

# Reclaiming Protection

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ADVOCATING FOR AN END TO THE CANADA-U.S.  
SAFE THIRD COUNTRY AGREEMENT

CITIZENS FOR  
PUBLIC JUSTICE



There has been a large increase in the number of refugee claimants that have arrived in Canada from the U.S. throughout the past year.

This report details how the Canada-U.S. Safe Third Country Agreement (STCA) has restricted access to refugee protection, put refugees in danger, and failed to uphold their rights to receive a fair hearing in Canada.

## **1) READ**

Pages 3-5 provide background on the STCA. Learn about the scale of the current international refugee crisis and increasingly anti-refugee policies from the current U.S. administration that have made the country unsafe for many refugees.

## **2) REFLECT**

Pages 6-8 showcase the first-hand experiences of several refugee claimants and explain some of the harsh conditions in their countries of origin. Explore how the STCA has impacted real people in search of safety.

## **3) RESPOND**

Pages 9-12 provide guidance to advocate for a just approach to refugee protection in Canada. Call for a compassionate, realistic, and proactive policy response to best meet the increased needs of refugees from around the world.

**Raise your voice to see the STCA rescinded once and for all.**

# Background



- The Safe Third Country Agreement is a policy shared by Canada and the United States that applies to refugees who arrive at an official land border in search of protection.
- Since December 2004, the STCA has allowed the Canada Border Services Agency to return refugee claimants to the U.S. under the premise that refugees should make their claim in the first "safe" country in which they arrive.<sup>1</sup>
- In signing the agreement, Canada maintained that the U.S. could share the responsibility of refugee protection because they had an adequate system for handling refugee claims. In practice however, the policy has served to largely shift the responsibility of refugee protection and restrict access to protection.
- A 2010 joint assessment by Canada and U.S. border agencies confirmed that from the start, **Canada intended for the STCA to limit the "northbound movement of people from the United States who wished to access the Canadian refugee determination system."**<sup>2</sup>
- In effect, the STCA was designed to restrict access to Canada's refugee system. The policy denies claimants their right to be assessed on an individual case-by-case basis and fails to acknowledge inadequacies in the U.S. asylum process.
- Recently, the mistreatment of migrants by the current U.S. Administration has drawn increased criticism over the integrity of the agreement. The agreement has also contributed to an influx in irregular border crossings from the U.S., which has led to the mischaracterization of refugee claimants as "illegals" by certain media outlets and members of government.
- Canada's Minister of Immigration, Refugees, and Citizenship, Ahmed Hussen, has repeatedly insisted that the STCA remains an effective mechanism for handling refugee claims. However, **allowing refugees access to regular channels would more appropriately manage refugee flows** and uphold our humanitarian obligations.

# What's at Stake?

"ISSUES THREATENED [MY] LIFE. [I] HAD TO RUN. MY U.S. VISA HAD EXPIRED AND [I] COULDN'T GO BACK. [I WAS] PREGNANT AND HEARD ABOUT CROSSING FROM [THE] U.S. AND DECIDED TO COME TO CANADA. THAT WAS THE ONLY CHOICE."

— *Refugee claimant*

- Because of the Safe Third Country Agreement, only refugee claimants that meet a narrow set of exceptions can make a claim at an official border point. Those that do not meet an exception are returned to the U.S. Refugees cannot directly apply to Canada for protection if they are outside Canada, but they must rather be referred for resettlement by the UN Refugee Agency. As a result, a majority of claimants have no choice but to enter Canada between Ports of Entry in order to apply for protection.
- The consequence of this is that **refugee claimants are often forced to embark on perilous journeys**. Over the past year, some claimants have suffered from extreme frostbite, and a few have even lost limbs as a result of trying to get to Canada.<sup>3</sup> Evidence also demonstrates that where border controls are fierce and regular channels difficult to access, individuals turn to smuggling networks.<sup>4</sup>
- In addition to unnecessarily placing refugees in harm's way, the STCA fails to uphold the rights of claimants to be assessed on an individual and case-by-case basis, as outlined in the 1951 Convention.<sup>5</sup>

*Canada processed 50,440  
refugee claims in 2017.  
20,593 claimants  
had to cross irregularly.*<sup>6</sup>

• Recently, the policy has contributed to an influx of irregular border crossings that have demonstrated that **the STCA is failing to uphold its purpose to promote the orderly handling of claims**. The arrival of refugee claimants through irregular channels has also served to evoke a public narrative that falsely conflates seeking refugee protection with criminality.

Some Members of Parliament have gone as far as to describe refugee claimants as "illegals," which has served to create public discord and unwarranted fear. This could be avoided if the STCA were not in place.

- While the agreement was enforced to provide a "full and fair refugee status determination procedure", it has instead compromised these commitments and put refugees at risk.<sup>7</sup> Canada has binding international obligations to provide protection to those who arrive at our borders fleeing conflict or persecution. **The STCA must be rescinded to restore the integrity of Canada's obligations.**

"THE POLICE CAME TO OUR APARTMENT FREQUENTLY AND WE  
[WERE] SCARED IN [THE] U.S."  
— Refugee claimant

# Is the U.S. Safe?

- Refugee advocates believe that **the failure of the U.S. to fully comply with many refugee obligations calls the legitimacy of the Safe Third Country Agreement into question.** This includes the use of prolonged and large-scale detention and the expedited removals of refugees. In other cases, refugees in the U.S. are disqualified from protection due to the one-year filing deadline, a policy which requires refugees to make their claim within their first year of arrival. Many are not aware of this until it is too late.<sup>8</sup>

*The U.S. experienced a 40% increase in Enforcement & Removal Operations Arrests in 2017.*<sup>9</sup>

- In July 2017, Amnesty International, the Canadian Council for Refugees, and the Canadian Council of Churches joined a refugee claimant in a legal challenge against the STCA.<sup>10</sup> These groups argue that in returning refugee claimants to the U.S., Canada is sending them to a place that is unsafe for many refugees. Similarly, a February 2017 Harvard University study concluded that **the U.S. Administration's opposition to immigrants and refugees "erases any notion that the U.S. is a safe country for refugees."**<sup>11</sup>

- On June 5, 2018, the UN Human Rights Office raised concern over the separation of migrant children from their families by U.S. border officials stating, "The use of immigration detention and family separation runs counter to human rights standards and principles."<sup>12</sup> On June 11, 2018, Attorney General Jeff Sessions announced that domestic and gang violence would no longer qualify as grounds for asylum in the U.S., a decision that will have sweeping effects, particularly on refugee women affected by gender-based violence.<sup>13</sup> Additionally, the Trump Administration recently suggested designating Mexico as a safe third country, yet overwhelmingly, evidence demonstrates significant gaps in Mexico's asylum system.<sup>14</sup> Taken together, all of this demonstrates a profound disregard for adequate standards for refugee protection in the U.S., as well as a willingness to shirk binding international laws and obligations to refugees.

- According to the Government of Canada, **"Only countries that respect human rights and offer a high degree of protection to asylum seekers may be designated as safe third countries."**<sup>15</sup> There is much reason to believe that these standards are no longer upheld in the U.S.

# Refugee Realities

CPJ heard from refugee claimants about their experience coming to Canada from the U.S. The majority of the individuals consulted noted that the Safe Third Country Agreement provided barriers to their ability to access protection. They cited deficiencies in the U.S. system as motivating factors for their decision to leave the U.S. They came to Canada to obtain adequate protection, as opposed to "asylum shop" or seek economic gain. Our correspondence revealed that these refugee claimants crossed the border irregularly simply because it was the only option to have their claim heard.

## Top Countries of Origin for Inland Asylum Claims (2016-2018):



THOUGH ARRIVING VIA THE U.S., MOST REFUGEE CLAIMANTS SEEK ASYLUM FROM COUNTRIES OF ORIGIN SUFFERING THE WIDESPREAD EFFECTS OF TERRORISM, GANG VIOLENCE, POLITICAL PERSECUTION, WAR, OR THE DEVASTATION OF NATURAL DISASTERS.

**63%** of the 21,480 asylum claims finalized in 2017 were accepted.<sup>17</sup>

# Refugee Reflections

*For refugee claimants, the Safe Third Country Agreement has significant, real-life implications. The fact is, many are escaping terror in their countries of origin and are looking for a place to receive respite. Refugee claimants deserve access to protection, but for many, the STCA has stood in the way of that. A few refugee claimants had this to say:*

“[THERE WAS A] LIFE-THREATENING CONDITION [FOR] ME AND MY DAUGHTER. NOT ONE PERSON TOLD ME TO EVEN TRY TO STAY IN U.S. [THEY ALL SAID] GO TO CANADA.”

— *Claimant from Nigeria*

“CURRENTLY ALL THE SUDANESE PEOPLE ARE SUFFERING. [THERE ARE] VERY BAD CIRCUMSTANCES... POLITICAL INSTABILITY. IN [THE] U.S. THEY ARE NOT WELCOMING FOR NEWCOMERS.”

— *Claimant from Sudan*

“THE [U.S.] GOVERNMENT IS NOT VERY SUPPORTIVE FOR THE IMMIGRANT... WE NEED [A] SAFE [PLACE] TO LIVE. WE NEED PEACE.”

— *Claimant from Mexico*

“[IT] DOESN'T MAKE SENSE TO TURN AWAY REFUGEES FROM THE BORDER. I NEEDED A PLACE TO BE SAFE FOR ME AND MY CHILD. IF [I] WAS TURNED [BACK] AT THE BORDER I DON'T KNOW WHAT WOULD HAVE HAPPENED TO US. THEY SHOULD GIVE US A CHANCE TO EXPRESS OURSELVES.”

— *Claimant from Nigeria*

# STCA FAQs

For more info, visit [cpj.ca/stca](http://cpj.ca/stca)

## 1 WHY ARE PEOPLE FLEEING THE U.S. TO GET TO CANADA?

Individuals flee the United States for a number of reasons. Most recently, certain policy changes and anti-immigration sentiments have caused select groups to feel that their lives could be at risk if they remain in the United States. For some, this is a result of a fear of deportation to a country they believe is unsafe, dangers posed by gang or domestic violence, the expiration of resident status, and so on. Recently, the end of select Temporary Protected Status designations, which allowed nationals from certain countries to reside in the United States, has prompted thousands to seek safety in Canada.

In general, refugees fear that the U.S. will fail to provide them with adequate protection and therefore turn to Canada for help.

## 2 IS IT ILLEGAL TO CROSS INTO CANADA AT AN UNOFFICIAL BORDER POINT?

**No.** Under Canadian and International refugee law, an individual in search of protection may bypass borders in order to seek asylum. The 1951 UN Refugee Convention, along with Canada's Immigration and Refugee Protection Act, state that refugees attempting to enter Canada and gain protection must not be penalized in the process.

Because of the STCA, a majority of refugees are not permitted to make their claim at the border, and are instead forced to enter Canada through alternate means. While some politicians and journalists have referred to this process as "illegal," when an individual has a well-founded fear of persecution, this movement is not in fact illegal, but is appropriately referred to as "irregular".

## 3 DO IRREGULAR BORDER CROSSERS SLOW DOWN THE RESETTLEMENT PROCESS FOR OTHER REFUGEES?

**No.** Canada has two refugee streams: the Refugee and Humanitarian Resettlement Program and the In-Canada Asylum Program. Those who arrive as Government-Assisted Refugees, Privately-Sponsored Refugees, or Blended-Visa Office Referred Refugees are identified for resettlement by the UNHCR and/or private sponsors and are processed through the resettlement program. Those who make claims from within Canada or upon arrival go through a separate and independent process in Canada.

# Towards Just Policies

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The world is facing a crisis unparalleled in modern times. At present, there are 25.4 million refugees across the globe.<sup>18</sup> Nations can no longer pass off refugee protection to other countries.

The Safe Third Country Agreement fails to consider the needs of individual refugees and, more broadly, the current realities of mass waves of displacement worldwide. While originally envisioned as a responsibility-sharing program, the policy has now become one of responsibility-shifting. But above and beyond the protocols set out in the STCA, **Canada has international obligations to promote, protect, and uphold the human rights of refugees.**

These obligations must be respected. Canada shouldn't continue to subject refugees to danger out of fear of being returned to the U.S. We should assure refugees that their cases will be carried out in a timely manner. Those that are eligible should know that they will promptly receive needed protections, and those whose claims are unfounded should not have their denials prolonged. Canada must pursue policies that will restore orderly and compassionate refugee processing at the border, uphold international law and ultimately curb irregular border crossings.

**Public justice** calls each of us to work towards a society that upholds the rights of all, especially those on the margins. Citizens and governments must act collaboratively to ensure that refugees receive the protections they are due.

In light of pressures from some to further restrict access to refugee protection, it is essential to remind the government that people in Canada support refugees. To remain true to Canada's legacy as a welcoming country, **Canada should end the STCA with the U.S.** and implement robust and proactive solutions for the handling of refugee claims. In doing so, we can continue to do our part to provide protection to refugees in need of care.



According to the Government of Canada:

*"Only countries that respect human rights and offer a high degree of protection to asylum seekers may be designated as safe third countries."*

**Join us in calling for an end to the STCA!**



# Take Action!

## ADVOCATE FOR AN END TO THE CANADA-U.S. SAFE THIRD COUNTRY AGREEMENT

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As citizens, it's important we let our government know when policies fail to provide justice for all.

On the following pages, you'll find a draft letter addressed to the Minister of Border Security and Organized Crime Reduction and briefing notes that you can use in face-to-face meetings with your Member of Parliament. **Edit these templates to make your concerns about the STCA known** to your elected officials.

*Call on the federal government to live up to Canada's international obligations and:*

1

**REFUSE TO MISCHARACTERIZE  
REFUGEE CLAIMANTS AS  
"ILLEGAL" BORDER CROSSERS.**

2

**RESTORE ACCESS TO REFUGEE  
PROTECTION AT THE CANADA-  
U.S. BORDER.**

3

**RESCIND THE SAFE THIRD  
COUNTRY AGREEMENT WITH  
THE U.S.**

September 1, 2018

The Honourable Bill Blair, P.C., M.P.  
Minister of Border Security and Organized Crime Reduction  
House of Commons  
Ottawa, Ontario K1A 0A6

Dear Minister Blair,

The Safe Third Country Agreement is an unjust policy for refugees seeking protection in Canada. All refugees have a right to receive due process, and the STCA denies refugees arriving from the United States this basic right.

With the current U.S. Administration's harsh stance against refugees and immigrants, the U.S. is not a safe place for many refugees. When refugees are returned to the U.S., they are at a high risk of being detained and returned to countries where they may be subject to harm or persecution upon arrival.

As someone living on Indigenous lands, in a country made up of immigrants, I am happy to welcome refugees. I am proud of Canada's rich tradition of providing protection for many of the world's displaced and marginalized people. I am saddened to think that while we readily receive resettled refugees from abroad, in contrast, we often reject those who arrive at our border.

I am concerned that in the process of coming to Canada, many refugees embark on dangerous journeys. Some refugees have risked life and limb while crossing the border during the winter months. Many others have turned to smuggling networks that put them in harm's way. Much of this could be avoided with proactive policies that put the dignity and safety of refugee claimants first.

It is with all this in mind that I ask the government to live up to Canada's international obligations for refugee protection and:

1. Refuse to mischaracterize refugee claims as "illegal" border crossers.
2. Restore access to refugee protection at the Canada-U.S. border.
3. Rescind the Safe Third Country Agreement with the U.S.

Canada should pursue a robust alternative to the STCA that promotes and protects the human rights and fundamental freedoms of refugees, restores security at the Canada-U.S. border, employs up-to-date technologies for the sake of timely processing of refugee claims, and removes any incentives for irregular border crossing and associated harms.

Thank you for your commitment to creating a more just and inclusive Canada. Now, would you stand with refugees and rescind the STCA? I look forward to your response.

Sincerely,

Name Name  
321 Justice St.  
Ottawa, ON K1S 5B7

cc: other MPs, ministers, and organizations who also received the letter.

## **Summary**

Thousands across Canada and the United States believe the Safe Third Country Agreement is discriminatory and harmful towards refugees. There no longer exists any rationale for applying this policy, particularly considering the ever-increasing global refugee crisis and consistent anti-immigrant rhetoric and policies within the current U.S. Administration. The STCA should be rescinded once and for all.

## **Issues**

- The STCA denies refugee claimants the chance to seek protection.
- The STCA dismisses refugee claimants without a fair hearing.
- The STCA encourages refugee claimants to embark on dangerous journeys.
- The STCA attempts to unjustly avoid Canada's international obligations to refugees.
- The STCA is out of step with the realities of the current global refugee crisis.

## **Background**

According to the UNHCR, there are currently 25.4 million refugees worldwide. At the same time, the U.S. has become increasingly hostile towards immigrants and refugees. In this context, Canada must do its part to respond to growing global demands for refugee protection. Prior to the implementation of the STCA in 2004, refugee claimants from the U.S. were able to simply present their case at a Canada-U.S. Port of Entry. Now, in order to be considered for protection, most refugees are forced to take sometimes perilous journeys to have their cases heard in Canada. This has put them at risk and resulted in irregular border crossings, eroding public confidence in Canada's refugee system.

## **Rationale**

By rescinding the STCA, Canada will allow refugees from the U.S. to once again have access to protection in Canada. This will greatly reduce irregular border crossings, restore public confidence in Canada's refugee system, and uphold the rights of each individual refugee.

## **Recommendations**

Canada should live up to our international obligations for refugee protection by upholding the rights of each refugee to receive a fair hearing. We should restore access to refugee protection at the Canada-U.S. border, and rescind the STCA with the U.S. in order to provide safety for refugees and to maintain our tradition as a global leader for welcoming refugees.

## **Contact**

For further information, contact Deb Mebude at 613-232-0275 x 232 or deb@cpj.ca

# Endnotes

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Report was prepared by Deborah Mebude, CPJ's public refugee rights intern, in June 2018.