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Media Release – Federal Court of Appeal’s decision to uphold the *Safe Third Country Agreement* is a step backwards for human rights

The Canadian Association of Refugee Lawyers is deeply concerned by today’s Federal Court of Appeal decision upholding the *Safe Third Country Agreement* (STCA). The Court dismissed the challenge on highly technical legal grounds related to the framing of the challenge brought by the claimants.

In July 2020, the Federal Court struck down the STCA after it found the agreement violated the *Canadian Charter of Rights and Freedoms* after hearing extensive evidence of the harm refugee claimants face when returned to the U.S. from the Canadian border. The Court found that many of those turned back faced immediate imprisonment in the U.S., and that Canada is complicit in and responsible for what happens to these claimants when returned into the hands of U.S. border agents.

“This decision is a step backwards for human rights in Canada. The curtain had been pulled back on what happens when claimants are jailed in the U.S. The evidence unequivocally reveals that detention is the default position,” said Maureen Silcoff, President of the Canadian Association of Refugee Lawyers. “The evidence of harm before the Court was overwhelming, and we are disappointed that the result failed to reflect that.”

The Federal Court of Appeal focused almost exclusively on technical legal issues, including whether the challenge was brought against the right provision of the law. Despite the fulsome record of more than 20,000 pages of evidence, including that most people are detained when turned back at the Canadian border to the U.S., the Court also found that detention is merely discretionary and was not enough to ground a finding that the claimants’ section 7 *Charter* rights had been breached.

The Federal Court of Appeal also declined to deal with the section 15 *Charter* challenge, which highlighted the significant barriers women refugee claimants face fleeing domestic violence in the U.S. asylum system. The decision did not consider the serious barriers for women and children turned back at the border to receive protection for gender-based claims in the U.S.

“The real consequences of this decision rest with those refugee claimants who are being returned to U.S. detention facilities after being turned back and facing harm both in jail and in the U.S. asylum process,” said Amanda Aziz, member of CARL’s executive. “What is lost in this decision are the people who will continue to face real and severe harm because of the ongoing operation of the STCA.”

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