



# Justice Centre

for Constitutional Freedoms

January 29, 2021

VIA EMAIL : [omar.alghabra@parl.gc.ca](mailto:omar.alghabra@parl.gc.ca)

The Honourable Omar Alghabra  
Minister of Transport  
House of Commons  
Ottawa, ON, K1A 0A6

Dear Minister Alghabra:

**RE: Federal Quarantine Requirement Imposed on Canadians Returning from International Travel**

We are writing to provide you with notice of our intention to sue the federal government immediately over the following measures from your department:

- i) the continued violation of *Charter* rights and freedoms by mandatory quarantine imposed on Canadian residents returning from international travel, even with negative PCR test results; and
- ii) the newly announced international travel restrictions that include a mandatory 14-day confinement of Canadian citizens returning home, in federal facilities at undivulged locations. These measures are a flagrant violation of *Canadian Charter of Rights and Freedoms*, specifically sections 6 (right to enter and leave Canada), 7 (liberty and security of the person), 9 (right not be arbitrarily detained or imprisoned), 10 (right to retain counsel), and 12 (right not to be subjected to cruel and unusual punishment).

Your government has increasingly shown a disturbing and even aggressive opposition to the constitutional rights and freedoms of Canadians.

It has come to our attention that the federal government is now arresting Canadians at the border and transporting them to secret federal locations even when they possess a negative PCR test. The citizens you are holding have not been convicted of an offence, have not had access to a lawyer, and have not appeared before a judge. Your officers are even refusing to inform family members of where their loved ones are being held. This policy aligns with practices of repressive and undemocratic regimes, and is completely unacceptable.

Your arrest and detention of Canadians in this regard is unlawful and unconstitutional and we hereby demand their immediate release, such that they may continue with any necessary isolation protocols in their personal residences.

This is not China or Cuba, or Chile under Pinochet, or Spain under Franco, or theocratic Iran. We are not prepared to permit you and your government to turn Canada into a repressive replica of countries that have no respect for human rights and civil liberties.

## **Mandatory Testing**

Prior to your recent appointment as Minister of Transport, your predecessor issued the Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 18, on January 6, 2021 (“the Order”). This Order, issued pursuant to section 6.41(1.2) of the *Aeronautics Act*<sup>1</sup> and section 58(1) of the *Quarantine Act*,<sup>2</sup> mandates that any person who intends to board an aircraft for a flight to enter Canada, may be prohibited from doing so if they are unable to provide evidence that they have received a negative COVID-19 molecular test, performed on a specimen that was collected no more than 72 hours before the aircraft’s initial scheduled departure time.

We again remind you that the *Charter* enshrines the protection and guarantee of individual rights and freedoms, such as the rights to liberty, mobility and privacy, into our Constitution. This includes a right to enter and leave Canada freely. Under the *Charter*, any restriction on this right must be minimal, narrow, reasonable, and demonstrably justified. All government orders, including emergency orders, must comply with the *Charter* by not infringing any of the rights protected thereunder, *unless doing so can be demonstrably justified in a free and democratic society according to law*.

## **Mandatory Quarantine**

The Order further mandates that, regardless of a negative COVID test result, any person entering Canada must quarantine for 14 days on arrival.<sup>3</sup> In fact, they must submit a 14-day quarantine plan to a government official, which is subject to the discretion of the said official. This discretion is subjective and without parameters.<sup>4</sup>

Quarantine is the functional equivalent of house arrest. State-compelled confinement to a person’s residence or to a federal quarantine facility in cases where the government rejects an individual’s quarantine plan, is a profoundly serious interference with personal autonomy and the right to liberty. Section 7 of the *Charter* protects individual liberty, including the right to be free of state interference with physical movement. Quarantining all citizens re-entering Canada, in

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<sup>1</sup> R.S., c. A-2

<sup>2</sup> S.C. 2005, c. 20.

<sup>3</sup> [https://tc.canada.ca/en/ministerial-orders-interim-orders-directives-directions-response-letters/interim-order-respecting-certain-requirements-civil-aviation-due-covid-19-no-18#fn\\_81100-3-85\\_hq\\_26662](https://tc.canada.ca/en/ministerial-orders-interim-orders-directives-directions-response-letters/interim-order-respecting-certain-requirements-civil-aviation-due-covid-19-no-18#fn_81100-3-85_hq_26662)

<sup>4</sup> <https://www.canada.ca/en/transport-canada/news/2021/01/new-pre-departure-covid-19-testing-requirements-come-into-effect-for-all-air-travellers-flying-into-canada.html>



addition to mandating negative test results, impairs liberty in a manner that is arbitrary, disproportionate, and overbroad, and therefore violates the principles of fundamental justice.

Section 6(1) of the *Charter* protects mobility rights and provides that “[e]very citizen of Canada has the right to enter, remain in, and leave Canada.” As the Supreme Court has ruled, “the right to leave Canada is a hollow right if it cannot be exercised in a meaningful way due to the actions of the Canadian government directed at individual or group of individual citizens.”<sup>5</sup> Arbitrarily penalizing all Canadians who exercise their right to leave and re-enter the country, by imposing a mandatory 14-day quarantine, represents a severe impairment of section 6(1). Further scrutiny by the Royal Canadian Mounted Police and provincial law enforcement agencies to verify the compliance of returning travelers is a further infringement of Canadian citizens’ *Charter*-protected rights when these mandates are applied to healthy, asymptomatic individuals who have tested negative for COVID-19.

The mandatory quarantining of *all* Canadians, merely because they exercised their *Charter* right to leave or enter Canada, is not rationally connected to any legitimate public health objective. It is not rational to impose a 14-day quarantine upon asymptomatic individuals who are able to provide negative test results confirming their lack of infection. This is especially so in light of data suggesting that only a negligible number of active cases are linked to international travel.<sup>6</sup>

Accordingly, orders issued under the *Quarantine Act* concerning Canadians returning from international travel should only apply to individuals who have tested positive for COVID-19 or who are symptomatic. Asymptomatic citizens and Canadians who have genuinely tested negative should not be quarantined upon exercising their *Charter*-protected right to enter Canada.

### **Incarceration in Federal Facility**

We have reports of Canadians now being arrested and transported to secret locations to be held against their will without access to lawyers, the courts of justice, or their family members. There is no justification for not informing family members where their loved ones are detained.

These measures are draconian and more fit for an oppressive regime like that of Iran or Uzbekistan than that of a free nation like Canada. Particularly where a returning traveler has her or his own residence to return to, and applicable laws can be enforced in an ordinary manner, without imprisoning people who have not been charged with, tried for, or convicted of any crime. Further, in all cases where Canadians have tested negative, they should be free to return to their own homes free of interference or arrest by the government.

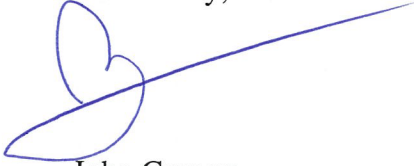
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<sup>5</sup> *Khadr* at para 63.

<sup>6</sup> [Doug Ford says international travellers pose 'extreme risk' for COVID-19 spread. Here are the facts | CBC News, What the science says on travel bans, as experts warily eye new COVID-19 variants | CBC News, Interim report shows results of COVID-19 tests for arriving international travellers – Brighter World \(mcmaster.ca\)](#)

You are hereby on notice that if you do not immediately rescind these provisions, and release the Canadians you are holding illegally under arrest in federally designated containment facilities, we will imminently commence legal proceedings.

Yours truly,



John Carpay  
President  
Justice Centre for Constitutional Freedoms

Email: [REDACTED]  
*"Defending the constitutional freedoms of Canadians"*

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