

COMING TO CANADA FROM THE UNITED STATES

INFORMATION AND RESOURCES FOR MIGRANTS BEFORE AND AFTER THEIR ARRIVAL IN CANADA

Canadian politicians are making a lot of misleading statements about migrants coming to Canada from the United States. This information sheet tries to provide accurate information about how people living in the United States come to Canada and what happens to them when they arrive. It also lists some resources in Montreal where people can get support.

If you have further questions, we encourage you to get in touch and we will do our best to put you in touch with a lawyer to answer them, though that may take a little time.

UPDATE: The law in Canada changed in June 2019. Now, asylum-seekers who have already made a refugee claim in the U.K., Australia, New Zealand and the U.S. are no longer able to apply as refugees in Canada. If they cross irregularly, they will only be able to put in a pre-removal risk assessment (PRRA). There is also a higher risk of being detained in this situation. Almost all PRRAs are refused, especially if you do it without the help of a lawyer. If the PRRA is refused, you will be deported to your country of citizenship and not to the United States.



PLEASE NOTE: the situation is changing rapidly, so make sure this information is still up to date. Updates will be posted here: www.solidaritycrossborders.org/fr/faq-coming-to-canada-from-the-united-states

QUICK FACTS

- People who make a refugee claim at a regular border post are turned back and banned from ever applying for refugee status in Canada. There are exceptions for people with family in Canada and people under 18 who are alone (no parent or legal guardian in either the US or Canada).
- People who entered Canada “irregularly” (that is, not at a border post), have usually been allowed to make a refugee claim once they are inside Canada. **Notably, people who have already applied as refugees in the United States and a few other countries are not allowed to apply in Canada. See below for other exceptions.** There are exceptions (see below).
- People who are inside Canada but are not allowed to make a refugee claim are usually given a “pre-removal risk assessment” which can delay the deportation for several months; in some cases, this allows for other plans to be made.
- Canada has suspended deportations to a few countries. Once you are inside Canada, you cannot be deported to that country, even if you are refused as a refugee.
- It is important to get legal help to make a refugee claim. Everyone in Quebec is eligible for a free lawyer if they can't pay for one themselves, whatever their immigration status.
- While waiting for their refugee claims to be accepted or refused, people have access to healthcare, education, social assistance and work permits.
- Refugee claims are not always accepted in Canada. In 2015, for example, only 60% of claims were accepted.
- People whose refugee claims are refused are ordered deported to their country of citizenship, not to the United States.
- Some people whose refugee claim has been refused stay in Canada, even though they are ordered deported and it is illegal under Canadian laws to stay. Similarly, people who entered Canada “irregularly” and were not picked up by police and don't make a refugee claim live in Canada without legal permission (they are “undocumented”). Hundreds of thousands of people live in this situation in Canada, including in Montreal.
- Montreal is not (yet) a Sanctuary City. Police cooperate with the Canadian Border Services Agency to deport undocumented migrants. Undocumented migrants do not have access to many public services.
- Undocumented people can apply for permanent residence on humanitarian grounds. This works for some people and not for others.

FREQUENTLY ASKED QUESTIONS

I WANT TO CLAIM REFUGEE STATUS IN CANADA. WHAT WILL HAPPEN IF I JUST GO TO A REGULAR CANADIAN BORDER POST?

If you come to the regular Canadian border post and ask to apply for refugee status in Canada, **you will be turned back to the United States.** ^(see note 1) **Worse, you will never be allowed to make a refugee claim in Canada again.**

In addition, the Canadian border agent may decide to give you an “exclusion order”. Under an exclusion order, you will not be allowed to legally enter Canada for one year.

Carlos (not the real name) came to the Canadian border post and asked to apply as a refugee. He was given a one year exclusion order and returned to the United States. With bad advice from a lawyer, Carlos went back to the Canadian border post after one year. He asked for a PRRA (see below), was not given one, and was returned to the United States. By that time, he could no longer apply as a refugee in the United States because of the one year bar (see below).

WILL EVERYONE BE TURNED BACK FROM A REGULAR CANADIAN BORDER POST? ARE THERE ANY EXCEPTIONS?

If you have a valid visa or permit to enter Canada (or Canada doesn't require a visa from your country of citizenship), you may be allowed to enter Canada.

Otherwise, the exceptions are if:

- 1) you can **prove** you have a family member with legal status ^(see note 2) currently in Canada;
- 2) you are under 18 and alone (no parent or legal guardian in either Canada or the United States); or 3) you can prove that you face deportation to a country where you are at risk of the death penalty.

If you fit these exceptions, you will not immediately be turned back. Instead, an agent will question you and decide whether you can make a refugee claim. ^(see note 3)

It is extremely important to be prepared to give **accurate and complete information** about your fear of returning to your country of citizenship because the information you give will be used as evidence in your refugee hearing. (See the resources listed in the back that can help you prepare.)

The border agent can also decide to detain you if, for example, you don't have valid ID to prove your identity.

American law prevents people from applying for refugee status after they are in the United States for one year. (This is called the “one year bar”.)

I SEE IN THE NEWS THAT MANY PEOPLE HAVE COME INTO CANADA WITHOUT GOING THROUGH AN OFFICIAL BORDER CROSSING. WHAT HAPPENED TO THEM?

People who enter Canada without going through a regular border post are generally (**with some important exceptions, such as having already made a refugee claim in the United States** [3]) allowed to claim asylum as soon as they are on Canadian soil.

If the police picked them up after they crossed

If the police or border agents picked them up after they crossed the border into Canada, they **immediately** told the agents that they were in **danger in their country of citizenship and wanted to make a refugee claim**. They were then arrested, sometimes questioned about who helped them cross the border, and then brought to a border office.

At the border office, they were interviewed by a border agent to see if they were eligible to make a refugee claim. They also had to fill out several forms asking a lot of personal details. ^(see note 4) They should have access to an interpreter if they need one. This process can take several hours.

If the border agent then decided they could make a refugee claim, they were given an important form (called the Basis of Claim (BOC)) to fill out later with the help of a lawyer. If there was no problem with their identity (that is, they had papers proving who they are), they were then released.

If the police did not pick them up after they crossed

Some people who cross the border without going through an official post do not get picked up by the police.

Those who wanted to make a refugee claim went to a reliable lawyer **as soon as possible** and asked them for help preparing a refugee claim. In Quebec, if they couldn't pay for a lawyer, they were eligible for a free lawyer through the Legal Aid programme (see resource section). After the claim was prepared, the lawyer got an appointment from Immigration, Refugees and Citizenship Canada, where they were interviewed to decide if they are allowed to make a refugee claim. This process can take weeks or even months.

Some people who crossed in this way did not make a refugee claim, either because they were not eligible to make a refugee claim ^(see note 3) or because they were afraid of being refused. They live in Canada without state permission. There are an estimated half-a-million people living in Canada without official authorization. You can read more about the conditions of "undocumented people" in Montreal in the next section.

Everything you write in your forms and everything you say to Canada Border Services Agency (CBSA) officers, and possibly police, will be part of your refugee file. You may later be questioned about it in your refugee hearing. Try to give complete and accurate answers to their questions about why you are afraid to go back to your country of citizenship. Providing information that is found to be false, leaving key elements out of your answers, and even minor contradictions can lead to your claim being refused. It is important to be prepared. (See resource list on back.)

WHAT HAPPENS TO PEOPLE WHO ARE NOT ALLOWED TO MAKE A REFUGEE CLAIM?

A few people who enter Canada without going through an official post and ask to make a refugee claim once they are inside Canada may not be allowed to do so. ^(see note 3) In this case, they are given a deportation order **to their country of citizenship** (not back to the United States). The only exception is if deportations to their country are temporarily suspended because of war, etc.; for example, Syria. In this case, they can stay and can get help to try to get permanent residence in Canada (see resource section).

Before being deported, people who are not allowed to make a refugee claim will

generally ^(see note 5) be allowed a "Pre-Removal Risk Assessment" (PRRA). If it is the first time they are given a PRRA, **their deportation will be stopped temporarily** until an agent evaluates the risk to them. This usually takes several months. However, if they are detained, the decision can be made in just a few days.

It is very important to **immediately** get a **good lawyer** to help fill out a PRRA form. But, even with a lawyer, very few people (less than 3%) are accepted on a PRRA. **For most people, a PRRA just buys a few months to try to work out another solution.**

A border agent has the power to arrest people if he believes they will not leave Canada when they are ordered to leave. People must be clear that they are afraid to return but at the same time not give the agent any reason to suspect that they will not return if Canadian officials order them to. Otherwise they could be detained.

IF SOMEONE IS ALLOWED TO MAKE A REFUGEE CLAIM AFTER THEY ARE INSIDE CANADA, WHAT HAPPENS NEXT?

People who are released from the border office may have been given a deadline (at the moment in Quebec it is fifteen days) to return the Basis of Claim form. It is very important to get a **good lawyer** to help fill it out and get it in on time and then prepare for the hearing. In Quebec, anyone (no matter what their immigration status) can get a free lawyer through the public Legal Aid programme, as soon as they are inside Quebec, as long as they can prove that they don't have enough money to pay for a lawyer themselves.

After they make their claim, a process will start to decide whether to accept or refuse them. This includes a hearing where they will tell their story to a "judge". ^(see note 6)

ARE REFUGEE CLAIMANTS INSIDE CANADA ELIGIBLE FOR SOCIAL SERVICES?

As soon as it is decided that they are eligible to make a refugee claim, they will be given a **"Refugee Protection Claimant Document"**. They can use this to get free social services (for example, healthcare, education for children, and social assistance) while waiting for a decision on their refugee claim. They may also be able to apply for a work permit to allow them to work legally.

WHAT HAPPENS TO PEOPLE IF THEIR REFUGEE CLAIM IS REFUSED?

Not all refugee claims inside Canada are accepted. In 2015, for example, only 60% of claims were accepted. ^(see note 7) The outcome can depend on the "judge", the lawyer, whether it is possible to find proof to back up the story, whether Canada considers the country the person is coming from to be "safe", etc.

This means that, after about six months or so in Canada (a refugee claim is normally heard within a few months; it can then generally be appealed, which can take a few months),

a refugee process may end in a refusal.

If a person is refused, they face deportation. They are legally obliged to return to their country of citizenship (not to the United States).

However, some people remain in Canada without legal permission, despite the deportation order. An arrest warrant is issued against people ("undocumented people") who remain despite a deportation order.

I HAVE SEEN IN THE NEWS THAT MONTREAL IS A SANCTUARY CITY. IS THAT TRUE?

No. Despite recent announcements by its Mayor, Montreal is not a sanctuary city. People who come to Canada irregularly and don't make a refugee claim, people who stay after a visa has expired, and people who remain in Canada after a deportation order are at risk of arrest/detention/deportation and are excluded from many social programmes.

In sum,

- If the Montreal police stop an undocumented person who is under an arrest warrant because they have missed a deportation, they could be arrested and handed over to the CBSA, detained and deported.
- Undocumented people are not eligible for a work permit in order to work legally (anywhere in Canada).
- In Quebec, it is still difficult (but possible) for undocumented children to get access to free public education.
- Undocumented people do not have access to free public healthcare (anywhere in Canada).
- It is only possible to open a bank account with valid Canadian papers (anywhere in Canada).
- It is not possible to maintain a drivers' license.

IS THERE ANY WAY FOR SOMEONE LIVING IN CANADA WITHOUT LEGAL PERMISSION TO REGULARIZE THEIR STATUS FROM INSIDE CANADA?

Undocumented people in Canada can try to regularize their status through an application on humanitarian and compassionate grounds (this is the same all across Canada). However, this is a costly and very lengthy process (generally, it takes a few months to put together a good file; and then generally at least two years before getting permanent residence; total costs are currently at least CAD\$1255 per adult, just for administration fees). While they are waiting for an answer on this application, they will not be protected against being arrested, detained and deported and will have no access to social programmes or over-the-table work.



notes

¹ This is because of an anti-immigrant Canadian law. There is more detailed information about this law here: <http://ccrweb.ca/en/safe-third-country>

² Who counts as a "family member" and having "legal status" is complicated. Also, keep in mind that you have to prove it (providing contact information of the family member, proof of your relationship to them, proof of their legal status in Canada, and proof that they are currently in Canada). You can find more information about this here: <http://www.jrchc.org/vive/information-for-asylum-seekers/>. In addition, it is a good idea to consult a Canadian immigration lawyer before trying, to make sure that you fit into this exception.

³ **Some reasons that people may not be allowed to make a refugee claim are: (a) they have already made a refugee claim in the United States, England, Australia or New Zealand, whether or not the claim was already heard; or (b) they have made a refugee claim in Canada and they were not allowed to make one, or it was refused or abandoned, etc.; or (c) they are considered 'inadmissible' (for example, as a security threat or having been convicted of serious crimes (i.e.**

carrying a maximum sentence of ten years in Canada)).

⁴ These forms can be consulted on Immigration Canada's website in English and French: IMM0008, Schedule A, Schedule 12. All necessary forms can be downloaded for free here: <http://www.cic.gc.ca/english/information/applications/protection.asp>

⁵ There are exceptions. For example, people will not always be given a PRRA if they have been refused as a refugee in Canada or done a PRRA in Canada less than a year ago (3 years in some situations). In addition, if they are from a country like Syria, where Canada has suspended deportations, they will not be given a PRRA but will be allowed to stay.

⁶ Immigration and Refugee Board Members – who decide on refugee cases – are either bureaucrats or political appointees and often do not have any legal training.

⁷ See report at <http://ccrweb.ca/en/2015-refugee-claim-data>

RESOURCES IN MONTREAL

LEGAL

- Here is an online resource that can help you **prepare to make a refugee claim**: <http://refugeeclaim.ca/>
- Legal Aid office in Montreal. **Anyone can access Legal Aid in Quebec, even if they have no legal status in Canada** and have stayed after a deportation order or before they have made a refugee claim, as long as they can show that they cannot afford to pay a lawyer. ADDRESS: 440, boul. René-Lévesque West, Suite 1001, Montreal. PHONE: 514 849-3671. EMAIL: baj.immigration@ccjm.qc.ca
- *Just Solutions Legal Clinic* in Montreal offers free legal advice. They can answer your questions about preparing a refugee claim and about regularizing your status if you have stayed after a deportation order. They can also help put you in touch with reliable lawyers including some who work on legal aid basis. **It is important to note that, because of their workload, Just Solutions may take a long time to get back to you.** ADDRESS (but you MUST call or e-mail to make an appointment before coming to the clinic): 1435 rue City Councillors, 3rd floor, Montreal. PHONE: (514) 844-9128, ext. 201 or ext. 204. EMAIL: solutions.justes@gmail.com
- *Solidarity Across Borders* maintains a list of reliable lawyers often willing to work on the basis of legal aid (that is, free for you if you qualify for legal aid). www.solidaritycrossborders.org/fr/resources-2
- A list of Quebec immigration lawyers can be found here: www.aqaadi.com/en/find-lawyer/. Note that not all lawyers are reliable. It is important to get a recommendation from a community member or community organization.
- **If you are detained**, *Action Réfugiés Montréal* takes calls from the detention centre and visits twice a week. They can help ensure your legal rights are respected.
PHONE: 514-935-7799
EMAIL: info@actionr.org

HEALTHCARE

After submitting a refugee claim, and while waiting for a response, people have access to free public healthcare.

Médecins du Monde runs a free drop-in clinic for migrants without access to free public healthcare. Clinics are Wednesday 1pm to 4pm for pregnant women; Thursday 1pm to 4pm for everyone.
ADDRESS: 560 Crémazie St. East (Crémazie metro)

EDUCATION

While waiting for a response on their refugee claim, children have access to free public education.

The *Collectif éducation sans frontières* fights for access to education for all kids, whatever their immigration status. They may be able to help individual families with undocumented children. Contact: solidaritesansfrontieres@gmail.com

LABOUR RIGHTS

The *Immigrant Workers Centre* supports migrants fighting for their labour rights, whatever their immigration status.
PHONE: 514 342 2111.

FIGHT BORDERS

Solidarity Across Borders fights against deportations and detentions, for status for all, and to make Montreal a solidarity city. To join in the collective struggle, EMAIL: solidaritesansfrontieres@gmail.com.
PHONE: 438-933-7654.
www.solidaritycrossborders.org.

Please see www.solidaritycrossborders.org/en/support for more resources in Montreal.

Toronto: *No One Is Illegal Toronto*,
nooneisillegal@riseup.net

Winnipeg: *Welcome Place*, 204-977-1000

Vancouver: *No One Is Illegal Vancouver*,
noui-van.resist.ca