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Repeal Safe Third Country Agreement with U.S., say immigration lawyers

Guests: Basir Khan, Deborah Anker, Julie Taub

The Current

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LAURA LYNCH: On the base of the Statue of Liberty in New York it is famously written, “give me your tired, your poor, your huddled masses yearning to breathe free.” But since the election last fall of a president who vows to build a wall, there’s been a growing unease among asylum seekers in the US. That was only heightened by President Donald Trump’s Executive Order to temporarily ban refugees and block travel from seven predominantly Muslim countries. Last night, an appeals court upheld the suspension of that ban but that just means it’s likely soon headed to the US Supreme Court. And the situation for asylum seekers inside the US remains as uncertain as ever. In recent weeks, some have started crossing a different border, walking into Canada. They include this 29-year-old gay man from Ghana, who walked through frozen fields along the Minnesota-Manitoba border to avoid detection. By the time he arrived in Canada, he was suffering severe frostbite, requiring hospitalization while his refugee claim was filed. He spoke with *CBC Winnipeg* in January.

SOUNDCLIP

REPORTER: What have doctors told you?

ASYLUM SEEKER: He told me I would lose my fingers or arms. They have to do some surgery on it and that’s the only way they can save me. And also they told me they have to cut some of my toe. So that makes me frustrated and I’m thinking about it and I don’t know what to do right now. And I was crying. I didn’t expect anything like this before. And I’ve never experienced anything like this before. So all I think about when I was crying is my family. Like, when I lose my toe what am I going to do? What work am I going to do?

LL: We are not naming this asylum seeker to protect his identity. And it's that agreement that we're focusing on today, as a growing number of critics say Canada should consider abandoning the Third Safe Country Agreement with the United States. Bashir Khan is a Manitoba immigration lawyer. He's representing several asylum seekers who have walked across the border into Canada. And he is with us from Winnipeg. Hello.

BASHIR KHAN: Hello, good morning.

LL: I understand that you're representing this man who suffered frostbite trying to get into Canada. How is he doing now?

BASHIR KHAN: Well, actually there's two of them who've suffered the same fate. One has lost nine digits and the other one is lost both hands completely. And they are both recovering across the street from the main hospital right now.

LL: And how are they doing mentally and emotionally?

BASHIR KHAN: Emotionally and mentally, one of them is not doing so well. And he cries quite a bit and is really quite disturbed by what has happened to him. He's still in disbelief, that he looks at his hands and they're not there.

LL: What led these two men to make this trek and eventually end up in hospital?

BASHIR KHAN: Well, I think it's the desperation. Basically, they are going to be deported from the United States back to their home country in Africa. And they have a fate that is pretty bad, a very bad fate waiting for them. And they feel they didn't get the asylum protection they were seeking from the United States, so then they make the last chance, last attempt trek to Canada to see if they would get a chance to stay here and find safety.

LL: Now, can we be clear here, were they denied asylum in the United States?

BASHIR KHAN: We can be more clear than that, they were actually detained in a United States immigration detention center for several months. They were not given a lawyer there, there legal aid available. They had to fill out the forms themselves with their limited English. And the judge of the United States immigration court and the court was held right inside the detention center, denied their asylum claims. That's what happened with them.

LL: So they were waiting to be deported?

BASHIR KHAN: They were waiting to be deported by the Immigration and Customs Enforcement of the Department of Homeland Security.

LL: How many clients do you have who have recently made this trek into Canada?

BASHIR KHAN: As of today, 17.

LL: And that is since when?

BASHIR KHAN: I would say between the third week of November and now I've had 17 assigned to me.

LL: Now, if they actually go to a formal land border crossing and ask a Canadian border guard for asylum, they won't usually get it because of the Safe Third Country Agreement. Tell us what that is and how it applies to refugees coming into Canada from the United States?

BASHIR KHAN: OK. So the Safe Third Country Agreement says, and there's an exception to it, and the exception is if you have a blood relation, a blood relative in Canada, then you can come to a port of entry, [clears throat] excuse me, then you can come to a port of entry and you can enter Canada. But if you do not have a blood relative living here, like all of these men actually didn't. Then if you come to the border of entry, you will be sent back to the United States. You will be deflected back to the United States and you will not be able to make a refugee claim here, and the United States will be forced to take you back. But of course, they will be more alerted, aha so you trying to sneak away, so I think we'll just arrest you now until we deport you. That's what would happen.

LL: But that is all based on the agreement between the two countries and the recognition that in fact, the United States is a safe country to return them to.

BASHIR KHAN: Yes, there is that agreement. But it only applies to a port of entry and that's why in order for them to get into Canada, they have to go around the port of entry hence a farmer's field near Emerson, Manitoba.

LL: What, you don't consider the United States to be a safe country?

BASHIR KHAN: No, but I think that the Safe Third Country Agreement is something that is not clearly mentioned in the Refugee Convention. There are some people who say it is implied. I mean, look, to look at the Safe Third Country Agreement, you've got to see what the two sides of the coin are. The Canadian government wants it so Canada is not swelled up, basically, at its borders with refugee claimants trying to get into Canada.

LL: Isn't that legitimate? Shouldn't Canada be able to control its borders?

BASHIR KHAN: Well it is a public policy perspective. And yes, and that's why I want to be fair too. But on the other hand, what I'm saying is the Refugee Convention does not clearly speak of a Safe Third Country in a very clear fashion. Therefore, you should be able to enter Canada and make a refugee claim because let's go back to what the situation was. Up until December 28, 2004 anyone would come to the Canada-US

border and make a refugee claim and they will be granted entry. It's only from December 29, 2004, have we got this strange rule put in place.

LL: We are going to have to leave it there. Bashir Khan, thank you very much for your time.

BASHIR KHAN: Thank you.

LL: Bye Bye.

BASHIR KHAN: Bye bye.

LL: Bashir Khan is an immigration lawyer in Winnipeg. For more now on just what's driving so many asylum seekers in the United States to take such risky new journeys into Canada, I'm joined now by Deborah Anker. She is a Professor and Director of *Harvard University's* Immigration and Refugee Clinical Program. And she is in Boston, Massachusetts. Hello.

DEBORAH ANKER: Hello.

LL: Now you issued this report that assessed the impact of President Donald Trump's Executive Orders on immigration. What was your conclusion?

DEBORAH ANKER: Our conclusion is with the, especially with the new executive orders. The United States is not a safe country of asylum, and that is for several reasons. The new executive orders provides for mass detention of refugees and other immigrants seeking asylum on a mere suspicion of violating the immigration laws. And refugees and immigrants, I should note as well, are subject to arrest now by any state or local official not just trained immigration officers. So anybody can be picked up and sent to any detention centres, even a remote detention centre, away from her family, away from their lawyers and a place where they would have access to asylum. The other major aspect of this program that is deeply problematic is that it provides for expedited removal of anybody who's arrested in such a manner, expedited removal throughout the United States. Before, expedited removal was applied within the area of the border, our southern border with Mexico. Now it is throughout the United States.

LL: [interposing] Now, I just wonder can you clear up a little confusion here because we know of this Executive Order that has now been suspended by the courts. And if that's the case, then then is there a problem for refugees and asylum seekers right now?

DEBORAH ANKER: Yes, the executive orders that I'm talking about have not been suspended. There have now been several executive orders related to immigration, but the first three that President Trump issued involved the Muslim ban, which is the one that's been suspended by the courts. But also these border and interior enforcement orders, which provided this mass deportation and expedited removal throughout the country. So those have not been suspended.

LL: You sent a letter about the results of your report to Prime Minister Justin Trudeau and to our Immigration Minister Ahmed Hussen, why did you do that?

DEBORAH ANKER: Because I think it's really critical that Canada either suspend the agreement or abandon it altogether at this point. Refugees are in tremendous risk. And we sent the letter as soon as we were able to evaluate what the effect of these new executive orders, again, the border and interior enforcement executive orders would have on refugees.

LL: What do you think the Canadian government should do?

DEBORAH ANKER: I think under the terms of the Safe Third Country Agreement, the Canadian government can either suspend for a period of time to investigate and evaluate the effect of the Safe Third Country Agreement or abandon it altogether. But the fundamental premise of the state or country is that the United States is a safe country in which to apply for asylum. And it is clearly not.

LL: Now, this week Ahmed Hussen, the Canadian Minister for Immigration and Refugees made a statement on Canada's Safe Third Country Agreement in the House of Commons. Let's listen to what he said.

SOUNDCLIP

AHMED HUSSEN: The US Safe Third Country Agreement with the United States and Canada provides an orderly system of managing asylum claims. The US Executive Order has no bearing on the US Safe Third Country Agreement with Canada. We are proud of our tradition of offering protection. Every eligible asylum seeker has access to a fair hearing in front of the Immigration and Refugee Board, and each case is assessed based on its merits.

LL: Now, he says he has no plans to change the agreement with the US and that it's helpful in managing refugee flows and managing our borders. What do you think about that view?

DEBORAH ANKER: Well with all due respect, the process now is not at all orderly. Indeed the opposite. And I think that the report of refugees earlier certainly supports that. More refugees are crossing the Canadian border from the US without presenting at a border crossing in order to avoid the effects of the agreement and they're being turned back to the United States. Indeed, before the agreement, Canada had an orderly process receiving refugees who presented at the border, now it is not. The minister is the right, Canada had been indeed the world's leader on refugee protection and human rights generally. You know, in 1993 for example, it issued ground breaking gender asylum guidelines that had an effect on the UN. Canada's willingness to take refugees applying at it's border for asylum from Central America during the civil wars of the eighties and early nineties led the United States to change course and stop discriminating, as the court found it did, a US court found it did against Central

American refugees. The Safe Third Country Agreement sends asylum seekers away from the border to the US, and sends a message that Canada will no longer play this role. And however unintentionally, the US could do what it pleases without Canadian example and leadership.

LL: We will have to leave it there. Thank you very much for your time.

DEBORAH ANKER: You're very welcome.

LL: Deborah Anker is a Professor and Director of the Harvard Immigration and Refugee Clinical Program. She was in Boston, Massachusetts. Well, when it comes to so-called irregular arrival, not everyone thinks that the way forward involves repealing the Canada-US Safe Third Country Agreement. Yesterday, the federal Conservative party's Manitoba caucus released a statement calling on the federal government to respect the agreement. For more on this, I'm joined by Julie Taub, she is an immigration and refugee lawyer, and a former member of the Immigration and Refugee Board of Canada. She is in Ottawa. Hello.

JULIE TAUB: Good morning.

LL: Now, we've been hearing the case against the Canada-US Safe Third Country Agreement. What's the case for it?

JULIE TAUB: Well, the Safe Third Country Agreement basically states that a genuine refugee will make a refugee claim in the first safe country they arrive in. To date, United States is the only country with that designation. And it is basically in place to stop what is called asylum shopping. Now, this is not the first time that the US refugee admissions have been stopped. They were stopped in 2001 after the September 11th terrorist attack. They were suspended for three months, so it's not unprecedented. What is unprecedented is that there is no major terrorist occurrence that happened in the United States to provoke President Trump's ban, that is unprecedented.

LL: But just to go back to the agreement. What does Canada get out of it?

JULIE TAUB: Well, currently there are approximately 11 million undocumented immigrants in the United States. Without this Safe Third Country Agreement in place, potentially several million of these illegal immigrants could come to the Canadian border legally and make a refugee claim. They would have to be admitted, eventually most of the claims would be refused. Now I'll just give you an example--

LL: But that is that realistic really to think that millions of people are going to try to cross into Canada?

JULIE TAUB: Potentially they could once the information is out. I'll just give you an example. Over the last couple of weeks, I've had dozens of calls from the states asking about refugee claims. Not a single call was from potential refugees from the seven

banned countries. They were from South Americans, Mexicans, from Pakistan and Bangladesh, all who have been living without documents in the United States for several years.

LL: And what was your advice to them?

JULIE TAUB: Well, none of them had made refugee claims in the States, and all of a sudden they decided they want to make a refugee claim to Canada. The advice I gave them, that I sent them by email are the options for immigration to Canada.

LL: For legal immigration to Canada.

JULIE TAUB: Yes, for legal immigration. I discussed all the options with them. I took about five, ten minutes per call, and I explained to them that while they cannot make a claim here and what they could do.

LL: How equipped are local authorities to handle an influx of asylum seekers?

JULIE TAUB: They are not. As it is, CBSA is underfunded, undertrained, they don't have enough personnel. Their equipment is about five years outdated. Technologically CBSA is five years behind. They need more money, they need more training, they need more personnel. They can't even handle what's going on currently. Should the Safe Third Country Agreement be repealed or suspended, Canada border services would be overwhelmed.

LL: How do you respond to critics who say that the US is no longer a safe country for asylum seekers and refugees?

JULIE TAUB: Well, the United States is not a dictatorship that I have noticed. The definition of refugees has not changed, the law, underlying law for receiving refugees has not changed. They received 85,000 refugees under the Obama administration's last year. That was their quota, that's what they wanted to accept and they did. And this was under President Obama.

LL: Right. But we're under President Trump now and you heard Deborah Anker saying that there are increased detentions happening in the United States, that these executive orders seem to have changed the game.

JULIE TAUB: I believe that these executive orders will fall one after the other. The first one that has been stayed is the seven countries, and I'm sure the others will follow suit because they cannot be maintained. They are not legal.

LL: Well, in the meantime there's still an awful lot of uncertainty for people who are trying to seek asylum in the United States.

JULIE TAUB: Yes there is at the moment.

LL: What could be the political fallout if Canada repeals or temporarily suspends the agreement with the United States?

JULIE TAUB: Well the political fallout, I've already talked about the practical fallout of potentially a million or so undocumented [clears throat] excuse me, undocumented migrants coming to Canada to make refugee claims. But politically, President Trump has stated he wants to renegotiate NAFTA. And I don't believe the government, I don't believe Trudeau's government is in a position to provoke President Trump by repealing the Safe Third Country Agreement right now. Because we have a lot to lose if President Trump decides to repeal NAFTA.

LL: Miss. Taub, thank you very much for your time.

JULIE TAUB: Thank you.

LL: Julie Talb is an immigration and refugee lawyer, and a former member of the Immigration and Refugee Board of Canada. She was in Ottawa today. Now, **The Current** requested an interview with the Immigration Minister Ahmed Hussen, but we did not receive a response. Well, coming up the *CBC News* is next. Then, big city mayors from across the country are gathering in search of a solution to Canada's opioid crisis. But some say a solution already exists in a controversial program in Vancouver's Downtown Eastside. I'm Laura Lynch and you are listening to **The Current**.