

“The US is not safe for asylum seekers” – Federal Court of Canada strikes down the Canada-US Agreement

The Federal Court of Canada has given the Parliament six months to take necessary action after the Canada-US Safe Third Country Agreement (STCA) was ruled unconstitutional in a landmark hearing on July 22. Until then, Canada can continue handing over asylum seekers to the US officials, exposing them to arbitrary detention and the possibility of immediate deportation. – The Court should rescind the STCA immediately, not six months from now, [says Ryerson University Professor and migration expert, Idil Atak](#).

In a landmark ruling on July 22, the Federal Court of Canada determined that the STCA is unconstitutional as it infringes upon asylum seekers' right to liberty and security protected under the [Canadian Charter of Rights and Freedoms](#).

In its decision, the Federal Court focused on “the most significant harm suffered by asylum seekers returned to the US”—immediate and automatic imprisonment and the risk of immediate deportation.

– During detention, individuals live under appalling conditions for an average of 31 days, usually with the inability to communicate with family members. They often face barriers in gaining access to medical attention and legal advice, explains Associate professor at Ryerson University, Idil Atak, whose research interests include irregular migration, refugee protection and international human rights law.

As a result of US detention, asylum seekers are unable to assert their asylum claims and are forced to return to persecution.

The recent ruling challenges the premise of the STCA in two ways, claims Atak:

– First, it exposes the US as an “unsafe” country for asylum seekers who are ill-treated and denied access to a fair refugee process. Second, the Federal Court has rejected the government’s contention that the STCA ensures “responsibility sharing” between Canada and the US, says Atak.

Despite the ruling’s focus on the immediate harm and rights violations asylum seekers are exposed to upon their forced return to the US, Canada still has six months to respond to the decision and take necessary action.

– This means that for another six months, Canada can continue handing over asylum seekers to the US officials for arbitrary detention and, sometimes, immediate deportation to confront persecution or other life-threatening situation. As the Federal Court put it, Canada cannot turn a blind eye to the consequences of its actions. It should rescind the STCA immediately, not six months from now, says Atak.

- [Atak and her team of early-career migration researchers](#), Zainab Abu Alrob (Ryerson University) and Jona Zyfi (University of Toronto) [criticize the recent ruling in a co-authored blog post](#).

- In a recent video interview Atak also criticizes the Canadian government’s declining commitment to refugee issues:



About the STCA:

- The STCA, in force since 2004, directs asylum seekers to make refugee claims in the first safe country they pass through.
- The agreement assumes that both Canada and the US comply with the 1951 Refugee Convention and international human rights standards, thus considered “safe” for asylum seekers.
- Since the US is listed as “safe”, most asylum seekers who attempt to enter Canada at an official border crossing point are found ineligible by Canadian authorities.
- In 2017, the Canadian Council for Refugees, Amnesty International, and the Canadian Council of Churches asked the Federal Court to suspend the STCA on the grounds that the US is *not* a safe country for refugees.
- The legal challenge was launched amid a considerable increase in asylum seekers irregularly crossing the Canada-US border soon after the election of Donald J. Trump.
- In the recent ruling, evidence indicates that asylum seekers sent back to the US by Canadian officials are placed in detention centers as a penalty, and without regard for their particular circumstances, moral blameworthiness, or their actions.
- The Court concluded that detention in the US and the ensuing hardship and risks amount to a violation of section 7 of the [Canadian Charter of Rights and Freedoms on liberty and security of the person.](#)

Facts about PROTECT:

- [PROTECT The Right to International Protection is a research project](#) funded by the EU’s Innovation and Research Program Horizon2020 with nearly EUR 3.3 million.
- PROTECT studies the future of international refugee governance and protection
- We consist of [11 partner universities in Europe, South Africa, and Canada](#)
- The project is led from the University of Bergen, Norway, by Professor Hakan G. Sicakkan.
- Professor Atak is leading [the Canada-related part of PROTECT.](#)

