Canada: Judge rules the return of political refugees to the US illegal

Guy Charron
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Judge Michael Phelan of the Federal Court of Canada ruled on November 29 that the Safe Third Country Agreement between Canada and the United States dealing with political refugees is illegal.

The purpose of this agreement, signed by the Liberal government of Jean Chretien and the Bush administration in late 2002 and put into effect in December 2004, is to prevent thousands of potential refugees from claiming asylum in Canada. It is estimated, for example, that since January 2005, some 2,500 people fleeing Columbia have been unable to secure refugee status in Canada on account of the Safe Third Country Agreement.

Under the Treaty, a claimant can request political asylum only in that country in which he/she first arrives. [Canada and the US are the sole signatories of the agreement.] Prior to its implementation, some 30 to 40 percent of requests for political refugee status in Canada came from refugees entering the country from the US. Due to the fact that they are poor and/or fear the generally more heavy surveillance at airports, many persons fleeing political persecution in Latin America travel overland, meaning they must first pass through the US to reach Canada. Consequently, the flow of refugees has historically been much greater from the US into Canada, than from Canada into the US.

Phelan's ruling is a condemnation of the treatment of political refugees by both the United States and Canada.

In justifying his decision, Phelan wrote that the United States does not adhere to international treaties on refugees or on torture.

He argued that the US could not be considered a "Safe Country" because claimants may be sent back to their original country even if they risk being tortured there. As an example, Phelan cited the case of Maher Arar, a Syrian-born Canadian, who was arrested at New York's JFK Airport while in transit to Canada, under false suspicion of terrorism. Arar was "rendered" to Syria, where he was jailed and savagely tortured for ten months.

Phelan's ruling is silent, however, on Canada's complicity in US torture practices. A public enquiry has already exposed the close collaboration between the governments of the two countries, with Canada arranging, through the medium of the American state machine, to have its citizens tortured, based on weak or false suspicions of terrorism.

The Canadian government is virtually alone among western governments in failing to condemn the US practice of torture, especially in Guantanamo Bay where a young Canadian has been held for the past five years, that is, since he was 15 years old. The Canadian army, which is engaged in counter-insurgency warfare in southern Afghanistan, regularly turns over its prisoners to Afghan security forces well known for their brutality.

Phelan wrote in his decision that "it is difficult to imagine how the governor in council could have reasonably concluded that the US complies with the Refugee Convention when the law allows the exclusion of claimants who involuntarily provided support to terrorist groups. The terrorist exclusions are extremely harsh and cast a wide net which will catch many who never pose a threat."

Under Canada's own anti-terrorist laws, the government specifically criminalizes involuntary support of government-designated "terrorist groups," not only for political refugee claimants but also for all Canadian citizens. The law is so broad that an anti-

government demonstration or protest movement could be defined as a terrorist act.

In ruling the Agreement illegal, Phelan also took into account the US refusal to allow claims of political asylum made one year after arrival in the country, as well as the incarceration of a significant percentage of refugee claimants.

The US Ambassador to Canada David Wilkins expressed outrage at the decision, stating that the US "has a proud record of accepting and protecting refugees, defending human rights and adhering to our treaty obligations."

Negotiations on the Canada-US agreement on political refugees began in the late 1980s, after the then Conservative government of Brian Mulroney introduced a clause into the country's immigration law that made it legal for the government to strip persons who entered into Canada from a "safe" third country of their right to claim refugee status. But as this would have had the effect of increasing the number of refugee claimants in the US, Washington balked and the two governments were unable to reach a deal. In the aftermath of the September 11 terrorist attacks and with greatly increased border control and security cooperation between the two countries, the Third Party negotiations were revived and an entente concluded in December 2002.

The agreement is part and parcel of measures being introduced by ruling classes around the world to restrict the right of political asylum. Everything possible is done so that refugees never reach the target country's border, for example by strengthening controls over who can embark on an airplane or by building walls to keep people out. Refugees who succeed in getting into a "safe" country are often arrested and held in special detention centers, as is the case in the United States, Great Britain, and Australia.

The impact of these policies has been so great that, although the number of refugees has increased by over 50 percent since 2003, according to the United Nations High Commissioner for Refugees (UNHCR), the number of refugee claims has fallen in half during the same period, including those in Canada and the United States.

It is remarkable that the two countries that have produced the greatest number of refugees, Iraq and Afghanistan (3.5 million and 2.8 million respectively by the end of 2006, according to UNHCR figures), largely owing to American invasions which Canada is supporting, are the source of only a tiny fraction of the refugees accepted by Canada and the United States.

Judge Phelan's decision has been largely denounced by the Canadian press. A *Globe and Mail* editorial of November 30, 2007 is typical: "The claim by a Federal Court judge that the United States is not a safe country for refugees is on the face of it outrageous... The decision should be appealed, and the effect of the judgment suspended until the appeal is heard."

The social-democratic New Democratic Party has expressed its concern that the Canadian bourgeoisie is being too candid about its predatory aims and its repudiation of democratic rights. The NDP has demanded that the government repudiate the Canada-US pact. "The Safe Third Country Agreement has stripped Canada of its ability to exercise good judgment, and does not reflect Canadian values," said Olivia Chow, the NDP critic on immigration.

It is certain that the Conservative government will appeal this judgment, not only because it seeks at all costs to avoid displeasing Washington, but also because its policy is to continuously restrict the entry of political refugees. Recently Canada's Supreme Court refused to hear an appeal by "war resisters"—that is, US soldiers who refused to participate in the illegal war in Iraq—of the Canadian government's refusal to accord them refugee status. (See "Canada's Supreme Court opens door to deportation of US 'war resisters'")