



Organizations call on federal government to immediately stop sending refugee claimants back to the United States

On July 22, 2020 the **Federal Court ruled** that sending refugee claimants back to the USA under the Safe Third Country Agreement violates their right to liberty and security protected by section 7 of the Canadian Charter of Rights and Freedoms. The Court therefore determined that the Canadian legislation designating the US as a safe third country is of no force or effect. However, the Court ordered that its decision will only take effect after six months, in other words on January 22, 2021.

In a letter to Prime Minister Trudeau, Deputy Prime Minister Freeland, Public Safety Minister Blair, Minister of Immigration, Refugees and Citizenship Mendicino, and Minister of Justice and Attorney General Lametti, the Canadian Council for Refugees, Amnesty International and the Canadian Council of Churches have implored the government to:

- Immediately stop sending refugee claimants back to the United States and suspend the Safe Third Country Agreement.
- Accept the Court's judgement and refrain from pursuing a further appeal.

The Federal Court's decision is based on the extensive evidence presented of wide-ranging and very serious human rights violations associated with immigration detention in the United States, and in particular of the actual experiences of people returned by Canada to the USA under the Safe Third Country Agreement.

One of the applicants, Nedira Jemal Mustefa, was “immediately imprisoned” after being returned to the United States. She was detained for one month, including one week in solitary confinement which she described as a “a terrifying, isolating and psychologically traumatic experience.” Ms. Mustefa lost 15 pounds because her dietary requirements as a Muslim were not respected. She was “detained alongside people who had criminal convictions” and held in “freezing cold” conditions in which prisoners were “not allowed to use blankets during the day.” She “felt scared, alone, and confused at all times” and “did not know when [she] would be released, if at all.”

Based on the evidence of Ms Mustefa, as well as of other individuals who had been detained, and lawyers and advocates who work with refugee claimants and migrants in detention centres and jails, the Court concluded that “detainees demonstrate both physical and psychological suffering because of detention, and a real risk that they will not be able to assert asylum claims.”

The Court determined that “imprisonment flows automatically from a finding of ineligibility under the STCA” and noted that “failed claimants are detained without regard to their circumstances, moral blameworthiness, or their actions. They are detained often without a release on bond and without a meaningful process for review of their detention.”

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The Court considered the government’s position that without the Safe Third Country Agreement, the numbers of refugee claimants arriving in Canada would rise. The Court’s conclusion, however, was that the “evidence offered by the [government] on this point is weak. In the past, Canada has demonstrated flexibility to adjust to fluctuations in refugee numbers in response to needs.”

The government has been provided by the Court with six months grace before the ruling takes effect. There is no need for the government to wait – on the contrary, the government should move immediately to rectify this longstanding and very serious human rights violation. Every day that the rules remain in effect, more people risk being returned to face imprisonment and mistreatment. Similarly, the government should refrain from launching an appeal that will further prolong and protract this intolerable situation.

By any measure, respect for the rights of refugee claimants in the United States at this time constitutes a human rights crisis, particularly when it comes to the prevalence, arbitrariness and cruel and inhumane conditions associated with immigration detention, which fall far below required international human rights standards. Canada should not continue to be complicit in these deeply troubling human rights violations for another day, let alone for six months.

There is no compelling or convincing evidence that implementing the court’s decision would give rise to increased numbers of refugees beyond Canada’s ability and resources to respond. What is most important is that we act immediately to uphold the Charter, respect our international human rights obligations and ensure the safety and dignity of refugees. We note as well that if refugees are able to make claims for protection at official land border posts it will be manageable and feasible for the government to adopt measures that public health officials recommend as being necessary to address any concerns related to COVID-19. It will also bring an end to the crossings at Roxham Road.

Canadians have been deeply troubled by the longstanding lack of respect for the rights of refugees and migrants in the United States, which has worsened precipitously in recent years. Embracing this ruling and moving immediately to suspend operation of the STCA provides an opportunity to demonstrate the strength of Canada’s commitment to refugee protection at a time when such leadership is in short supply and urgently needed around the world.

In responding to the judgment, the government must choose between overall policy objectives and protecting individuals from “imprisonment or the deleterious effects of cruel and unusual detention conditions, solitary confinement, and the risk of *refoulement*”. The Court was clear that there is only one choice that is acceptable “in our free and democratic society”. The treatment that Ms. Mustefa experienced is sufficient to ‘shock the conscience’. We cannot continue to send people back to the United States knowing that they will be treated in ways that are fundamentally unjust, causing grave and lasting harm.

