



Government
of Canada

Gouvernement
du Canada

Final Text of the Safe Third Country Agreement

This is the text of the Agreement that was signed by officials of Canada and the United States on December 5, 2002, as part of the Smart Border Action Plan. The Agreement allows both countries to more effectively manage the flow of refugee claimants.

Agreement between the Government of Canada and the Government of the United States of America

For cooperation in the examination of refugee status claims from nationals of third countries

THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA (hereinafter referred to as “the Parties”),

CONSIDERING that Canada is a party to the 1951 Convention relating to the Status of Refugees, done at Geneva, July 28, 1951 (the “Convention”), and the Protocol Relating to the Status of Refugees, done at New York, January 31, 1967 (the “Protocol”), that the United States is a party to the Protocol, and reaffirming their obligation to provide protection for refugees on their territory in accordance with these instruments;

ACKNOWLEDGING in particular the international legal obligations of the Parties under the principle of non-refoulement set forth in the Convention and Protocol, as well as the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York, December 10, 1984 (the “Torture Convention”) and reaffirming their mutual obligations to promote and protect human rights and fundamental freedoms.

RECOGNIZING and respecting the obligations of each Party under its immigration policies, instructions and agreements;

EMPHASIZING that the United States and Canada offer generous systems of refugee protection, recalling both countries' traditions of assistance to refugees and displaced persons abroad, consistent with the principles of international solidarity that underpin the international refugee protection system, and committed to the notion that cooperation and burden-sharing with respect to refugee status claimants can be enhanced;

DESIRING to uphold asylum as an indispensable instrument of the international protection of refugees, and resolved to strengthen the integrity of that institution and the public support on which it depends;

NOTING that refugee status claimants may arrive at the Canadian or United States land border directly from the other Party, territory where they could have found effective protection;

CONVINCED, in keeping with advice from the United Nations High Commissioner for Refugees (UNHCR) and its Executive Committee, that agreements among states may enhance the international protection of refugees by promoting the orderly handling of asylum applications by the responsible party and the principle of burden-sharing;

AWARE that such sharing of responsibility must ensure in practice that persons in need of international protection are identified and that the possibility of indirect breaches of the fundamental principle of non-refoulement are avoided, and therefore determined to safeguard for each refugee status claimant eligible to pursue a refugee status claim who comes within their jurisdiction, access to a full and fair refugee status determination procedure as a means to guarantee that the protections of the Convention, the Protocol, and the Torture Convention are effectively afforded;

HAVE AGREED as follows:

ARTICLE 1

1. In this Agreement,
 - a. **“Country of Last Presence”** means that country, being either Canada or the United States, in which the refugee claimant was physically present immediately prior to making a refugee status claim at a land border port of entry.
 - b. **“Family Member”** means the spouse, sons, daughters, parents, legal guardians, siblings, grandparents, grandchildren, aunts, uncles, nieces, and nephews.
 - c. **“Refugee Status Claim”** means a request from a person to the government of either Party for protection consistent with the Convention or the Protocol, the

Torture Convention, or other protection grounds in accordance with the respective laws of each Party.

- d. **“Refugee Status Claimant”** means any person who makes a refugee status claim in the territory of one of the Parties.
 - e. **“Refugee Status Determination System”** means the sum of laws and administrative and judicial practices employed by each Party’s national government for the purpose of adjudicating refugees status claims.
 - f. **“Unaccompanied Minor”** means an unmarried refugee status claimant who has not yet reached his or her eighteenth birthday and does not have a parent or legal guardian in either Canada or the United States.
2. Each Party shall apply this Agreement in respect of family members and unaccompanied minors consistent with its national law.

ARTICLE 2

This Agreement does not apply to refugee status claimants who are citizens of Canada or the United States or who, not having a country of nationality, are habitual residents of Canada or the United States.

ARTICLE 3

1. In order to ensure that refugee status claimants have access to a refugee status determination system, the Parties shall not return or remove a refugee status claimant referred by either Party under the terms of Article 4 to another country until an adjudication of the person’s refugee status claim has been made.
2. The Parties shall not remove a refugee status claimant returned to the country of last presence under the terms of this Agreement to another country pursuant to any other safe third country agreement or regulatory designation.

ARTICLE 4

1. Subject to paragraphs 2 and 3, the Party of the country of last presence shall examine, in accordance with its refugee status determination system, the refugee status claim of any person who arrives at a land border port of entry on or after the effective date of this Agreement and makes a refugee status claim.
2. Responsibility for determining the refugee status claim of any person referred to in paragraph 1 shall rest with the Party of the receiving country, and not the Party of the country of last presence, where the receiving Party determines that the person:
 - a. Has in the territory of the receiving Party at least one family member who has had a refugee status claim granted or has been granted lawful status, other

- than as a visitor, in the receiving Party's territory; or
- b. Has in the territory of the receiving Party at least one family member who is at least 18 years of age and is not ineligible to pursue a refugee status claim in the receiving Party's refugee status determination system and has such a claim pending; or
 - c. Is an unaccompanied minor; or
 - d. Arrived in the territory of the receiving Party:
 - i. With a validly issued visa or other valid admission document, other than for transit, issued by the receiving Party; or
 - ii. Not being required to obtain a visa by only the receiving Party.
3. The Party of the country of last presence shall not be required to accept the return of a refugee status claimant until a final determination with respect to this Agreement is made by the receiving Party.
4. Neither Party shall reconsider any decision that an individual qualifies for an exception under Articles 4 and 6 of this Agreement.

ARTICLE 5

In cases involving the removal of a person by one Party in transit through the territory of the other Party, the Parties agree as follows:

- a. Any person being removed from Canada in transit through the United States, who makes a refugee status claim in the United States, shall be returned to Canada to have the refugee status claim examined by and in accordance with the refugee status determination system of Canada.
- b. Any person being removed from the United States in transit through Canada, who makes a refugee status claim in Canada, and:
 - i. whose refugee status claim has been rejected by the United States, shall be permitted onward movement to the country to which the person is being removed; or
 - ii. who has not had a refugee status claim determined by the United States, shall be returned to the United States to have the refugee status claim examined by and in accordance with the refugee status determination system of the United States.

ARTICLE 6

Notwithstanding any provision of this Agreement, either Party may at its own discretion examine any refugee status claim made to that Party where it determines that it is in its public interest to do so.

ARTICLE 7

The Parties may:

- a. Exchange such information as may be necessary for the effective implementation of this Agreement subject to national laws and regulations. This information shall not be disclosed by the Party of the receiving country except in accordance with its national laws and regulations. The Parties shall seek to ensure that information is not exchanged or disclosed in such a way as to place refugee status claimants or their families at risk in their countries of origin.
- b. Exchange on a regular basis information on the laws, regulations and practices relating to their respective refugee status determination system.

ARTICLE 8

1. The Parties shall develop standard operating procedures to assist with the implementation of this Agreement. These procedures shall include provisions for notification, to the country of last presence, in advance of the return of any refugee status claimant pursuant to this Agreement.
2. These procedures shall include mechanisms for resolving differences respecting the interpretation and implementation of the terms of this Agreement. Issues which cannot be resolved through these mechanisms shall be settled through diplomatic channels.
3. The Parties agree to review this Agreement and its implementation. The first review shall take place not later than 12 months from the date of entry into force and shall be jointly conducted by representatives of each Party .The Parties shall invite the UNHCR (United Nations High Commissioner for Refugees) to participate in this review. The Parties shall cooperate with UNHCR (United Nations High Commissioner for Refugees) in the monitoring of this Agreement and seek input from non-governmental organizations.

ARTICLE 9

Both Parties shall, upon request, endeavor to assist the other in the resettlement of persons determined to require protection in appropriate circumstances .

ARTICLE 10

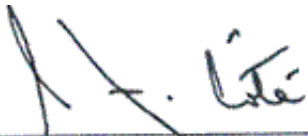
1. This Agreement shall enter into force upon an exchange of notes between the Parties indicating that each has completed the necessary domestic legal procedures for bringing the Agreement into force.
2. Either Party may terminate this Agreement upon six months written notice to the

other Party.

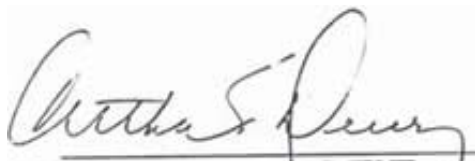
3. Either Party may, upon written notice to the other Party, suspend for a period of up to three months application of this Agreement. Such suspension may be renewed for additional periods of up to three months. Either Party may, with the agreement of the other Party, suspend any part of this Agreement.
4. The Parties may agree on any modification of or addition to this Agreement in writing. When so agreed, and approved in accordance with the applicable legal procedures of each Party, a modification or addition shall constitute an integral part of this Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective governments, have signed this Agreement.

DONE at Washington D.C. (District of Columbia), this 5th day of December 2002, in duplicate in the English and French languages, each text being equally authentic.



**FOR THE GOVERNMENT
OF CANADA**



**FOR THE GOVERNMENT
OF THE UNITED STATES
OF AMERICA**

Procedural issues associated with implementing the Agreement for cooperation in the examination of refugee status claims from nationals of third countries

Statement of Principles

The Parties intend to act according to the following principles:

1. **Opportunity for Third Party During Proceedings.** Provided no undue delay results

and it does not unduly interfere with the process, each Party will provide an opportunity for the applicant to have a person of his or her own choosing present at appropriate points during proceedings related to the Agreement. Details concerning access to proceedings will be set out in operational procedures.

2. **Proof of Family Relationship.** Procedures will acknowledge that the burden of proof is on the applicant to satisfy the decision-maker that a family relationship exists and that the relative in question has the required status. Credible testimony may be sufficient to satisfy a decision-maker in the absence of documentary evidence or computer records. It may be appropriate in these circumstances to request that the applicant and the relative provide sworn statements attesting to their family relationship.
3. **Standard for Determining Eligibility for an Exception to the Agreement.** The United States will use the preponderance of evidence standard to determine whether an applicant qualifies for an exception under the Agreement. Canada will use the balance of probabilities standard to determine whether an applicant qualifies for an exception under the Agreement. These standards are functionally equivalent.
4. **Review.** Each Party will ensure that its procedures provide, at a minimum: (1) an opportunity for the applicant to understand the basis for the proposed determination; (2) an opportunity for the applicant to provide corrections or additional relevant information, provided it does not unduly delay the process; and (3) an opportunity for the applicant to have a separate decision-maker, who was not involved in preparing the proposed determination, review any proposed determination before it is finally made.
5. **Record of Interview and Eligibility Determination.** Upon request and subject to national law, Canada and the United States will share all written materials pertaining to whether an applicant qualifies for an exception under the Agreement. Subject to national law, this information will also be available to the applicant.
6. **Requests to Reconsider Exception Determinations.** Each Party will have the discretion to request reconsideration of a decision by either Party to deny an applicant's request for an exception under the Agreement should new information, or information that has not previously been considered, come to light.
7. **No Reconsideration of Positive Determinations.** Neither Party will reconsider any decision that an applicant qualifies for an exception under the Agreement.
8. **Timeframe for Return Under the Agreement.** Returns to the country of last presence under the Agreement must take place within 90 days after the original refugee status claim is made.

Date Modified:

2002-12-05