

THE 'NOT SO SAFE' THIRD COUNTRY AGREEMENT: AN ANALYSIS OF THE
CANADA-U.S. SAFE THIRD COUNTRY AGREEMENT

By

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A Major Research Paper
presented to Ryerson University

in partial fulfillment of the requirements for the degree of

Master of Arts
in the program of
Immigration and Settlement Studies

Toronto, Ontario, Canada 2019

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Master of Arts 2019

Immigration and Settlement Studies

Ryerson University

ABSTRACT

This major research paper examines the impact of the Canada- U.S. Safe Third Country Agreement relating to the current refugee crisis, especially with the current American presidential administration with Donald Trump. The Safe Third Country Agreement between Canada and the United States was implemented on December 29th, 2004 and will be examined in terms of its relations to state security and human security in the current refugee context. The paper provides context to the current refugee crisis with the Safe Third Country Agreement under the Trump Administration. The paper examines the theory of criminalization in relation to the unintended consequences of the Safe Third Country Agreement. The paper also provides a policy analysis and a critical analysis of the Safe Third Country Agreement. The paper also provides possible solutions and recommendations to either suspend or abolish the Safe Third Country Agreement.

Key Words: Safe Third Country Agreement, Criminalization, Refugees, Non-Refoulement

Acknowledgements

I would like to thank all those who have helped me through the process of writing this major research paper. At this time, I would like to acknowledge and thank my supervisor Professor Idil Atak for her dedication to working with me and helping me finish this major research paper. I would also like to thank Professor Graham Hudson for agreeing to be my second reader to finish my major research paper. Thank you to my family and loved ones for their continued support throughout this process.

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Introduction:

Canada is known to be a welcoming and open country for immigrants, refugees and asylum seekers (Marwah & Ball, 2017). In comparison to other countries such as the United States (U.S.) under the current Trump Administration, Canada is perceived as less discriminatory towards the asylum seekers arriving at our borders. However, while the Canadian government is not as blatantly discriminatory towards asylum seekers, they are not the most welcoming to all asylum seekers or refugees either (Marwah & Ball, 2017). A refugee, according to the UN Geneva *Convention Relating to the Status of Refugees*, is

a person who has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality' and is unwilling or unable to 'avail himself of the protection of that country or return to this country for fear of persecution' (*Convention Relating to the Status of Refugees*, 1951).

They often do not have a choice in terms of which country they can seek refuge. Many asylum seekers are often criminalized within Canada, especially upon arrival at the borders (Arbel & Brenner, 2013). It should be noted that asylum seekers who arrive at the border that are entitled to make refugee claims (*Convention Relating to the Status of Refugees*, 1951); whereas, irregular migrants arriving at the border may be excluded. Refugees who are in Canada or on Canadian land, cannot be deported unless they fall under certain limited circumstances and those who are illegal migrants are considered deportable (*Convention Relating to the Status of Refugees*, 1951).

Many of the asylum seekers who are arriving to the Canadian border are often criminalized by government officials and media discourses. Criminalization involves the process by which behaviours and individuals are transformed into crime and criminals, often through legislation or judicial decisions (Stumpf, 2006). The criminalization of asylum seekers is often perpetuated by policies such as the *Canada-U.S. Safe Third Country Agreement* (Canada-U.S. Safe Third

Country Agreement, 2004). Many asylum seekers often face discriminatory practices such as being stopped and searched by the authorities, along with detention. They are often portrayed as “frauds” or “bogus” refugees who “abuse” the Canadian immigration system and thus are often barred from entering countries for protection (Wallace, 2018). This paper will primarily focus on asylum seekers as those are who are arriving to Canada via the *Safe Third Country Agreement* in hopes to make a refugee claim. One of the policies in Canada that serves as a significant barrier for asylum seekers from entering Canada is the *Safe Third Country Agreement* that Canada has with the United States.

The *Safe Third Country Agreement* was meant to help both the Canadian and U.S. government manage their refugee systems with people crossing the Canada-U.S. land border (Canada-U.S. Safe Third Country Agreement, 2004). The *Safe Third Country Agreement* signed on December 29th, 2004 between Canada and the United States as part of the U.S.- Canada Smart Border Action Plan in hopes to modernize and better secure the Canada-U.S. border following the attacks of September 11th, 2001. It is a form of border control from the United States to help with immigration cases that initially involved tackling terrorism and since then has shifted towards dealing with asylum seekers. This paper will demonstrate how through this Agreement, Canada falls short of both international and legal standards as asylum seekers can be sent to the United States by Canada. This paper will demonstrate that the United States is not a “safe third country” for asylum seekers, especially with the election of Donald Trump in 2016. The paper will discuss the repercussions of the *Safe Third Country Agreement* since the election of Trump, as there has been a significant increase in irregular migration from the United States to Canada as Trump has implemented various policies and Executive Orders which had severe negative impacts on asylum seekers and refugee claimants within the United States. This will be discussed

within the paper relating to the Temporary Residents within the United States who had their refugee status revoke, thus forcing them to seek refuge in Canada. Since the election of Donald Trump in 2016, there has been a significant increase of asylum seekers arriving to the Canadian border, along with an increase of irregular crossing into Canada as well. Within a month of the November 2016 elections, there was a significant increase in irregular crossing where we saw 305 people cross the border into Quebec from the United States. Previously, Canada's Royal Canadian Mountain Police would only see 20 people cross in an irregular manner within a month's span (Proctor, 2017). It should also be noted that currently, asylum seekers cannot make a claim if they have been within the United States for more than a year. Furthermore, the *Safe Third Country Agreement* also permits the detention of asylum seekers as a punitive and arbitrary measure. There are also inconsistencies in the recognition of gender-based asylum claims in the United States which will be discussed below and also inconsistent adjudication where the rates of acceptance vary between different regions (*Safe Third Country Agreement must be suspended, say Canadian Council for Refugees and Amnesty International in comprehensive brief to Canadian government*, 2017). The *Safe Third Country Agreement* encourages asylum seekers, to take desperate measures such as crossing from the United States through dangerous situations such as going through isolated locations, going through harsh weather conditions and increases their chances of being exploited by human smugglers (Arbel, 2013). These measures often put the safety and well-being of the asylum seekers at risk. Thus, by examining the *Safe Third Country Agreement*, the study can provide solutions that can fix the problem at hand. The *Safe Third Country Agreement* is a topic that has gained increased relevance recently within Canada and this paper will shed light on how this policy impacts the current asylum seekers who are arriving at Canada's borders.

As a signatory of the 1951 United Nations Refugee Convention, Canada is internationally obligated to protect refugees and abide by the principle of *non-refoulement* listed under Article 33, where Canada is prohibited from deporting or returning a refugee to their country of origin if they face torture or inhumane treatment if they were to be returned (*Convention Relating to the Status of Refugees*, 1951, Article 33). Furthermore, Canada is also obligated to adhere by Article 31 of the United Nations Refugee Convention which states that a signatory shall not

Article present entry or 31).	“impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of 1, enter or are present in their territory without authorization, provided they themselves without delay to the authorities and show good cause for their illegal presence” <i>Convention Relating to the Status of Refugees</i> , 1951, Article
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With this in mind, the *Safe Third Country Agreement* has caused for uncertainty for refugee claimants as it forced them to choose alternative methods for entering into Canada and avoid having their claims rejected by the American refugee determination system (Legge, 2006).

Moreover, the social problem examined in this paper pertains to asylum seekers being highly criminalized within Canada through the *Safe Third Country Agreement*. This paper will examine the *Safe Third Country Agreement* and the roles it plays in the criminalization of asylum seekers. The criminalization involves discriminating against and penalizing asylum seekers for their means of arrival. The research questions that will be addressed in this paper are as follows: what roles does the *Safe Third Country Agreement* play in the criminalization of asylum seekers? How does the *Safe Third Country Agreement* impact asylum seekers in terms of their security and safety? Has the *Safe Third Country Agreement* resulted in the increased use of irregular crossing? My objective through this paper is to examine the human rights and unintended consequences of the *Safe Third Country Agreement* along with the criminalization of asylum seekers through the *Safe Third Country Agreement*. This paper will examine the further repercussions of the *Safe*

Third Country Agreement and how the *Safe Third Country Agreement* impacts asylum seeking groups such as the Haitians, Nigerians, Latin American refugees who have been recently crossing, among others. It will examine the impacts of the *Safe Third Country Agreement* in terms of their security and safety, as well as in terms of the result in increased irregular migration or the use of “illegal” border crossing to be able to claim refugee status in Canada. It will also discuss the ways in which the *Safe Third Country Agreement* makes the border crossing more unsafe. This paper will argue that the *Safe Third Country Agreement* should be suspended or completely abolished as it results in increased irregular migration and does not fulfill its purpose.

This research is current and topical because the *Safe Third Country Agreement* is a hot topic in the news and media, especially with the election of Donald Trump in 2016 in the United States. The *Safe Third Country Agreement* has been a topic that has gained significant news attention as there are many stories and images of asylum seekers who are crossing the Canadian borders through rough terrains and dangerous situations where many have lost limbs in doing so (Hoye, 2018). Furthermore, with the election of Donald Trump as President of the United States, there have been significant repercussions that refugees and asylum seekers now face within the United States due to new policies implemented by Donald Trump’s administration. For example, the Executive Orders, or other controversial policies such as the one where children were separated from their parents as they crossed irregularly from Mexico (Gollom, 2019). With this in mind, the analysis of the *Safe Third Country Agreement* will contribute to the research with current examples of what is happening regarding the consequences of the *Safe Third Country Agreement* as asylum seekers are arriving to Canada’s borders from the United States to seek asylum.

The primary theory that will be discussed within this paper is the theory of criminalization which involves the process by which behaviours and individuals are transformed into crime and criminals. In the context of this paper, criminalization refers to techniques from laws and policies that punish, stigmatize or exclude a new group by giving this new group a criminal status (Miller, 2008). This is often done through the use of criminal penalties for those who are either irregular or undocumented migrants, where they face harsh sanctions (Miller, 2008). According to Spena (2015), irregular migration is viewed as “wrong” as it involves a person residing in a state by violating the state’s territorial sovereignty, which results in the subsequent justified immigration regulations. With the *Safe Third Country Agreement* in place and the increased use of irregular migration as an unintended consequence, criminalization has now become a default method of dealing with asylum seekers. Sovereign states often exercise their right to close and control their borders through limitations to legal entrances and by enforcing criminal norms against “foreigners” who violate these limits. This is often justified through the use of the harm principle where certain people and certain acts may be “harmful” to the nation, or to society itself (Hörnle, 2016). There are often legislative decisions that provide criminal punishments to these harms as a response to the “violation of civil order”. There are three elements to criminalization theory: harm, offence and paternalism. Harms are the wrongdoings, the offence is the actual crime and the paternalism aspect is the government protecting their citizens from the harm and offences that can impact them, through interventions such as laws (Hörnle, 2016).

This study will be conducted in the form of a qualitative analysis with the use of secondary research. There will be a short policy analysis of the *Safe Third Country Agreement* and the repercussions it has on asylum seekers in Canada. The data collected would primarily

focus on information surrounding increased irregular crossings from the Canada-U.S. border, along with the reaction of Canadian authorities and the result in shelter crisis. It will demonstrate the various policies implications in Canada that have intensified the border crossings since the election of Donald Trump. The data will also include statements and proposed solutions made by the Canadian Council for Refugees, Amnesty International and other NGO's as they have conducted studies about the repercussions of the *Safe Third Country Agreement* and have provided solutions to deal with the unintended consequences. The policy analysis of the *Safe Third Country Agreement* will be used to demonstrate how immigrants are criminalized within Canada. The policy analysis will begin by providing context about the current refugee crisis and the Trump Administration.

The paper will begin with an introduction of the context of asylum seekers and the *Safe Third Country Agreement* within Canada. The paper will then outline the methodology of the paper. Part one of the paper will examine the policy of the Safe Third Country Agreement by providing context of how the policy originated, along with the repercussions since the election of Donald Trump. This section of the paper will provide a brief analysis of the *Safe Third Country Agreement* and provide the context of the policy in Canada. Part two of the paper will discuss the theory of criminalization of asylum seekers perpetuated by the *Safe Third Country Agreement*. Part three of the paper will examine the counterproductive effects of the *Safe Third Country Agreement* and whether the United States is a “safe” country, especially since the election of Donald Trump. The paper will conclude by providing potential solutions and suggestions to move forward.

Part 1: The Safe Third Country Agreement Context and Policy Analysis

The *Safe Third Country Agreement* was meant to be a form of border control to help with immigration cases that involve asylum seekers. It should be noted that the United States is the only country that is designated as a “safe third country” by Canada under the *Immigration and Refugee Protection Act* (IRPA) (S.C. 2001, c. 27, s. 102). A ‘safe third country’ refers to a country other than Canada where a person may make a claim for refugee protection. The following factors are outlined in IRPA (S.C. 2001, c. 27, s. 102) to determine if a country can be designated as being “safe”. To be considered a “safe third country”, the IRPA examines whether a country is part of the 1951 *Convention Relating to the Status of Refugees* and the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1984) (Canada-U.S. Safe Third Country Agreement, 2018). It examines whether a country’s policies and practices comply with the Refugee Convention and follow the obligations outlined under the Convention Against Torture. It examines the country’s human rights records and whether the country is party to an agreement with the Canadian government for sharing responsibility with respect to claims for refugee protection (IRPA, S.C. 2001, c. 27, s. 102). It should be duly noted that the *Safe Third Country Agreement* applies only to asylum claimants who are seeking entry to Canada from the United States and vice versa via Canada-U.S. land border crossings, by train or by air through airports. If the asylum claimant seeking protection in Canada is someone who has been determined not to be a refugee in the United States, has been ordered to be deported from the United States and is in transit through Canada for removal from the United States, they cannot apply for protection in Canada through the *Safe Third Country Agreement*.

It should also be noted that the *Safe Third Country Agreement* is currently pertinent to those who cross the land borders and is geared towards those who arrive on foot and cross the border.

It pertains to claims made at the legal port entries on the border of the United States and Canada and not to those who arrived in Canada or the United States in an “illegal” or “irregular” manner (Asthana, 2011). The Agreement only applies to refugee claims that are made at a land port-of-entry and does not apply to those who make inland refugee claims from within Canada or the United States (Macklin, 2005). One of the reasons the Agreement does not apply to inland refugee claims is due to the impossibility of determining whether the inland claimants arrived in Canada through the United States (or vice versa). This is due to the fact that refugee claimants who want to make a claim in Canada do not have an incentive nor are they forced to disclose that they passed through the United States.

The *Safe Third Country Agreement* derives from the notion that a person fleeing from persecution leaves their country of origin and arrives in a country where they want to receive protection (the second country) (Moore, 2007). The country a person flees through is called the “third country”. The *Safe Third Country Agreement* is particularly concerned with the movement that happens between the second and third country (Moore, 2007). The *Safe Third Country Agreement* signed on December 29th, 2004 between Canada and the United States as part of the U.S.- Canada Smart Border Action Plan. The Smart Border Action Plan was adopted on September 9th, 2002 in hopes to modernize and better secure the Canada-U.S. border following the attacks of September 11th, 2001. The Smart Border Action Plan included a 30-point plan in which both sides would keep track of those crossing the borders through strategies such as the following: biometric identifiers, permanent residency cards, managing refugee/asylum claims, notably through the *Safe Third Country Agreement*, visa policy coordination, advance passenger information/passenger name records, compatible immigration databases, immigration officers overseas, integrated border and marine enforcement teams, removal of deportees, counter-

terrorism legislation to name a few (Canada-U.S. Safe Third Country Agreement, 2004). This 30-point Action Plan was designed to increase the border security and “legitimate flow of people and goods” across the Canadian and American borders. The *Safe Third Country Agreement* allowed both countries are considered to be “safe third countries”. This designation reaffirms that both Canada and United States follow their international legal obligation to protect refugees who have arrived on their territory. It connotes that both countries want to promote and protect asylum seekers’ human rights and fundamental freedoms. Through this, the primary goal that is outlined in the *Safe Third Country Agreement* is to “enhance the international protection of refugees by promoting the orderly handling of asylum applications and the principle of burden sharing” (Canada-U.S. Safe Third Country Agreement, 2004). It should be noted that there are safeguards in place to prevent *refoulement*, which prohibits a refugee claimant to be returned to a country where they could face persecution.

The *Safe Third Country Agreement* was meant to help both the Canadian and U.S. governments manage their refugee systems with people crossing the Canada-U.S. land border (Canada-U.S. Safe Third Country Agreement, 2004). The *Safe Third Country Agreement* was initially a form of protection and a national security measure to better improve the U.S.- Canada border after the events of the September 11th, 2001 attacks (Cutler, 2004). The U.S.- Canada Smart Border Action Plan was adopted right after the terrorist attacks of September 11th, 2001 which was much prior to Trump being elected in office. This is important as it demonstrates that the *Safe Third Country Agreement* has been problematic since its implementation, and not only since the election of Donald Trump. After the events of September 11th, the United States border was heavily closed up to immigrants, especially migrants who were of Arab or Muslim descent as a preventative measure (Arbel, 2013). Following these events, the irregularities in terms of the

method or form of immigration served as the foundation for reasoning to detain and deport undocumented migrants and foreigners such as refugees or asylum seekers. As a result of these events and rules following the attacks of September 11th, due to the treatment of Muslims, Arabs and the significant use of “othering”, the United States became a country from which people want to flee. This led to many refugees going to Canada to seek asylum; the reason being that many people feel they are now unwelcomed and are targets because of their country of origin (Settleage, 2012). Many often felt that they would have a better chance of being treated in a more positive manner than they would have been in the United States. In a sense, Canada has often been viewed as the lesser evil in terms of how refugees are treated when arriving into the country (Settleage, 2012). The Agreement was meant to help both countries control their immigration levels (Cutler, 2004), which will be discussed in the next section which discusses a brief policy analysis of the *Safe Third Country Agreement*.

It should also be noted that under the *Safe Third Country Agreement*, refugee claimants cannot be subjected removal to a country outside of Canada or the United States until the refugee claimant’s acceptance or denial into the country has been determined by either country. This provision is implemented and intended to preclude “chain refoulement” and to avoid the “refugee in orbit scenario” (Macklin, 2005). Chain refoulement refers to when asylum seekers are deflected from one country to another country in an informal manner or when asylum seekers pursue “readmission agreements” until they can be returned to their country of origin without going through the refugee determination processes (Macklin, 2005, pg.9). The “refugee in orbit” scenario refers to when one country designates the second country as a “safe third country”, which consequently entitles the first country to refuse to adjudicate the claim of asylum seekers who arrive in the first country via the second country (Macklin, 2005).

Under the *Safe Third Country Agreement*, asylum claimants are required to claim asylum protection in the first country they arrive. Both the United States and Canada are considered “safe” countries for asylum seekers to seek protection within the *Safe Third Country Agreement*. They must do this unless they are qualified for an exception from the Agreement. The exceptions to the *Safe Third Country Agreement* are based on three principles: importance of family unity, the best interest of children and the best interest of the public (Arbel, 2013). There are four types of exceptions that can be applied: family member exceptions, unaccompanied minors exception, document holder exceptions and the public interest exception. Under the family member exception, a refugee claimant may qualify for exception if they have a family member in Canada who is a Canadian citizen, a permanent resident, a protected person under Canadian immigration legislation etc. (Canada-U.S. Safe Third Country Agreement, 2004). Under the unaccompanied minor exception, a refugee claimant may qualify under this category of exceptions if they are under the age of 18 and are not accompanied by a parent or legal guardian, do not have a spouse or common-law partner, do not have a parent or legal guardian in Canada or the United States (Canada-U.S. Safe Third Country Agreement, 2018). The document holder exception involves a refugee claimant who has a valid Canadian visa (other than a transit visa), holds a valid work or study permit, holds a travel document for permanent residents or refugees or any other valid admission document issued by Canada or is not required to get temporary resident visa to enter Canada but require a United States issued visa to enter the United States (Canada-U.S. Safe Third Country Agreement, 2018). Finally, under the exception of public interest, a refugee claimant is qualified under exception if they have been charged with or convicted of an offence that would subject them to the death penalty in the United States or in a third country. With this, a refugee claimant will be ineligible to have their claim referred to the Immigration and Refugee

Board if they have been determined inadmissible to Canada on the grounds of security, violating human or international rights or criminality (Canada-U.S. Safe Third Country Agreement, 2018). It should be noted that despite qualifying for the exceptions listed above, a refugee claimant must also still meet all other eligibility criteria listed in Canadian immigration legislation (Canada-U.S. Safe Third Country Agreement, 2018). Furthermore, the *Safe Third Country Agreement* does not apply to those who are citizens of either country, or habitual residents of either country (Canada-U.S. Safe Third Country Agreement, 2018).

According to the *Immigration and Refugee Protection Act*, refugee claims are ineligible if a refugee has already attained protection in another country or was refused refugee status in Canada or comes from a “safe third country” where the refugee protection could have been claimed (*Immigration and Refugee Protection Act*, S.C. 2001, c. 27). By signing the 1951 Refugee Convention, Canada assumes the responsibility to not return refugees to a country where they face a well-founded fear of persecution. Article 33 of the 1951 Refugee Convention prohibits a state from returning a refugee who faces persecution through the principle of non-refoulement (*Convention Relating to the Status of Refugees*, 1951). This article and the underlying principles are incorporated into Canadian law (Arbel & Brenner, 2013). Furthermore, claimants who are found to be ineligible are entitled to Pre-removal Risk Assessment (PRRA) where they could receive refugee protection if they were not deemed to be a security risk, human rights violator or a serious criminal. However, it should be noted that the claimants found to be ineligible because they arrived via a “safe third country” are not entitled to PRRA (Akibo-Betts, 2006). This leaves many refugees in limbo where they are left with the fear that they could be removed without any assessment or determination as being a non-threat to security, human rights or being a serious criminal. It is clear that the claimants who are allowed to make a claim under

the *Safe Third Country Agreement* have limited rights. It should also be noted that refugee claimants do not have the right to appeal the negative decisions by the Refugee Protection Division (RPD) of the Immigration and Refugee Board (IRB) (Akibo-Betts, 2006).

According to the Canada Border Services Agency (CBSA), the claims at the Canadian border have dropped significantly to 2,500 claims per year since the *Safe Third Country Agreement* has come into effect (Canada-U.S. Safe Third Country Agreement, 2018). This refers to claims made at the legal port entries. One of the reasons behind the significant drop in the claims made at the legal port entries is due to the fact that there have been increases in irregular crossings, which thereby increase the vulnerability of the asylum seekers and refugees (Marwah and Ball, 2017). Moreover, as a result of the *Safe Third Country Agreement*, there has been increased patrol of the United States and Canadian border, especially with the election of Donald Trump in November of 2016, as the current President of the United States (Wright, 2018). Prior to the election of Donald Trump, the *Safe Third Country Agreement* has been used as a tool by both Canada and the United States that has resulted in a refugee crisis and the increased use of irregular migration (Wright, 2018). Once Donald Trump was elected, he began to create a series of policies and Executive Orders to address the large numbers of refugees and immigrants in the United States. He did so by creating policies and orders such as the “Muslim Ban” which targeted various refugee groups from a list of seven countries which will be discussed later in the paper. He also began to target the Haitian refugees who had temporary residency status within the United States and ordered their removal. With the election of Donald Trump, these trends have been increasingly used to deal with the refugee crisis. With the removal orders, and targeting of refugees, it has led to many of them to leave the United States and head to Canada. There have been increased refugee claims from the temporary residents in the United States who

originate from Guatemala and Haiti along with those with travel visas from Nigeria; these refugees have U.S. travel visas or temporary residency status in the United States (Zillio, 2018). Since Trump took office, Canada has had large numbers of refugees going up to over 23,000 asylum seekers cross the Canada-U.S. border to make claims ("Refugee news - Spring 2018 edition - Immigration and Refugee Board of Canada", 2018). They primarily make their claims at the borders of Quebec as many of the refugees are also francophone, such as the Haitians (Hopper, 2018). Furthermore, there are many other controversial policies that Trump has implemented since the Muslim Ban, such as the policy where he would separate children from their parents as they crossed irregularly into the U.S. from Mexico (Gollom, 2019). With this policy, he had almost 2,000 children held in detention centres from between the months of April and May of 2018 (DiPaolo, 2018).

With these new immigration policies in place, there have been requests for the Canadian Government to modernize the *Safe Third Country Agreement*. One of the ideas that were brought up by Immigration Minister Ahmed Hussen is to have border officials use biometrics to track the movements across the Canada-U.S. border, regardless of the fact that this is already supposed to be incorporated into the Agreement and does nothing to stop irregular migrants from coming to Canada (The Canadian Press, 2018). As briefly aforementioned, with changes such as the revocation of the temporary protected status of immigrants living in the United States there have been more asylum seekers arriving at the Canadian border (Dickson, 2019). With Trump revoking the temporary protected status, the people who were allowed to live within the U.S. as their home countries are facing an environmental disaster, epidemic or war, are now left to find a new place to live. Trump has also made remarks towards the people with temporary protected status along with refugees and asylum seekers, such as the remark where he did not want people

coming to the U.S. from “shithole” countries (Dickson, 2019). These remarks along with revocation of the temporary protection status, has led to trends where 60-70 people from countries such as Nicaragua, El Salvador and Nigeria are crossing the border daily. This is especially as these individuals are no longer able to live in a country where they have lived for years without legal status, nor can they go back to their home country, which often leaves them to go to a third country (Dickson, 2019).

With the increasing numbers of refugees arriving at and irregularly crossing the borders, it is important to examine why they are displaced between Canada and the United States and face the unintended consequences such as the criminalization of refugees. Why would we have a policy such as the *Safe Third Country Agreement*, which perpetuates the unintended consequences such as irregular crossing and the subsequent criminalization of refugees? These irregular crossings are slowly increasing as more refugees are in need of protection since the election of Donald Trump as the President of the United States. Within the first six months of 2017, there were approximately 4,345 irregular border crossings into Canada from the United States, which is almost double the 2,464 crossings which occurred the year before (Harris, 2018). From January to June of 2018, that number has increased significantly where there are now 6,183 irregular border crossings into Canada ("Refugee Protection Claims Made by Irregular Border Crossers - Immigration and Refugee Board of Canada", 2018). Clearly, there have been increases in irregular border crossing since the election of Trump (Proctor, 2017).

The Agreement has been criticized in terms of whether it's a humane way of determining an asylum seekers' right to claim asylum. A prime example would be during the winter of late 2017 and early 2018 where many asylum seekers found themselves in dangerous situations while crossing the borders. There have been close to 30,000 asylum seekers who have crossed the

border since 2017 (Wright, 2018). Many asylum seekers would often become disoriented while trekking in the night to get to their destinations due to the extreme cold and faced issues such as hypothermia and frostbite (Hoye, 2018). Many of these refugees would have died had it not been for RCMP intervention, which demonstrates that the *Safe Third Country Agreement* forces refugees to make dangerous attempts to cross the border (Hoye, 2018). It does so while simultaneously punishing those who try to enter Canada through official ports of entry. Reports of these instances occurring in Canada often challenge and question Canada's responsibility to protect those who are vulnerable. By implementing the *Safe Third Country Agreement*, Canada excludes potential refugees from protection. This perpetuates the notion that refugees do not belong in the Canadian societies and further criminalizes refugees and asylum seekers. It serves as a gatekeeping mechanism where it determines who is allowed into Canada, and often makes the act of irregular migration synonymous with criminality. Furthermore, it also perpetuates the notion that refugees are risks to society as there is often a collective anxiety that is presented surrounding immigrants, especially refugees (Brian & Denoy, 2011). With these unintended consequences there have been hundreds of letters to the Immigration Minister Ahmed Hussen, to suspend the *Safe Third Country Agreement* after the recent immigration policies have caused many asylum seekers and refugee claimants from the U.S. to cross the border into Canada (Harris, 2018). The primary argument being that the U.S. is inhospitable for asylum seekers and refugee claimants (Gollom, 2019). With the election of Trump and the continuous implementation of the *Safe Third Country Agreement*, many immigrants have been dehumanized which has brought many people to push the government and Prime Minister Trudeau to acknowledge that the United States is not safe and that the Agreement should be suspended, which will be discussed in further sections of the paper (Dickson, 2018). This is especially with

recent reports suggesting that the government has the intention to have the *Safe Third Country Agreement* to apply to the entirety of the Canadian and United States border rather than just regarding claims made at port entries (Braganza, 2019). What they do not take into account is that with a change like this, it could further decrease the prospects of asylum seekers seeking refugee status and continue to criminalize and put them into danger. It could lead to fast-tracking the process where asylum seekers are being sent back to their country of origin (Braganza, 2019). The following section of the paper will discuss the Safe Third Country Agreement and the criminalisation of asylum seekers in Canada and the United States. This section will be followed by a section discussing the counterproductive effects of the *Safe Third Country Agreement*.

Part 2: Criminalization of Asylum Seekers Through the Safe Third Country Agreement

This section will discuss the theory of criminalization of asylum seekers in Canada and the United States, with the use of the *Safe Third Country Agreement* as an example. The criminalization of immigrants through the use of immigration law, has impacted those who are typically protected, such as the refugee populations (Stumpf, 2006). Criminalization involves the act of turning an activity or person(s) illegal (Stumpf, 2006). Criminal law is used to “prevent harm” to both individuals and society. Immigration law is used to determine who can and cannot cross the border and reside in a country (Stumpf, 2006). Criminal law and immigration law have slowly been blurring into as one, as there have been increased use of criminal grounds being used for the exclusion and deportation of refugees (Stumpf, 2006). Many of the changes in immigration law have been focused on criminalizing populations such as refugees, who are often deemed to commit crimes that are considered as threats to national security (Stumpf, 2006). There has been a shift towards increasing the cooperation of law enforcement and civil immigration authorities to punish, stigmatize, exclude or deport irregular migrants such as

asylum seekers (Miller, 2008). Through the acts of apprehension and deportation of immigrants such as irregular border crossers, they become criminalized. There has been a shift towards criminalizing refugees and various immigrants after the threats and terrorist attacks of September 11th, 2001. The focus on terrorism has entwined both criminal and immigration law as there were increased anti-terrorism efforts (Stumpf, 2006). The association of immigration and criminal law has also led to an increase in the use of Border Patrol which is a prime example of how immigration enforcement and law enforcement have become parallel as Border Patrol agents conduct surveillance, track and pursue undocumented migrants and often arrest those who are deemed criminals (Stumpf, 2006).

The notion of the *Safe Third Country Agreement* being implemented for protecting the integrity of the Canadian immigration system were based on the popular mistaken notion that many asylum seekers in Canada and the United States are “illegals” who have broken the law to get into a country and thus should not be admitted into the country. Here, the notion was that because these people would not be allowed for reasons aside from humanitarian reasons granting them asylum. There were also arguments that if the people who had their application for protection rejected elsewhere, the nation's sovereignty is no longer justified (Cutler, 2004). Thus, the Agreement was necessary to protect the nation's security because it would improve the management of the U.S.-Canadian border. The argument being that if Canada and the United States had an asylum system that was better managed, the *Safe Third Country Agreement* would improve security because of incidents such as when 6 foreign born Al-Qaeda operatives who committed crimes in the United States arrived as asylum applicants and 3 of the 6 took part in terrorist activities (Cutler, 2004).

This plays into the notion of “crimmigration” where there are uses of exclusion and deportation, which fail to protect populations such as the refugees. Crimmigration involves the blurring or fusion of criminal and immigration law, where it provides the state with the power to use criminal punishments towards migrants such as the use of exclusionary measures (ex. detention and incarceration) for immigration matters (Hudson, 2018). The United States especially, has adopted the punitive approaches towards irregular migrants where they have a restrictive and exclusionary system of immigration control (Jian & Erez, 2018). Crimmigration law systematically leads to criminal convictions having immigration law consequences where violations of immigration law are increasingly being punished through the criminal law system (Saad-Diniz, 2018). There has been an increasing use of criminal justice in immigration control such as the use of border monitoring and increased policing of immigrants, along with denial of rights of new immigrants through detention and deportation (Jiang & Erez, 2018). Crimmigration creates and perpetuates the notions that refugees do not “belong” to certain societies and are often criminalized to further exclude them (Stumpf, 2006). Both criminal and immigration laws determine who is excluded from society and from the national territory (Stumpf, 2006). The convergence between criminal and immigration law make irregular migration synonymous with criminality (Stumpf, 2006). When migrants, such as refugees or asylum seekers, are classified as criminals, the general solution used is to expel the person out of the country. Once a person is deemed as “unworthy” of membership in a country, there is an increased population of outsiders who are cast out of the country through the use of borders, walls, laws etc. (Stumpf, 2006). The increasing anti-immigration sentiments and the increasing use of boundaries have created the notion of immigrants as “symbolic assailants” . This has led to immigrants, such as asylum

seekers, being perceived and constructed as threats to the American societies (Jiang & Erez, 2018).

Regulations such as the *Safe Third Country Agreement* which prohibit and criminalize asylum seekers, demonstrate attitudes towards irregular migrants that are often hostile (Spena, 2017). Irregular migrants are criminalized as they are portrayed as causing “indirect” economic losses to the state’s public services (ex. Healthcare, public transport) and yet they do not have to pay taxes. This notion reinforces the idea that they are freeloaders or parasites who benefit from services and are economic burden for states (Spena, 2017). The *Safe Third Country Agreement* prevents some refugee claimants from accessing asylum in Canada and pushed them to cross the border irregularly. The criminalization plays out as they are then stuck with the labels of being “irregular” or “undocumented”. Also because of their marginalization, they are viewed to commit more crimes as they are at “the edge” of society and would commit certain types of crimes related to the conditions of being poor, which then makes it look like the crime rates increase and reinforce the idea that irregular migrants are harmful to society (Spena,2017).

Furthermore, the use of terms such as “irregular migrant” and “illegal migrant” often carry the stigmatization of criminality especially in conjunction with the *Safe Third Country Agreement* as it perpetuates the stigmatization (Council of Europe, Commissioner for Human Rights, 2010). The use of these terms is negative as populations, such as the refugees or irregular migrants have not committed a criminal offence. Furthermore, asylum seekers face criminal sanctions when it comes to their arrival (Council of Europe, Commissioner for Human Rights, 2010). The Royal Canadian Mountain Police (RCMP) and the Canadian Border Services Agency (CBSA) apprehend asylum seekers at port entries. Furthermore, they go through health and security screenings, along with security and criminality checks. Non-Western immigrants are

often targeted by immigration policies which further perpetuate their status of illegality (De Giorgi, 2010). Furthermore, there is higher use of incarceration along with deportation as the main strategy when dealing with unauthorized immigration which results in the hyper-criminalization of immigrants (De Giorgi, 2010, pg.6). With irregular arrival, there are often fines that are given to transporters especially if there are forged documents involved. What is not taken into consideration is that asylum seekers are unable to attain genuine documents as they are in situations where they are in fear of their lives due to persecution that could be from the hands of the authorities in their countries of origin (Council of Europe, Commissioner for Human Rights, 2010). Sanctions, such as on those who aid refugees, can result in a refugee being forced to use smugglers to help them get into a country with false documents (Council of Europe, Commissioner for Human Rights, 2010). By criminalizing the means of arrival, a refugee uses, it has an effect of reinforcing the depiction of asylum seekers as criminals, such as in context of the *Safe Third country Agreement* (Council of Europe, Commissioner for Human Rights, 2010). The use of criminal law works as a threat in which there are enforcement of immigration rules, and criminalization is often used as a form to bring social order (Aliverti, 2012). Furthermore, with criminal law being used in immigration matters, criminal law plays a significant role in the representation of foreigners such as refugees as being cheats, liars and abusers. This leads to immigrants being represented as criminals, dangerous and risky (Aliverti, 2012). The use of law enforcement resources that are directed towards asylum seekers frame them as criminals rather than vulnerable victims that face persecution in their country of origin and are often targets of crime (Miller, 2008). Asylum seekers are often stigmatized and excluded by anti-immigrant campaigns from government officials which perpetuate the notion of

“immigrant criminality” and blame them for increases in issues such as the increasing numbers of mass incarceration (Miller, 2008).

Furthermore, asylum seekers crossing the Canadian borders are criminalized through the *Safe Third Country Agreement* and the unintended consequences often resulting from the “legal” or “illegal” prefix attached to them. By criminalizing immigrants and incorporating criminal law into immigration policies, the use of these terms makes the notion of a criminal synonymous with asylum seekers. This migrant binary and dichotomy of the legal versus the illegal is often based on their mode of entry, and not based on their motive. Those who are “legal” migrants are provided with official state sanctions to enter the country either before or at the port of entry. Those who are considered “illegal” migrants enter without permission or they are those who entered lawfully and could have overstayed their visas or violated their terms of entry by working without authorization, in so-called “under the table” work is often criminalized (Macklin, 2005). The events of September 11th, 2001 and the subsequent implementation of the *Safe Third Country Agreement* have intensified the connection between asylum seekers and criminality, thus reinforcing the notion of foreigners as terrorists (Macklin, 2005). Furthermore, the public often believes that many asylum seekers are frauds and that the migrants who are refugees do not have a genuine fear of persecution but are attempting to use the refugee system to evade the restrictive immigration provisions enacted in Canada (Macklin, 2005).

Moreover, the word ‘refugee’ or ‘asylum seeker’ is often associated with being a “cheat, liar, or criminal” not because they have demonstrated that they fit into these depictions, but simply because they are the ‘other’ (McDonough, 2005). Asylum seekers who arrived in irregular manners are a socially constructed and universally discriminated group as they are subject to discriminatory policies which are meant to alleviate the socially constructed threat that they

represent (McDonough, 2005). Asylum seekers are often referred to by government officials as “illegal” or “queue jumpers” who are essentially arriving to take advantage of the country’s generosity (Rowe & O’Brian, 2014). They are often labelled as being “illegitimate” and as a threat to national identity and national security. Asylum seekers who are constructed as illegitimate or as “boat people” leads to misrepresentation, which results in undermining their protections under Canadian law and our international obligation (Rowe & O’Brian, 2014).

The *Safe Third Country Agreement* was meant to improve the asylum application and “reduce the misuse” of asylum systems. Here, the policy surrounding asylum seekers is used to keep them far away from the borders (Faulkner, 2003). As a result, this forces asylum seekers to enter in an irregular manner as it leaves them with no other options. Furthermore, the press and many government officials have been describing refugee claimants who have entered irregularly as ‘fraudulent’ or as bogus which then add to the negative views of asylum seekers and refugees which are perpetuated publicly (Faulkner, 2003). The word asylum seeker and its connection to security threats have essentially become synonymous, especially when used by the media and government officials. For example, in the current context we have seen the discourse of a refugee crisis where these asylum seekers pose a threat to the United States and to Canada (Faulkner, 2003). These refugee claimants are presented as risks to the security of the states via terrorist activities, even though asylum seekers were not the ones who carried out attacks such as those of September 11, 2001. Furthermore, there are also issues presented with ‘asylum shopping’ where Canadian officials use the term to describe refugee claimants as they are portrayed as those who are looking for economic gain and to abuse the Canadian system. However, it should be noted that the government officials have not been able to demonstrate what kinds of abuse Canada suffers, nor do they have any data to illustrate it as well (Faulkner, 2003).

As aforementioned, asylum seekers are often politically constructed as “illegal” which often result in the criminalization of the actions of asylum seekers. This construction is often a method of disconnecting from their actual reasons for seeking refuge or asylum in Canada (Rowe & O’Brian, 2014). Asylum seekers are often constructed by government officials as a threat through their perceived illegality and often results in the delegitimization of genuine refugee claimants. With these negative connotations, they can often hinder the odds of obtaining refugee status for those who are not in Canada yet or still awaiting on their refugee status (Rowe & O’Brian, 2014). Asylum seekers are rarely presented in a less negative light. Sometimes they are construed as people who need help, support and assistance from the more developed countries rather than as a massive group of criminals or wrongdoers who arrive to ‘steal jobs’. However, the dominant discourse surrounding asylum seekers is often one depicting them as threats to national security.

The general negative perspective and negative construction of asylum seekers is often perpetuated by various media and government discourses, which impose a certain way of thinking. The general perception of asylum seekers is also influenced by other international events, often covered in the media, which further influence the representation of refugees and the perception of the refugees (Boeva, 2016). Since the mid 1990’s there have been increases in the asylum applications across the world (Castles, 2003). Forced displacement has been increasing since the mid 1990’s for reasons such as: conflicts that cause large refugee outflows (ex. Decades of wars such as in Afghanistan) and dramatic, reignited, conflicts and situations of insecurity (ex. Syrian war or gang related violence in Central America). According to the United Nations High Commissioner for Refugees, in 2016, there were 65.6 million individuals were forcibly displaced internationally due to persecution, conflict, violence, or human rights violations. Of the 65.5

million people who were forcibly displaced, 2.8 million of them are asylum seekers (United Nations, 2019). Asylum seeking has gone to a high peak, along with the perception of migration as a threat to national security (Hugo, Abbasi-Shavazi & Kraly, 2017). The media and government officials, such as politicians often claim that asylum-seekers are not real victims of persecution, but simply economic migrants in disguise who are there to take advantage of the nation (Castles, 2003).

Within these discourses, racialized migrants such as asylum seekers or irregular migrants, are viewed as “abusers” of the Canadian systems and national resources; they are often criminalized because they are viewed to be “ignorant of the democratic values and the rule of law” (Thobani, 2000). Asylum seekers are viewed as “outsiders” as they are perceived as not sharing the same values as Canadians and are viewed to threaten the Canadian “national way of life” (Thobani, 2000). An example would be with stereotypes stemming from one’s race or ethnicity, which develop support for the criminalization of visible minority groups such as the Czech Roma, Sri Lankan, Syrian and Haitian refugees through ‘difference’, as compounded by ethnic minority experiences of social marginalization. These asylum seekers are often stereotyped as ‘invaders’ and portrayed as being different from the rest of Canadian societies as they go against what was considered Canadian values (Goodey, 2001). These representations often result in various laws and policies to keep these ‘invaders’ out of the Canadian border. Regulations such as the *Safe Third Country Agreement*, which result in the criminalization of immigration demonstrate the hostility towards immigrants. Due to the irregular crossing, many irregular migrants are viewed as indirect losses to the states as they do not bear costs such as paying taxes and they weigh on public services that are often provided by the state such as public transportation, healthcare and schooling etc. (De Giorgi, 2010). This leads to the notion of refugees being “free-riders” who

take advantage of the state's services without contributing to them. This leads to refugees being stereotyped as burdens to the states.

Furthermore, the Agreement was meant to help control the levels of immigration and yet it contradicts the obligations of the United States and Canada under the International refugee and human rights treaties. It also goes against the policies of multiculturalism (1967) within Canada and the *Immigration and Refugee Protection Act* of 2001 which outlines the objectives of the Canadian immigration laws such as the concerns for refugee protection, family reunification and non-discrimination. While one of the goals of the *Safe Third Country Agreement* is to improve and increase the national security of both the United States and Canada, the evidence states that it harms national security (Cutler, 2004). Amnesty International has stated that “when the door is closed, desperate refugees will try to get across irregularly, putting themselves in the hands of traffickers and becoming victimized yet again” (Cutler, 2004). This illustrates that the *Safe Third Country Agreement* puts refugees in dangerous situations and the border at risk for irregular migration. The *Safe Third Country Agreement* is a criminalization tool that perpetuates negative discourse, limits the rights of asylum seekers and refugees while increasing the aggressive use of law enforcement.

The notion of national security is very important to Canadians and the Canadian government. Canada has been viewed as being vulnerable to exploitation by ‘terrorists’ as according to the United States, alleged terrorists were able to make refugee claims in Canada, but in actuality their claims were denied (Cutler, 2004). The issue in these instances were that the removal orders were not issued or enforced within Canada. The United States government also make the claims that the Canadian borders are more relaxed compared to the United States. We are also not as quick to use automatic detentions, implement special registration systems,

expedited removals etc. Canada is viewed by the United States to be in need of tighter border control, thus the Agreement was implemented as a measure to increase security. With this, under the Smart Border Action Plan, the goal was to ensure the safety of Canadians against terrorism by collaborating with the United States.

As aforementioned, despite the notion of Canada being “open” and welcoming, the Canadian government often try to deter the thousands of asylum seekers attempting to arrive to Canada (Macklin, 2005). There are anti-immigrant discourses used by politicians, the media and the public, which perceive refugees as a threat to national security and the nation's interest. Government officials want to protect citizens from the threat of “outsiders”, where the notion of border protection is linked to national identity and protecting the nation's values (Rowe & O’Brian 2014). This is despite Canada’s commitment to refugee protection, as they are a signatory to the *United Nations 1951 Refugee Convention (Convention Relating to the Status of Refugees, 1951)*. By signing this convention, they assume the responsibility to not return refugees to a country where they face a well-founded fear of persecution. Article 33 of the 1951 Refugee Convention prohibits a state from returning a refugee who faces persecution through the principle of non-refoulement. This article and the underlying principles are incorporated into Canadian law (Arbel & Brenner, 2013).

Here, refugees and asylum seekers are portrayed as those in need of protection, and as those vulnerable to persecution. This illustrates the obligations that Canada has to protecting refugees, and yet often contradict their Convention obligations through policies such as the *Safe Third Country Agreement*. This expands on the notion that refugees are socially constructed as the “other”, whether they are portrayed in a negative light or in a sympathetic light both within the government perspective, the media perspective and at an international level. Here, we see that

there is often a destructive aspect of the notion of a refugee as many refugees have their refugee status questioned in terms of their credibility (Macklin, 2005). Asylum seekers are also socially constructed as being economically, politically and culturally threatening to the nations in which they seek asylum (McDonough, 2005). Due to policies such as the *Safe Third Country Agreement*, many refugees are viewed as threats which result in the logic behind the securitization of the borders against refugees. This is despite Canada being a signatory of the UN 1951 Geneva Convention where the state has agreed to abide by the principle of *non-refoulement*; meaning Canada cannot return a person to their country of origin if they have a well-founded fear of persecution.

Current efforts to address the irregular migrants involve the Prime Minister, Justin Trudeau, naming a new minister to his cabinet to “tackle irregular migration”. On July 18th, 2018, Bill Blair (former Toronto Police Chief) was named the Federal Minister of Border Security and Organized Crime Reduction as Trudeau’s government has faced pressure to respond to the issue of asylum seekers crossing into Canada from the United States. Blair’s responsibility involves ensuring that Canada’s borders are “managed to promote legitimate travel and trade while keeping Canadians safe and treating everyone fairly and in accordance with Canadian laws” (Omar, 2018). This was the response to the refugee claimants who were allegedly putting pressure on education, social assistance, legal aid, and immigration services offered (Garneau et al., 2018). This is despite the fact that Canada claims they are a “fair and welcoming” country. The Canadian government clearly illustrate that they are not fair and welcoming as they target those who “abuse” the generosity of the Canadian government. Thus, they implement policies and initiate task forces to tackle issues related to the increase in asylum seekers entering Canada from the United States due to the *Safe Third Country Agreement* (Immigration, 2018). This was

in response to Canada seeing an influx of asylum seekers crossing from the United States shortly after Donald Trump announced he would end the program protecting temporary status immigrants, such as those from Haiti. The following section will further discuss the counterproductiveness of the *Safe Third Country Agreement* relating to human rights violations, smuggling issues, irregular migration and the impacts that Donald Trump has had on asylum seekers since his election in 2016.

Part 3: Counterproductive Effects of Safe Third Country Agreement

While conducting the literature review for this study, I saw reoccurring themes relating to the *Safe Third Country Agreement* which will be analyzed in the following sections. In this section, I will discuss whether the United States is actually a ‘safe’ country. I will also discuss unintended consequences such as human rights violations, the increased use of human smuggling, and the increase in irregular migration which have counterproductive effects through the *Safe Third Country Agreement*. It should be noted that under the *Safe Third Country Agreement*, both Canada and the United States are considered to be ‘safe’ for asylum seekers. The purpose of the first part of this section is to critically analyse and refute the assumption that the United States is a ‘safe’ third country. This section will discuss the Executive Orders that have been implemented by Donald Trump, the gender related issues, and the counterproductive effects of the *Safe Third Country Agreement*.

With the election of Donald Trump in the United States in November of 2016 (Gökariksel, 2017), there have been significant increases in the measures, such as the implementation of the *Safe Third Country Agreement*, used to prohibit refugees from entering the United States. Donald Trump has publicized and used various Executive Orders to “enhance the public safety” which as a result has undermined the legal protections asylum seekers are entitled to within the

United States (Marwah & Ball, 2017, pg. 6). For example, one of the first Executive Orders passed relating to immigration barred people from certain “Muslim-Majority” countries such as Iran, Libya, Somalia, Sudan, Syria and Yemen from entering the country in order to “protect the nation from foreign terrorist entry into the United States”(Exec. Order No. 13769, 2017). Trump’s Administration has attempted to ban refugees from certain countries as they are perceived to be “risks” to the nation through “Islamic militants”, thus forcing many to try and come to Canada to seek refuge (Wright, 2018). This Executive Order which was popularly referred to as the “Muslim Ban” targeted Muslim-majority countries and restricted the entry and re-entry into the United States through any means, regardless of if they had a visa or were green card holders (Ayoub & Beydoun, 2017). Executive Orders such as this demonstrate Trump’s blatant hostility towards immigrants arriving in the United States, particularly those from Muslim-majority and Latin American countries (Marwah & Ball, 2017).

With the use of the *Safe Third Country Agreement*, there is a significant convergence of criminal and immigration law that is used to exclude and deport refugees from entering either country. One of the groups who were also highly impacted and excluded by the *Safe Third Country Agreement* would be the Colombians, who made up about 14% of the claimants in Canada (Akibo-Betts, 2006). Due to the *Safe Third Country Agreement*, there had been a drop in the number of Columbian claimants arriving at the Canadian border to make their asylum claims. For example, in 2004 there was a 30% deficit where there were 2,500 less claims made with the *Safe Third Country Agreement* in place. Many of these Columbians often relied on entering through irregular manners which indicates that the *Safe Third Country Agreement* is not successful in achieving its goal of protecting refugees and better protecting their needs (Akibo-Betts, 2006). Recently, similar trends are occurring with the use of irregular crossing has been

fluctuating. From the end of 2017 to the first three months of 2018, there was a significant increase in the reported irregular crossing that are pending cases. The numbers jumped from 15,847 to 20,114 and have since risen to 24,891 as of June 2018 ("Irregular border crosser statistics - Immigration and Refugee Board of Canada", 2018). Thus, because the results of the Agreement increase the dangers that refugees face, the *Safe Third Country Agreement* does not meet Canada's obligation to protect refugee rights and adhere by the principle of refoulement under the Refugee Convention and the Convention Against Torture, which then violates the international obligation of protecting refugees.

With the most recent trends of irregular migration they resulted because as previously mentioned, Trump made the decision to revoke temporary resident permits for individuals who are citizens of Haiti, Guatemala, Honduras or San Salvador (Kopan, 2018). Since the election of Trump, thousands of asylum seekers have been fleeing to Canada to escape his racist policies (Gilbert, 2018). There have been vast images of asylum seekers crossing the borders into Canada, produced by the media to portray Canada as the "haven" for these asylum seekers (Gilbert, 2018). Of the 7,800 asylum claims made at the Canada-U.S. border between January and February of 2017, 3000 were intercepted at the land border as they walked across the Canadian border, primarily to Quebec (Wright, 2018). These crossing attempts are largely due to the hostility of Donald Trump towards racialized migrants within the United States.

Trump has used the travel bans on Muslims and other policies geared towards certain racialized minorities which have significantly limited the acceptance rates for refugees and as a result has deported many of these asylum seekers which goes against our obligations regarding non- refoulement (Gilbert, 2018). Anti-Muslim discourses and anti- immigration actions were perpetuated which reinforced stereotypes of Muslims and asylum seekers from Islamic countries

as potential terrorists or as victims of oppression and Islam as being a tyrannical, violent and patriarchal religion (Gökariksel, 2017). For example, there were references to honour killings among other misconceptions which then resulted in the further targeting of Muslims as security threats. The Executive Order led to increased surveillance, discriminatory practices and violence towards Muslims (Gökariksel, 2017). With the “Muslim Ban”, there has been an increase in Islamophobia being integrated into the American immigration laws (Ayoub & Beydoun, 2017). With the Trump Administration in power, there have been many women and children from the seven countries listed in the Order who have been detained and the Executive Order has caused utter chaos at the nation’s borders. For example, there have been changes where airports have been repurposed and used as jail cells to detain immigrants and non-immigrants, including those who are there lawfully. The Order also put a cap on the number of refugees allowed in for 2017 to 50,000 (Ayoub & Beydoun, 2017). This was a significant drop from the 85,000 allowed in 2016. Furthermore, it suspended the entry of all refugees for approximately 120 days after the enactment of the Order.

Due to the Trump Administration and his outrageous laws, many asylum seekers are left with no option but to try and obtain refugee status in Canada. It should be noted that there is increased use of detention in the United States when dealing with refugees and asylum seekers. There are serious deficiencies in detention conditions including: inadequate access to medical care, prolonged confinement in holding cells, and prison like conditions with severe psychological impacts. The United States has turned to increased usage of punitive measures when dealing with refugees with the “skyrocketing” incarceration rates and the increasing use of penal practices (De Giorgi, 2010). Furthermore, many of the refugees who are crossing the border into Canada from the United States have paid in grave ways. Many have lost limbs in the winter due to frostbite,

and some have even died during their travels to arrive in Canada through irregular manners to avoid detention or deportation from the United States (Hoye, 2018). It is evident that the United States is an unsafe country, especially with the current Trump Administration in power as they have multiple laws that target asylum seekers and put them in dangerous situations as illustrated in the example above. Thus, the United States is not a “safe country for asylum” or a “safe third country” for those who are refugees (Marwah & Ball, 2017, pg.7). The United States, under the Trump Administration has become extremely volatile towards asylum seekers and often result in zero-admittance or the arbitrary detention until they are deported. Furthermore, there are also issues of limited time periods for refugees to make a claim, massive backlogs of their immigration system, low acceptance rates, along with interpretation of persecution which all make the United States unsafe for the asylum seekers. Many refugees are often detained and in waiting for their asylum hearings due to the backlogs (Gilbert, 2018).

It is evident there are significant problems with the *Safe Third Country Agreement*. There are especially vast procedural differences between the Canadian and United States asylum systems. For example, the Refugee Convention definition of a refugee is applied differently in Canada compared to the United States which often results in instances where a refugee would be granted status in Canada but rejected in the United States. There are also differences in the treatment and experiences of the claimants as the refugees in the United States seem to have harsher conditions than they would in Canada, a prime example being the use of detention (Akibo-Betts, 2006). For example, after the terrorist attacks on September 11th 2001 in New York, many people from Muslim and Middle Eastern descent were racially profiled and discriminated for being linked to terrorism within the United States, including those who were refugees (Akibo-Betts, 2006). This is regardless of the fact that terrorists are not likely to use the

asylum system to enter a country because that exposes them to authorities and forces them to undergo security clearances among other things.

The notion of the United States being a “safe country” for asylum seekers has been recently challenged by Amnesty International and the Canadian Council for Refugees (*Safe Third Country Agreement must be suspended, say Canadian Council for Refugees and Amnesty International in comprehensive brief to Canadian government*, 2017). This is particularly important as the current Canadian Minister of Immigration, Refugee and Citizenship Ahmed Hussen has publicly stated that because the United Nations High Commissioner for Refugees (UNHCR) recognizes the “legitimacy” of the refugee determination system in Canada, there is no need to change anything regarding the *Safe Third Country Agreement* as both countries are legitimate and “safe” (Marwah & Ball, 2017). However, the American refugee system is known to be deficient as there are often asylum seekers who are banned from making claims if they have resided in the United States for over a year. Furthermore, there are issues of detention being used for punishment and there are also issues in terms of gender-based claims as they are not often recognized (Marwah & Ball, 2017). These negative repercussions and deficiencies of the American refugee system have significantly impacted the rates of claims that have been made at the land border. The following section will discuss the various issues with the United States, such as the security and gender-related issues.

Refugee women are a vast number of those who seek asylum in Canada (Akibo-Betts, 2006) as Canada validates the use of gender as a basis for the need for refugee protection. This is especially because female refugees are especially vulnerable to persecution (ex. rape by military/police and honour killings, sterilization etc.) due to ‘transgressions’ that they committed which went against the social norms (Akibo-Betts, 2006). It should be noted that Canada and the

United States have different systems in terms of treating female asylum seekers and those who are claiming asylum on the grounds of gender-related persecution. Many people who have claimed asylum on these grounds from countries such as the United States, were subject to expedited removal from the United States often to their country of origin (especially women) (Akibo-Betts, 2006). This is often due to the fact that many of these women are often fearful of the immigration officials and telling them their stories due to reasons of shame, re-traumatization and intimidation issues among more. There are also issues regarding the fate of women who are fleeing domestic violence issues. In Canada, the Immigration and Refugee Board states that those who are fleeing domestic violence issues and their country of origin is unable to or unwilling to protect them, may be recognized as refugees (Akibo-Betts, 2006). This is the opposite of the recent policy changes occurring especially with the Trump Administration in power and spewing anti-immigration sentiments (Hoye, 2018). One of the more recent policy changes that Trump has made relates to the elimination of the option to cite the risk of domestic violence as grounds to seek asylum in the United States (Kopan, 2018). As a result of this policy change, there are tens of thousands of immigrants who are prevented from seeking asylum in the United States on the grounds of domestic violence (Kopan, 2018, pg. 1). Under this new policy, the government of the country of origin must be unable or unwilling to help the victims of domestic violence and the applicant must demonstrate that the government of their country of origin condoned the domestic violence or demonstrated an inability to protect the victims of domestic violence (Kopan, 2018, pg. 1). This is especially difficult for women to prove as they are in very vulnerable and dangerous situations which do not provide them with the opportunities to attain the information needed to seek asylum in the United States.

It is evident that there are substantive differences between the Canadian and American asylum laws, especially in relation to gender-based claims. This is especially because gender is not specifically listed as grounds for protection under the Refugee Convention, thus many women by default must make their claims in the “membership in a social group” (Akibo-Betts, 2006). Interpretation of this term is often challenging, especially when it comes to analyzing asylum law and finding a legal standard definition to be used. Claimants who fall under this social group must prove that the persecution they face is “immutable” (Arnett, 2005). Furthermore, the American laws have shown that they are unwilling to acknowledge that gender should be grounds under the “membership in a social group”; their reasoning being that if they allowed it they would, it could potentially bring “floodgates” of women to the U.S. to make their claims (Akibo-Betts, 2006). In Canada, the approach to protecting women through the use of gender as grounds for protection is a little bit easier as women often combined with other grounds. However, for this to be accepted, there needs to be credibility in terms of the evidence where they must prove their country of origin failed to protect these women (Akibo-Betts, 2006, pg. 7). Thus, gender has not been a ground for persecution and it has led to confusion and inconsistency in relation to a woman’s claim to asylum.

The Canadian guidelines for asylum claims based on gender persecution are often done through various definitions from templates from the United Nations Human Rights Commission (UNHCR) (Arnett, 2005). The Canadian guidelines have gender specific harms that are recognized as basis for claims to asylum. For example, they include forms of discrimination which includes gender discrimination by non-state actors such as violence inflicted from domestic violence (Arnett, 2005). By including domestic violence as grounds for an asylum claim, Canada shows that they are willing to help protect female refugees when their home

country is not. In Canada, the adjudicators consult various international documents such as the *Universal Declaration of Human Rights*, the *Convention on the Elimination of All Forms of Discrimination Against Women* etc. In the United States, the *Immigration and National Services* guidelines refer to some of these documents as background information but do not actually encourage their adjudicators to use or even consider using these documents (Arnett, 2005). The Canadian guidelines often recognize the barriers women face such as reluctance to discuss any sexual violence they faced due to cultural norms and the trauma they may have faced such as rape and domestic violence, which are often not considered by the American counterparts. The *Immigration and National Services* guidelines allow for these issues to be taken into consideration but don't necessarily abide by the Conventions or incorporate the experiences of these women into their asylum law and its adjudication (Arnett, 2005, pg. 17).

Thus, while Canada assumes that the United States is a "safe third country", there is evidence that it is often not safe for many female refugees making, it counterproductive. Many female asylum claimants arrive from countries where they have been deprived of education and the ability to attain valid travel documents. Furthermore, they often face many difficulties in relation to disclosing their experiences of persecution as their experiences are often associated with sexual violence and shame and force them to relive their trauma (Asthana, 2011, pg. 28). By referring to the United States as a "safe third country", Canada closes the door on refugee women and forces them to make their claims in the United States . This is despite the fact that there are high chances that they are not likely to be accepted or seen as legitimate. This perpetuates their hardships as they are not permitted in Canada. These women are often re-victimized when attempting to seek refuge in a country like the United States. They are often

handcuffed, detained and searched during the asylum process and on high alert as women are often removed from the United States more than men (Asthana, 2011, p. 28).

It is evident that the asylum proceedings in the United States can often hinder the credibility of female asylum claimants as the policies such as expedited removal, the use of detention and the one-year filing deadlines are all incorporated into refugee law and make things unfavourable for these women who seek asylum in Canada. Furthermore, these policies result in the refoulement and often penalize the asylum seekers, which goes against the international obligations of the Refugee Convention and the Convention Against Torture (Asthana, 2011, pg. 37). These types of policies fail to acknowledge that acts such as domestic or sexual violence against women are public acts of persecution of women. Thus, these policies are proof that the United States violates its obligations under Article 33(1) which is the principle of non-refoulement and 31 which involves the “right not to be punished for illegal entry into the territory of a contracting State” of the Refugee Convention (Guterres, 2018, pg. 4). It also violates Article 3(1) of the Convention Against Torture which also involves the principle of non-refoulement because they do not adequately protect the women who face persecution. Furthermore, by knowing the policies that the United States uses, the Canadian government violates the definition of the *Safe Third Country Agreement* and *Immigration and Refugee Protection Act* by referring to the United States as a “safe” country. The Canadian government thereby has failed to adhere to their international obligations by failing to protect women from facing penalization through detention and returning them to persecution (Asthana, 2011). Thus, Canada should acknowledge that the United States is not safe and there should be a push to terminate the *Safe Third Country Agreement*. They should do so to make that gender-based asylum claims are adjudicated fairly and adhere to the international obligations of the

Conventions (Asthana, 2011). With the unintended consequences of the treatment of women asylum seekers and others that make the United States an unsafe third country.

As aforementioned, the Agreement also incorporates the principle of *non-refoulement*, which involves the practice of not forcing refugees or asylum seekers to return to a country in which they are likely to be subjected to persecution based on their “race, religion, nationality, or membership of a particular social group or due to their political opinion” (*Convention Relating to the Status of Refugees*, 1951). The principle of *non-refoulement* plays an essential role in refugee protection. The principle of non-refoulement applies mainly to refugees who face serious dangers in their country of origin. Canada can only go against the principle if the refugee themselves are dangerous or a threat to the country they seek asylum (Macklin, 2005). Under the Convention against Torture, Canada is not permitted to return a person to their country of origin if they face torture. The only time Canada can deport a security risk to face torture is in an “exceptional case”.

The Agreement also states that there are international protections which are meant to promote the asylum seeker’s application by a “responsible” party and through the notion of “burden-sharing”(Arbel, & Brenner, 2013). By implementing the *Safe Third Country Agreement*, both the United States and Canada are meant to “share the burden” and take responsibility over the asylum seekers who need protection. Because both countries are well developed countries and are considered “safe”, they are meant to prevent “asylum shopping”. If the United States cannot take their refugees for reasons aside from threats to their national security, or being a potential threat to their country, Canada has an obligation to take in those refugees and offer them protection. By having the Agreement force them to seek protection in the first country they

arrive in, it perpetuates the notion that asylum seekers are there to abuse the generosity of the Canadian government.

As aforementioned, refugees have often been depicted as “undesirable” migrants, despite the fact that Canadian values coincide with the notion that the Canadian government and the Canadian public are “humanitarian” and “generous” (Tyyskä, Blower, Deboer, Kawai, & Walcott, 2018, pg. 4). There are both positive and negative tropes that have been associated with refugees which often have unintended consequences. The positive frames are often associated with a refugees’ ability to speak English, their professional and transferable skills and their willingness to adapt to Canadian values. The negative tropes include a refugees’ unwillingness to integrate into Canadian society, their reliance on social/financial assistance, their family structure and their visible religious symbols and practices (Tyyskä, Blower, Deboer, Kawai, & Walcott, 2018). With the current crisis and the *Safe Third Country Agreement*, the negative tropes are currently being imposed on black males who are often from ‘third world’ countries such as Haiti and Nigeria (Wright, 2018). There have been many Haitians, Nigerians, Eritrean and Sudanese people who have been crossing the border irregularly via official ports of entry (Refugee Protection Claims Made by Irregular Border Crossers - Immigration and Refugee Board of Canada, 2018). It should be noted that the unintended consequences such as the intensification of border crossings due to policies such as the *Safe Third Country Agreement* are counterproductive as they violate the human rights of refugees. The current “refugee crisis”, as illustrated by the Canadian government and media has led to an increased emphasis on security concerns and humanitarian considerations. Currently, asylum seekers are a hot topic, along with illegality and security, economic and labour considerations along with social services and diversity (Wallace, 2018). Research finds that immigrants are generally connected to the

economy and refugees are often depicted as security threats. Furthermore, the refugees such as those who are currently crossing the U.S.-Canadian borders are often dehumanized, and coined as “queue-jumpers”, as well as victims who are unable to achieve their social or economic goals (Wallace, 2018).

With the influx of asylum seekers arriving in Canada, the government tends to set boundaries in terms of what kinds of immigrants they want to enter Canada. They have those whom they consider “desirable” immigrants and those who they consider as “undesirable” immigrants. It has been found that asylum seekers are often considered to be “undesirable” as they tend to not fit the governments specific requirements of a “desirable” immigrant (Hernandez, 2013). Thus, the government will put forth certain barriers, such as the *Safe Third Country Agreement*, to deter many undesirable refugees from entering the country. Barriers such as the *Safe Third Country Agreement* result in the demonization of refugees to justify their implementation. Furthermore, the government often spreads the notion that immigrants and refugees are dishonest, frauds and not worthy of being admitted into the country. The research finds that Canada “systematically closes its border to asylum seekers by making it hard to lawfully reach Canada” through the use of the *Safe Third Country Agreement* (Arbel & Brenner, 2013). For example, for those who benefit from the exceptions of the *Safe Third Country Agreement* and are allowed to claim refugee status still face limitations in terms of their rights. The research also finds that although Canada has signed conventions which we are obligated to abide by, we do not abide to them. By using policies such as the *Safe Third Country Agreement*, we often avoid our legal obligations which results in weakening the legal protections available for refugees (Marwah and Ball, 2017). The research also examines the shift towards securitization, especially with the discourses revolving the refugee flows and “crisis

management” of the refugee claimants arriving in Canada. The research finds that the policy implementations surrounding refugees perpetuate the hardships that many refugees face. The *Safe Third Country Agreement* forces refugee claimants to enter the country in an irregular manner. Furthermore, the basic premise of the *Safe Third Country Agreement* is flawed as the United States cannot be considered a “safe” country for some of the refugee claimant groups.

With the hostility from the United States towards the refugees and asylum seekers, many of those who have a well-founded fear of persecution in their country of origin could benefit from making a refugee claim in Canada and thus many are forced to arrive in Canada as they fear deportation and detention while in or if they were to go to the United States (Arbel, 2013). It should be noted that those who do not face persecution, would most likely be sent back to their home country shortly after arriving in Canada as their claim would be quickly rejected. To avoid being sent back to the unsafe environment of the United States and dealing with their immigration authorities, many refugees would rather go through dangerous experiences such as going through snow filled forests and losing limbs due to the *Safe Third Country Agreement* (Marwah & Ball, 2017). Since the implementation of the *Safe Third Country Agreement* in 2004, and especially with the current Trump Administration, there has been a decline in the number of claims made at the entry points to Canada and as a result, there has been an increase in irregular migration (Wright, 2018) due to the Agreement being in place (Marwah & Ball, 2017). There are various reasons for refugees to cross into Canada from the United States to make their claims for refugee status. For example, many of those who are in the United States without status often feel unsafe and fear their claim will not be fairly considered (Refugee and the safe third country agreement, 2017). Many of these refugees often fear that they will not be able to reunite with their families. As a result, many refugees end up crossing irregularly and often face risk with the

cold, and through the smugglers who exploit the refugees from thousands of dollars to cross the borders (Refugee and the safe third country agreement, 2017).

To counteract the Trump Administration, Prime Minister Trudeau has publicly stated that “To those fleeing persecution, terror & war, Canadians will welcome you, regardless of your faith. Diversity is our strength” (Zillio, 2018). And yet, with immigration policies such as the *Safe Third Country Agreement*, these “welcomed” refugees are barred from entering Canada and indirectly forced to take illegal and risky methods of entering Canada (Marwah and Ball, 2017). Policies such as the *Safe Third Country Agreement* contradict the image of Canada as being “generous” towards refugees along with the aforementioned United Nations Refugee Convention. Asylum seekers are prohibited from making claims at the Canadian border, unless they were to cross the border in an irregular manner and make their claim once they have arrived into Canada (Gilbert, 2018). Furthermore, those who cross the borders through farmland and untraveled roads are arrested instantly by the Royal Canadian Mountain Police and are as a result, detained (Gilbert, 2018)

It is evident that while the intentions of the *Safe Third Country Agreement* were to protect refugees and make their asylum claim easier to process, it has had the opposite effect. Instead, it is a form of “burden sharing” among Canada and the United States and as a form of preventing “asylum shopping”. There have been hundreds of refugee claims that have been rejected in Canada under the Agreement since it was initially implemented (Arbel, 2013). For example, in 2005 Canada rejected about 301 claims and by 2009 the rate rose as high as 768 claims rejected (Arbel, 2013, pg. 7). Thus, the *Safe Third Country Agreement* turns many claimants away at the border and simultaneously discourages refugee claimants from arriving at the legal border-crossing points. Because the Agreement applies to applications and arrivals at designated port

entries, it has been argued that this further perpetuates human smuggling and has resulted in the increase of irregular crossing into Canada (Arbel, 2013, pg. 8). The refugees' use of irregular methods such as using human smugglers subsequently results in various human rights violation. The smuggling is often very costly for refugees and can put refugees in very precarious and dangerous situations as many refugees are often forced to turn to smugglers to help overcome the barriers they face due to the *Safe Third Country Agreement* (Marwah & Ball, 2017). A report by the Canadian Council for Refugees found that within a year between 2011 and 2012, human smuggling from the United States to Canada increased by 58% through the impact of the *Safe Third Country Agreement*. Evaluations conducted by the Canadian Border Services Agency have demonstrated that the *Safe Third Country Agreement* has increased the amount of unauthorized entries into Canada as many of these migrants want to avoid the risk of being sent back to the United States or the country in which they may face persecution. Thus, the *Safe Third Country Agreement* fails to meet its primary goals of securing the border (Arbel, 2013).

It is evident that the *Safe Third Country Agreement* has been used as a deterrent for asylum seekers from “abusing” the Canadian immigration system. The Immigration Minister, Ahmed Hussein, has made statements such as “coming to Canada first of all has to be done through regular channels, and secondly the asylum system is only for people who are in genuine need of protection” (Keung, 2018). Statements such as this, delegitimize many of the asylum seekers arriving at the Canadian borders. They construct these refugees as being sneaky and taking advantage of Canada's “generous” immigration and refugee system. The portrayals of asylum seekers, such as those aforementioned, lead to the securitization of the Canadian borders and perpetuate the exclusion of immigrants such as refugees. As a result, many of these asylum

seekers are forced to make their claims in land by irregularly crossing, which is technically considered “illegal migration”.

The *Safe Third Country Agreement* has been used to prevent refugees and asylum seekers from “choosing” which destination they prefer (Macklin, 2005). This suggests that refugees and asylum seekers have the ability of choosing a country to seek asylum and refer to refugees as being “opportunistic” and “abusing” the refugee protection that is offered from either country. Canada prides itself on having citizens and residents who follow the rules, and frowns upon actions that “take advantage” of the Canadian government/s and immigration system (Macklin, 2005). The resistance that is met by asylum seekers in relation to their ability to exercise ‘choice’ is due to the notion that refugee protection is a humanitarian action and not based on “duty”. The notion being that those who are receiving the ‘generosity’ and have ability to seek refugee status in a country like Canada, are not entitled to choosing which host country they want to enter (Macklin, 2005, pg. 17). Asylum seekers are not allowed to “pick and choose” which benefits they may receive from the country they end up seeking refuge in. In other words, Canada reinforces the notion that “beggars can’t be choosers”. The notion behind this is that refugees and asylum seekers should not be ‘shopping’ for the country they want to live in, rather they should focus on escaping the oppression and horrific events they face in their country of origin (Macklin, 2005, pg. 17).

This assumption of “beggars can’t be choosers” plays into the notion of credibility and the notion of the “genuine refugee”. The notion is that if a person genuinely wants to flee their country of origin due to fear of persecution, they will seek refuge in any country they can and as quickly as possible. They will seek refuge in the first country that opens their borders to them out of desperation. Due to this notion, those who are unwilling to do so are considered “bogus” or as

“frauds” because they are not ‘desperate enough’ to settle in the first country they reach. For example,

"Asylum is analogous to giving a drowning man a berth in your lifeboat, and a genuinely desperate man grabs at the first lifeboat that comes his way. A person who seeks to pick and choose among lifeboats is by definition not seeking immediate protection, but instead seeking immigration." (Macklin, 2005).

This example demonstrates that a person seeking asylum must grab the first chance they get in attaining protection and safety. They cannot “pick and choose” which safe country they want to enter. This plays to the notion that asylum seekers and refugees who do not claim refugee status in the first country they arrive in demonstrates that they are not genuine refugees but are economic migrants or “queue jumpers” who are trying to abuse or con the immigration system. Canada plays into this notion, where they value integrity and would work to stop the exploitation and abuse of the Canadian borders and immigration system (Macklin, 2005, pg.17).

The *Safe Third Country Agreement* is often justified as a preventative measure against asylum seekers conducting what is referred to as “forum shopping” (Settlage, 2012). The justification is based on the notion that by forum shopping, the refugees are manipulating the international refugee systems and that they may be lying about the amount of protection they need. The notion is that if a person was in fear of losing their life and was fleeing their country for that reason, they would apply for asylum in the country they first arrived in rather than “shop for the best deal” (Settlage, 2012). Under the United Nations Refugee Convention, a refugee is not required to apply for asylum in the first safe country they arrive in. They acknowledge that there are various reasons for asylum seekers to apply for asylum in countries other than the one they first arrived. For example, they include having support communities, having extended families, familiar languages, or have asylum laws that better protect them given their situation (Settlage, 2012). This notion ignores the fact that asylum seekers may have other reasons to

apply for refugee status in one country over another. For example, they may try to seek asylum in one country over another due to acceptance rates, the presence of family members, languages, the treatment of refugees in a country and more. The *Safe Third Country Agreement* takes these reasons into consideration, and they are sometimes used to permit the refugee claimant to enter the country they desire to as so long they have a visa to enter the country or has a family member in that country lawfully or is an unaccompanied minor (Macklin, 2005).

Furthermore, the *Safe Third Country Agreement* between the United States and Canada reaffirms that both countries have obligations to provide protection for refugees on their territories according to the 1951 Refugee Convention and the 1967 Protocol (Macklin, 2005). Canada follows the notion of the “rule of law” where it is important to honour our legal commitments at an individual level and state/national level. For example, abiding by the country’s international legal obligations such as those relating to refugees are an example of the application of the rule of law. Through the *Safe Third Country Agreement*, the rule of law has been denied as those who seek asylum at the border and those who are not actually on Canadian territory. With the rule of law, there are four universal principles where laws are clear, publicized, stable, just and applied evenly. The rule of law is a mechanism that is meant to protect people’s fundamental rights, which include the security of persons and protecting human rights. Through the *Safe Third Country Agreement*, Canada has denied the rule of law to asylum seekers as the Agreement is not protecting their fundamental rights, nor their rights to security or their basic human rights. Thus, one can argue that Canada has no obligation to protect these refugees and they can deport them without violating any of their legal and international obligations under both Canadian and international law (Macklin, 2005). However, they would thereby violate the principle of non-refoulement, thereby hindering refugee human rights.

Conclusion:

In sum, the social problem that was examined involved refugees and the *Safe Third Country Agreement*. It is evident that refugees have historically been criminalized within Canada, and this trend is still occurring today through policies and discourses such as the *Safe Third Country Agreement*, as it play a significant role in the criminalization of immigrants and refugees. The subsequent criminalization of refugees through the *Safe Third Country Agreement* results in various unintended consequences which discriminate against and penalize refugees for their means of arrival. This is a violation of their basic human rights and Canada's international obligations which often result in the discouragement of refugees from seeking protection in Canada in a legal manner. Thus, the *Safe Third Country Agreement* clearly should be suspended. It does not work to fulfil its purpose, but in fact closes off the Canadian borders for racialized migrants and often results in the criminalization of migrants such as refugees, especially by the government. Refugees are often portrayed in a negative light, such as being "bogus" and abusing the Canadian immigration system. This paper examined the role of political discourses surrounding the *Safe Third Country Agreement* in the criminalization of refugees and the repercussions of the policy. The paper also discussed the impacts of the *Safe Third Country Agreement* in terms of the security and safety of asylum seekers, as well as in terms of the result in increased irregular migration or the use of "illegal" border crossing to be able to claim refugee status in Canada. The research found that the *Safe Third Country Agreement* makes the border crossing more unsafe. This paper argued that the *Safe Third Country Agreement* should be suspended or completely abolished as it results in increased irregular migration and does not fulfill its purpose.

The *Safe Third Country Agreement* clearly serves as a barrier for asylum seekers by consistently shifting the borders of Canada and the United States as both governments are not consistent in adhering to territorial boundaries which “brings refugee claimants outside of the state’s territories and away from attaining Canadian constitutional protection as a form of extending its state power outwards” (Arbel, 2013, pg.12). This places asylum seekers at a disadvantage and in a legal bind where it requires them to arrive at the territory to claim legal protection and yet the border boundaries continuously shift to prevent them from making their claims. The *Safe Third Country Agreement* requires refugee claimants to be physically at a static border to claim protection, and yet these borders shifts preclude them from doing so. By shifting the borders of enforcement and implementing the *Safe Third Country Agreement*, both Canada and the United States shift the focus of asylum seekers from why they are there to where they arrive and where they came from. This makes the focus of their eligibility based on the location from where the claim is made, rather than based on the merit of an asylum claim.

Furthermore, the increase of irregular entry into Canada demonstrates that Canada fails to increase their security through the Agreement. Also, the notion that most refugees want to sneak into the country by illegally crossing the border is mainly false as many refugees want their claims to be adjudicated through a legal system to get a legal status rather than risk their ability to stay in the country. In fact, most refugee claimants arrive for their hearings regularly to complete the legal processes involved with their claim. Even if one accepts that security provides a justification for a *Safe Third Country Agreement*, this particular Agreement will at best have no effect on national security, and at worst, undermine it. The Agreement's impact on the security of asylum seekers is less uncertain (Macklin, 2005). There are also various costs that they must pay such as the costs associated with smugglers; costs that many cannot afford (Mochama, 2018).

Thus, when laws and policies such as the *Safe Third Country Agreement* force people into dangerous situations, it is clear that something must be done, and the asylum seekers' human rights should be protected at all times (Mochama, 2018). The *Safe Third Country Agreement* clearly violates the international treaties and refugee protections incorporated in the 1951 Refugee Convention.

The Canadian Council for Refugees, a non-profit organization committed to protecting the rights of refugees and vulnerable migrants in Canada and around the world (Canadian Council for Refugees, 2018), has argued for a reversal or suspension of the *Safe Third Country Agreement* as it would not likely cause an increase in the number of the asylum-seekers crossing into Canada (Canadian Council for Refugees and Amnesty International, 2017). Their argument aligns with that of the paper as they argue that the *Safe Third Country Agreement* should be suspended as it has done the opposite of what it was intended for. It has increased the use of irregular crossing and the use of human smuggling to get across the border (Marwah & Ball, 2017). As aforementioned, there have also been many casualties and instances where people have lost their limbs due to the harsh conditions of the Canadian winter, thus resulting in the call for the suspension or complete removal of the *Safe Third Country Agreement*. There have also been many arguments for the suspension of the *Safe Third Country Agreement* as such suspension would make the refugee claims at the border ports of entry safer and more orderly (Refugees and the Safe Third Country Agreement, 2017). Furthermore, if the *Safe Third Country Agreement* were to be suspended, it would provide asylum seekers with documentation and provide access to basic services while reducing their hardships (Refugees and the Safe Third Country Agreement, 2017).

It is evident that Canada clearly falls short of their international and legal standards as through the *Safe Third Country Agreement*, asylum seekers cannot make a claim if they have been within the United States. Thus, the *Safe Third Country Agreement* should be suspended as it has more negative repercussions than positive. By criminalizing immigrants and incorporating criminal law into immigration policies, it makes the notion of the “criminal” synonymous with refugees. Thus, the *Safe Third Country Agreement* is a criminalization tool. Furthermore, Canada is well aware of the discriminatory practices the United States implements and has been since before they entered into the *Safe Third Country Agreement* (Moore, 2007). Many advocates have stated that Canada needs to amend the *Safe Third Country Agreement* to address these issues and the violations asylum seekers face. For example, the *Safe Third Country Agreement* is also inconsistent with the *Canadian Charter for Rights and Freedoms*’ Section 7 which “protects a person’s life, liberty and security and prohibits deprivation” which is in accordance to the principles of “fundamental fairness” (Moore, 2007). This argument that Canada violates Section 7 of the *Charter of Rights and Freedoms* is strengthened by the Canadian Supreme Court as they argue that this section applies to all humans in Canada, including those who seek refugee protection (*R. v. Singh*, 2007). By refusing to hear the claims of an asylum seeker arriving from the United States and returning the asylum seeker to the United States due to the *Safe Third Country Agreement*, Canada violates the United Nations Refugee Convention (Settlage, 2012). An asylum seeker who goes to the United States from Canada may have their claim for protection denied because of the current United States laws and policies, whereas they would have received protection had they claimed asylum under Canadian law. Canada is often found to indirectly refool asylum seekers by virtue of the actions of the United States government and thus violates their obligations under the international refugee law (Settlage, 2012). Through

various court cases such as the 2007 case: *Canadian Council for Refugees, Canadian Council of Churches, Amnesty International, and John Doe v. Her Majesty the Queen*, Canada has been criticized in terms of their “direct back” policy where those who are unable to get their claims in Canada are sent back to the United States, and this has been criticized for being in violation of the principle of non-refoulement as it does not give the refugee claimant their personal assessment (Settlage, 2012).

The *Safe Third Country Agreement* is clearly not working. It is not an effective policy as thousands of people are facing dangerous situations and often many have lost limbs or in a few cases, lost their lives while trying to cross the border. Canada violates their international legal obligations through the notion of “complicity” as it sends a refugee claimant back to the United States by implementing the *Safe Third Country Agreement* (Moore, 2007). The United States uses exclusionary measures, mandatory detention, expedited removal processes which all lead to less protection for those seeking refugee status. This demonstrates that the United States does not care for the well-being of the refugee applicants (Moore, 2007). Thus, the *Safe Third Country Agreement* should be suspended or abolished as Canada fails to meet its obligations on an international level.

As aforementioned, irregular border crossing and human smuggling from the United States into Canada has been increasing since the *Safe Third Country Agreement* was implemented (Settlage, 2012). Furthermore, there is evidence that demonstrates that more asylum seekers are crossing into Canada through irregular routes instead of going through regular border crossings to avoid the impacts of the *Safe Third Country Agreement*. This leads to the Canadian and United States to be more dangerous as asylum seekers face dangerous

conditions while crossing the border and are often at a higher risk of falling victim to exploitation by human smugglers (Settlage, 2012).

Asylum seekers in general should be treated with respect and not be referred to as “illegal” immigrants when arriving to Canada (Council of Europe, Commissioner for Human Rights, 2010). If an individual were to arrive outside of a border crossing point, their reason for the arrival should be taken into account and they should not be judged based on their colour or any other prejudices to bar them from entering into Canada (Council of Europe, Commissioner for Human Rights, 2010). With this in mind, states are obligated to protect those in need of international protection due to fear of persecution, fear of facing torture, or facing inhumane treatment or more in their country of origin (Council of Europe, Commissioner for Human Rights, 2010). Furthermore, if a person who needs international protection such as refugees, comes in contact with authorities and mentions their need of protection the authorities have a duty to protect that individual and take their claim into consideration as this is in accordance to their international obligations (Council of Europe, Commissioner for Human Rights, 2010). However, with the *Safe Third Country Agreement* in place, the authorities refuse asylum seekers what they are obligated to receive. They are often turned away or detained and not protected. Thus, the Canadian authorities are clearly violating their international obligations. The Canadian government should ensure that our national policies adhere to and conform to the Canadian Charter of Rights and Freedoms along with our international obligations under the Convention of Torture and the Refugee Convention (DiPaolo, 2018).

After studying the *Safe Third Country Agreement* and the unintended consequences it has led to question why would we have a policy such as the *Safe Third Country Agreement*, which perpetuates the unintended consequences such as irregular crossing and the subsequent

criminalization of refugees? The *Safe Third Country Agreement* is serves as a criminalization tool and a barrier for asylum seekers arriving to Canada. The Agreement is counterproductive and should be abolished as it does nothing but increase unintended consequences.

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