

Report on the “Re-Examining the Canada-US Safe Third Country Agreement” Virtual Panel

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Participants

Chris Alexander former Minister of Immigration, Refugees, and Citizenship; former MP for Ajax-Pickering

Heather McPherson MP for Edmonton Strathcona, NDP Critic for Human Rights

Robert Falconer Research Associate, School of Public Policy, University of Calgary

Prasanna Balasundaram Staff lawyer, Refugee and Immigration division, Downtown Legal Services

Discussant

Dr. Craig Damian Smith- Senior Research Associate, Ryerson University; Research Associate, Global Migration Lab

On 16 November 2020, the Global Migration Lab (GML) in collaboration with the Centre for European, Russian, and Eurasian Studies (CERES) sponsored a virtual panel discussion on the current status and future of the US-Canada Safe Third Country Agreement (STCA).

The panel began with a brief explanation of the STCA and its recent changes. The bilateral US-Canada agreement known as the STCA was implemented after 9/11. Under the agreement, asylum seekers entering Canada through an official land port of entry are not allowed to file a refugee claim if they have passed through the US first, and vice versa. Asylum claims have to be submitted to the first country of entry. However, on 22 July 2020, a Canadian federal court ruling in *Canadian Council for Refugees v. Canada* struck down the STCA; an appeal will be heard in February or March 2021, and a decision is expected over the summer.

Chris Alexander began by stating that the STCA court ruling is not only timely because of the recent US election, but also due to the current place of asylum on the global stage. Moreover, the way Canadian society handles issues of asylum and refugees is significant, as Canada receives the greatest number asylum claims of country in the world. Alexander believed that the STCA should have been terminated – not suspended – when the Trump administration began. With the general course of migration policies in the US as of late, there is no way an expert could call the US a safe place for refugees. Alexander pointed not only to the widespread use of detention in the US but also to issues with the way that immigration cases are

adjudicated. According to Alexander, suspending the agreement would allow Canada to do three things. First, it would allow Canada to treat claimants more humanely at ports of entry and put an end to scandalous situations where asylum seekers cross the border in a dangerous manner. Second, suspending the STCA would allow Canada to set a higher standard for the US by stating that Canada no longer believes the US qualifies as a safe country. Finally, with respect to the treatment of migrants and upholding the rights of refugee, suspending the STCA would allow Canada to set a higher standard globally and within Canada itself.

In her introduction, Heather McPherson noted that she would be using a civil society perspective to guide her comments on the STCA and its suspension. She stated that since the 2017 Trump travel ban was instituted, it has become obvious that the international community cannot count on the US to fulfil its obligations and commitments to refugees. News from the US in the last four years – such as the zero-tolerance policy, the deplorable conditions in detention centers, and the refusal to accept gender-based violence (GBV) and gang violence as legitimate reasons to claim asylum further – prove this point. McPherson expressed that agreeing to the STCA violated international refugee law, as it undermines the principle of *non-refoulement*. Thus, agreeing to the STCA not only puts those turned away to the US at greater risk, but it is also a breach of human rights and “un-Canadian.” McPherson asserted that even with the impending change in the White House, Canada should still be worried about the STCA because the agreement predates the Trump administration.

Robert Falconer began his statement by providing more background on the inception of the STCA, such as the goal to have more information-sharing between the US and Canada. Interestingly, Falconer noted that the rise of the number of refugee claims in Canada began before the STCA (back in the 1990s and early 2000s), which has caused a backlog of claims in the Canadian immigration system. Falconer then proceeded to analyze why the STCA has remained in place for so long. He stated that, although the STCA is not responsible for causing this backlog, its existence does highlight some recent trends in migration and policy for North America. In his own words, the STCA shows “a crisis of management” not a “crisis of claims.” Falconer also added that Canada has been walking a policy tightrope, wanting to stay in the good graces of the US but also fearing that divergent immigration policies could risk the relationship. Falconer concluded his remarks with great questions for reflection, such as: What is the future of the STCA according to the US? Is the country interested in renegotiating the agreement? Would Biden help reform it? Since the STCA might not be the highest priority for the US currently, the outlook is not too optimistic.

Prasanna Balasundaram was the event’s final speaker and echoed McPherson’s statement that the STCA should be terminated – not just suspended – as the US does not meet Canada’s legal requirements to be categorized as a safe country. Several longstanding practices by the US make it an unsafe destination for refugees. Its failures become clear when one examines its incompatibility with relevant policies that guide Canadian refugee policy, including



section 102.2 of Canada’s Refugee Protection Act, the 1951 Refugee Convention, and the Convention against Torture. Additionally, refugees entering the US must make their claim within one year of entering to the country. Balasundaram declared that this one-year bar particularly hurts refugees claiming persecution due to sexual orientation and GBV as their reasons for seeking asylum (which is further worsened by inconsistency in the way the US handles GBV-related claims). The large US immigrant-detention system – where thousands of people are held every year – is another longstanding and unsafe feature of the US immigration system. According to Balasundaram, these reasons not only prove that the STCA should be terminated for not meeting the ‘safe country’ requirement, but these same reasons put refugees coming from the US at increased risk when they are turned away in Canada.

Statements from the speakers were followed by a Q&A session with the webinar’s audience. Panelists answered questions such as: why was the STCA created in the first place? Has the agreement been effective since its implementation? The panelists concluded by largely agreeing that the STCA shows bad policy on Canada’s part by harming refugees and that the agreement should therefore not be extended in any way. The end of the panel also included a suggestion, by Falconer, to look beyond the STCA in the near future and keep an eye on the form of refugee and resettlement programs that the US and Canada conclude together. Given that the STCA will remain in the Canadian legal spotlight next year, it will be interesting to see what the federal court rules as well as what the changes in US administration will bring.