forced to leave the only country they have ever really known.

The undersigned believe that people who have served criminal sentences, particularly those who immigrated to Canada as children, should not also be subject to removals as this amounts to "double punishment." The circumstances of those who spent any period of their childhood in

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<sup>1</sup> Canada Border Services Agency, "Standing Committee on Public Accounts: Spring 2020 Auditor General report" (Nov 24 2020), online: <<https://www.cbsa-asfc.gc.ca/pd-dp/bbp-rpp/pacp/2020-11-24/km-mc-eng.html#s3>>

<sup>2</sup> Taryn Grant, "Former child refugees Abdoul and Fatouma Abdi sue N.S. for alleged abuse in care" (Sep 02 2020), online: CBC News <<https://www.cbc.ca/news/canada/nova-scotia/abdi-lawsuit-children-in-care-nova-scotia-home-for-colored-children-1.5709163>>

<sup>3</sup> Statistics Canada, "Visible Minority (15), Immigrant Status and Period of Immigration (11), Age (12) and Sex (3) for the Population in Private Households of Canada, Provinces and Territories, Census Metropolitan Areas and Census Agglomerations, 2016 Census - 25% Sample Data", online: <<https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/dt-td/Rp-eng.cfm?TABID=2&Lang=E&APATH=3&DETAIL=0&DIM=0&FL=A&FREE=0&GC=0&GID=1341679&GK=0&GRP=1&PID=110532&PRID=10&PTYPE=109445&S=0&SHOWALL=0&SUB=0&Temporal=2017&THEME=120&VID=0&VNAMEE=&VNAMEF=&D1=0&D2=0&D3=0&D4=0&D5=0&D6=0>>

the child welfare system, are particularly egregious because they are facing removal in part due to a failure of the state to obtain Canadian citizenship for them.

### **Anti-Black Racism in Child Welfare**

Black children and families are overrepresented in child welfare systems relative to their proportion in the general population. For example, a 2018 report by the Ontario Human Rights Commission found that “the proportion of Black children admitted into care was 2.2 times higher than their proportion in the child population.”<sup>4</sup>

Black people are overrepresented in the child welfare system largely because Canada’s child welfare policies are oppressive, because the discretionary practices of child welfare agencies are biased, and because there is a lack of culturally safe service responses. A 2016 report found that despite experiencing similar rates of neglect, and of physical, sexual and emotional abuse as white children, Black children are 40% more likely to be investigated, 18% more likely to have their abuse substantiated, 8% more likely to be transferred to ongoing services, and 13% more likely to be placed in out-of-home care during investigations.<sup>5</sup>

Because Black children are disproportionately admitted into the child welfare system, Black children who were not citizens at the time that they became involved in the child welfare system are also more likely to be disproportionately impacted by a failure of the state to seek and obtain Canadian citizenship on their behalf.

It is also worth noting that youth in the child welfare system are particularly vulnerable to “crossing over” to the criminal justice system. This is mainly because actors in the child welfare system often rely on police to “parent”; i.e. for de-escalation and crisis management. In Ontario, it is estimated that over 50% of young people living in group care settings will incur criminal charges related to something that they did in out-of-home care.<sup>6</sup> For most, this will be their first criminal charge.<sup>7</sup> Black youth are more likely to receive more severe charges, more administrative charges, and more time in pre-trial detention.<sup>8</sup> This is referred to as the “child welfare to youth justice pipeline”.

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<sup>4</sup> Ontario Human Rights Commission, “Interrupted childhoods: Over-representation of Indigenous and Black children in Ontario child welfare” (Feb 2018), at 4, online: [http://www.ohrc.on.ca/sites/default/files/Interrupted%20childhoods Over-representation%20of%20Indigenous%20and%20Black%20children%20in%20Ontario%20child%20welfare\\_accessible.pdf](http://www.ohrc.on.ca/sites/default/files/Interrupted%20childhoods%20Over-representation%20of%20Indigenous%20and%20Black%20children%20in%20Ontario%20child%20welfare_accessible.pdf)

<sup>5</sup> Ontario Association of Children’s Aid Societies, “One Vision, One Voice: Changing the Ontario Child Welfare System to Better Serve African-Canadians, Practice Framework Part 1: Research Report”, (Sep 2016) at 22, online: [http://www.oacas.org/wp-content/uploads/2016/09/One-Vision-One-Voice-Part-1\\_digital\\_english.pdf](http://www.oacas.org/wp-content/uploads/2016/09/One-Vision-One-Voice-Part-1_digital_english.pdf)

<sup>6</sup> Judy Finlay et al., “Cross-Over Youth Project: Navigating Quicksand” (Sep 2019) at 74, online: <https://youthrex.com/wp-content/uploads/2020/01/COYNavigatingQuicksand.pdf>

<sup>7</sup> *Ibid.* at 76.

<sup>8</sup> *Ibid.* at 77.

## Anti-Black Racism in Criminal Justice

It is well documented that police services single out Black people for greater scrutiny, surveillance, and questioning.<sup>9</sup> As a result, police are also more likely charge and arrest Black people.<sup>10</sup> Once arrested, judges and justices of the peace are more likely to deny Black people bail. If they grant bail, they are more likely to impose more release conditions, thereby subjecting Black people to greater surveillance by the court (i.e. curfews, mandatory supervision requirements), and increasing the likelihood of a breach of bail conditions.<sup>11</sup> This means that Black people are also more likely to plead guilty, be unjustly convicted, and have more severe sentences imposed on them after conviction.<sup>12</sup> As a result, Canada incarcerates Black people at rates that are disproportionate to their representation in the general population. Despite representing only 3% of the population in Canada, Black people represent 7% of people in Canada's prisons.<sup>13</sup>

Black people are disproportionately policed, stopped, questioned, arrested, charged, convicted and sentenced. As a result, Black people who are not citizens, are also more likely to be deemed inadmissible for reasons of criminality.

## Anti-Black Racism in Immigration

As noted in "Regulating Spousal Migration through Canada's Multiple Border Strategy: The Gendered and Racialized Effects of Structurally Embedded Borders":

... practices that criminalize immigrants enable the state to discriminate against immigrants within the law. The combined effect of criminalization of people of color through race-neutral laws, along with the legality of discrimination within the

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<sup>9</sup> Scot Wortley and Julian Tanner, "Data, denials, and confusion: The racial profiling debate in Toronto" (2003) 45(3) Canadian J. Criminology and Crim. Just. 367; Akwasi Owusu-Bempah "The usual suspects: police stop and search practices in Canada" (2011) 21(4) Policing and Society 395; Scot Wortley and Julian Tanner "Inflammatory rhetoric? Baseless accusations? A response to Gabor's critique of racial profiling research in Canada" (2005) 47(3) Canadian J. Criminology and Crim. Just. 581; Jim Rankin, Sandro Contenta, and Andrew Bailey "Toronto marijuana arrests reveal 'startling' racial divide" *The Toronto Star* (6 July 2017), online:

<https://www.thestar.com/news/insight/2017/07/06/toronto-marijuana-arrests-reveal-startling-racial-divide.html>

<sup>10</sup> Vic Satzewich & William Shaffir, "Racism versus Professionalism: Claims and Counter-Claims about Racial Profiling" (2009) 51 Canadian J. Criminology and Crim. Just. 119 at 203.

<sup>11</sup> Gail Kellough and Scot Wortley, "Remand for Bail: Bail decisions and plea bargaining as commensurate decisions" (2002) 42(1) Brit J Crim 186, as explained in Akwasi Owusu-Bempa & Scot Wortley, "Race, Crime and Criminal Justice in Canada" in Sandra M. Bucerius & Michael H. Tonry eds, *The Oxford Handbook of Ethnicity, Crime and Immigration*, (Oxford: Oxford University Press, 2013) at 292; Anna Mehler Paperny "Exclusive: New data shows race disparities in Canada's bail system" Reuters (19 October 2017), online:

<https://ca.reuters.com/article/domesticNews/idCAKBN1CO2RD-OCADN>

<sup>12</sup> Commission on the Reform of Ontario's Public Services, "Public Services for Ontarians: A Path to Sustainability and Excellence", (2012) at 354, online: <http://www.fin.gov.on.ca/en/reformcommission/chapters/report.pdf>

<sup>13</sup> Department of Justice Canada, "Bill C-22: Mandatory Minimum Penalties to be repealed", online: <https://www.canada.ca/en/department-justice/news/2021/02/bill-c-22-mandatory-minimum-penalties-to-be-repealed.html>

immigration system, creates an effective means to discriminate against immigrants, the majority of whom are racialized, within a post-racial legal framework.<sup>14</sup>

Canada has a long history of using immigration laws to discriminate against racialized people. Between 1885 and 1903, Canada imposed a head tax on Chinese immigrants. In 1906, Canada banned immigration from India. In 1911, Canada set up regulations to prevent the immigration of African Americans. In 1923, Canada introduced the *Chinese Exclusion Act*. Successive governments have followed suit.<sup>15</sup>

## Conclusion

The federal government has made numerous commitments to combatting racism in general, and anti-Black racism in particular.<sup>16</sup> Enforcing removal orders against people who have been perpetual victims of systemic anti-Black racism contradicts and undermines these commitments.

Removing a permanent resident who was formerly involved in Canada's child welfare system also violates the right to equal benefit and protection of the law under s. 15(1) of the *Canadian Charter of Rights and Freedoms*.<sup>17</sup>

It is also inconsistent with Canada's obligations under the United Nations Convention of the Rights of the Child, including:

- to take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members; and
- to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, to take all appropriate legislative and administrative measures.

Finally, suspending these removals, reinstating permanent resident status or issuing temporary resident permits for people who have had removal orders issued against them, and providing a path to citizenship is consistent with Bill S-215 "An Act to amend the Citizenship Act and the

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<sup>14</sup> Rupaleem Bhuyan, et al., "Regulating Spousal Migration through Canada's Multiple Border Strategy: The Gendered and Racialized Effects of Structurally Embedded Borders" (2018) *Law & Policy*, 40(4) at 32, online: <[https://tspace.library.utoronto.ca/bitstream/1807/94924/3/Regulating%20Spousal%20Migration\\_Bhuyan.pdf](https://tspace.library.utoronto.ca/bitstream/1807/94924/3/Regulating%20Spousal%20Migration_Bhuyan.pdf)>

<sup>15</sup> Barrington Walker, "Introduction: From a Property Right to Citizenship Rights - The African Canadian Legal Odyssey" in *The African Canadian Legal Odyssey: Historical Essays* (University of Toronto Press, 2012) at 34-35; Robyn Maynard, *Policing Black lives: State violence in Canada from slavery to the present* (United States: Fernwood Publishing, 2017) at 64.

<sup>16</sup> Government of Canada, "Building a Foundation for Change: Canada's Anti-Racism Strategy 2019–2022", online: <<https://www.canada.ca/en/canadian-heritage/campaigns/anti-racism-engagement/anti-racism-strategy.html>>; Government of Canada, Federal Anti-Racism Secretariat, online: <<https://www.canada.ca/en/canadian-heritage/campaigns/federal-anti-racism-secretariat.html>>

<sup>17</sup> *Canadian Charter of Rights and Freedoms*, s 7, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11, s. 15.

Immigration and Refugee Protection Act”, introduced by the Honourable Senator Mobina Jaffer in 2020.

Sincerely,

Black Legal Action Centre (BLAC)  
Ontario Council of Agencies Serving Immigrants (OCASI)  
South Asian Legal Clinic of Ontario (SALCO)  
Chinese Southeast Asian Legal Clinic (CSLAC)  
Colour of Poverty Campaign  
Collective of Child Welfare Survivors (CCWS)  
Peacebuilders International (Canada)  
Refugee Law Office (RLO)  
Canadian Civil Liberties Association (CCLA)  
Canadian Association of Refugee Lawyers (CARL)  
Midaynta Community Services

The **Black Legal Action Centre (BLAC)** is an independent not-for-profit community legal clinic that combats individual and systemic anti-Black racism by conducting research, engaging in structural transformation, and providing legal services to members of Ontario's Black communities. BLAC engages in advocacy, community development, law reform, test case litigation, and public legal education.

The **Ontario Council of Agencies Serving Immigrants (OCASI)** is the umbrella organization for immigrant and refugee-serving organizations in Ontario, and now has 240 member agencies across the province. As the collective voice of the immigrant and refugee-serving sector in the province OCASI is an important advocate for access and equity for refugees, refugee claimants, immigrants, migrants and people with precarious immigration status.

The **South Asian Legal Clinic of Ontario (SALCO)** is a community legal clinic mandated to provide free legal services to low-income South Asian communities in Ontario. SALCO also engages in systemic advocacy on the issues that impact low-income South Asians and other disadvantaged communities in Canada including immigration reform, employment / labour market outcomes, poverty, systemic racism, faith-based discrimination, and gender-based violence.

The **Chinese and Southeast Asian Legal Clinic (CSALC)** is a community based legal clinic which provides free legal services to low-income Chinese, Vietnamese, Cambodian and Laotian communities in Ontario. Established in 1987, CSALC has become an important advocate for many immigrant workers and workers from racialized communities who find themselves ghettoized in low waged, non-unionized jobs, and who face exploitation by employers who have little regard for their rights.

SALCO, OCASI, CSALC, and BLAC are steering committee members of **Colour of Poverty Campaign (COPC)**, a province-wide community initiative to build community-based capacity to address the growing racialization of poverty and the resulting increased levels of social exclusion and marginalization of racialized communities (both Indigenous Peoples and peoples of colour) across Ontario.

The **Collective of Child Welfare Survivors (CCWS)** is a grassroots organization that provides various supports for child welfare survivors as well as their families, and currently works in partnership with the Black Legal Action Centre (“BLAC”). This includes systemic organizing, community development, and one-on-one individual intervention/advocacy, all grounded in principles of critical youth-centering, decolonization, and a lens on anti-Black racism. Most persons seeking support (“PSS”) are Black, Indigenous, and racialized people.

**Peacebuilders International (Canada)** is a non-profit organization based in Toronto that seeks to improve access to justice for young people in conflict with the law and advocate for change in our justice, child welfare and education systems. Since its inception in 2002, Peacebuilders has been committed to transforming the youth justice system from one that punishes and harms young people to one that supports and empowers. Its flagship **Restorative Youth Circles (RYC) Program** is the first clinic of its kind in Toronto. Through our programming, training and advocacy, Peacebuilders promotes restorative justice as an effective way to work with youth in conflict and support their critical reflection and positive decision-making skills. Peacebuilders uses restorative programs in the youth court to offer meaningful alternatives for young people and in Toronto high schools to help students and teachers manage conflict and make schools safer for learning and development.

The **Refugee Law Office (RLO)** works to promote the full realization of the rights of refugees and migrants in Canada through the provision of high quality, sustainable legal services to persons in need, and through law reform, legal representation, education, and support to service providers and agencies.

The **Canadian Civil Liberties Association (CCLA)** is a human rights organization committed to defending the rights, dignity, safety, and freedoms of all people in Canada. As was established in the organisation’s founding principles, CCLA is the pre-eminent voice advocating for the rights and freedoms of all Canadians and all persons living in Canada. We are a leader in protecting rights and have earned widespread respect for our principled stand on such issues as national security, censorship, capital punishment, and police and state accountability —with a fearless voice on civil liberties, human rights and democratic freedoms.

The **Canadian Association of Refugee Lawyers (CARL)** serves as an informed national voice on refugee law and the human rights of refugees and forced migrants, and promotes just and consistent practices in the treatment of refugees in Canada. CARL carries out its work promoting the human rights of refugees in the courts, before parliamentary committees, in the media, among its membership via bi-annual conferences, and elsewhere in the public sphere. CARL’s membership includes over 350 lawyers, academics and law students from across Canada. Relying on the broad experience of this membership, CARL has a mandate to research, litigate and advocate on refugee rights, forced migrants and related issues. CARL is a non-profit, non-partisan organization.

**Midaynta Community Services** is a registered Canadian charitable organization that provides settlement services and other programs that advances education by providing courses, seminars, meetings, counseling and other support services for refugees, immigrants and youths in need. We are a social and settlement services agency, working to improve the quality of life of newcomers in Toronto and vicinity. Midaynta was established in July 1993 as a family reunification project, and incorporated in August 1995 as a non-profit organization committed to identifying and responding to the needs of the community. Midaynta abides by a policy of non-discrimination and equity, and our services are open to everyone and are free of charge. Midaynta has a team of professionals who are committed and passionate about their work. Midaynta's success is built on strong working relationships with their stakeholders. Due to their diversified services, Midaynta is able to assist newcomers from their initial start-up process upon arrival until their full adaptation in the society. They are striving to provide services that promote, accountability, transparency, social justice, equality and equity, partnership and diversity.