



DEPORTING REFUGEES

Hidden Injustice in Canada

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SSHRC  CRSH
Social Sciences and Humanities Research Council of Canada
Conseil de recherches en sciences humaines du Canada

About this Report

Romero House

Romero House is a charitable organization and community of welcome and accompaniment for newly arrived refugee claimants in Toronto. Romero House offers transitional housing and immigration and settlement support in the spirit of good neighbours valuing dignity, mutuality and care.

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Suggested Citation

Dennler, Kathryn Tomko and Brianna Garneau. 2022. *Deporting Refugees: Hidden Injustice in Canada*. Romero House <https://romerohouse.org/wp-content/uploads/2022/08/Report-on-deportation.pdf>.

Acknowledgements

Funding for the research and this report was provided by a Social Sciences and Humanities Research Council (SSHRC) Partnership Engage Grant. The project received research ethics approval from York University's Office of Research Ethics' Human Participants Review Committee.

We thank the interviewees who generously shared their time and expertise. The research was made possible thanks to the assistance of Andrew Kultun, Chris Hendershot, Craig Damian

Smith, Hayley Schultz, Jennifer Hyndman, Jenn McIntyre, Jeoung Ha-Seul, Lina Alipour, Mary Jo Leddy, Michele Millard, Sean Rehaag, and Simon Wallace. We thank those who provided feedback on the paper: Dave Meslin, Francesca Allodi-Ross, Idil Atak, Jeff Dennler, Kristin Marshall, Pierre-André Thériault, and Sean Rehaag. Finally, we thank our graphic designer, Yuriko Zakimi. Any mistakes are the responsibility of the authors.

Related Resources

In addition to the report, we created two additional resources that serve as a companion to this report. The first is a data repository with data from access to information requests. The second is a document with information aimed at people who are going through the deportation process.

A data repository with government documents and data analyzed to write this report: <https://refugeelab.ca/projects/deportation-data>

Plain-language brochure that explains the deportation process, aimed at people who are going through the deportation process: <https://romerohouse.org/wp-content/uploads/2022/08/Know-your-rights.pdf>

Contents

- Canada’s Hidden and Unjust Deportations.** **5**
- Research Methods 6
- The Deportation Process.** **7**
- Stage 1: Waiting After Refusal 8
- Stage 2: Action 10
- Stage 3: Outcomes. 12
- Legal Options during Deportation** **14**
- Humanitarian and Compassionate Submissions (H&C). 14
- Pre-Removal Risk Assessment (PRRA) 15
- Deferral Requests and Stays of Removal. 15
- Success Rates of Legal Options 16
- CBSA Structure and Mandate Contribute to Poor Outcomes.** **19**
- Seven Factors that Lead to Unjust Deportations 19
- Deportation Engages Human Rights 20
- A Focus on Enforcement Interferes with Fairness 21
- Duration Matters: Waiting Period, Travel Documents, and
Legal Options 22
- Insufficient Policies, Training, and Management 24
- Independent Oversight Is Needed, but Lacking. 25
- An Opaque Deportation Process Is Unjust** **28**
- Lack of Available Information 28
- Language Barriers Deepen Confusion 29
- Difficulty Securing Legal Representation 29
- CBSA Officers Misinform People about Deportation 31
- The Role of Bias in Decision-Making** **33**
- Assessing Cooperation 33
- Systemic Racism 35
- Recommendations for the Canadian Government** **37**
- Recommendations for People Who Work with Refugee Claimants . .** **39**
- References** **40**

INTRODUCTION:

Canada's Hidden and Unjust Deportations

Deportation forces people to leave against their wishes. In Canada, the threat of detention is used to secure people's cooperation with the deportation process. From 2016 to 2019, more than half of the 35,000 people deported from Canada were deported because their claim for refugee status was refused.¹ Thousands were sent to countries where conflict, violence, and persecution continue, including Colombia, Mexico, Nigeria, Pakistan, and Turkey. It is unknown how many people with a refused refugee claim experience harm and persecution after deportation.



For people who fear return, deportation is frightening. Systemic problems also mean that deportations can be unfair:

1. The deportation process is confusing, and there is almost no publicly available information to help people navigate the process.
2. CBSA prioritizes speedy enforcement over ensuring human rights protections.
3. Appropriate policies and management structures to prevent CBSA misconduct are missing, meaning that abuses and other forms of injustice occur.
4. Government policies and practical barriers make it difficult to access legal options that could stop deportation for people who face risk.

Deportations mostly occur quietly, with limited information available about deportations, little public scrutiny, and no independent oversight mechanism. There is little research that studies the deportation process. The purpose of this report is to fill this gap. This report improves transparency about the deportation process and how the process perpetuates unfairness, racism, and human rights violations. The report concludes with thirteen recommendations to address problems in the deportation process.

¹ In legal terms, deportation is called 'removal.' The orders to 'remove' people are called departure orders, deportation orders, and exclusion orders, depending on the specific circumstances. We use the term deportation for all 'removals,' not only those legally called a 'deportation order.'

Research Methods

We analyzed government data and conducted interviews with people who work with people with a refused refugee claim.²

Government data comes from publicly available information and responses to Access to Information and Privacy (ATIP) requests made to Canada Border Services Agency (CBSA) and Immigration, Refugees, and Citizenship Canada (IRCC) between October 2020 and April 2022.

We conducted 24 semi-structured interviews, speaking to:

- 17 experienced refugee lawyers who practice in Ontario and Quebec
- 2 consultants with expertise in immigration and refugee law who practice in Ontario
- 4 people in Ontario who work for community organizations
- 1 former deportation officer³

All names of interviewees in the report are pseudonyms.

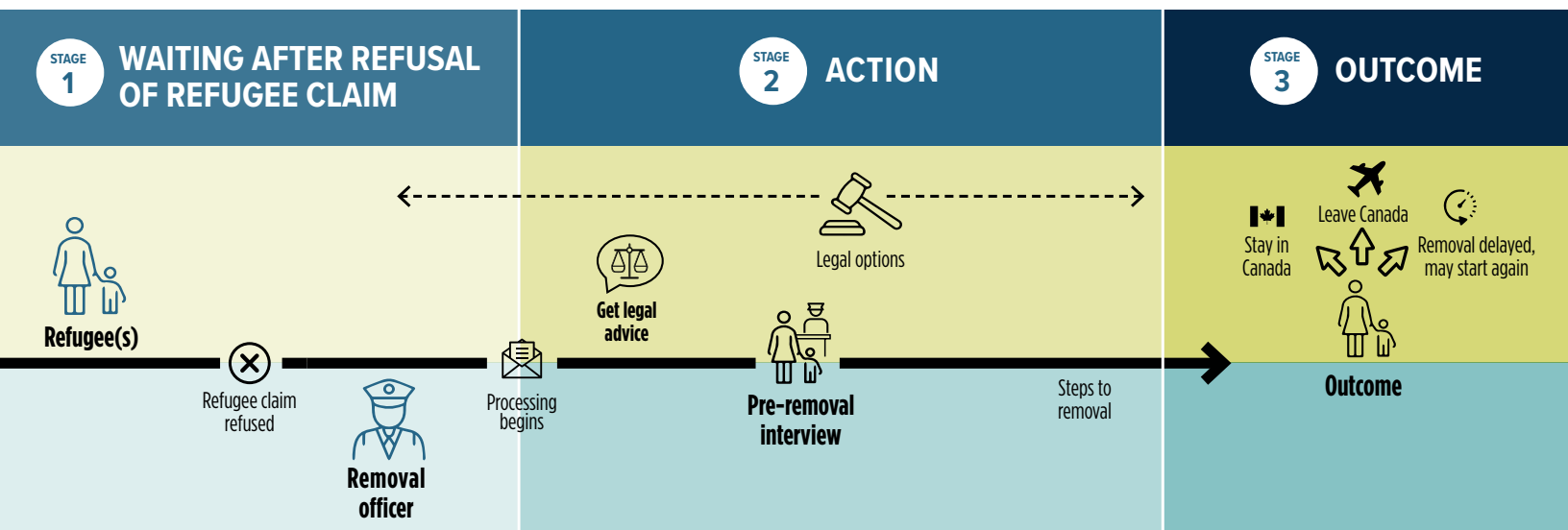
We focus on a single group – people with a refused refugee claim who are not in detention at the time of deportation. We identify persistent structural problems that lead to unfairness, misinformation, and human rights violations within the ‘removals’ program. Because CBSA has no independent oversight or effective complaints mechanism, it is difficult to quantify structural problems or CBSA misconduct. Interviewees had encountered CBSA misconduct that they could not share because descriptions of the incidents would potentially identify the interviewee and/or the person involved. The research and report does not capture the perspectives of people who have been deported or who are in the deportation process.

2 Although the research was conducted during the COVID-19 pandemic, including when there was a moratorium on deportations, we asked interviewees to focus on how deportation functioned in non-pandemic times.

3 CBSA officers who advance deportations are called ‘removal’ officers. We use the term deportation officer to emphasize their role in deporting people.

The Deportation Process

Every person who claims refugee status is given a conditional deportation order. The conditional deportation order takes effect if the claim is denied and the person has no more opportunities to appeal. This report focuses on the three stages that occur once the conditional deportation order takes effect.



- **Stage 1: Waiting After Refusal of Refugee Claim** – the period of time after the refugee claim is refused and there are no more rights to appeal the refusal and before CBSA begins actively working to enforce the deportation.
- **Stage 2: Action** – the period of time in which CBSA officers take steps to enforce a deportation. People find out the action phase has begun when they receive a letter telling them to attend their first pre-deportation interview. During the action stage, people may also take steps to delay or contest the deportation or apply for permanent residence on humanitarian and compassionate grounds.
- **Stage 3: Outcome** – the conclusion of the deportation process. There are several possible outcomes, including delaying the deportation, enforcing the deportation, gaining permanent residence in Canada (which prevents deportation), or ending contact with CBSA.

STAGE 1:

Waiting After Refusal



STAGE 1
WAITING AFTER
REFUSAL

STAGE 2
ACTION

STAGE 3
OUTCOME

After there are no more opportunities to appeal a negative decision, CBSA sends a letter telling people to take steps to leave Canada. This indicates that the deportation order has taken effect. During the waiting stage, CBSA is not actively taking steps to enforce the deportation.

The Duration of the Waiting Stage Is Unpredictable

The duration of the waiting stage varies considerably. CBSA calls in some people for the initial pre-deportation interview within weeks of their last refusal, whereas CBSA may not initiate contact with others for years.

Many officials handle an individual's file during and after the refugee claim process. Depending on what applications and appeals have been lodged, all or part of the file may be held by Immigration, Refugees, and Citizenship Canada (IRCC), the Immigration and Refugee Board (IRB), the Refugee Appeal Division (RAD), or the Federal Court. Information is not always transferred between agencies in a timely manner. For example, the 2020 Auditor General report on the 'removals' program stated that cases refused at the Federal Court are not always entered into the computer system quickly.⁴

There is no apparent pattern to explain the difference in timelines because the timeline is influenced by delays in processing and file sharing, as well as decisions by deportation officers on how to prioritize their caseload.

On average, deportations occur about 1,000 days after the refugee case was refused.

When CBSA receives the file, CBSA managers should assign it to an officer. According to the Auditor General, "In a representative sample of cases that were not removed within 1 year... about 1 in 5 cases were delayed simply because they were not assigned to an officer."⁵

⁴ Office of the Auditor General of Canada, "Immigration Removals," 10.

⁵ Office of the Auditor General of Canada, 11.

Asked about differences in the duration of the waiting stage, Kevin, a former deportation officer, explained:

“

It could be a whole bunch of reasons. It could be a question of travel documents. If you need stats [progress towards performance targets] before the end of the month, the ones that will be called in are the ones where you have a travel document. The easier case, right? I don't think there's specific reasons [that for] some people it takes one month and some people it takes six months. It could also be that IRCC doesn't send the file to CBSA for the next four months because they're still doing paperwork or they're dealing with an outstanding spousal [sponsorship] and they keep the file to have all the information.

The Government of Canada is working to address problems in data sharing and data management. The 2019 budget allocated funds for IRCC, CBSA, and the IRB to enhance the data sharing capability. The initiative, called Information Technology System Interoperability, was scheduled for completion in the 2022-23 fiscal year.⁶ It is unclear whether the project is on schedule and if it will function well. But the project could impact the duration of the post-refusal period and its predictability.

Once a case is assigned to a deportation officer, officers have discretion in deciding which cases to work on first. But errors in the CBSA database make it difficult for officers to decide how to prioritize their caseload. The Auditor General identified cases where electronic files don't show that key documents have been received; cases missing from the 'removal inventory;' and cases wrongly labeled as either actionable or not actionable.⁷

⁶ Immigration, Refugees, and Citizenship Canada, "CIMM - Enhancing the Integrity of Canada's Borders and Asylum System – Information Technology Systems Interoperability."

⁷ Office of the Auditor General of Canada, "Immigration Removals," 12.

STAGE 2

Action

STAGE 1
WAITING AFTER REFUSAL



STAGE 2
ACTION

STAGE 3
OUTCOME

The action stage starts when a deportation officer begins working on the file. Kevin explained that the first step is to become familiar with the case based on data in the file. Kevin characterized data management as “horrible.” Older cases tended to be on paper, while newer cases were often spread across both paper and the database. “Even if we had put everything in the online system, a lot of people preferred to deal with the paper version, so everything was printed and put in the file with paper as well.” Then the officer calls in the person for the first pre-deportation interview.

Pre-Deportation Interviews

People know the deportation is being actively pursued when they are told to come for the first pre-deportation interview. The purpose of the first interview is to inform someone their deportation order is enforceable and they are being deported, to verify information and to tell people what steps they are expected to take.

The deportation officer asks about the person’s address, whether they work, and whether they have any immigration applications pending. The officer will tell people what they should do such as getting passport photos or buying a plane ticket. In subsequent interviews, officers verify that people have complied with CBSA instructions and are continuing to comply with the deportation process. Deportation officers have the authority to detain people who appear uncooperative or non-compliant.

In Toronto, interviews take place at CBSA’s Greater Toronto Area Region Enforcement and Intelligence Operations Division (EIOD)⁸ at 6900 Airport Road, across the street from Toronto Pearson International Airport. Proximity to the airport and long wait times in a waiting room with other frightened people make EIOD an unpleasant place. Some deportation officers

⁸ EIOD is sometimes also called by its former name, Greater Toronto Enforcement Centre (GTEC).

attend interviews wearing a full uniform including a gun, which increases people's fear. Sathya explained, "It's a very bad energy in there."

Most legal representatives we interviewed did not usually attend pre-deportation interviews with clients. Legal Aid does not compensate lawyers for attending interviews. Paid representatives felt it was unnecessarily expensive, especially since clients may need that money for other legal work. But interviewees did stress the importance of representation once the action stage begins. A representative can prepare clients for pre-deportation interviews by helping them understand what to expect, how to conduct themselves, what not to say, and what information they should record during the pre-deportation interviews.

Steps to Enforce Deportation

During the action stage, deportation officers take steps to advance the deportation. Kevin handled cases by addressing the following issues, in order:

1. verify the validity of the travel document
2. obtain a travel document if there is none or the one on file is expired
3. initiate a pre-removal risk assessment (PRRA) if eligible
4. inform the person of the PRRA decision
5. plan the deportation

He explained this order, saying, "If there's no travel document, we're not going any further [in the process]." Without the possibility of a deportation, there is no reason to take subsequent steps. However, he also said this order was not standard across all CBSA regional offices.

As the officer advances the deportation, people may simultaneously seek legal options to delay or prevent their deportation. Several interviewees worried that shame and stigma stop people from seeking help after the refusal of their refugee claim.

Interviewees stressed that people who do not want to be deported should seek advice from an experienced refugee support organization and/or an experienced refugee lawyer. Ava, a community worker, urged refugees, "Reach out. Even to settlement agencies. Don't be afraid to reach out because probably there are options that nobody explained to you."



Once a person is ‘removal ready,’ the CBSA officer arranges the deportation. They often ask the person whether they want to purchase their own ticket or whether CBSA should purchase the ticket on their behalf. Some officers allow the person to choose the date of deportation, especially those who purchase their own plane ticket. Another stated advantage of purchasing one’s own ticket is to make it easier for a person to return to Canada later. However, once a former refugee claimant is deported, they must seek permission to return to Canada and permission may not be granted.

The duration of the action stage is variable. It depends on whether someone has a valid travel document or needs to obtain a new one, whether the country of origin cooperates with issuing a new travel document, whether the person pursues legal options to delay or stop deportation, and whether the person is detained. These factors are examined in detail later in the report.

Stephanos explained that the worst scenario for someone who fears return is when, at the first pre-deportation interview, they have no immigration application pending, a valid travel document in CBSA’s possession and no reason why they cannot be removed. In that case, “very often removal proceedings are discussed that same day.”

STAGE 3

Outcomes



There are several possible outcomes to the deportation process – deportation, delay of deportation, or gaining permission to stay in Canada (thereby stopping the deportation).

In most cases, on the day of deportation, the person transports themselves to the airport or border. They are met by an officer, who provides the travel document to enable the person to board the plane or to cross the land border.

Transportation Infrastructure in Deportation

CBSA mostly uses commercial flight infrastructure to enforce deportations. William Walters, scholar of deportation, has observed that “the very same flight routes that knit places and people together globally and across borders are also used [for deportation].”⁹

CBSA purchased more than 15,000 tickets on commercial flights between 2013 and 2019 to deport people whose refugee claims were refused.¹⁰ Over 4,000 of those flights were on Air Canada or its subsidiaries, accounting for almost 27% of CBSA’s purchases. This percentage was consistent across the years included in the study. Among other Canadian airlines, CBSA purchased 257 flights on Air Transat and 331 flights on WestJet between 2013 and 2019. CBSA purchased more than 100 tickets on four airlines in 2019: Air Canada, Aeromexico (Aerovias de Mexico), Ethiopian Airways, and LOT-Polish Airways.¹¹

People being deported usually fly unaccompanied by CBSA officers.

According to 2017-18 Departmental Results Report, CBSA ratified a Joint Air Removal Charter memorandum of understanding (MOU) with the US.¹² We requested the MOU, but CBSA denied access to the document.¹³



Despite use of commercial flights, deportations are often invisible to other travellers.

9 Walters, “Deportation as Air Power.”

10 In some cases, people with refused refugee claims purchase their own flights. We did not seek data on which airlines were most used by people purchasing their own ticket.

11 ATIP Request A-2020-17524 to CBSA

12 CBSA, “2017-18 Departmental Results Report - Canada Border Services Agency.”

13 ATIP Request A-2020-16909 and A-2021-05443

Legal Options during Deportation

There are four commonly-used applications that legal representatives use to contest or prevent a deportation. The below table summarizes each type of application. In the rest of the section, we provide more detail on each and provide data on the success rates for H&Cs, PRRAs, and requests for a deferral of removal.

SUMMARY OF LEGAL OPTIONS				
APPLICATION TYPE	DECIDED BY	DESCRIPTION	AFFECT ON DEPORTATION	OUTCOME
Humanitarian and Compassionate (H&C)	IRCC	Application for permanent residence based on evidence of hardship, establishment in Canada, the best interests of the child, and humanitarian considerations	Can be deported while waiting for decision	If positive, person is granted permanent residence
Pre-Removal Risk Assessment (PRRA)	IRCC	Based on new evidence of risk not previously considered in the refugee claim	No deportation until decision for first PRRA	If positive, person can apply for permanent residence
Request to Defer Removal	CBSA	Request to postpone deportation for reasons such as a pending H&C application, new evidence of risk not previously considered, or information related to health or children	Deportation will take place as scheduled unless deferral is granted	If request is granted, deportation is postponed for a specific purpose or length of time
Stay of Removal	Federal Court	Appeal of negative decision on a deferral of removal or a request to postpone deportation until a pending Federal Court application can be decided; based on a serious issue raised in the pending application and irreparable harm of enforcing deportation	Deportation will take place as scheduled unless stay motion is granted	If granted, deportation is postponed until the pending application is decided by the Federal Court

Humanitarian and Compassionate Submissions (H&C)

The H&C is an application for permanent residence outside the immigration rules based on humanitarian considerations. People can be deported while the H&C application is pending. But an H&C can strengthen a request for a deferral of removal.

Asked what makes a strong case, Melanie, a refugee lawyer, answered, “Evidence. An H&C is completely discretionary. Either there’s best interests of the children, or there’s hardships in the country, or there’s establishment in Canada, or [a combination of the] three. But you have to have the evidence to back it up.” She went on to explain that she does not submit a claim without extensive evidence: “We do 15–30-page submissions. [The application fee is] \$550; if you’re doing a family, it’s \$550 per adult and \$150 per kid. I’m not going to waste everybody’s time and money.”



Morris, a refugee lawyer, stated, *“Putting in an H&C as soon as you legally can is very helpful. It’s probably the best thing that someone can do.”*

In some cases, an H&C can be filed immediately following the last negative decision on the refugee claim. In other cases, there is a one-year bar, meaning that the person must wait one year after the last decision on the refugee claim to submit the H&C.

Refugee support organizations encourage their clients to spend the post-refusal waiting period strengthening their ties to Canada, since doing so helps to prepare for a future H&C application. Ava, a community worker, said, “We tell people to be prepared for an H&C. Go in the community, do volunteer work, try to maintain stable work, try to send kids not only to school but extracurricular activities.”

Pre-Removal Risk Assessment (PRRA)

A PRRA is a final opportunity to argue risk before deportation. A person is only eligible to make a PRRA during the action stage of the deportation process and only if a year has passed since the final decision on the refugee claim. The deportation officer should offer an opportunity to submit a PRRA application if the person is eligible.

A strong PRRA cannot repeat the arguments from the refugee claim. Rebecca, a refugee lawyer, explained that a PRRA “is to look at new evidence of risk, or evidence that was not reasonably available at [the time of the refugee claim].” The risks should be carefully documented. Peggy, another refugee lawyer, said, “You kind of have to fit the [Section 96 or Section 97 IRPA] definition. How much evidence is there? Does the client have evidence about their own risk? What kind of country conditions [and] documents, can we provide?”

Deferral Requests and Stays of Removal

A request for a deferral of removal is a request to delay the deportation justified with a strong reason. A person cannot seek a deferral of removal until the deportation has been scheduled. A stay of removal serves a similar purpose, but it is made to the Federal Court. To apply for a stay of removal, there must be a negative decision to review.

There are many reasons people might request a deferral. Some people ask for a few extra weeks to get their affairs in order. For example, a deferral could allow people to finish a course of medical treatment, to sell items to pay for the plane ticket, or to allow children to finish the school year.

Deferrals may be granted on the basis that someone has an outstanding H&C application. Such a deferral is more likely to be successful when the H&C decision is expected soon or when there are compelling reasons not to make the person wait outside Canada for the H&C decision. Stephanos explained, “The strength of the H&C application has an impact on the deferral request. In asking for a deferral, you would submit the entire copy of the H&C application that’s pending.”

Kevin, the former deportation officer, said:



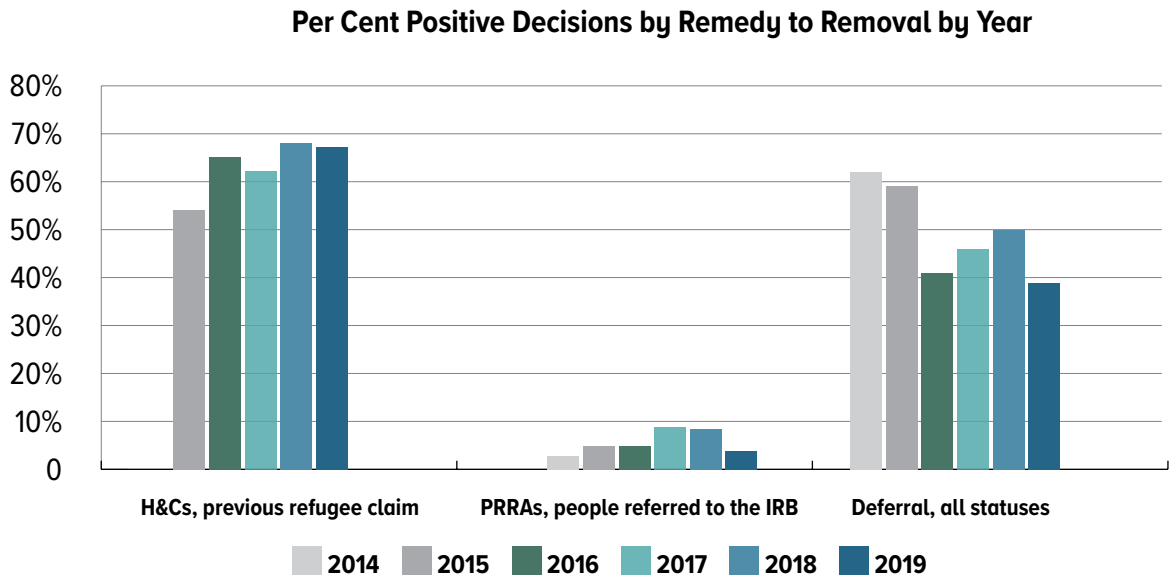
It is more difficult to get a deferral to delay deportation until someone is PRRA eligible. Some people would say, “I’m PRRA-eligible in three weeks so give me three weeks.” And I’m like, “I don’t have the authority to grant you that.” But what you would see was people filing a deferral request that brings in new risk. Risk that was not evaluated in their refugee claim... information that was not reviewed by an assessor. So, that’s how they justified [the deferral,] saying, “I have new information so you should allow me to go past the PRRA bar so I can apply for PRRA because of this.”

A stay of removal is an application to the Federal Court to delay a deportation until the Court decides an application for judicial review, such as an appeal of a negative H&C, PRRA, or deferral of removal. Morris explained that the stay of removal often “turns on irreparable harm.” Irreparable harm could include, for example, lengthy family separation, loss of the school year, lack of access to an appeal in a criminal proceeding, negative impact on the best interests of the child, or new evidence that someone is going to be seriously hurt.

If the deportation is delayed through a deferral or a stay, the person may subsequently be granted permission to remain in Canada if their H&C or PRRA is successful. If the H&C or PRRA are refused, the deportation process may resume.

Success Rates of Legal Options

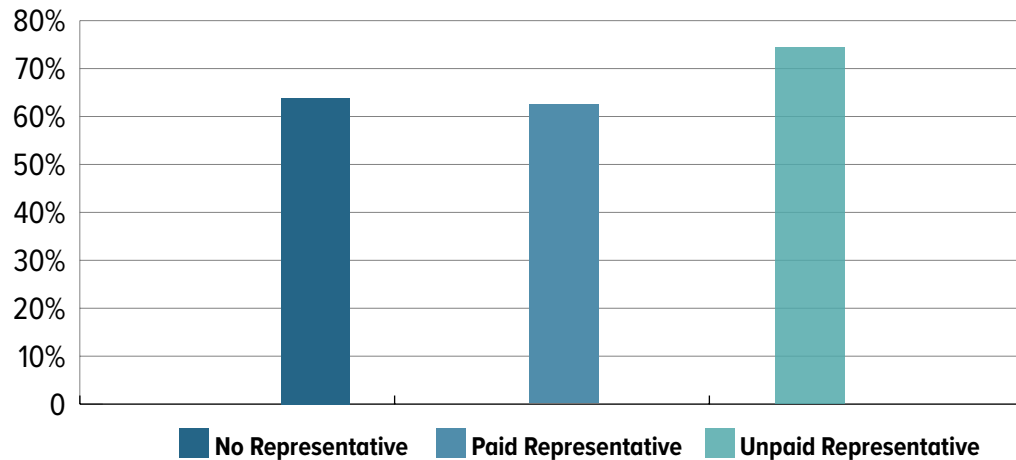
The below chart lays out the success rate for H&Cs, PRRAs, and requests for a deferral of removal. We do not have corresponding data for outcomes of stays of removal.



Source: ATIP Request to IRCC 2A-2020-94842 and 2A202-124265; ATIP request to CBSA A2021-45747 and A-2022-00459

The chance of success varies significantly between each legal option. But because the applications have different eligibility requirements and can affect one another, they are often used in combination. PRRAs rarely receive a positive decision, but a pending PRRRA application temporarily stops deportation, giving time for an H&C to progress. Similarly, a strong H&C increases the likelihood of success of a deferral or stay of removal.

Success of H&Cs by Representative Type, 2015-2019



Source: ATIP request to IRCC 2A-2020-94842

Outcomes of H&Cs for people with a previous refugee claim vary depending on who prepares the application. Only 6% of H&Cs are submitted by an unpaid representative. But unpaid representatives had the highest success rate - 74% for H&Cs between 2015 and 2019. This may be because H&Cs are time-consuming. A refugee support organization may be able to devote more time to gathering evidence and writing the submissions, whereas a legal representative is limited by legal aid or the ability of the client to pay for their time. Freddy said, “It’s not unreasonable to spend 40 hours on an H&C.” However, the success rate of unpaid representatives might not be easily reproduced. Refugee support organizations should be experienced with H&Cs, as a strong application requires expertise.

The table below summarizes the reasons for positive PRRRA decisions (numbers include people who never made a refugee claim). Overall, a significant portion of positive decisions were granted due to “risk to life, risk of cruel and unusual treatment or punishment” as well as on the grounds set out by the Geneva Convention. Among people whose refugee claim was referred to the IRB, the rate of positive decisions averaged 5.5% between FY 2015/16 and 2020/21.¹⁴

¹⁴ IRCC ATIP numbers 2A-2020-53332 and 2-A2021-24265.

SELECT GROUNDS FOR POSITIVE PRRA DECISIONS FROM 2013 TO 2017	
	Persons
Negative	11,836
Positive	586
-Risk to life, risk of cruel and unusual treatment or punishment	140
-Risk: sexual orientation	18
-Risk: gender related	14
-Risk: minor children	5
-Ministerial stay granted	38
-Convention against Torture	10
-Geneva Convention: nationality	18
-Geneva Convention: political opinion	49
-Geneva Convention: race	100
-Geneva Convention: religion	46
-Geneva Convention: social group	139

Source: ATIP Request to IRCC A-2018-71552

The success rate for deferral requests between 2014 and 2019 was 49% (numbers include people who never made a refugee claim). The success rate contrasts with interviewees' perception that deferrals are rarely granted. This may be because the deferral data from CBSA includes all deferral requests, whereas interviewees were being asked about deferral requests for people with a previous refugee claim. It could be that deferral requests by people who fear return have a lower success rate than those made for practical reasons, such as sorting out one's affairs. If that is the case, it would mean that people who have the most urgent need for a deferral are the people who are least likely to get it. The rate varied based on region, with Quebec region refusing the greatest proportion of deferral requests.

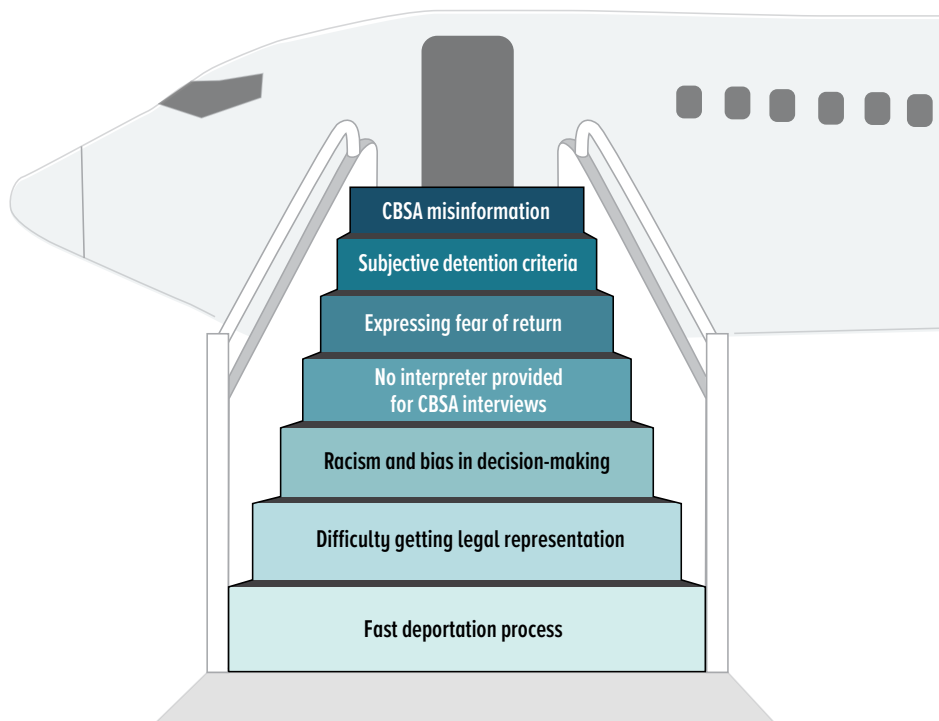
CBSA Structure and Mandate Contribute to Poor Outcomes

Audits of CBSA programs in 2016 and 2020 document structural deficiencies that lead to a flawed deportation process in which abuse, misconduct, and racism can occur. The findings of this research reinforce the fact that appropriate controls and protection mechanisms are currently lacking.

In this section, we identify systemic issues, relying on government audits and Kevin's experiences as a CBSA officer. In subsequent sections, we provide examples from interviewees to show what kinds of abuses occur in this environment and to document some impacts of CBSA misconduct.

By highlighting structural issues, as well as examples of abuse, we do not mean to suggest that all deportation officers act with ill intent. Interviewees reported examples of good conduct and positive interactions with CBSA officers. Rather, we show that the current structure is not sufficient to prevent abuses.

Seven Factors that Lead to Unjust Deportations



Deportation Engages Human Rights

Human rights dictate what practices are permissible or prohibited when deporting people who sought refugee protection. Deportation of people with a refused refugee claim engages rights named in:

- the Universal Declaration of Human Rights
- the 1951 Convention Relating to the Status of Refugees
- the International Covenant on Civil and Political Rights
- the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

For example, all people are entitled to equal protection and the right to not be subject to cruel, inhuman, or degrading treatment. In signing the 1951 Convention, Canada committed to non-refoulement, meaning not returning people to a country where they face persecution.

The need to respect human rights within the refugee program is written into legislation and government documents. Section 3(3)(f) of IRPA states that it should be “construed and applied in a manner that complies with international human rights instruments to which Canada is signatory.”¹⁵

The refugee determination process should identify and protect people subject to persecution. But poor quality counsel or lack of available evidence may prevent someone from proving the risks they face. Additionally, refugee decisions are complex; claims may be wrongly refused.¹⁶ As a result, there may be genuine refugees facing deportation. Deportation must be conducted in a way that upholds human rights, as well as refugee rights specifically.

An immigration enforcement agency must be designed with a human rights lens. It needs the appropriate controls in terms of staffing, training, policies and procedures, management controls, and oversight that ensure respect for human rights. These controls are currently inconsistently applied or absent within CBSA.

The PRRA is an example of an existing process that is designed to prevent deportation of someone who is at risk of persecution.¹⁷ While important, it is flawed. Its purpose has been subverted by laws designed to reduce access to the PRRA,¹⁷ as well as by reports (elaborated below) that CBSA officers sometimes discourage eligible people from seeking a PRRA.



¹⁵ Track and Paterson, “Oversight at the Border: A Model for Independent Accountability at the Canada Border Services Agency,” 44.

¹⁶ Evans Cameron, “Risk Theory and ‘Subjective Fear’”; Evans Cameron, “Refugee Status Determinations and the Limits of Memory”; Rehaag, “The Role of Counsel in Canada’s Refugee Determinations System”; Rehaag, “Judicial Review of Refugee Determinations”; Rehaag, “I Simply Do Not Believe.”

¹⁷ IRCC, “Evaluation of the Pre- Removal Risk Assessment Program.”

A Focus on Enforcement Interferes with Fairness

CBSA corporate documents reflect a greater emphasis on number and speed of deportations, rather than an emphasis on procedural fairness and respect for human rights. But the message most repeated in corporate documents is that CBSA should ensure that people with a ‘removal’ order leave in a timely manner.

CBSA performance targets show an emphasis on enforcing many deportations per year. For example, “In October 2018, the Canada Border Services Agency established a target of 10,000 removals for the 2018–19 fiscal year... part of a new strategy to increase the number of removals.”¹⁸ Among people with a refused refugee claim, CBSA also aims to enforce deportations quickly. ‘Timely removal’ of people with a refused refugee claim appeared as a stated objective in every CBSA Departmental Plan from 2013/14 to 2019/20 (usually a median of one year to enforce deportation or 80% of people with a refused refugee claim removed within one year).

CBSA expresses deportation priorities in terms of who should be deported. People with a refused refugee claim are considered a priority group. CBSA documents do not have similar stated priorities about *how* deportations should be conducted.

Kevin (quoted above) stated that officers prioritize easy or fast cases if they “need stats.” Later Kevin said officers were not pressured to deport a certain number of people. But his reference to needing stats suggests otherwise. The numerous CBSA documents focusing on number and speed of deportations, as well as the increase in deportations in March of most fiscal years from 2013/14 to 2018/19,¹⁹ suggest that there is pressure on the institution and individual officers to enforce more deportations.

An enforcement mandate is no surprise. But it is important to name the objectives and priorities that are sacrificed in favour of numbers and speed. An enforcement agency could:

- resolve cases by taking people out of the ‘removal inventory’ if they face risk, have strong ties to Canada, or are unlikely to be deported due to delays or non-cooperation by some countries with the issuance of travel documents
- document systemic issues that lead to people who face risk being put in CBSA’s ‘removal inventory’
- ensure that each person has an opportunity to understand the process and access all legal options.

¹⁸ Office of the Auditor General of Canada, “Immigration Removals,” 7.

¹⁹ CBSA ATIP A-2020-17525



The focus on ‘timely’ deportation informs officer conduct. There is ample evidence that officers sometimes go to great lengths to advance a deportation with little regard for the possible harm done. For example, Stephanos said, “I’ve had very, very pregnant clients going and being treated with complete disdain and told that [CBSA] didn’t care what would happen to them or their child. They can get on a flight even if they’re eight months pregnant.” This practice violates the Government of Canada statements about air travel in pregnancy.²⁰

In a recent, highly publicized case, a CBSA officer traveled abroad during his vacation time, collaborated with “someone in Gambia” who was not a government official, and obtained a ‘passport’ for the purposes of deportation. He did this using his personal email and without going through diplomatic channels.²¹ Reflecting on the case, Benjamin said he was not surprised because he had similarly encountered cases in which CBSA officers concocted documents, including passports.

Expired travel documents, legal representatives, and legal submissions may be seen by CBSA officers as barriers to carrying out their deportation mandate. As a result, CBSA officers may use tactics such as detention or giving misinformation (discussed further below) to work towards CBSA’s mandate of timely ‘removal’. It may be easier to use punitive tactics on people racialized as Black or brown, deepening the potential for discrimination and human rights abuses within deportation.

Duration Matters: Waiting Period, Travel Documents, and Legal Options

Legislative changes and government documents show that the Canadian government is significantly invested in speeding up all stages of the refugee and deportation processes. Since 2012, the Canadian government has made changes to the refugee claim process intended to reduce the time from lodging a refugee claim to getting a decision.²² It introduced a one-year bar to accessing the PRRA to reduce its use, which has the effect of speeding up the deportation process. And the government relies upon ‘timely removal’ as a key performance target. This is because the combined duration of the refugee claim process and post-refusal waiting has a significant influence on the outcome of deportation.

²⁰ Global Affairs Canada, “Travelling While Pregnant.”

²¹ “Gambian Embassy Was ‘Taken Aback’ by Canadian Border Agent Who Used Irregular Channels to Obtain a Passport.”

²² Atak, Hudson, and Nakache, “Making Canada’s Refugee System Faster and Fairer: Reviewing the Stated Goals and Unintended Consequences of the 2012 Reform

Why does duration matter? One of the primary factors that inhibits deportation is lack of a valid travel document. A 2016 evaluation of refugee reforms states that countries delaying or refusing the issuance of travel documents to facilitate deportation accounts for three quarters of all cases with ‘impediments to removal.’²³ Without a travel document, CBSA cannot enforce deportation. The longer people remain in Canada, the more likely it is that the passport they used to arrive in Canada has expired.

If the document has expired, CBSA asks people to sign an application to apply for a new travel document. However, some countries are routinely uncooperative. Hollis, an immigration consultant, noted that sometimes “the person [being deported] is willing to cooperate, fills out the forms for the travel document, and the travel document just isn’t issued.” Interviewees named Cameroon, Gambia, Guinea, India, Nigeria, and Pakistan as countries that have been slow or unwilling to issue travel documents for the purpose of deportation. Internal CBSA documents from 2014-15 refer to a “difficult to remove to” list.²⁴ We submitted an ATIP request for the list, but CBSA has not yet provided the list.



Kevin described his experience trying to get travel documents in his work as a deportation officer:

“

There’s a lot of countries that don’t want those individuals back in their country, it’s as simple as that... They won’t say that openly, but they’ll find a way to not issue a travel document. There was an embassy in Ottawa that for years said they didn’t have the proper paper to issue travel documents. There’s nothing CBSA can do against that, so we just lived with it.

CBSA anticipates that difficulties obtaining travel documents will continue to prevent deportations. According to the 2015-16 Departmental Performance Report, “A significant proportion of new claimants are from countries where it is difficult to obtain travel documents, therefore the cases that will enter the removal stream in the future will be difficult to remove.”²⁵

A shorter waiting stage limits legal options that could stop deportation. During the post-refusal waiting period, people may acquire stronger ties to Canada that would make an H&C more likely to succeed. Conditions in their country of origin might change or new evidence of risk might come to light. More time also gives people an opportunity to seek legal representation and for the representative to become familiar with the case. Speeding up deportation and maintaining the one-year bar on PRRAs facilitates CBSA’s mandate to enforce

²³ IRCC, “Evaluation of the In-Canada Asylum System Reforms,” 16.

²⁴ ATIP to CBSA A-2020-19334

²⁵ CBSA, “2015-16 Departmental Performance Report - Canada Border Services Agency,” 37.

more deportations faster. But it interferes with fairness and human rights and can result in deportation of people who face risk.

Insufficient Policies, Training, and Management

Training and oversight mechanisms within CBSA are lacking. A 2016 internal audit uncovered numerous instances of unclear rules, insufficient training, lacking management structures, and rules being broken. Structural gaps of this magnitude create conditions in which abusive conduct and wrong decisions pass unnoticed.

Kevin's training involved 12 weeks of CBSA college. CBSA training covers all areas of the CBSA mandate, including international trade, collecting duties, border management, and immigration enforcement. Refugee law and rights are a very complex area that cannot be condensed into part of a 12-week course, meaning deportation officers are likely to have a knowledge deficit with respect to refugee issues.

Kevin initially worked in another program area before becoming a deportation officer. Kevin explained that when he became a deportation officer,



They sat me at a desk and said, 'Here's your files. If you have questions, ask your colleagues.' Training-wise, it's not structured in how they teach removals officers to do their job. You learn by practice. You learn by sitting with someone and watching them do it.

This means that good or poor conduct gets easily transmitted from officer to officer.

Management structures are not designed to ensure good conduct. Managers of deportation officers are chosen for their management qualifications, not their expertise in deportations. Only some of Kevin's managers were familiar with deportations. "My removals manager [in region X] was not a removals guy. He had no idea what removals were, he was just the manager."

Management roles in the 'removals' area are structured with an emphasis on enforcement rather than human rights. We analyzed a sample of job descriptions for senior leaders and middle management - the executive director and director that oversee enforcement in the GTA region, as well as the relevant assistant director and supervisor at the national level - provided in response to an ATIP request. The documents include vague references to fairness, agency conduct, and "correct application of... legislation [and] international conventions." But they do not mention any specific human rights obligations or treaties. The job descriptions did not create accountabilities for upholding human rights. The job description for the Director - Enforcement and Intelligence (GTA Region) did, however, direct the employee to "provide ['failed asylum claimants'] reasonable incentives... to promote fast and efficient removals."²⁶

The Audit of Immigration Enforcement noted that some key areas lack policies and procedures.²⁷ The 2016 audit called out deportations in particular:

“

*[Despite new legislation and other important changes impacting the program area,] the Removals chapter was last updated in March 2010... In the absence of ongoing, regular updates to key policies and procedures, CBSA officers must independently interpret new legislation, processes, and systems, resulting in varying understandings, workarounds, and inconsistent program delivery across regions.*²⁸

The removals chapter was eventually updated in 2017.



Knowing how to do the job correctly is even more difficult because there is no shared understanding of what CBSA policies and procedures are. CBSA manuals and documents do not provide sufficient information in how deportations should be carried out.

Insufficient training, procedures, and management oversight create conditions in which misconduct can happen. Kevin said that he did not believe CBSA enabled misconduct, but he also pointed out “I don’t think CBSA does enough to slow down people to be like that because they don’t recognize those cases before it’s too late sometimes... There’s so much leeway for removals officers to deal with their own files without too much oversight [from management].”

Independent Oversight Is Needed, but Lacking

CBSA is the only major law enforcement agency in Canada that does not have independent oversight. For years, numerous agencies have called for the creation of an independent oversight body.²⁹

In laying out the case for CBSA oversight, the British Columbia Civil Liberties Association (BCCLA) pointed out, “1) CBSA’s extraordinary law enforcement powers; 2) the exceptionally vulnerable population with whom CBSA officers often interact; 3) CBSA’s role in detaining migrants and refugee claimants, including children and people dealing with significant mental

²⁷ CBSA, “Audit of Immigration Enforcement.”

²⁸ CBSA, para 62.

²⁹ BCCLA, CCR, and CARL, “Seven Years of Inaction”; Track and Paterson, “Oversight at the Border: A Model for Independent Accountability at the Canada Border Services Agency”; CARL-ACAADR, “Joint Open Letter to the Ministers of Public Safety and IRCC Regarding CBSA Oversight in Light of the Ebrahim Toure Case.”

health challenges.”³⁰ Interview participants echoed many of these concerns, particularly that CBSA has a broad mandate to detain.

The Liberal government has previously proposed independent oversight but has not followed through. Legislation to create an oversight body was introduced again in May 2022.³¹ Because the bill has not yet passed, our analysis looks at what happens with no oversight.

Lack of oversight contributes to a culture of impunity. Jackie, a refugee lawyer, emphasized that: “CBSA officers are on a power trip. They are people who abuse their power. They’re given a mandate and they abuse it. They’re out of control because there’s nobody to control them. [A CBSA officer] doesn’t have to answer to anybody.”

Stephanos, a refugee lawyer, agreed that lack of oversight shapes workplace culture and officer conduct: “There’s no accountability at CBSA. And they know that.”

A lack of oversight calls into question the legitimacy of the agency, even when officers conduct enforcement in a way that respects the principles of justice. For example, Rebecca, a refugee lawyer, said:

“

This is a democracy. The rule of law applies to everyone, including the CBSA. And the organization loses its legitimacy if it doesn’t have oversight. Complaints have to be dealt with transparently. There have to be consequences for misconduct. The individuals at issue are vulnerable. They’re afraid to make complaints because they don’t know how it could impact them. So CBSA gets away with a lot, you’re dealing with this organization that operates as if it’s above the law.

Without independent oversight, filing complaints is either a waste of time or detrimental for people in the deportation process. While some participants had made complaints, others dissuaded clients from complaining on the grounds that it could further harm their case. Lydia, a refugee lawyer, explained,

“

I’ve complained about CBSA officers over the years with absolutely no effect. In fact, several officers who lied under oath were promoted after they had engaged in really disreputable conduct. Why waste your time? It’s not going to be heard, it’s not going to be acted upon.

Selena agreed, saying that complaints about CBSA “just go into a void.”

30 Track and Paterson, “Oversight at the Border: A Model for Independent Accountability at the Canada Border Services Agency,” 13.

31 Public Safety Canada, “Bill C-20 – An Act Establishing the Public Complaints and Review Commission and Amending Certain Acts and Statutory Instruments.”

Even worse, the current complaint mechanism leaves people vulnerable to retaliation from CBSA officers. People are often reluctant to file complaints for CBSA misconduct out of fear of retaliation against not only the person at risk of being deported, but also legal counsel. Shelly, a refugee lawyer, stated,

“

Often times, making those kinds of complaints doesn't work in favour of your client, it gets taken out on your client. And also, your reputation, which I care very little about. I don't care what CBSA officers think about me. Although, if they see your name and think you're one to make complaints, they may deal with you differently... It's just like employment law. Complaining against your employer may get you what you were seeking legally, but your relationship with your employer is pretty much sunk. So, it's the law versus the practical.

In more than 250 pages listing over 1,000 misconduct investigations from January 2016 to January 2020 relating to CBSA employees, we found only three complaints relating to 'removal.' Two were determined to be unfounded. The other was a case of someone speaking about a practice which would be disallowed if used.³² The near absence of complaints, compared to the many unacceptable practices observed by legal representatives, shows that the current complaints mechanisms are insufficient.

Abuses go unreported, and structural gaps in policies and procedures persist. In the context of deportation, the result is harm to primarily racialized people, many of whom fear persecution upon return.

³² ATIP to CBSA A-2019-06359 and A-2020-00482.

An Opaque Deportation Process Is Unjust

Interviewees told us that it is common for clients to be “totally confused” and not know what to expect during the deportation process. Numerous factors contribute to the opacity of the system:

- lack of publicly available information about the deportation process and people’s legal options
- lack of interpreters at pre-deportation interviews
- difficulties securing legal representation to provide expert assistance and support
- misinformation provided by CBSA officers

In this section, we address each of these points. People’s understanding of the deportation process necessarily shapes how people negotiate it. CBSA officers, in turn, make decisions about the deportation process depending on their perceptions of people’s conduct. Thus, lack of information can lead to people unintentionally acting against their own interests.

Lack of Available Information

Publicly available information about deportation is extremely limited. Two CBSA webpages provide a general description of deportation and the types of deportation orders.³³ Neither webpage is aimed at informing people in the deportation process about what is expected of them and what options they have.

Interviewees reported that people facing deportation come to them with conflicting and often inaccurate information. Jonathan, an activist, stated, “It’s not a terribly accessible process.” Lack of information means people may be exploited by unscrupulous legal representatives. It can also lead to mistakes. For example, it seems logical to tell the deportation officer that they are afraid and to impress upon officers how great of a risk they face. But this is a miscalculation. The deportation officer does not make decisions on pre-removal risk assessments.

Instead, expressing fear of deportation increases the likelihood that the deportation officer will assess someone as a flight risk and detain the person. Ezra, an immigration consultant, explained, “Some people will cry and beg [in pre-deportation interviews], and it means they get detained because the officer thinks they’re not going to show up.”

³³ Canada Border Services Agency, “Removal from Canada”; Canada Border Services Agency, “Arrests, Detentions and Removals.”

Interviewees also said that people are unaware of their legal options to stop or delay their deportation. Morris, a refugee lawyer, emphasized that “deferral requests are unpublicized. They’re not on the immigration website... Officers don’t tell people about deferrals often... It’s not set out anywhere.”

Language Barriers Deepen Confusion

CBSA does not provide an interpreter for pre-deportation interviews. If someone wants an interpreter for their pre-deportation interview, they must find someone to help them. Interviewees worried about how much people understood instructions given during pre-deportation interviews. Shelly, a refugee lawyer, said it is hard to know whether CBSA officers are vague in pre-deportation interviews or whether clients struggle to understand the contents of interviews. Selena, a refugee lawyer, reported, “[CBSA] are willfully blind to people not understanding what’s happening in those appointments. If the person who’s supposed to be translating speaks only marginal English, then I don’t think it’s responsible to continue with the interview, but they absolutely do.”

The worst outcome, according to interviewees, was people being forced to rely on their children to interpret in CBSA interviews. Shelly called the use of children to translate “devastating,” going on to say,

“It’s a huge issue. The fact that they don’t have interpreters is, to me, ludicrous. I would suspect that the vast majority of people don’t speak English or French as a first language. They may have some working knowledge of one of those languages, but not enough to understand the complexities of what they are told.”

Language barriers make it difficult for people to explain to their legal representative what happened in the interview, especially since legal representatives don’t often attend with them. It also makes it difficult for people to take the steps requested by CBSA, which risks making them appear uncooperative.

Difficulty Securing Legal Representation

Without representation, most people with a refused refugee claim are not able to access legal options effectively. The timing and strategy of legal options are complex. Legal representatives spoke about crafting legal arguments that anticipate subsequent applications and appeals. For instance, Rene, a refugee lawyer, said, “Without a lawyer, you can’t put together a deferral request that really addresses what it needs to... These processes are not really accessible to people who are unrepresented.” Morris, a refugee lawyer, described it as an “incredibly convoluted, complicated, difficult process that needs a lawyer.”

Yet finding legal representation for deportations can be challenging. Many of the lawyers we interviewed reported that they rarely take on a deportation case unless they are already working with the client. Deportation cases require an enormous intensity of effort compressed into a short period of time. Lawyers must become familiar with the entire case file, including all previous evidence submitted and decisions, identify a legal strategy, and write lengthy submissions. At the same time, it is high stakes, stressful work.

Sathya, a refugee lawyer, encapsulated deportation work by saying, “It’s literally the worst work in this field... It wipes every single thing off your desk. You have to adjourn [upcoming hearings] and put aside everything, cancel all your client meetings, cancel all your evening plans because you’re going to be pulling all-nighters. It is very, very difficult... Particularly because the timeframe is often very short.” These dynamics contribute to lawyers’ reluctance to take on deportation cases.

The cost of legal representation is a barrier. A Legal Aid certificate covers 16 hours of work, which lawyers likened to about \$1,600. But deportation cases require more like 100 hours.

Morris, a refugee lawyer, said, “You just can’t sustainably do stays [of removal] on Legal Aid certificates. Both for your practice and for your mental health and ability to live a life.” Interviewees reported that private lawyers may charge between \$5,000 and \$10,000 for deportation work. Because a negative decision leads to deportation, clients need to pay those fees up front, rather than paying in installments.

When experienced representatives turn down deportation cases, people are pushed into poor options: going without legal representation or turning to inexperienced or unscrupulous legal representatives. Interviewees worried about the number of people who are not able to get expert support and must navigate the deportation process alone.

Stacey, a support worker, explained that gaps in information and support undermine access to justice during the deportation process:

“

Too often after the rejection of a refugee claim people do not get continued support from a lawyer. They’re either told that that lawyer cannot continue to work with them, or that the lawyer is going to charge them money... There is a stigma attached to refused refugee claims. I’ve heard stories of service providers refusing to work with people or just stigmatizing people. Often people don’t have all the information they need to understand the processes they’re going through after their refugee claim is denied.”

CBSA Officers Misinform People about Deportation

CBSA misinformation was the form of misconduct most often named by interviewees. The misinformation sometimes seemed to stem from ignorance and lack of training. Other times, misinformation seemed like a deliberate tactic to interfere with people's ability to contest their deportation. Officers gave misinformation about a range of topics, including the reason for an interview, the availability of legal options, the success rates of legal options, and the value of legal representation.

CBSA officers sometimes advise people against having a legal representative or pursuing legal options. Stephanos, a refugee lawyer, said,

“

Very recently I had a client go in. She [the CBSA officer] told my client that he couldn't go to court. You can always go to court to stop a removal, always. As long as there's something pending, you can always file a stay motion. And she told my client that there was nothing I could do: "Your lawyer can't do anything, you just need to leave." I hear that a lot, [officers] trying to undermine a lawyer's job and any kind of hope that the client might have.

Melanie, a refugee lawyer, reported that CBSA officers tell people not to waste their money on legal options, saying, "That lawyer's just trying to get money from you." While there is concern about predatory practices by certain legal representatives,³⁴ the situation is not corrected when CBSA officers provide misinformation.

Certain officers are known among legal representatives as liars. Jackie, a refugee lawyer, related a conversation they had with a colleague: "Another lawyer told me, 'This [CBSA officer] has done many, many things, he's lied on record at a hearing, he's lied about my client... [CBSA officer name] is a liar.'"

Misinformation serves CBSA's mandate, which is to enforce deportation rather than to prevent *refoulement*. Numerous legal representatives pointed out that misinformation about legal options helps officers meet their performance targets. Sathya, a refugee lawyer, said,

“

People are kept in reactive mode so they can't prepare for deportations, so people don't know enough about the process, so people are ignorant of their rights.... I think it's a tactic by CBSA to keep people in the dark [...] to keep people ignorant of their rights so they can more effectively deport.

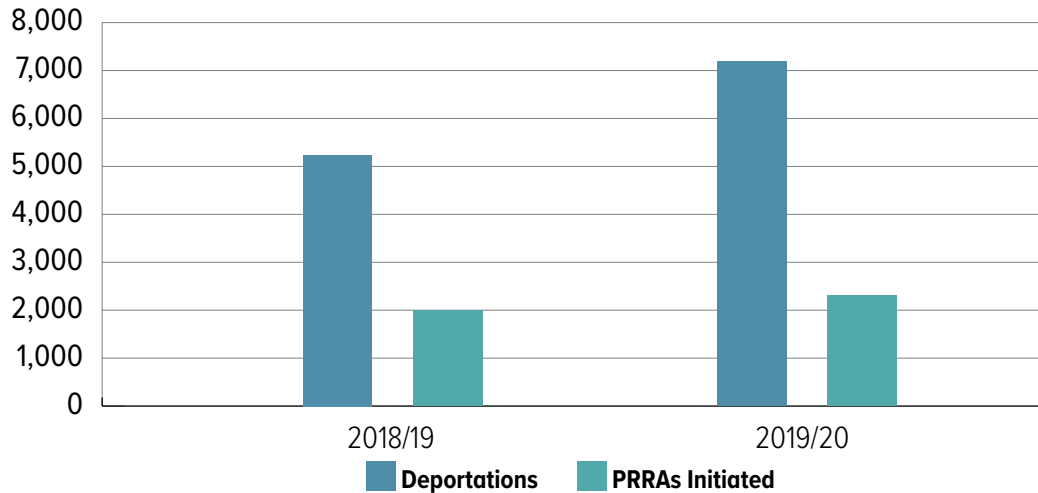
Interview participants had encountered cases where officers do not offer a PRRA or discourage people from submitting a PRRA application. Jonathan, an activist, said, "I've heard of and seen situations where the person doesn't ask [for a PRRA] and therefore is not informed." In FY 2018/19 and 2019/20, the number of PRRAs initiated among people with a refused refugee claim was less than half of the number who were deported.³⁵ Considering that average time

³⁴ Smith, Rehaag, and Farrow, "Access to Justice for Refugees."

³⁵ These are the only two years for which we have these data points because the data on PRRAs initiated comes from someone else's ATIP request.

to deportation is much more than a year, one would expect a greater similarity between the number of deportations and the number of PRRAs initiated. Combined with reports of officers not initiating PRRAs, the data raises concerns about CBSA conduct with respect to PRRAs.

Comparison of the Number of PRRAs Initiated and the Number of Deportations



Source: CBSA ATIP A-2021-02040 and IRCC ATIP 2A2021-24265



Depriving someone access to legal options can cost lives. The damage of misinformation was most clearly illustrated in a case that Benjamin, a refugee lawyer, handled, in which a CBSA officer lied to someone about the implications of *not* seeking a PRRA:

They were told that to waive their PRRA, and [the officer] said, “Only 1% of PRRAs are accepted so it’s a waste of your time. [If you waive your PRRA], we will permit you to travel on your own. Whereas, if we need to enforce your deportation after a PRRA, the [country name] government will be notified about your arrival. We know that you’re scared of that, so you might want to waive it.” And they did [waive the PRRA]. Nevertheless, their documents were given to the flight crew, and the flight crew gave them to officials on arrival in [capital city]. [The person] was arrested and tortured for two months. There was [additional evidence] that could have been considered on the PRRA [had it not been waived]. All of that was a result of CBSA manipulating and lying to the clients. That was one of the most horrifying cases.

In this case, CBSA enforced a deportation that should not have happened and CBSA conduct led to someone being tortured. The case was unusual in that a Canadian lawyer learned about what happened. But the Canadian government does not have a mechanism to find out what happens to people after deportation. Therefore, the government does not know how often errors or misconduct lead to persecution.

The Role of Bias in Decision-Making

During the deportation process, CBSA officers assess people's conduct and the risks they may face if returned. CBSA officers use these assessments to make crucial decisions about how to treat people and whether to detain them. CBSA also decides whether to grant a request for deferral of removal, although the decision is not made by the officer who people meet during pre-deportation interviews.

There are significant barriers to making a fair assessment. CBSA's enforcement mandate influences officers' conduct and thinking. CBSA officers make judgments about people across differences of life experience and culture. Insufficient training makes it so poor conduct can be transferred easily from officer to officer. Decisions are also made in the context of systemic racism. Opaque criteria introduces further room for bias to influence decision-making and officer conduct. Unsurprisingly, legal representatives and refugee support workers observed that decisions often seem arbitrary.

Assessing Cooperation

Once the action stage of deportation has been initiated, CBSA officers assess whether the person appears to be uncooperative or frightened of deportation. Individuals assessed to be a flight risk are detained to prevent them from ending contact with CBSA.

Being viewed by a CBSA officer as a flight risk is a prime reason to detain people during the deportation process. Concerns about people being a flight risk may be unjustified since the failure to appear is rare. Between 2013 and 2018, the number of people with a refused refugee claim who failed to appear for a scheduled deportation ranged between 145 and 260 per year, with an increase to 400 in 2019.³⁶ In most years, 'voluntary removals' are 5 times more common than failure to appear for a deportation.

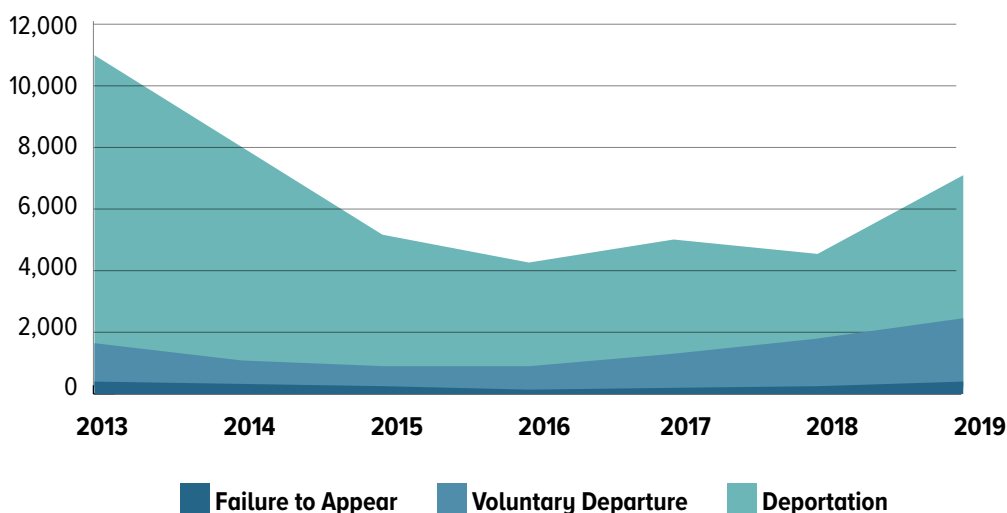
Assessing flight risk – already subjective – is especially problematic when people are uninformed or misinformed about the deportation process, what is expected of them, what options they have, and which actions may hurt or help their case to prevent deportation (see above on lack of information).

Similarly, in April 2019, about 1,200 scheduled pre-deportation interviews resulted in a no-show, representing 5% of all scheduled interviews.³⁷ This number suggests very high compliance by people with a refused refugee claim, considering some of the 1,200 interviews are not people with a refused claim, some people have already left Canada without informing CBSA, and some people may have shown up for subsequent interviews.

³⁶ ATIP to CBSA A-2020-16911

³⁷ ATIP to CBSA A-2020-19334

Frequency of Cooperation / Non-Cooperation among People with a Refused Refugee Claim



Interviewees explained that they struggle to account for why certain people are detained. They described cases where people who had been complying are detained. For example, Jackie, a refugee lawyer, shared a story of their client being detained during what was supposed to be a regular check-in:

“ I’m calling the CBSA officer. I’m like, “What are you doing? My client showed up to every signature. He’s done everything you’ve ever wanted. There’s no reason. He’s not a flight risk. You ask him to come, he came the next day you wanted him. You don’t need to detain him.” “Yeah, I think he’s a flight risk.” “But why do you think he’s a flight risk?” No, that’s it. Done. They took him and put him in detention.

According to Stacey, a support worker, “non-compliance can mean anything.” She once called CBSA after her client received a letter saying that the client needed to come to 6900 Airport Road:

“ I called and said, “If she does exactly what you’re asking and shows up on the day, is she complying? Are you going to accept that as sign that she’s complying?” And CBSA never confirms or denies anything, so they said, “It’ll be a good sign if she shows up.” So I went with her, and they were very combative. They ended up detaining her even though we had complied with literally everything they had asked up to that point.”

Thus, even with steps taken to ensure or perform compliance, the threat of detention remains very real.

Systemic Racism

Racism reduces the likelihood that white people trust Black and brown people. White people underestimate the amount of pain felt by Black and brown people, and white people are less empathetic about pain and suffering experienced by Black and brown people. These forms of racism are embedded into institutions, shaping structural context, fairness in decision-making, and individual treatment.

In some cases, the racism is covert and difficult to pinpoint. For example, Rebecca, a refugee lawyer, said, “I can’t connect the dots in every case. When people come to me and say they felt mistreated - they were treated like they’re nothing or they were treated like, ‘get out of here.’ Those things are hard to explain, they’re felt by the people who are subjected to that treatment.” Jackie, a refugee lawyer, contrasted stories of poor treatment by CBSA with a deportation case they handled for a white client: “We had a Lithuanian client - blonde, blue eyed, Christian. Very nice treatment. He left, but very nicely. I felt like the officer wanted to go on holidays with him.”

Several lawyers gave examples of clients who were detained as a flight risk where there seemed to be no basis for that determination other than distrust motivated by racism. Selena, a refugee lawyer, said,

“

There’s a lot of racism, anti-Black racism, Islamophobia, general distrust of immigrants, of migrants. A strong disposition to assume that people are lying.”

Benjamin, a refugee lawyer, also raised concerns about how racism and difference shapes assumptions made by decision-makers in the refugee process. He pointed out that it’s easier to believe everyone involved other than the refugee, simply because decision-makers have more in common with everyone else:

“

There are presumptions about why people come to Canada. There are presumptions about how they were treated as they went through proceedings here... [if a person being deported says] anything negative about their representative, the officer will assume that the representative probably was doing a really good job but it’s the client who’s lying out of desperation. There are all sorts of embedded institutional problems and barriers facing claimants that are really difficult to overcome. There’s an ‘us and them’ thing going on. We can cause them to suffer, but being detained and tortured is not a world that decision-makers can conceive of, and that’s the problem.”

Benjamin points out that bias and racism are not isolated to the deportation process. Difference is present throughout every stage of the refugee claim process. Interviewees identified racism within the Immigration and Refugee Board, IRCC (who decide H&Cs and PRRAs), and the Federal Court, as well as government lawyers. By the time someone is in the deportation process, they have likely had multiple negative decisions by multiple decision-

makers. In seeking to delay or stop a deportation, people are asking CBSA, IRCC, and/or the Federal Court to believe them even when others have not.

But negative decisions have inertia. Again and again, lawyers emphasized how difficult it is to overcome poor representation and negative decisions that happen in the early stages of a refugee claim. Systemic racism makes it easier for CBSA officers to trust the reasoning of previous decision-makers rather than the people they are tasked with deporting. An agency that conducts deportations must be committed to the principles of anti-racism, human rights and equity, and it must have independent oversight.

Recommendations for the Canadian Government

1. An agency that advances deportations must have a justice mandate rather than an enforcement mandate.

CBSA should not be tasked with deportation of people with a refused refugee claim. This job should be done by another agency, such as IRCC. The agency that enforces deportations of people with a refused refugee claim should have transparent procedures and management controls designed to uphold the Canadian Charter of Rights and Freedoms and Canada's international human rights obligations. Currently, CBSA job descriptions and performance targets incentivize officers to prioritize enforcement over respect for human rights. Performance targets relating to deportation targets and timelines should either be eliminated or should be revised so they do not measure periods when people are pursuing legal options to stop deportation.

2. End detention of people with a refused refugee claim.

Compliance with deportation orders is high. Detention on the grounds of someone being perceived as a 'flight risk' is subjective and unnecessarily punitive.

3. Repeal the one-year bar on PRRAs and H&Cs and end deportation of people with a refused refugee claim who have submitted an H&C application.

A person who fears return may wrongly get a negative decision on their refugee claim, for example due to human error, unavailable evidence, and lacking or poor representation. People should have the opportunity to exhaust their legal options to stay in Canada. Repealing the one-year bar and ending deportations of people with a pending H&C will reduce the need for requests for deferral of removal and stays of removal.

4. Create an independent oversight body for CBSA or any department that is tasked with deportations.

The qualities needed in an oversight body have been well elaborated by the Canadian Council for Refugees and the British Columbia Civil Liberties Association. It is particularly important that an oversight body can compel evidence and make binding recommendations.

5. Increase the period between last refusal and deportation.

Currently, people are required to leave Canada within 30 days of the last refusal. CBSA sometimes begins the deportation process within weeks of a negative decision. This does not leave enough time for refugees to get information about the deportation process and

make decisions about how to proceed. The regulations on departure orders should be revised to allow people 60 days to leave Canada

6. Provide clear information about deportation.

Lack of transparency makes the deportation process less fair. People in the process, as well as their legal representatives, should know how to contact the deportation officer in charge of the case. At the beginning of the deportation process, people should be given information about legal options and how to find a legal representative. After each pre-deportation interview, people should be given written information documenting what next steps are expected of people being deported. Information should be available in multiple languages.

7. Provide interpreters for pre-deportation interviews.

People should understand what is happening at pre-deportation interviews. The use of children as interpreters at pre-deportation interviews is inappropriate and violates the best interest of the child.

8. End the practice of carrying guns in pre-deportation interviews.

Many people who claim refugee status have experience with abuse and torture, sometimes at the hand of government officials. An armed officer carrying out a pre-deportation interview is likely to exacerbate fear, stress, and trauma.

9. Track and publicly report data on deportations.

Currently, public information on deportation is extremely limited. The Canadian government should publish data on activities during the action phase of deportation, disaggregated by race and refugee indicator. The government should publish data on how many people attended a pre-deportation interview, how many PRRAs were initiated, how many PRRAs and requests for a deferral of removal were submitted, the success rates of these applications, how many immigrants were detained, and how many deportations were enforced. The government should use this data to identify and address bias and racism in decision-making and the deportation process in order to fulfill their commitments to anti-racism initiatives.

10. Conduct anti-racism and intersectional analysis to address systemic racism and bias in refugee determinations and deportations.

IRCC has made a commitment in their Anti-racism Strategy 2.0³⁸ to eliminate racism in their policies, programs, and service delivery. Strategy 2.0 acknowledges the concerns that have been raised over potential bias and racism in the implementation of special measures for refugees and displaced people. An agency that deports people should also develop and improve an anti-racism review of its enforcement procedures. This review should take seriously feedback from clients and newcomers' experiences of discrimination and racism and consult key external stakeholders.

³⁸ IRCC Anti-Racism Strategy 2.0 (2021-2024) – Government of Canada and IRCC's Anti-Racism actions in context

11. Revise job descriptions for management roles to create accountabilities related to Canada’s human rights obligations and include human rights accountabilities in performance reviews.

An agency tasked with deportation should orient its work around respect for human rights and specifically refugee rights. To ensure that a human rights lens informs day-to-day work, human rights legislation and human rights obligations must be included in the job descriptions and performance metrics for senior leaders and managers whose portfolios include immigration enforcement.

Recommendations for People Who Work with Refugee Claimants

1. Develop relationships with legal representatives and support organizations with expertise in deportation.

Not every legal representative and refugee support group has expertise in the deportation process. But people who work with refugee claimants should know where they can refer people with a refused claim if they need help understanding the deportation process or accessing a qualified legal representative.

2. Tell clients that they can seek assistance after their refugee claim has been refused and they have no more right of appeal.

People may feel ashamed that their claim for refugee status was refused. They may be afraid to ask for help at this stage. But without information, people make missteps and are vulnerable to misinformation. People who work with refugee claimants should let their clients know that they can seek assistance after they receive a negative decision. Community organizations can provide emotional support and practical help. If the organization does not have expertise in the deportation process, they can refer clients to other organizations and legal representatives who have this expertise.

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