

EXTRACT FROM CANADIAN HUMAN RIGHTS COMMISSION

COMPLAINT ON BEHALF OF LUCY FRANGINETH GRANADOS 11

APRIL 2018

We are the Immigrant Workers' Centre, a non-profit incorporated under the Québec *Companies Act*. Our purpose is to defend the rights of immigrants in their places of work and advocate for dignity, respect, and justice. With authorization from Ms. Lucy Francineth Granados, we are filing a complaint pursuant to the *Human Rights Act* (herein: the *Act*) regarding the discriminatory treatment of Ms. Grandos by the Canada Border Services Agency (CBSA).

Ms. Granados is a 42 year old racialized single mother from Guatemala with a pending application for permanent residency on humanitarian and compassionate grounds pursuant to the *Immigration and Refugee Protection Act*. Considering that she has filed for status within Canadian law and has suffered discrimination and abuse from the CBSA, s.40(5)(a) of the *Act* should be given a broad and purposive interpretation that is consistent with the human rights and freedoms that Canadian legislation and the *Canadian Charter of Rights and Freedoms* aim to uphold. Specifically, given that the purpose of the *Act* is to ensure that all individuals have equal treatment without being discriminated against, it would be an injustice to deny Ms. Granados a claim when she has validly applied to regularize her immigration status and is currently awaiting a decision from Immigration, Refugees, and Citizenship Canada.

On 20 March at 6 am, four CBSA agents arrested Ms. Granados in her home using unnecessary and disproportionate force,¹ resulting in the physical injury of her arm and neck. She has since spent 22 days in immigration detention. During this time, Ms. Granados has been denied medical treatment recommended by independent medical experts and been isolated by the CBSA, violating s.5(a) and s.5(b), and s.14.(1)(a) of the *Act*, as well as s.15(1) and s.12 of the *Canadian Charter of Rights and Freedoms* and s.5 and s.12 of the *Universal Declaration of Human Rights*. Ms. Granados' treatment by the CBSA has caused a severe deterioration of her physical and mental health and puts her at risk of long-term psychological damage.

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Racialized non-citizens and systemic discrimination:

Ms. Granados has been individually discriminated against by the CBSA: after physically injured by four CBSA agents, she has been denied access to medical care recommended by independent medical experts and isolated under CBSA custody. This mistreatment is a result of structural discrimination against racialized women in Canada and specifically racialized women who are non-citizens.

A 2017 report from the UN Committee on the Elimination of Racial Discrimination highlights discrimination against non-citizens as a systemic problem in Canada. Specifically, it voices a concern for the physical precarious position of migrants in immigration detention that has in some cases led to deaths in custody.²

¹ *R v Nasogaluak* 2010 SCC 6 1 SCR.

² <tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD/C/CAN/CO/21-23&Lang=En> at section 33(a).

According to the Canadian Council for Refugees, non-citizens are disproportionately from racialized backgrounds.³ In the context of entrenched societal racism, the denial of the basic human rights of racialized non-citizens is considered to be the norm by many in government and in society. Along with Indigenous peoples in Canada, the economic, social and cultural rights of racialized non-citizens are those which are the most frequently violated in Canada.⁴

Racialized non-citizens are systematically denied access to healthcare services and educational institutions, work the most difficult and dangerous jobs in Canada,⁵ do not have access to safety-net benefits due to their immigration status,⁶ and are commonly denied basic legal protections.⁷

The UN Committee on the Elimination of Racial Discrimination emphasizes that immigration detention should only be undertaken as a last resort after fully considering alternative non-custodial measures,⁸ and that Canada should ensure that all persons have access to health care, regardless of immigration status, without discrimination.⁹

Statement of Facts:

On 20 March at 6 am, four CBSA agents violently arrested Ms. Granados in her home using unnecessary and disproportionate force.¹⁰ The agents pulled her by her hair, forcefully grabbed her neck and arm without warning, and threw her face-down onto a table and then on the floor. They then applied an arm wrench that caused Ms. Granados severe pain and put the full force of a knee on her upper back.

The actions of these agents left a “10cm diameter bruising and swelling at the back of her neck, which was still evident five days after the arrest”.¹¹ It also left Ms. Granados with a presumed tendon injury on her left arm, leaving her left hand numb and her arm swollen and largely immobile following the incident and continuing until the date of submission of this application. Since the arrest Ms Granados has also experienced a pain to the right of her left breast, which becomes sharp when she breathes in.

On 21 March, doctors at the detention centre examined Ms. Granados, but did not diagnose any cause for her pain, contenting themselves to prescribe her simple painkillers. She did not receive any medical treatment for her injured arm or neck.

On 26 March, Ms. Granados was taken to the Centre hospitalier de l'Université de Montréal (CHUM) emergency room after collapsing and falling unconscious. According to Nazila Bettache, a doctor and specialist in internal medicine at CHUM, Ms. Granados suffered from loss of consciousness with possible cardiac arrest. She underwent cardiopulmonary resuscitation.¹² In emergency care, she received an

³ ccrweb.ca/files/cescrsubmission.pdf at p.1.

⁴ *Ibid.*

⁵ justlabour.journals.yorku.ca/index.php/justlabour/article/view/7.

⁶ *Supra* note 3 at p.12.

⁷ http://www.fondationtrudeau.ca/sites/default/files/u5/article_catherine_dauvergne.pdf at p.3.

⁸ *Ibid* at s.34.

⁹ *Ibid.*

¹⁰ *Supra* note 1.

¹¹ Dr. Cécile Rousseau, MD, and Swanson Kalache, MD, “Psychiatric Assessment for Lucy Francineth Granados,” (25 March, 2018).

¹² Nazila Bettache MD CM, “Condition de santé de Mme Lucy Granados, DDN 24 avril 1976,” (27 March 2018) at para 3.

electrocardiogram; she was finally given a sling for her injured arm. Ms. Granados stayed in hospital until 5pm on Tuesday, 27 March, when she was returned to immigration detention.

While in hospital, Ms. Granados' feet were shackled together despite the presence of two CBSA guards.¹³ The CBSA did not inform her lawyer of Ms. Granados' hospitalization. For several hours, friends and family were unable to locate her and she was kept in isolation. She was not permitted any calls to family or friends or visits by family or friends.¹⁴ Dr. Bettache describes this treatment of Ms. Granados' as disproportionately severe, particularly considering her fragile state of health.¹⁵

Dr. Bettache reviewed the medical chart and noted that an echocardiogram had not been conducted at the hospital and should have been to ensure that Ms Granados was not in danger¹⁶ ...

On 29 March, Ms. Granados was taken to the emergency at the Hospital Cité de la Santé in Laval. She experienced sharp chest pains and high blood pressure; her lips turned purple and her hands turned white. She was returned to immigration detention that same afternoon.

On 5 April, Ms. Granados was finally told by a doctor in the detention centre that she had suffered a tendon injury in her arm. He told her the pain in her chest had been caused by the knee applied by a CBSA officer to her back. On 5 April, Ms. Granados' lawyer asked the detention centre for her medical chart. To date of filing, her lawyer has not received the file, making it impossible for Ms Granados to know the diagnosis or to seek advice on appropriate treatment.

Ms. Granados' mental health has deteriorated as a result of both her traumatic arrest and her time in detention. A recent psychiatric report for Ms. Granados concludes that she is suffering from Acute Stress Disorder.¹⁷ The report recommends that her "vulnerable mental health state" requires Ms. Granados to return to a secure and supportive environment for her to remit...".¹⁸

It has been extensively documented¹⁹ that detainees and non-citizens have higher levels of trauma, depression, PTSD, anxiety and suicidal ideation. The emotional stress that Ms. Granados has experienced, aggravated by the isolation of her imprisonment and lack of adequate medical care, is severely affecting her mental and physical health and well-being. Since March 20th, she has been unable to sleep and often wakes up in episodes of panic.²⁰ She is repeatedly crying, has difficulties concentrating, is easily startled and continues to have flashbacks of her arrest. Doctors have diagnosed that she is at risk of developing Post-Traumatic Stress Disorder if there are "ongoing life stressors" such as continued detention and deportation.²¹

These expert recommendations were made available to the Minister and the CBSA and no action was taken.

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid* at para 6.

¹⁶ *Ibid* at para 6.

¹⁷ *Supra* note 13.

¹⁸ *Ibid.*

¹⁹ <drive.google.com/file/d/1ywk1ZnnIWk1mptVdfkZHUXty7FEKHqZt/view>.

²⁰ *Ibid.*

²¹ *Supra* note 13.

As described above, Ms. Granados has endured physical and psychological harm as well as been denied essential medical services under CBSA custody, in violation of s.5(a), s.5(b), and s.14(1)(a) of the *Act*. She has been denied this care based on her position as a racialized woman with a fragile health condition who is a non-citizen in Canada. This is clearly a violation of her right to equal protection under s.15(1) of the *Charter*.²² Moreover, it is a violation of her right not to be subjected to cruel and unusual treatment under s.12 of the *Charter*.

Conclusion

We are lodging this complaint in consideration of the fact that there is currently no independent watchdog over CBSA abuse and thus no engrained protections for racialized non-citizens.²³ Ms. Granados' position as a racialized woman with a precarious health condition has made her further vulnerable to harm in CBSA custody.

Racial stereotypes about racialized non-citizens are so deep-seated in Canadian institutions such as the CBSA that they have become a norm or are functionally rendered invisible.²⁴ Nonetheless, racism is routinely practiced by CBSA agents.²⁵ A 2017 federally commissioned report has recently outlined a need for an independent watchdog to oversee CBSA activities and to examine systemic problems in the agency.²⁶

As a federal government agency, CBSA is under the Commission's jurisdiction. There is no other legal avenue for Ms. Granados to launch a human rights complaint for the harms she has endured.

We refer to all the above information to allege that the actions of the CBSA constitute discrimination as prohibited under s.3(1) of the *Act*.

²² *Supra* note 2.

²³ <www.thestar.com/news/immigration/2017/06/14/federal-government-urged-to-create-oversight-bodies-for-border-agency.html>.

²⁴ <www.thestar.com/news/canada/2017/09/24/un-report-on-canada-to-address-anti-black-racism.html>.

²⁵ <theprovince.com/news/local-news/canadian-border-services-officers-at-yvr-were-racist-homophobic-toward-atlanta-man-lawsuit-alleges>

²⁶ <globalnews.ca/news/3942698/cbsa-watchdog-accountability/>.