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REPORT ON PUSHBACKS AT THE US-CANADA BORDER

US-CANADA CROSS BORDER NETWORK SUBMISSION TO THE UN SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS OF MIGRANTS

Introduction

The US-Canada Cross-Border Network is a network that includes 18 organizations across eight US states and four Canadian provinces. The US-Canada Cross-Border Network is dedicated to cross-border cooperation with the goal of sharing information about conditions at the US-Canada border, as well as improving migrants' access to practical support and legal representation.

Members of the US-Canada Cross-Border Network witness firsthand the effects of measures to prevent people from crossing borders to seek asylum, including pushbacks. We recognize that the US is not safe for all refugees. The use of pushbacks without considering the human rights implications thereof or the risks people face if pushed back, including the risk of detention and *refoulement*, is inconsistent with Canada's international legal obligations. We urge the Canadian government to open the US-Canada border to people fleeing persecution.

Refugee Protection and the US-Canada Border: Background

The United States and Canada signed the Safe Third Country Agreement (STCA), which went into force in December 2004. The STCA regulates who will be admitted at an official Port of Entry along the US-Canada border for the purposes of making a refugee claim. Most people will be pushed back to the US unless they meet an exception to the STCA.[1] The Federal Court of Canada ruled in July 2020 that the STCA violates the Canadian Charter of Rights and Freedoms.[2] The ruling has been appealed and has not yet gone into effect.

Restricting the right to enter Canada at an official Port of Entry to make a refugee claim has resulted in people entering Canada at informal crossings. From February 2017 to June 2020, 58,621 people who crossed at an informal crossing have made refugee claims in Canada. Approximately half of those claims have been decided by the Immigration and Refugee Board.

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[1] Exceptions to the STCA are here:
https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/policies-operational-instructions-agreements/agreements/safe-third-country-agreement.html#toc1
[2] https://www.cbc.ca/news/politics/safe-third-country-agreement-court-1.5658785

Among those claims that have been decided, 55% were granted refugee status.[3] The high rate of success suggests that most people entering Canada at an informal border crossing are indeed refugees in need of protection.

It is important to be able to make a refugee claim in Canada because asylum in the US is inaccessible to many people who fear persecution. This includes people fleeing gender-based violence or gang violence, two types of claims that have been greatly curtailed in the US, as well as people who are barred from seeking asylum because they waited more than one year after arriving in the US to file their claim and other people who have a low chance of being recognized as refugees in the US. In addition, the US attempted to terminate Temporary Protected Status (TPS) for El Salvador, Haiti, Honduras, Nepal, Nicaraugua and Sudan, prevented only by the Federal Court. Ending TPS would potentially affect more than 300,000 people from countries where violence and other life-threatening conditions are ongoing. Finally, some people wish to seek refugee protection in Canada rather than the US because they have extended family members in Canada with whom they wish to be reunited.

COVID-19 and Expanded Grounds for Pushbacks

In light of the COVID-19 pandemic, the Government of Canada issued an Order in Council (PC Number: 2020-0185) on 26 March 2020 that closed the land border, including informal crossings, to most travel.[4] The Order in Council specified that entry to Canada for the purposes of seeking refugee protection was temporarily disallowed due to the pandemic.

The border closure was renewed on 20 April 2020 by another Order in Council (PC Number: 2020-0263).[5] The April Order in Council permits asylum claims to be made at official Ports of Entry if there is an exception to the STCA. However, informal border crossings remain closed with few exceptions. Informal crossings are actively monitored by the RCMP to prevent travel across the border.

A steady stream of refugees continue to seek to cross into Canada because the need for refugee protection remains even in the context of the pandemic. From 21 March to 31 December 2020, a total of 269 people were intercepted at irregular crossings by the RCMP.[6] It is not clear how many were allowed to remain under the exceptions for irregular crossers, but it is thought to be small in number. Most of the 269 people who were intercepted were pushed back.

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[3] https://irb-cisr.gc.ca/en/statistics/Pages/irregular-border-crossers-countries.aspx
[4] https://orders-in-council.canada.ca/attachment.php?attach=38991&lang=en
[5] https://orders-in-council.canada.ca/attachment.php?attach=39170&lang=en
[6] https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/asylum-claims/asylum-claims-2020.html

Instances of Pushbacks at the US-Canada Border

Since the COVID-19 border closure, Bridges Not Borders - Créons des Ponts, a nonprofit organization based in Hemmingford, Quebec, continues to receive emails from people in the US and around the world asking about conditions at Roxham Road. Many of those who reach out to Bridges Not Borders - Créons des Ponts are living in difficult circumstances and afraid about their immigration status and future. Volunteers from Plattsburgh Cares, a nonprofit organization based in Plattsburgh, New York, have interacted with approximately 90 people near the US-Canada border since the border closure in March 2020.

The selected instances outlined illustrate the difficult circumstances people face prior to being pushed back, as well as the harm caused by pushbacks themselves. Identifying details have been removed from each case in order to maintain anonymity, meaning the below descriptions do not adequately capture the vulnerabilities created by lack of access to refugee protection.

- Sometime in June 2020, a taxi driver left a woman and a toddler by the side of the road near the informal crossing at Roxham Road. They wanted to join an extended family member living in Canada. The taxi driver, knowing that they should not accept payment to bring people to the border, rushed off, leaving with the woman's phone and suitcase. A local family took them in for the night before contacting Plattsburgh Cares.
- On June 29, 2020, a Haitian woman and a toddler attempted to cross the border at an informal crossing. They were hoping to join a close family friend who already lived in Canada. They had previously been denied admission to Canada at a Port of Entry because they did not meet an exception to the STCA.
- On or about August 1, 2020, a woman from a Caribbean country with young triplets was pushed back from the official Port of Entry at Lacolle, Quebec. Before being pushed back, her family had already experienced a harrowing journey. They had crossed the Darien Gap, the only overland route between Colombia and Panama, composed of dense rain forest and home to anti-government militias, drug traffickers, and poisonous snakes. Her husband and eldest child were stuck in Mexico under the Remain in Mexico policy implemented by the Trump administration, but she managed to cross into the US with the triplets. One of her husband's close relatives lives in Quebec, and the children could have been admitted under an exception to the STCA, but the mother did not qualify for an exemption. Thus, seeking entry to Canada at a Port of Entry would have involved separating the mother from her young triplets.
- Around December 2, 2020, a woman from Eastern Europe wanted to cross into Canada. She ordered a taxi, but the driver, a Plattsburgh Cares volunteer, explained that the border was closed and that approaching the border was risky.
- On December 23, 2020, Plattsburgh Cares was informed by a local taxi driver of a family of seven from an African country who wanted to cross the border at an informal crossing. One member of the family had a qualifying family member in Canada and was exempt from the STCA, but the others were pushed back when they tried to cross the following week. They did not have the means to support themselves.

- A woman from South America who feared persecution was pushed back from a border crossing on or about December 29, 2020. She needed food and a place to stay, but had no contacts to assist her.

Impacts of Pushbacks on People Fleeing Persecution

People who approach informal crossings and are pushed back are at increased risk for detention in the US, and detention increases the risk of expedited deportation. On 29 December 2020, the Washington Post reported that at least eight people directed back to the US were being detained, and US authorities successfully deported at least one person who was pushed back from the Canadian border.[7]

Plattsburgh Cares and other organizations working along the US-Canada border observe that pushbacks, both under the STCA and the Order in Council, create and exacerbate vulnerability for people fleeing persecution. People become stranded near the border without housing or resources, having often exhausted their funds in order to get to the Canadian border. Without assistance, they risk homelessness, hunger, and, in the winter, hypothermia. The provision of temporary emergency assistance by NGOs is vital to safeguarding people who have been pushed back, but this assistance does not address the underlying and enduring need for refugee protection. The US-Canada Cross-Border Network has grave concerns above the impact of pushbacks on people fleeing persecution.

The border closure has created confusion about when and how people fleeing persecution will be able to enter Canada to claim asylum. Members of the US-Canada Cross-Border Network are receiving conflicting messages from representatives of the Canada Border Services Agency about where people who have been pushed back from informal crossings should go to make a refugee claim once travel for the purposes of seeking asylum is permitted.

Ending Pushbacks

Since the beginning of the pandemic, the Canadian government has allowed travel for more groups of people, including professional athletes, international students, and certain visitors. However, until now the border remains closed for seeking asylum, with the exception of those who are permitted according to the STCA. The selective re-opening of the US-Canada border indicates that the Canadian government has the capacity to safely manage certain cross-border travel. Organizations in Canada, including the Jesuit Refugee Service-Canada and the Canadian Association of Refugee Lawyers have called for the Canadian government to recognize travel for the purpose of seeking asylum as essential and to immediately re-open the border for people fleeing persecution.[8] The US-Canada Cross-Border Network echoes those

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https://www.washingtonpost.com/world/the_americas/canada-asylum-coronavirus-border-deportation/2020/12/28/28a8c588-40cc-11eb-9453-fc36ba051781_story.html

8 See https://carl-acaadr.ca/refugee-travel-is-essential/ and
https://canada.jrs.net/en/news/covid-19-closure-of-the-canadian-border-to-asylum-seekers/

calls. As long as the pandemic continues, people seeking refugee protection should be permitted to enter Canada and quarantine for two weeks.

Pushbacks at the US-Canada border are not consistent with Canada's legal obligations to protect human rights, including the right to seek asylum, the right to family life, the rights of children, and the right to liberty and security. Once people are pushed back, Canada has very little knowledge or influence on what happens to them. If Canada has turned a person back without considering the merits of their refugee claim, then Canada is complicit in any human rights violations they subsequently face in the US, which could include mistreatment or *refoulement*.

In keeping with its international human rights obligations, Canada must open the US-Canada border to people fleeing persecution. Canada should withdraw from the Safe Third Country Agreement, and people fleeing persecution should be exempt from the COVID-19 border closure.

Signed by the US-Canada Cross-Border Network