

CARL WELCOMES FEDERAL COURT DECISION TO STRIKE DOWN THE SAFE THIRD-COUNTRY AGREEMENT

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In these extraordinary times when our country is coming together to support vulnerable people, the Canadian Association of Refugee Lawyers (CARL) welcomes and applauds the Federal Court's decision in *Canadian Council for Refugees, et al. v. Canada*, 2020 FC 770, striking down the *Safe Third-Country Agreement* as a violation of the *Canadian Charter of Rights and Freedoms* – our country's highest law.

CARL is an organization of nearly 400 lawyers, academics and law students from across the country engaged in immigration and refugee law.

The litigation was brought by the Canadian Council for Refugees, Amnesty International and the Canadian Council of Churches along with eight refugee claimants. It challenged the 2004 Agreement that allowed the Canadian government to turn back people who sought Canada's protection at the land border – and to force them back into the United States and into the arms of U.S. border officers.

As the Court found today, many of those turned back faced immediate imprisonment in the United States, some for the mere fact that they tried to make a claim in Canada. While the Agreement was stated to be about 'responsibility sharing' for refugees between Canada and the U.S., the Federal Court decided "Responsibility sharing cannot be positively balanced against imprisonment or the deleterious effects of cruel and unusual detention conditions, solitary confinement, and the risk of *refoulement*. In my view, to find otherwise would be 'entirely outside the norms accepted in our free and democratic society'". (para. 136)

CARL has long stated that the current treatment of refugee claimants in the U.S. violates the international *Refugee Convention*, to which Canada is a signatory. Maureen Silcoff, President of the CARL says:

We are now all too familiar with the harrowing scenes of children in cages and of family separation along the U.S. border. This decision shines the light on the unacceptable consequences of Canada turning people back at the border which puts people at risk of traumatic detention and possible return to their country of origin. Simply put, the U.S. can no longer be considered a trusted partner in refugee protection. Today's judgment is a monumental victory for refugees.

The Court's judgment also finds that Canada is not blameless when it forces people at our border back into the U.S. asylum system. To the contrary, Canada is directly complicit in and responsible for what happens to them. As the Court found: "Canada cannot turn a blind eye to the consequences that befell [the Applicant] in its efforts to adhere to the STCA. The evidence

clearly demonstrates that those returned to the U.S. by Canadian officials are detained as a penalty” (para. 138).

The Court’s judgment is blunt and it is clear. CARL calls for the government to respect and implement it without delay, despite the Court suspending it for 6 months. The Agreement itself makes immediate suspension possible. Anthony Navaneelan, Vice-President of CARL says:

We do not need countless taxpayer dollars wasted on appeals to challenge a finding Canadians already know to be true: refugee claimants are not treated fairly in the U.S. Every month the government drags out an appeal process is another month that vulnerable refugees are being turned back from our border – and likely to be imprisoned on return to the United States. Lives are at stake; we can’t afford to delay.

CARL also calls on the government to immediately revisit other immigration measures that are tied to the U.S. asylum system. This includes the 2019 law making individuals ineligible to pursue a refugee claim before the Immigration and Refugee Board if they had previously claimed asylum in the U.S., and the current COVID-19 Order-in-Council directing back refugee claimants at the land border to wait in the U.S. until the border is reopened. The fairness and humaneness of these measures are now cast into serious doubt following the Court’s judgment today.

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