

Why we are challenging the USA as a “safe third country” in the Federal Court of Canada

Since December 2004, Canada has declared the USA a “safe third country” for refugees and closed the door on most refugee claimants seeking protection at the US-Canada border. This designation is based on the Safe Third Country Agreement (STCA) signed by the two countries.

The Canadian Council for Refugees, the Canadian Council of Churches and Amnesty International Canada are challenging the designation of the USA as a “safe third country” in the courts. The organizations believe the designation violates refugee rights under international law and the Canadian Charter of Rights and Freedoms.

Here’s why:

➤ **The USA does not fully comply with its refugee obligations and therefore is not safe for all refugees**

- Most people cannot make a claim if in the US for more than a year
- Expedited removal allows people to be removed from the US without a hearing before a judge
- Many people are arbitrarily detained in substandard conditions with limited or no access to legal counsel
- Contrary to international law, asylum-seekers face prosecution for illegal entry
- Rates of acceptance of similar claims vary dramatically between different regions
- The US has an inconsistent record of recognizing gender-based persecution

➤ **The USA is getting even less safe for refugees**

New anti-refugee and anti-Muslim measures have been adopted in the US under the administration of President Trump. Increased and harsher enforcement measures put refugees at greater risk.

➤ **More refugee claimants are forced to cross the border irregularly**

Before the U.S. was designated as a “safe third country”, refugee claimants presented themselves at a border port of entry in an orderly process. Now most refugee claimants are denied the chance to make a refugee claim if they present themselves at a port of entry. They must cross the border irregularly in order to make a refugee claim in Canada, since the rules about “safe third country” do not apply to people who cross the border outside of a port of entry.

Irregular crossings can be dangerous for refugees and cost the government more to manage.

➤ **Canada should not be closing the door on refugees**

The goal and the effect of the Agreement is to reduce the number of refugees who can claim refugee protection in Canada. By implementing this Agreement, Canada joins the many countries that take the "Not in my backyard" approach to refugees. Only a tiny percentage of the world’s refugees reach Canada’s borders. We should not close our doors even on these few.

➤ **The Federal Court of Canada already ruled that the USA is not safe.**

In 2007, the three organizations challenged the designation of the U.S. as a Safe Third Country. The Federal Court upheld the challenge, finding that it is unreasonable to conclude that the US complies with its *non-refoulement*¹ obligations under the Refugee Convention and the Convention against Torture, and that the application of the safe third country rule violates refugees' rights under the Canadian Charter to life, liberty and security of the person (section 7) and to non-discrimination (section 15).

The decision was overturned by the Federal Court of Appeal on technical grounds, without any consideration of how safe the U.S. is for refugees. Thus, the only court to have examined the issue found that the US is not safe for refugees and the STCA violates refugees' rights.

➤ **A detailed submission about why the USA is not safe for refugees was made to the Canadian government**

Before launching the legal challenge in 2017, Amnesty International and the Canadian Council for Refugees submitted a detailed brief to the government.

The 52-page brief, *Contesting the Designation of the US as a Safe Third Country*, outlined the many ways that the US asylum system and immigration detention regime fail to meet required international and Canadian legal standards. It highlighted how law and practice have deteriorated further since the Trump administration took office.

When the Canadian government declined to undesignate the US, the three organizations decided that a legal challenge was necessary.

➤ **Legal challenge to the Safe Third Country**

On July 5, 2017, the three organizations launched a legal challenge in the Federal Court of the designation of the United States as a safe third country for refugees. They joined an individual litigant, a Salvadoran woman accompanied by her children. The federal government challenged the organizations' right to be included in the case, but on December 11, 2017 the Federal Court granted them standing as public interest litigants. The case is still in the preliminary stages.

¹ Non-refoulement is a principle of international law which forbids a country from returning a person to another country where they are at risk of persecution or torture.