



The Right Honorable Justin Trudeau MP
Prime Minister of Canada, Office of the Prime Minister
80 Wellington Street, Ottawa, ON K1A 0A2

July 6th, 2018

Re: Safe Third Country Agreement (STCA)

Dear Prime Minister Trudeau

We are members of Bridges Not Borders, a grassroots refugee support group in the Hemmingford area that lobbies about the STCA, provides direct support to refugees and shares information with local people and Canadian and American media. Every week we go to Roxham Road USA to greet people before they cross, giving them warm clothing in winter. To highlight the problems with the STCA that drive asylum seekers to cross irregularly into Canada, we have organized a well attended local information meeting, produced a briefing on the STCA and expressed our views in person to local MPs Brenda Shanahan and Anne Minh-Thu Quach and to Mark Holland, parliamentary secretary to Minister Goodale.

We are writing to you and to Ministers Hussen and Goodale, to protest - in the strongest possible terms - the continued designation of the US as a 'safe third country' under the STCA and to call for the termination of this agreement. Recent events in the US prompt this letter: the horrific forced separation of some 2500 children from their parents, recklessly removed without any plan for reunification, the removal of specific forms of violence against women and girls as grounds for refugee status and the widespread criminalization and detention of asylum seekers arriving irregularly. In the annex to this letter (see pg. 3) we give detailed comments on these three areas of concern. All of this has happened to a background of overtly xenophobic commentary from President Trump describing Latin Americans as 'breeders' and criminals who are 'infesting' the US, despite inward migration being at its lowest in 20 years. He has even called for the elimination of due process rights for non-citizens - enshrined in the US constitution - saying they should be deported as soon as they arrive.

We believe the designation of the US as a safe country is untenable and recent events only strengthen this assertion. It is unsafe for multiple reasons that breach international law and do not comply with the criteria for 'safe third country' status as set out in section 102 of the Immigration and Refugee Protection Act (IRPA):

- the one-year bar on making a refugee claim;
- the arbitrary, punitive use of detention;
- degrading immigration detention conditions – prison- like settings, negligent medical attention, widespread sexual abuse that goes uninvestigated, use of solitary confinement;
- expedited removal processes lacking proper safeguards;
- lack of access to legal representation in detention and the prosecution of asylum seekers;
- 'asylum free' jurisdictions such as in Atlanta where only 2% are recognised as refuge

All of these have put asylum seekers in the US at risk of being returned to a home country where their lives and liberty are at risk. This constitutes *Refoulement*, a fundamental prohibition under refugee law and a core principle of refugee protection. This is not hypothetical. One study revealed that 83 rejected asylum seekers were murdered after being returned from the US to Honduras, Guatemala and El Salvador from January 2014 to September 2015¹. People who are denied entry into Canada at Ports of

Entry because of the STCA are being sent back to a risky future under a worsening US asylum system. The recent actions by the US administration, in particular the forced separation of children and parents, have elicited condemnation from US citizens and politicians, US allies and the UN Commissioner of Human Rights. New York State is currently suing the Trump administration for denial of due process rights to these children and parents.

For all these reasons we believe it is no longer tenable for the United States to be considered a 'safe third country' with which Canada can maintain an agreement designed to share responsibility for asylum seekers, and which relies on each country treating them appropriately and fairly, respecting international norms. This is clearly not the case in the US and has not been so for some time. These latest developments have dramatically worsened an unacceptable situation.

Within Canada the STCA has weakened support for refugees as misrepresentations of 'illegal migrants' flood the media and the far-right uses this falsehood to promote xenophobia and even white supremacy. Already in the past 12 months far right groups have mounted four protests in our community against Roxham Road refugees. We support a vision of Canada that is inclusive and welcoming to refugees who contribute so much to our country, not least the resilience and courage born of having survived persecution and the flight to safety.

As a society we can do better by allowing asylum seekers to enter Canada in dignity and safety. Without the STCA, people could enter into any province and no longer be concentrated in Quebec, no lives would be put at risk in winter, smuggling would cease, and RCMP resources could be used elsewhere. Xenophobic arguments against asylum seekers would be weakened since no one would be perceived as entering illegally. The 50,649 people who sought asylum here last year do not constitute a crisis (only 6,000 more than in 2004) and we can allocate the resources to do much more. Most of the world's 68 million refugees and internally displaced persons are found in impoverished developing nations who assume a burden immeasurably greater than Canada's with very few resources. Uganda, a small country of 39 million which bears the scars of a lengthy armed conflict, has taken in 1 million refugees from South Sudan giving them land and tools to help them become self sufficient. As a country we cannot remain untouched by this global reality of unprecedented forced displacement. We need to find ways to engage with it with strength, wisdom and compassion.

You have said that you will apologise for Canada's refusal, in 1939, to accept 907 Jewish refugees aboard the St Louis ocean liner. All were sent back to Europe where 254 perished in the holocaust. Today your government has the chance to cast Canada on the right side of history. The longer the STCA stands, the more complicit Canada becomes with conditions in the USA that are contrary to our duty of protection towards people seeking refuge. We ask that you terminate this agreement and by so doing, demonstrate that Canada does not condone or accept the ill-treatment of child and adult asylum seekers and the intolerance of the current American administration.

Sincerely

Wendy Ayotte, Grace Bubeck and Frances Ravensbergen, on behalf of Bridges Not Borders
www.bridgesnotborders.ca

CC: Brenda Shanahan MP, Anne Minh-Thu Quach MP, Mark Holland MP, Serge Cormier MP, Andrew Scheer MP, Jagmeet Singh MP, Elizabeth May MP, Mario Beaulieu MP, Rhéal Fortin MP, Michelle Rempel MP, Jenny Kwan MP.

ANNEXES

1. Children Separated from Parents

President Trump's policy of mandatory separation- designed solely to deter Latin Americans from migrating for work or seeking asylum in the US - has inflicted deep psychological harm on babies, children and adolescents. Although Mr. Trump reversed this policy by Executive Order on June 20th, this cannot undo the harm already done to children and it leaves 2053 children (latest figures from Homeland Security) in a state of limbo facing many hurdles and uncertainties before they *may* be reunited with parents. The substance of the Executive Order itself and plans for reunification of these families announced on June 23rd reveal that the administration is willing to continue using children for political ends.

Under the mandatory separation order, US officials forcibly removed terrified children (including babies who are still breast feeding) from their parents (or took them away on the false pretext of 'having a bath', never to return) and placed them in often barbaric conditions – sleeping on concrete floors in chain link cages with only space blankets for protection. Older children have been caring for babies including changing diapers. Children are not being consoled or helped with their distress. They are traumatised and manifesting the foreseeable signs of separation anxiety: crying, distress, disorientation, calling for their parents, withdrawal, sleeplessness, loss of appetite, bed wetting, stomach ache etc. It is well known that such dramatic and unexplained separations can leave lasting scars: breaking trust, disrupting the bond with parents and leading potentially to troubled adult relationships. The Adverse Childhood Experiences Study (ACE), a landmark long-term study of 17,337 Americans, has demonstrated a clear association between ACEs and lifelong health problems: *'Survivors of adverse childhood experiences like separation also have markedly higher rates of posttraumatic stress disorder, depression, self-harm, substance abuse, suicide and heart disease.'*ⁱⁱ

Faced with criticism of this policy, the President claimed that the 1997 *Flores* decision in federal court (that places strict limits on detention of children) 'forced' him to separate children from detained parents in order to carry out his 'Zero Tolerance' policy of detaining every migrant crossing irregularly into the US. While some parents have already been deported, some children have been moved to locations in 16 states. Flight attendants report highly distressed children being taken by ICE handlers to places far away from the border area. There is chaos surrounding the process of reuniting families. Officials can't get needed information from babies and young children. Some children have different file numbers from parents. Parents in detention are given an ICE number to call to help locate children but many don't have money to call, or they can't get through or they are intimidated by the recorded message. According to the former director of ICE, John Sandweg: *'it's entirely possible that children and parents will remain permanently separated. Not only could a parent and a child be deported at different times—sometimes years apart—but the passage of time and complexity of geographic distance make it difficult for parents outside of the United States to locate their children.'*ⁱⁱⁱ

The President's Executive Order of June 20th rescinded mandatory separation of children from that date onward. However, the Order makes clear that the administration's intent is to be able: *to detain alien families together throughout the pendency of criminal proceedings for improper entry or any removal or other immigration proceedings. (Section 3(e)).* In order to be able to do this, the *Flores* decision must be overturned through the courts, but this is unlikely to succeed. To resolve this Mr. Trump wants Congress to legislate on this, as the title of the Order makes clear: *Affording Congress an Opportunity to Address Family Separation.* The Order also instructs the military to provide and construct facilities to house migrant and asylum-seeking families in large numbers (Section 3(c)) Plainly, the administration appears unconcerned that immigration detention would be harmful for children's welfare as the *Flores* decision found.

The administration's plan for 'reunification' of the children with their families, announced on June 23rd, is in effect a plan for parents who, out of desperation, waive both their own and their children's claims for asylum so that they can be reunited, even though it means deportation. The government 'fact sheet' states that the purpose of the plan is: "*to ensure that those adults who are subject to removal are reunited with their children for the purposes of removal*". Yet cases have already been reported of parents being deported *without their children* despite having made the choice to accept removal in order to be with their children. And for parents who choose to pursue their asylum claims: "*The federal government isn't guaranteeing that the Office of Refugee Resettlement will release children to their parents if the parent has been released from detention while her asylum claim is pending. Instead, the agency maintains it's going to keep its typical screening process in place.*"^{iv} This means that parents who sought protection from violence in their countries and were forcibly separated from their children will be vetted to see if they are suitable carers for their children! The ORR will require parents, newly released from detention, to provide extensive documentation and to demonstrate they can provide "*adequate care, supervision, access to community resources and housing.*" Parents are faced with the terrible choice either to be deported back to danger but – hopefully - reunited with their children, or to pursue an asylum claim and potentially remain separated from their children for months if not years. In the first instance, children are being used as pawns to coerce parents into leaving the US and, in the second, withholding access to children can be used to punish parents who choose to pursue an asylum claim. The worst-case scenario of parents being deported without their children (as has happened) means parents will face enormous difficulties in trying to find and reunite with children from outside the country. Some children may never be reunited with their families.

These actions by the US administration are a violation of two core provisions of the UN Children's Convention: according to Article 2 the rights of the Convention apply to all children without discrimination and children must be protected from *punishment based on the status and activities of their parents*; according to Article 3.1, the child's best interest shall be a *primary consideration* in all actions undertaken by official bodies. Moreover, US actions are incompatible with several other articles including Articles 8 (Preservation of identity), 19 (Protection from abuse), 22 (Protection of Refugee Children) and 37 (Torture and Inhumane treatment, Arbitrary Detention). Lastly, we would like to draw your attention to Article 9.1 which forbids states to *separate children from parents against their will except when it is in the child's best interests*. Clearly these separations are contrary to the children's best interests and will do lasting harm.

2. Violence Against Women

Attorney General Jeff Sessions has ordered that domestic violence and gang rape will no longer be a ground for women and girls to claim asylum in the US. In many jurisdictions, including Canada, it is well established that women subject to these kinds of violence, who are not protected by state authorities, may be able to claim asylum as members of a 'particular social group' (one of the five 'nexus' reasons set out in the Refugee Convention). UNHCR guidelines also affirm this. Session's policy is a severe blow to women in desperate need of protection and is aimed specifically at women coming from the south where: "*In the Northern Triangle (Honduras, El Salvador and Guatemala) and Mexico the problem of femicide and violence against women has reached epidemic levels, in many cases with links to organized crime,*"^v. On top of the violence that causes them to flee their countries, the journey to the US border is a harrowing and dangerous one that some do not survive. Only a desperate person would undertake it. This new policy will mean women (and their accompanying children) will be returned to countries where their very survival is uncertain, to places where gangs rule neighbourhoods and decide the fate of individuals, and where victims of spousal violence are not protected by the authorities. This again is *Refoulement* as prohibited under Article 33 of the 1951 Refugee Convention.

3. Zero Tolerance: Criminalization of Asylum Seekers.

The prosecution of people crossing the border 'illegally' to seek asylum in the US violates international refugee law (Article 31 of the 1951 Refugee Convention) which states that governments must not punish asylum seekers for the way they enter a country. Canada recognises this important principle under IRPA section 133 and does not prosecute people entering irregularly if they present themselves to an immigration official. The intent of the Trump administration is also to arbitrarily detain asylum seekers pending outcome of court proceedings, removal and immigration processes. As stated above the US military has been ordered to prepare detention camps for large numbers of people. Yet, the UN Refugee Agency has long maintained that detention should normally be avoided and in 2014 launched a five-year initiative with the aim of ending the detention of asylum seekers. The prosecution of asylum seekers has the effect of dehumanizing them and tarnishes them as 'criminals' in the minds of those who support Trump's hardline approach and share his xenophobic attitudes towards migrants at the southern border. Yet, these are people like us, caught in frightening circumstances, fleeing for their lives and trying to protect their children. Very often it is the threat to a child that will be the last straw and prompt parents to seek refuge.

ⁱ Jose Magaña-Salgado, Immigration Legal Res. Ctr., *Relief Not Raids: Temporary Protected Status for El Salvador, Guatemala, and Honduras* (2016), at page 6.

ⁱⁱ 'Trump's zero tolerance policy inflicts anguish on kids – with toxic health impacts.' André Picard, *The Globe and Mail*, June 18th, 2018.

ⁱⁱⁱ 'How Will Detained Children Find Their Parents?' Priscilla Alvarez, *The Atlantic magazine*, June 21st, 2018. This is not a direct quote but has been paraphrased by the journalist.

^{iv} 'Trump will reunite separated families – but only if they agree to deportation.' Dana Lind, *Vox News*, June 25th 2018

^v Quote from Eugenia Piza-Lopez, head of UNDP's gender mission in Latin America. She also stated that: '*The issue of violence against women in Latin America is critical. It's the most violent region in the world against women outside of conflict contexts,*' November 2017, NDTV.com