

Canadian court rules Safe Third Country Agreement with US violates refugee rights

By Laurent Lafrance
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Canadian Federal Court Judge Ann-Marie McDonald recently ruled that the Canada-US Safe Third Country Agreement (STCA) violates refugee rights and the Canadian constitution's Charter of Rights and Freedoms. The decision represents a blow to the Trudeau government, which has falsely presented itself as "pro-refugee" to provide a "progressive" cover for its reactionary policies at home and abroad.

The case was brought by the Canadian Council for Refugees, the Canadian Council of Churches, and Amnesty International on behalf of citizens from El Salvador, Ethiopia, and Syria. The most significant case was that of Nedira Jemala Mustefa, a Muslim woman from Ethiopia of Oromo origin, an ethnic group persecuted by the US-backed Ethiopian government. She arrived in the US at age 11 and lived in the country for several years as an undocumented refugee. She graduated from a Georgia high school in 2015. However, because she had arrived after the cut-off date to apply for the Deferred Action for Childhood Arrivals (DACA) program, she was unable to obtain proper documentation to continue her studies in the country.

Like thousands of migrants fearing Trump's brutal anti-immigrant witch-hunt, Mustefa attempted to cross to Canada in 2017 at the official border at Saint-Bernard-de-Lacolle, Quebec. She was questioned for 30 hours before being delivered back to US authorities and "immediately imprisoned." She was detained for one month, alongside people who had criminal convictions, in a maximum-security prison in upstate New York known as "Little Siberia" for its frigid conditions. She was locked in solitary confinement for the first seven days, which she described as "a terrifying, isolating and psychologically traumatic experience." Her dietary requirements as a Muslim were not respected and she lost 15 pounds.

In her ruling, McDonald wrote that Canadian officials had handed Mustefa over to the US knowing she would be imprisoned, knowing in other words, that she would be deprived of her fundamental rights under Canadian law. Justice McDonald concluded, "The evidence clearly

demonstrates that those returned to the US by Canadian officials are detained as a penalty," which is a violation of their "right to liberty and security" as stipulated in section 7 of the Canadian Charter of Rights and Freedoms.

A spokesperson for Public Safety and Emergency Preparedness Minister Bill Blair said, "We are aware of the Federal Court's decision and are currently reviewing it." The federal government argued before the court that the US has a "fair" detention review process, citing Mustefa's eventual release by American authorities. But that argument was rejected by the judge as not providing "sufficient evidence of minimal impairment" of her rights.

Mustefa is only one among thousands who have been sent back to the US after unsuccessfully seeking protection in Canada. Even before Trump's ascent to the presidency, the US was notorious for its mistreatment of asylum seekers. US Immigration and Customs Enforcement (ICE) routinely separates children from their parents and has imprisoned tens of thousands of innocent refugees in military-style prisons where they are subjected to abuses, violence and even rape. Under "deporter-in-chief" Barack Obama, and now under Trump, the US has deported millions of desperate migrants fleeing war, persecution and economic hardship in their home countries, which have more often than not been ravaged by US imperialism.

The court's decision, which further exposed the federal government's collaboration with Trump's crackdown on migrants, could not have come at a worse time for the Liberal government. Trudeau is at the center of a scandal which has divulged a web of incestuous and corrupt ties between the top ranks of the Liberal government, including Finance Minister Bill Morneau, and WE, a "philanthropic" charity that has powerful corporate backers (See: Canada's Liberal government shaken by WE Charity scandal).

The cultivation of Trudeau's image as a "refugee-friendly" and "humanitarian" leader has proven invaluable in covering over the criminal activities of Canadian imperialism at home and abroad, including the growing involvement of the Canadian Armed Forces in a

series of US-led wars, intrigues, and provocations around the globe. At home, Trudeau has developed a corporatist partnership with the trade unions and big business to drive workers back on the job amid the COVID-19 pandemic, and to prepare the political groundwork for imposing massive austerity and increased exploitation to make working people pay for the hundreds of billions of dollars in bailout funds the state has provided the rich and super-rich.

As part of Ottawa's close collaboration with the Trump administration, the Trudeau government has followed in the footsteps of the previous Conservative government of Stephen Harper and adopted a series of reactionary measures targeting refugee rights and expanding "border-security" cooperation with Washington. This includes the Trudeau-Trump pact announced as the pandemic erupted last March, according to which all asylum seekers attempting to cross into Canada—including those who used a "loophole" to escape the reactionary provisions of the STCA by entering Canada "irregularly"—would be immediately sent back to the US. This is a clear violation of international law.

While the court's decision sheds light on Canada's complicity in the mistreatment of refugees, it also seeks to preserve the false portrayal of Canada as a more humane country than the US. Judge McDonald granted the Trudeau government some breathing space to refurbish its image by suspending the effect of her ruling for six months. During this time, the government can ask parliament to make some cosmetic changes to the agreement in order to satisfy the court. In other words, the STCA is still in full effect, and Canada can and will continue to deny asylum seekers the right to claim refugee status and immediately return them to the US.

Signed in 2002 in the wake of the 9/11 terrorist attack and officially adopted in 2004, the STCA is part of Canada's efforts to maintain and deepen its military-strategic partnership with Washington. It is an integral part of a Canadian immigration system so closely tailored to the needs of big business that it has won high praise from Trump and leaders of Germany's far-right opposition party, the AfD.

The STCA stipulates that any refugee entering Canada at an official entry point from a so-called "safe country"—that is, one where basic democratic rights and the rights of refugees are supposedly protected—can immediately be returned there without having the right to file an asylum claim in Canada. However, those crossing outside official checkpoints have the legal right to file a claim. In the last three years, thousands of asylum seekers have used this "loophole" to avoid being sent back to the US, and risked their personal safety by crossing into Canada on foot. This

influx still represents a drop in the ocean of a global refugee population numbering more than 70 million.

The Conservatives and the chauvinist pro-Quebec independence Bloc Québécois have long demanded that the "loophole" be closed and the entire US-Canada border be declared an official entry point. The Liberals resisted this, at least until last March, saying such a change was unnecessary because most "irregular" entrants to Canada are deported anyway.

According to the Immigration and Refugee Board of Canada, of the roughly 58,000 irregular migrants who have crossed the border since February 2017, 14,500 have been accepted and 12,000 have been rejected. Some 29,600 claims are still awaiting a decision.

The Canadian Council for Refugees and other human rights organizations celebrated the court ruling as a great victory. They are claiming it could push the government into scrapping the STCA, and enable refugees to enter via official checkpoints without fear of immediate deportation.

Even in the extremely unlikely event such a change were made, it would barely begin to address the plight facing refugees and immigrants. Among those who are successful in their effort to stay in Canada, poverty, unemployment and homelessness are rampant. According to a report by the City of Toronto, as of October 2019, approximately 40 percent of all shelter users in the city's permanent shelter system were refugee/asylum claimants, with an average of 15-20 new claimants entering the shelter system each day.

Thousands of migrants have been detained without charge in various immigration holding centers or provincial prisons. According to the site Neverhome.ca, the Canadian government jailed over 87,317 migrants without charge between 2006 and 2014, including more than 800 children. This trend has continued in recent years. According to the Canada Border Services Agency (CBSA), there were 6,609 people detained in immigration holding centres in 2017-18, up from 4,248 a year earlier. There were 1,831 detainees held in jails last year, compared to 971 in 2016-17.

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