

**The Safe Third Country Agreement, Irregular Migration
and Refugee Rights: A Canadian Policy Challenge**

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Executive Summary

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Executive Summary

This paper examines current policy developments surrounding the Canada-U.S. Safe Third Country Agreement (STCA). In 2017, large surges in irregular arrivals crossed Canadian border at points where the Agreement does not apply. This spurred political debates around a so-called “loophole” and the charge that asylum seekers were taking advantage of unauthorized crossings. Efforts to re-claim migration control have triggered more restrictive asylum policies and a colder climate towards refugees in Canada. Amendments to modernize STCA, budget cuts to the services available to refugees as well as a heavy investment into a more “effective” border strategy were presented by the Canadian government as viable solutions to mitigating the implications caused by the large volume of asylum claims and perceived threats to the resilience of the Canadian immigration system.

Currently, there is an ongoing legal challenge against the legality of the Safe Third Country Agreement at the Federal Court of Canada. An exploration of the historical policy challenges to the Canada-U.S. agreement reveals that current controversies have historic roots in Canada. They also reveal that the legitimacy of STCA has been challenged in courts of law since its inception in 2005. The legality of STCA has been largely contested over concerns regarding the state of refugee protection, specifically in the United States. To this end, this paper provides a historic overview of STCA’s development, legal and policy challenges, as well as implications for refugee protection. Against this backdrop, current policy developments under the Trump administration are examined. An analysis of the deteriorating state of refugee protection in the U.S. reveal that its continuous designation as “safe” jeopardizes both the objectives of STCA and state commitments to international law and refugee protection.

Critics argue that under the Trump administration, the U.S. is not safe for refugees and thus, STCA can no longer function as intended. Amending or overturning STCA would ensure that Canada does not jeopardize its commitments to refugee protection and its obligations under international law. This would also reduce incentives for irregular migration and reduce the costs associated with processing high volumes of refugee claims. However, given the continued uncertainty around U.S. immigration policy, it would also likely result in a higher volume of standard refugee claims from the U.S..

The 2017 irregular migration surge brought attention to significant issues concerning asylum protection and necessitating effective strategies that can mitigate the strains put on the Canadian asylum system. These strategies, although put forth to effectively re-claim migration control, must place refugee protection at their core and ensure that state obligations under international law do not decline. The irregular migrant ‘crisis’ poses challenges to the resilience of the Canadian immigration system, placing strains on urban reception areas and calling into question numerous aspects of immigration policy. There has been an increase in right wing populist sentiment around immigration and the need for stronger progressive responses. In order to ensure immigrant-friendly migration, we need to better understand issues like STCA and bring forth evidence-based policy reforms that both maintain Canada’s commitments to refugee rights and help foster resilient communities.