

Expansion of the Safe Third Country Agreement (SCTA): What it means for those seeking refuge in Canada

Frequently Asked Questions

(Addendum to the CLEO Connect webinar presented April 20, 2023)

This fact sheet is solely for informational purposes. We urge you to consult with your settlement counsellor or caseworker if you have any specific questions about your situation.

<p>As of March 25, 2023, the Canadian land border with the U.S. is almost entirely closed to refugee claimants. In the past, thousands of individuals sought refugee status at our land border every year. Now, only those who meet very narrow Safe Third Country exceptions are permitted to make their refugee claim at our land border. Claimants who request refugee protection at the border but do not meet an STCA exception or who cross the border undetected but are apprehended within their first 14 days in Canada will be returned to the U.S. and may face detention and deportation.</p>	
<p><i>What are the ways that refugee claimants enter Canada to seek protection?</i></p>	<ul style="list-style-type: none"> • Remember that when we speak of refugee claimants, we mean individuals who are fleeing persecution (forms of serious harm) in their home country. • Refugee claimants may enter Canada by plane (if they have a visa), by boat, or over our land border with the United States. • This set of questions and answers focuses on Canada's land border with the U.S., which is where the U.S.-Canada Safe Third Country Agreement (STCA) applies. • The land border means the border between the most Northern states of the U.S. and the most Southern parts of Canada, where the land of the two countries meets. • In the past, many refugee claimants made their claims at the land border because they did not have a visitor visa for Canada but obtained one for the U.S. Others crossed the U.S.-Mexico land border and then continued on to the U.S.-Canada border. • Many claimants seek to enter Canada from the U.S. because they do not feel safe in that country or know that their particular claim type has a low chance of success. For example, individuals fleeing gang-based or gender-based violence have a very low chance of receiving refugee protection in the U.S.
<p><i>What is the U.S.-Canada Safe Third Country Agreement (STCA)?</i></p>	<ul style="list-style-type: none"> • The STCA is an agreement between the U.S. and Canada which has been in effect since 2004. Governments call it a "burden-sharing" agreement. • The idea is that individuals must seek refugee protection in whichever of the two countries they arrive in first. • The rule has always been that if a claimant enters the US first, they are required to make their refugee claim in that country unless they meet one of a set of narrow exceptions permitting them to make their claim in Canada at the land border. • If someone enters Canada by air or sea, the STCA does not apply and they can make their claim without any restriction.
<p><i>How did the agreement operate before March 25, 2023?</i></p>	<ul style="list-style-type: none"> • Before March 25, 2023, the STCA only applied to ports of entry along the U.S.-Canada land border. Ports of entry are official crossing points where individuals present themselves to Canadian Border Services Agency (CBSA) officers. • If an individual tried to make their refugee claim at the Canadian land border at a port of entry and did not meet an STCA exception, they were returned to the U.S. • If an individual entered Canada at an irregular crossing point between ports of entry (like Roxham Road) they were permitted to make their refugee claim inside Canada and did not have to meet any STCA exception. • For this reason, many individuals entered Canada between ports of entry in order to make their claim. • Some individuals would try to make their claim at a port of entry following the correct legal process only to find themselves returned to the U.S. because they didn't meet an STCA exception. • It would make more sense to let everyone claim at ports of entry and be screened for security and criminality concerns. Then we wouldn't have the issue of so many people all trying to enter at one irregular crossing point (Roxham Road).

<p><i>What changed on March 25th 2023?</i></p>	<ul style="list-style-type: none"> • The Canadian government has been unhappy about the number of claimants entering into Quebec through Roxham road, an irregular entry point not covered by the STCA since it is not a port of entry. • Canada and the U.S. negotiated an expansion of the STCA. • There was no public consultation. • As of March 25, 2023, the new protocol and regulations extended the STCA to the entire land border between the U.S. and Canada, not just ports of entry. • If someone enters Canada by air or sea, the expanded STCA still does not apply and they can make their claim without any restriction. • This means the entire border is closed to refugee claimants unless they meet one of a few very narrow exceptions to the STCA. • Unless they meet one of a few exceptions to the STCA, refugee claimants are now not allowed to enter Canada and make a refugee claim. This applies both at ports of entry and between ports of entry.
<p><i>Are there exceptions to the Safe Third Country Agreement?</i></p>	<ul style="list-style-type: none"> • Yes, but they are very limited. • Most refugee claimants no longer qualify to enter Canada by land.
<p><i>If a refugee claimant meets an exception to the STCA, how do they make their refugee claim at a port of entry? What is the process?</i></p>	<ul style="list-style-type: none"> • A claimant who meets an STCA exception can either show up at a port of entry or make an appointment. • If a claimant makes an appointment, they can fill out all required forms and submit supporting documents by email in advance of the appointment. • Peace Bridge (between Buffalo New York and Fort Erie Ontario) is the port of entry with the most experience processing refugee claims. • The Peace Bridge phone number to schedule a refugee claim appointment is: 905-994-6001 • The Peace Bridge port of entry refugee processing unit email is: CBSA-ASFC_RPU@cbsa-asfc.gc.ca • Booking an appointment and completing forms in advance reduces time at the POE. Otherwise, the individual must complete numerous forms at the port of entry with an interpreter. • Claimants should always come to their port of entry interview with copies of all supporting documents. • While at the port of entry, the refugee claimant is fingerprinted, photographed and questioned. • They are asked questions about why they are coming to Canada, about any family members in Canada, about any forms of inadmissibility and other general questions. • The claimant is asked questions to decide if they meet an STCA exception. • If the claimant demonstrates that they do meet an STCA exception, they receive their refugee claimant ID document (often called brown paper) • They then have 45 days to submit their Basis of Claim Form to the Immigration and Refugee Board. • They leave the port of entry and may go anywhere in Canada they choose; detention of refugee claimants is very rare.
<p><i>Who can make a claim using the family member exception?</i></p>	<ul style="list-style-type: none"> • The claimant must have a family member in Canada which is called an “anchor relative”. • The anchor relative must be the claimant’s: <ul style="list-style-type: none"> ○ spouse, married or common law ○ legal guardian ○ child ○ father or mother ○ sister or brother, including half siblings ○ grandparent ○ grandchild ○ uncle or aunt ○ nephew or niece

	<ul style="list-style-type: none"> • A cousin cannot be an anchor relative; the relationship is too distant. • The family member must be physically inside Canada and must have one of a list of required forms of Canadian status They must be a: <ul style="list-style-type: none"> ○ Canadian citizen ○ permanent resident of Canada ○ won their refugee claim or Pre-removal risk assessment ○ received approval in principal on an application for permanent residence on humanitarian and compassionate grounds ○ has temporary residence as a worker or student (valid Canadian work or study permit) ○ or is over 18 years old and has a claim for refugee protection that has been referred to the Immigration and Refugee Board for determination. • Note that, for a refugee claimant to serve as an anchor relative, they must have passed their eligibility interview and received their claimant ID document. A claimant who has only an Acknowledgement of Claim document does not qualify as an anchor relative.
<p><i>How does someone prove they meet a family member exception?</i></p>	<ul style="list-style-type: none"> • The claimant must submit proof of their family member (anchor relative's) immigration status in Canada. • The claimant must present identity documents that prove the family relationship between themselves and the anchor relative such as birth certificates (or a family book for countries that issue them). • The claimant should present copies of all identity documents for themselves and their anchor relative plus any originals they have. • Example: if it's the claimant's aunt who is their anchor, the claimant must present their own birth certificate, their parent's birth certificate and their aunt's birth certificate to prove that their aunt is their parent's sibling. • It is also helpful to present additional documents like photos of the claimant and anchor relative together in the past. • If the anchor relative is the claimant's spouse, they must present their marriage certificate. • If the anchor relative is the claimant's common law partner, the claimant must present documents demonstrating that the couple lived together for 12 months. • The claimant and anchor must be ready to both answer questions at the port of entry interview; best if anchor comes in person but phone interview is possible. • The claimant and anchor relative could be asked to draw a family tree. The two copies will be compared to see if consistent. Important to be sure claimant and anchor know other family members by the same names.
<p><i>What is the unaccompanied minor STCA exception?</i></p>	<ul style="list-style-type: none"> • This exception applies to children under age 18 who have no parent or legal guardian in either the U.S. or Canada • Such children meet an exception to the STCA so may make their refugee claim at a port of entry.
<p><i>What are the document holder and death penalty STCA exceptions?</i></p>	<ul style="list-style-type: none"> • People who have a Canadian visa or work permit or study permit may make a refugee claim at a port of entry. • This exception also applies to individuals who don't require a visa for Canada but do require one to legally enter the U.S., like Mexicans. • The death penalty exception applies to an individual who is charged with or convicted of an offense in the U.S. or abroad that could result in the death penalty
<p><i>What happens when someone tries to make a refugee claim at a port of entry but does not meet an STCA exception?</i></p>	<ul style="list-style-type: none"> • The claimant is found ineligible, told to return to the U.S. or driven back across the border, and handed over to U.S. border authorities (Customs and Border Protection). • The claimant may be detained and put into deportation proceedings, depending on their status in the U.S. and detention space in the area. • Many claimants are detained on return to the U.S., often in county jails where they are mixed in with individuals being held for committing crimes.

<p><i>What happens when someone tries to enter Canada to make a claim between ports of entry (irregularly) and is caught by the RCMP?</i></p>	<ul style="list-style-type: none"> • With the March 25 expansion of the STCA, anyone caught crossing between ports of entry will be arrested, taken to the closest port of entry, processed and then returned to the U.S if they don't meet an STCA exception. • Like individuals returned from ports of entry, they will be handed over to CBP and may be detained and put into deportation proceedings
<p><i>If someone is returned to the United States because they do not meet an STCA exception, can they make a refugee claim in Canada in the future?</i></p>	<ul style="list-style-type: none"> • If a claimant is returned to the U.S. under the STCA, they have been found ineligible to make a claim. This means that they have used up their one chance to claim. • They can't make a second refugee claim if they manage to enter Canada in the future. • If they manage to enter Canada somehow, they only have access to a pre-removal risk assessment, an application which is on paper rather than having an oral hearing. • If an individual wins their pre-removal risk assessment, they receive refugee status
<p><i>What is the new 14-day rule for claimants who enter Canada irregularly?</i></p>	<ul style="list-style-type: none"> • If a refugee claimant enters irregularly and is apprehended within 14 days of entry, they will be returned to the U.S. and will not be permitted to make their refugee claim unless they can prove that they meet an exception.
<p><i>How can refugee claimants prove that they have been inside Canada for more than 14 days ?</i></p>	<ul style="list-style-type: none"> • If the Canada Border Services Agency demands that a refugee claimant prove that they have been inside Canada for more than 14 days, the burden of proof is on the claimant. • The claimant must prove that it is more likely than not that they have been inside Canada more than 14 days. • It is not yet clear what forms of proof CBSA will find sufficient. However, perhaps a claimant could buy things inside Canada and present receipts or could take photos on their phone and show that the photos are of places inside Canada and the dates correspond to the past 14 days. • A claimant could also obtain a sworn affidavit from whoever they are staying with to prove they have been inside Canada for more than 14 days. • If a claimant can't prove that they have been inside Canada more than 14 days after entering irregularly, they should wait to make their claim until they have the proof
<p><i>If a claimant enters irregularly, Can they make a refugee claim after 14 days if they were not apprehended before that time?</i></p>	<ul style="list-style-type: none"> • If a claimant enters irregularly and is not apprehended and returned to the U.S. during their first 14 days, they may make a refugee claim. • All refugee claimants inside Canada can start their refugee claim by creating an account on the IRCC portal. Claimants do not go to an Immigration office anymore to start their claim. • A claimant who enters irregularly and is still here after 14 days should not go to Immigration or Canada Border Services; they should begin their refugee claim on the online IRCC portal • Claimants can begin entering their information on the IRCC portal to make a refugee claim after their 14th day in Canada. In this portal, they must answer a question about when they arrived. When they finalize their information on the portal, they must declare that the information is true and accurate. This statement will help support their assertion that they have been inside Canada for more than 14 days.
<p><i>If someone enters Canada irregularly and has been here less than 14 days, can they access medical care?</i></p>	<ul style="list-style-type: none"> • These claimants are not covered by Interim Federal Health because they have not yet made their claim; they have no medical insurance. • There is no way to know for certain what medical service providers will do but it is unlikely they will call CBSA to report such claimants. If a medical service provider serves undocumented individuals, they should serve these claimants too as they are undocumented until they make their claim. • Information on uninsured health services is available at Uninsured Clients (HNUC)

<p><i>Are there any concerns about providing services or shelter to those who make it here irregularly and have been in Canada for less than 14 days?</i></p>	<ul style="list-style-type: none"> • Such individuals are undocumented like any other undocumented individual. • Housing them is not smuggling or trafficking and it is not illegal to assist them once they are inside Canada
<p><i>How will the requirement to remain underground for 14 days make refugee claimants who enter irregularly vulnerable to abuse?</i></p>	<ul style="list-style-type: none"> • Claimants who enter irregularly in violation of the expanded STCA will be afraid to come forward at all during their first 14 days since they could be returned to the U.S. during that period. • They will be afraid to seek medical help or go to the police if being abused by smugglers or traffickers. • Claimants will cross the border in dangerous ways and feel they must stay hidden. • It is particularly disturbing that the government's own written analysis of the new changes admits all these risks exist, including the risks of increased sexual violence and trafficking.

More information available at:

CLEO's Steps to Justice:

→ [REFUGEE LAW](#)

→ [Can I make a refugee claim in Canada if I'm coming from the US?](#)

→ [Find out if the STCA applies](#)

→ [Exceptions to the STCA](#)

→ [Port of Entry Claims: FLOWCHART](#)

→ [Inland Claims: FLOWCHART](#)

→ [Basis of Claim \(BOC\) forms: TIP SHEETS](#)

→ [IMMIGRATION LAW](#)