

## CANADA AND THE SAFE THIRD COUNTRY AGREEMENT (STCA)

October 2019

### WHAT IS THE SAFE THIRD-COUNTRY AGREEMENT?

Effective since 2004, the [Safe Third-Country Agreement \(STCA\)](#) is a bilateral treaty between the United States and Canada that requires a refugee claimant to request refugee protection in the first country they reach, whether the United States or Canada. Thus, any refugee claimant who intends to ask for protection in Canada cannot have their claim heard if they arrived or traveled through the United States first, unless they satisfy one of the exceptions listed below.

### WHY WAS THE STCA CREATED?

In the aftermath of 9/11, the Canadian and U.S. governments worked together to better secure common borders. One result was the [U.S.-Canada Smart Border Declaration and Action Plan](#), in which Canada agreed to cooperate on border security and information sharing in exchange for a U.S. agreement to enter into a safe-third-country agreement that prevented certain entrances to Canada at the U.S.-Canada border. The United States and Canada each agreed that the other offered effective protection to refugee claimants. The net effect of the STCA was to stop refugee claimants from '[choosing](#)' their country of asylum.

### WHERE IS THE STCA IN EFFECT?

The STCA applies only to refugee claimants who seek to enter Canada from the United States:

- ◆ at an official land border crossing point;
- ◆ by train;
- ◆ at airports, "only if the person seeking refugee protection in Canada has been refused refugee status in the U.S. and is in transit through Canada after being deported from the U.S."

## ARE THERE EXCEPTIONS TO THE STCA?

Yes.

1. If claimants have family members living in Canada, who are either Canadian citizens, permanent residents, or refugees.
  - ♦ Under the STCA, the definition of family members includes spouses, parents, sons/daughters, siblings, grandparents, grandchildren, uncles/aunts, and nephews/nieces. Legal guardians of claimants under 18 are included in the definition of family members, but in-laws are not.
2. If claimants are unaccompanied minors (under the age of 18), with neither parent nor legal guardian in Canada or the United States.
3. If claimants hold valid Canadian travel documentation (i.e., Canadian visas, work/study permits, travel/admission documents issued by Canada).
4. If It is in Canada's interest to grant an exception, as when the claimant is subject to the death penalty in the United States or a third country.

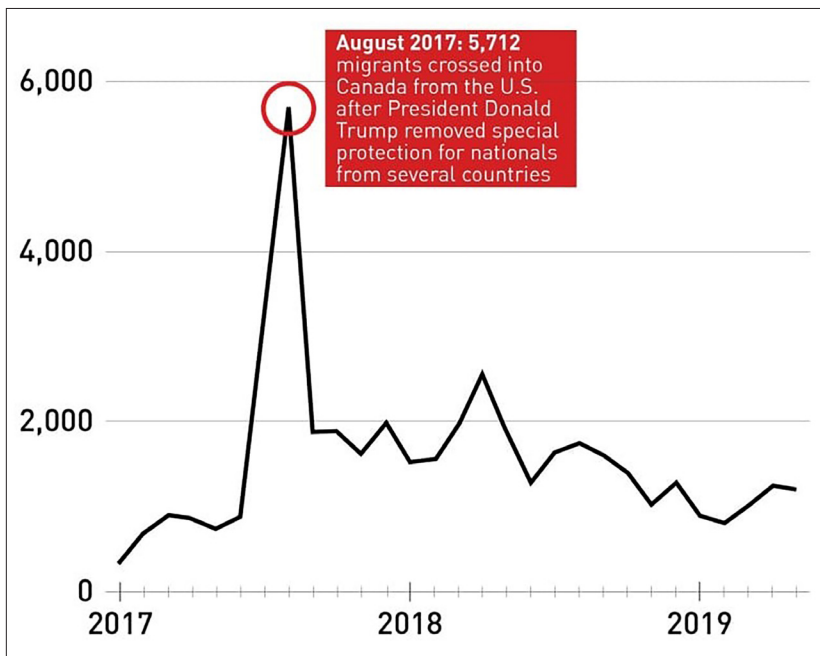
The STCA also does not apply to **U.S. citizens, stateless people, certain airport arrivals**, and, most notably, **irregular arrivals**.

## IRREGULAR ARRIVALS: A HUMANITARIAN RISK

While the STCA is in effect at official border crossings, it does not apply at other entry points. A refugee claimant who crosses into Canada irregularly, is intercepted by the RCMP, and requests protection, can have a claim processed. This loophole has encouraged claimants to take riskier routes from the United States into Canada.

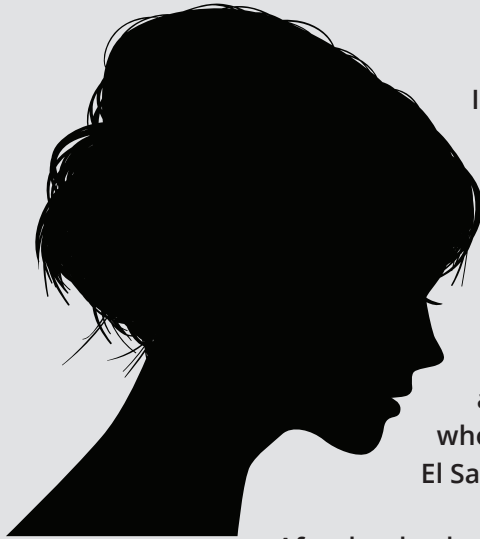
In 2017, when the United States announced its intention to stop renewing [Temporary Protected Status](#) for Haitians and other groups, the number of people [crossing](#) into Canada irregularly [spiked](#). In the winter months, many [reportedly lost fingers](#) to frostbite, while there was at least one reported death from [hypo-thermia](#). Irregular crossings are still commonplace; in the first six months of 2019, [6,707](#) people claimed refugee protection after irregularly crossing the border.

### RCMP INTERVENTIONS



Source: CBC News (data from Immigration, Refugees, and Citizenship Canada)

## BEYOND THE STATISTICS **A STORY**



In November 2016, “[ABC](#)” (her name was concealed for her protection) left El Salvador with her two youngest daughters to seek asylum in Canada after repeated threats and acts of violence against her and her family by the MS-13 gang. Her husband had fled to Canada in [2005](#), after he identified a gang member who had killed his brother to the police in El Salvador.

After her husband’s departure, the gang constantly threatened ABC and her family, demanding to know where her husband was. Gang members stalked ABC’s daughters and murdered the family’s landlord. They raped ABC (who stated that her youngest daughter was born from this rape), robbed her, and told her that they would kill her daughters if she went to the police.

In November 2016, gang members told her that she had 24 hours to pay a sum of money that she couldn’t produce. ABC packed her bags and left with her daughters the same day, heading for Toronto, where her husband was still awaiting a ruling on his refugee claim. With her daughters, she undertook a dangerous [journey](#) through Guatemala, Mexico, and the United States, staying for a time with family in Mississippi.

When ABC finally arrived at the Fort Erie-Buffalo border crossing to claim asylum in Canada, she was turned away under the rules of the STCA. When she sought legal counsel, she was told that she did not have a strong refugee claim in the United States. Afraid of being deported back to El Salvador if she made her refugee claim in the United States, ABC attempted to claim asylum at the Canadian border a second time, only to be rejected again.

An irregular arrival occurs when an individual enters one country from another without passing through a controlled port of entry. An irregular arrival is not necessarily illegal. A person who crosses the border irregularly and asks a police officer or an inland immigration officer for asylum is not breaking any laws and is entitled to due process. Canada is obliged to assess the asylum seeker’s claim for protection.

## OTHER HUMANITARIAN CONCERNS

- ♦ The STCA denies refugee claimants coming from the United States the right to have their claim heard or registered at an official port of entry, even if the claimants face danger if they are turned away. Organizations contesting the STCA often argue that the agreement blocks refugee claimants from accessing the “[protections](#)” guaranteed to them under the Canadian Charter of Rights and Freedoms.”
- ♦ While the STCA assumes that the United States is a [safe country](#), in which refugee claims will be heard and processed fairly, [recent developments](#) in the United States cast doubt on this assumption. In the last two years, the following components of the US refugee system have raised concerns:
  - ♦ the [one-year limit](#) to apply for asylum after arriving in the United States,
  - ♦ the appalling [conditions](#) and increased use of detention for refugee claimants, and
  - ♦ the [turning away](#) of asylum-claimants at the U.S.-Mexico border.
- ♦ **Women who seek refugee status in the United States on the basis of gender-based violence (GBV)** are experiencing increasing difficulties. In 2018, Attorney General Jeff Sessions [decided](#) that domestic violence and gang violence were not valid claims for asylum, putting women at high risk of being deported back to their countries and abusers.

## CANADIAN LEGAL CHALLENGES TO THE STCA

**2006-2008:** In 2006, the STCA received its [first legal challenge](#) by the Canadian Council of Refugees (CCR), the Canadian Council of Churches (CCC), Amnesty International, and John Doe, a failed Colombian refugee claimant in the United States. In 2007, Federal Judge Michael Phelan [upheld](#) the challenge because the United States was not meeting its responsibilities under the UN Refugee Convention and the UN Convention against Torture. After Judge Phelan’s ruling, the STCA was set to be canceled; however, a Canadian appeals court [granted a stay of Phelan’s order](#) one day before it was set to take effect, and eventually overturned the ruling on the grounds that the decision was not the court’s to make.

**2017-Present:** ABC’s case provided the opportunity to legally challenge the STCA again. In 2017, the CCR, CCC, and Amnesty International [legally challenged](#) the Canadian designation of the United States as a “safe country” for claimants to file refugee claims. Their [report](#) highlighted policies of the U.S. refugee protection system that make a fair hearing of a refugee claim difficult, including: the one-year deadline to file a refugee claim, the forcible return of refugees to countries where they face persecution (known as refoulement), and a lack of recognition of GBV-based asylum claims. According to the report, recent deficiencies in the U.S. refugee system—specifically, the expansion of immigration detention—further exacerbated risks to claimants.

## OTHER “SAFE THIRD COUNTRY” OR “FIRST COUNTRY OF ARRIVAL” AGREEMENTS

- ♦ **European Union:** The [Dublin III Regulation](#) (entered into force July 2013) is an agreement among the 28 EU member countries (plus Switzerland, Norway, Lichtenstein, and Iceland) that stipulates that a claimant intending to apply for asylum must do so in the first of the Regulation countries en-

tered. However, during the 2015 European migration crisis, several countries [defied or suspended](#) the regulation after they were [overwhelmed](#) with applicants.

- ♦ **Turkey-Greece (EU):** In 2016, Greece and Turkey agreed to principles that further developed [EU-Turkey Cooperation in Tackling the Migration Crisis](#). Europe was trying to manage the influx of refugees and dissuade migrants from paying smugglers and making the dangerous journey to Greece across the Aegean Sea. The agreement classified Turkey as a safe third country of return, whereby irregular migrants (including asylum-seekers) could be [returned](#) to Turkey if they had passed through it first and did not qualify for international protection. As part of the agreement, the EU agreed to [provide](#) Turkey with funds to aid refugees and to speed up talks about Turkey's joining the EU.
- ♦ **United States-Mexico-Guatemala:** The United States has exerted increasing pressure on Mexico and Guatemala to accept the status of a safe third country. Mexico has generally been opposed to such an agreement, although it did begin talks with the United States over changing rules about Mexico's status if the [flow of migrants](#) entering the United States from Mexico had not diminished significantly by July 22. On that date, Mexico ended [negotiations](#). On July 26, Guatemala and the United States entered into a [safe third country agreement](#) that would force migrants from El Salvador and Honduras, who pass through Guatemala on their way to the United States, to seek asylum first in Guatemala. The status of the agreement remains uncertain. ♦

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