

Court to Hear Why Sending Refugee Claimants Back to the U.S. Breaks Canadian Law

Demonstrators to rally outside Toronto court in support of legal challenge to flawed Safe Third Country Agreement

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From November 4th to 8th the Federal Court of Canada will hear a challenge to the designation of the U.S. as a safe third country for refugees. The court will hear that sending refugee claimants back to the US violates Canadian law, including the *Canadian Charter of Rights and Freedoms*, and Canada's binding international human rights obligations.

The Canadian Council for Refugees (CCR), Amnesty International (AI) and The Canadian Council of Churches (CCC), alongside an individual litigant and her children, initiated the legal challenge in July 2017. The hearings are taking place at the Federal Court of Canada in Toronto, at 180 Queen Street West.

"We are asking the court to look at the impact of the Safe Third Country Agreement on women, men and children who can't find safety in the U.S. and to assess the legality of Canada sending them back to detention and potential deportation to persecution," said Claire Roque, CCR President. "The impacts are particularly severe for women, because of U.S. policies that close the door on women fleeing gender-based violence. The conclusion is clear to us: the U.S. cannot be considered a safe country for refugees."

"The Canadian Council of Churches has long advocated that every human being who is physically present in Canada has a legal right to life, liberty and security of person under the Charter of Rights and Freedoms," said Peter Noteboom, General Secretary of The Canadian Council of Churches. "The U.S.-Canada Safe Third Country Agreement stands in the way of guaranteeing those legal rights."

"The time for Canada to rely on the adequacy of the U.S. protection regime has come to a definitive end," said Justin Mohammed, Human Rights Law and Policy Campaigner at Amnesty International. "In the absence of action on the part of Canada's elected representatives to acknowledge the serious shortcomings of the U.S. refugee protection system, we now turn to the courts to ensure that Canada's domestic and international legal obligations are upheld."

The organizations and individuals leading the legal challenge have submitted extensive evidence that the U.S. system fails in many ways to protect refugees, and that people turned back from Canada under the Safe Third Country Agreement are at risk of being sent in turn by the U.S. to face persecution, torture and even death in their home countries.

Under the Safe Third Country Agreement, implemented in 2004, refugees who present themselves at a Canada-U.S. border post seeking to make a refugee claim in Canada are, with limited exceptions, denied access to the Canadian refugee system and immediately returned to the United States. Since the Agreement does not apply to people who cross into Canada other than at an official border post, people in need of safety in Canada have been crossing in

significant numbers in between ports of entry. Withdrawing from the Agreement would not only ensure that Canada meets its legal obligations, but would also allow people to present themselves in an orderly way at ports of entry, ending irregular crossings.

A rally will be held outside the Court (180 Queen Street West) in support of the legal challenge on Monday, November 4 at 12:30pm.

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For more information

- Extract from the legal arguments (Overview) – see below
- CCR backgrounder, [Why the US is not safe for refugees](#) (July 2018)

Extract from Supplementary Memorandum

Overview

I believe therefore that a Convention refugee who does not have a safe haven elsewhere is entitled to rely on this country's willingness to live up to the obligations it has undertaken as a signatory to the United Nations Convention Relating to the Status of Refugees.

- *Singh v. Canada (MEI)*, [1985] 1 S.C.R. 185, per Wilson J at para. 20

The Applicants challenge the lawfulness of Canada's continuing reliance on the U.S. as a partner in refugee protection under the Canada-U.S. Safe Third Country Agreement.

The evidence now before the Court establishes that the refugee claimants that Canada turns away at our borders are exposed to grave risks of detention and mistreatment in the U.S. and *refoulement*. Refugee claimants are being detained indefinitely, in conditions that are nothing short of cruel and unusual, simply for seeking protection. Those who failed to start their U.S. claims within a year of first arrival are barred from ever obtaining asylum. Whole classes of people are being excluded from protection under the Refugee Convention, including women fleeing gender-based persecution and those fleeing gang violence.

In efforts to discourage and prevent people from even seeking protection in the U.S., the Administration has issued transit bans targeting Muslims, instituted "zero-tolerance" policies targeting Central American refugees, separated children from their parents and detained them, refused entry to almost all people seeking asylum at the southwestern border, and most recently rendered ineligible for asylum anyone who could have made a claim elsewhere before coming to the U.S.

The Governor in Council was instructed by Parliament to ensure continuing review of conditions in the U.S. for refugees, so as to be in a position to suspend the responsibility-sharing arrangement in the event that the U.S. ceased complying with its obligations under international refugee law. Instead, it has permitted the arrangement to continue, exposing countless refugees to violations of their fundamental rights under international law and the Charter of Rights and Freedoms upon return to the U.S.

The Applicants seek a declaration that the designation of the U.S. as a safe third country is *ultra vires* and unconstitutional, contrary to the requirements of s. 7 and 15(1) of the *Charter of Rights and Freedoms*.