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Canada's Drift Toward U.S. Expedited Removal: How Enforcement Tools Reshape Protection and Removals in Canada

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List of Abbreviations

Canadian Acronyms

- **CBSA**: Canada Border Services Agency
- **CCR**: Canadian Council for Refugees
- **IAD**: Immigration Appeal Division
- **ID**: Immigration Division
- **IRB**: Immigration and Refugee Board of Canada
- **IRCC:** Immigration, Refugees and Citizenship Canada
- **IRPA**: *Immigration and Refugee Protection Act*
- **IRPR**: Immigration and Refugee Protection Regulations
- **MBS**: Multiple Borders Strategy
- **POEs**: Ports of Entry
- **PRRA**: Pre-Removal Risk Assessment
- **RPD**: Refugee Protection Division
- **SCC**: Supreme Court of Canada
- **STCA**: Safe Third Country Agreement

United States Acronyms

- **DHS**: Department of Homeland Security
- **ICE**: Immigration and Customs Enforcement
- **INA**: *Immigration and Nationality Act*
- **U.S.**: United States

International Instruments/Bodies

- **UNHCR**: United Nations High Commissioner for Refugees

Summary

This paper examines whether Canada can converge toward the United States' expedited removal model without formally enacting an "expedited removal" statute and argues that recent Canadian reforms are already creating conditions for functional convergence. It traces how expedited removal in the United States evolved from a border-limited mechanism into an enforcement tool organized around credible-fear screening, constrained review, and expanded executive capacity. It then maps Canada's removal architecture under IRPA/IRPR, focusing on the s. 44 process, direct removal orders in prescribed cases under IRPR s. 228, and information exchange as an eligibility screen through IRPA s. 101(1)(c.1). The paper examines PRRA as a late-stage, paper-based "safety valve," and the STCA as a border-stage filtration and outsourcing mechanism. It situates these dynamics within Charter constraints, emphasizing that convergence can occur even where safeguards remain formally available but are practically constrained through front-end discretion, narrowed review pathways, and expanding information-sharing infrastructure. Finally, it assesses the Carney government's agenda, emphasizing Bill C-12's ineligibility rules, executive document powers, and information-sharing authorities as key accelerants of enforcement-first removals.

Keywords: expedited removal, convergence, return governance, executive discretion, information-sharing, securitization, non-refoulement, deportation.

Disclaimer

This paper is written for academic purposes only and does not provide legal advice. Immigration and refugee law is fact-specific and changes quickly. Nothing in this paper should be relied on as legal guidance for any individual case.

For clarity and consistency, this paper avoids the statutory term “alien” except in direct quotations and instead uses person-centered language such as “foreign national” and “individual.”

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Introduction

In 1951, the UN adopted the Convention Relating to the Status of Refugees, which recognizes that the challenges inherent in refugee protection are of international scope and nature and need to be achieved with international cooperation.[1] This cooperation has become a distant promise in the case of refugees and migrants who are constantly vilified by politicians around the world and are rounded up for summary deportation in the United States (U.S.).[2] When political interests intervene, human rights dissipate and are no longer inherent and inalienable.[3] We then turn to the law for direction, but "laws are often the very instrument of repression and exclusion. Laws define who is in and who is out of the human rights club."[4] In response to record level displacements, countries perpetuate the failure of delivering fundamental universal human rights by closing borders, rejecting claimants, and increasing deportations.[5]

Canada's government has gravitated to where Donald Trump has set the universal human rights debate. In response, that manifests in significant increases in military spending and border enforcement.[6] Under two prime ministers, Canada has been silent on the way in which Trump has eviscerated the rights of refugees and migrants and continues to maintain the Safe Third Country Agreement (STCA).[7]

The year 2025 was a turning point because it featured simultaneous acceleration on both sides of the border. In the U.S., the second Trump administration moved to expand expedited removal toward its statutory maximum and to widen enforcement capacity in ways that intensify concerns about erroneous removals, constrained review, and weakened due process safeguards.[8] Expedited removal is the process in which a foreign national is immediately deported without a hearing or review before an immigration judge.[9] In Canada, the Carney government's recent legislative agenda reframes border and immigration governance through a security and integrity lens, proposing new refugee ineligibility rules, expanded ministerial authority over documents and applications, and broader information-sharing structures.[10]
This paper seeks to answer a comparative question on whether Canada can converge toward the U.S.-style expedited removal model, and whether recent Canadian reforms, such as Bill C-12, are already moving Canada along that path. It argues that Canada's shift toward expedited,

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[1] Alex Neve, *Universal: Renewing Human Rights in a Fractured World* (Toronto: House of Anansi Press, 2025) at 85.
[2] *Ibid.*
[3] *Ibid* at 111.
[4] *Ibid* at 118.
[5] *Ibid* at 191.
[6] Sarah Ritchie, "Conservative Strategists Say Trump Comparisons No Reason for Poilievre to Change Gears" (13 February 2025), online: *CBC News* https://www.cbc.ca/news/politics/poilievre-foreign-aid-1.7458797.
[7] Neve, *supra* note 1 at 195.
[8] The White House, "Protecting the American People Against Invasion" (20 January 2025), online: *The White House* https://www.whitehouse.gov/presidential-actions/2025/01/protecting-the-american-people-against-invasion/.
[9] Hillel R Smith, *Expedited Removal of Aliens: Legal Framework, Report No R45314* (Washington: Congressional Research Service, 19 September 2018), online: *Congress.gov* https://www.congress.gov/crs-product/R45314.
[10] Public Safety Canada, "Government of Canada introduces new streamlined legislation to strengthen border security and keep Canadians safe" (8 October 2025), online: *Government of Canada* https://www.canada.ca/en/public-safety-canada/news/2025/1process0/government-of-canada-introduces-new-streamlined-legislation-to-strengthen-border-security-and-keep-canadians-safe.html.

policy-driven removals is not isolated. It reflects a broader convergence toward an internationally normalized, security-based governance model of migration control and return,[11] where state interests in control and deterrence increasingly override human rights protection.[12] Put differently, Canada may not need to enact an expedited removal statute for expedite removal logic to take hold. That logic can be built through layered reforms that narrow access to independent hearings, expand executive discretion, and shift protection into thinner residual "safety valve" processes.

This paper uses a combined approach: (1) doctrinal comparison of statutory and procedural design in the U.S. and Canada; and (2) a contextual analysis of how "returns" are framed, operationalized, and normalized as a population-management project. On the doctrinal side, the U.S. section tracks the development and expansion of expedited removal under the *Immigration and Nationality Act* (INA) and its extensions through executive designation and policy. On the Canadian side, the paper maps the *Immigration and Refugee Protection Act* (IRPA) and Immigration and Refugee Protection Regulations (IRPR) removal structure.

The paper's core analytical claim is that these reforms create convergence pressures through three linked mechanisms: (1) executive discretion and administrative streamlining, (2) diversion of protection into residual screening processes, and (3) border-stage filtration and outsourcing through the STCA, reinforced by narrowed appeal pathways and expanded deportability. The paper does not assume that Canada is unconstrained. It contextualizes convergence against the constitutional baseline that removal decisions engage section 7 of the Canadian Charter of Rights and Freedoms concerning the life, liberty, and security of the person, and that fundamental justice requirements constrain how quickly and how thinly Canada can lawfully remove people, particularly where risk of persecution or torture is at issue. The point, however, is that convergence can occur even where formal safeguards remain on paper. Rights can be narrowed through refugee ineligibility rules, compressed timelines, administrative discretion, and surveillance-focused enforcement, while "safety valves" are invoked to justify the overall scheme.[13]

This paper makes two deliberate scope choices to keep the comparison analytically tight. First, while Canada's removal structure includes multiple enforcement and review pathways, this paper focuses on the features that most directly shape access to independent adjudication and risk review at the point where removal becomes operational, rather than offering an exhaustive account of inadmissibility jurisprudence across all grounds.

Second, although Canada contains several "safety valves" that can operate in the shadow of removal, including discretionary relief, deferrals, and permit-based mechanisms,[14] this paper centers the Pre-Removal Risk Assessment (PRRA). This is a purposeful choice. PRRA is

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[11] In this paper, "return" is used as a governance and policy term to describe state practices of directing foreign nationals out of territory, including but not limited to formal "removal" orders under domestic immigration law. Where the analysis turns to statutory mechanisms, the paper uses the term "removal" to track the language of the *Immigration and Refugee Protection Act* and the Immigration and Refugee Protection Regulations.

[12] Younes Ahouga, "Between Discipline and Biopolitics: The Role of IOM and UNHCR in the Return of Crisis-Affected Populations" (Working Paper, GAPs: De-centring the Study of Migrant Returns and Readmission Policies in Europe and Beyond, 2 October 2024) at 2–4, online: *Zenodo* https://doi.org/10.5281/zenodo.13880119.

[13] *Canadian Council for Refugees v Canada (Citizenship and Immigration)*, 2023 SCC 17 at para 163 [*Canadian Council for Refugees*].

[14] Kathryn Tomko Dennler & Brianna Garneau, *Deporting Refugees: Hidden Injustice in Canada* (Toronto: Romero House, 2022) at 14, online: https://romerohouse.org/wp-content/uploads/2022/08/Report-on-deportation.pdf.

structurally tied to enforcement and is, in practice, the most obvious and readily available protection mechanism for many individuals once removal is imminent.[15] Framing PRRA in this way clarifies what is at stake when front end eligibility screens narrow access to a full merits-based refugee determination and shift protection seeking into later stage, constrained review.

A. Expedited Removal in the United States: Statutory Design and Expansion

A.1 Statutory Foundation and Early Expansion

The *Illegal Immigration Reform and Immigrant Responsibility Act* of 1996 created the expedited removal process, codified in the *Immigration and Nationality Act* (INA) § 235(b)(1),[16] over increasing concerns of "illegal" immigration, abuse of humanitarian provisions, and burden on taxpayers due to the use of welfare and other benefits.[17] INA § 235(b)(1) establishes the expedited removal process, allowing the Department of Homeland Security (DHS) to immediately remove certain inadmissible foreign nationals arriving at a designated U.S. port of entry without a hearing or review before an immigration judge.[18] The initial application applied only to people caught at entry, not those already in the U.S.

Expedited removal went through several expansions over the years. In 2002, a federal notice authorized expedited removal to be used on individuals within the U.S. who arrived by sea and were not continuously present for two years.[19] In 2004, the Secretary of Homeland Security issued a designation authorizing DHS to apply expedited removal procedures to any and all foreign nationals who are apprehended within 100 miles of the Canadian or Mexican border and who entered the United States fewer than 14 days immediately prior to the date of apprehension.[20] As such, expedited removal was primarily used at and near the border, with a few exceptions.

Under this framework, a person placed in expedited removal is detained pending a final determination of credible fear.[21] If an individual seeks to apply for asylum, or indicates fear of returning to their home country, an immigration officer is required to refer them to a Credible Fear Interview.[22] If no credible fear of persecution is found, the officer orders the removal of the individual from the U.S. without further hearing or review.[23]

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[15] *Ibid* at 15.
[16] Smith, *supra* note 9.
[17] United States Senate, Committee on the Judiciary, *Senate Report 104-249: Immigration Control and Financial Responsibility Act of 1996* (104th Cong, S. Rept. 104-249) (1996), online: https://www.congress.gov/committee-report/104th-congress/senate-report/249.
[18] Smith, *supra* note 9.
[19] *Notice Designating Aliens Subject to Expedited Removal Under Section 235(b)(1)(A)(iii) of the Immigration and Nationality Act*, 67 Fed Reg 68924-68926 (13 November 2002), online: https://www.govinfo.gov/app/details/FR-2002-11-13/02-29038.
[20] *Designating Aliens for Expedited Removal*, 69 Fed Reg 48877 (11 August 2004), online: https://www.federalregister.gov/documents/2004/08/11/04-18469/designating-aliens-for-expedited-removal.
[21] 8 CFR § 235.3 (b)(2)(iii).
[22] 8 CFR § 235.3 (b)(4).
[23] 8 USC §1225 (b)(1)(B)(iii)(I).

The impact of 9/11 on refugee law in the U.S. was transformative, accelerating the turn toward security-based immigration controls,[24] and reinforced a security framing that later supported executive expansion, including the 2025 Trump-era changes discussed next.

A.2 2025 Acceleration: Executive Direction, Discretion, and Reduced Review

Beginning of President Trump's inauguration on January 20, 2025, notable policy changes surrounding immigration promptly took place. These changes have marked the most extreme changes to the immigration system in modern U.S. history.[25]

On January 20, 2025, Trump signed Executive Order 14159, titled *Protecting the American People Against Invasion*, which directs DHS and other agencies to "employ all lawful means to ensure the faithful execution of the immigration laws of the United States against all inadmissible and removable aliens."[26] Section 15 directs ICE to "take all appropriate and lawful action to reestablish within ICE an office to provide proactive, timely, adequate, and professional services to victims of crimes committed by removable aliens, and those victims' family members."[27]

On January 21, 2025, DHS announced the expansion of expedited removal to its fullest extent to cover additional classes of foreign nationals.[28] The impact of this change includes increased deportation and erroneous removal, increased racial profiling and discrimination, infringements of civil liberties, lack of judicial review, inadequate protections for individuals seeking protection, and accidental deportations.[29]

On January 23, 2025, Benjamine Huffman, then-acting Secretary of DHS, issued a memorandum titled *Guidance Regarding How to Exercise Enforcement Discretion* which directs DHS to identify people eligible for expedited removal and, using enforcement discretion, move them into that process, including by terminating pending § 240 proceedings or revoking parole, and to reassess parole grants under policies that may be paused or terminated.[30]

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[24] Arthur E Dewey, "Immigration After 9/11: The View From the United States" (Remarks by the Assistant Secretary for Population, Refugees and Migration to the American Society for International Law, Washington, DC, 3 April 2003), online: *US Department of State* https://2001-2009.state.gov/g/prm/rls/2003/37906.htm.

[25] American Immigration Council, "After Day One: A High-Level Analysis of Trump's First Executive Actions" (22 January 2025), online: *American Immigration Council* https://www.americanimmigrationcouncil.org/fact-sheet/after-day-one-high-level-analysis-trumps-first-executive-actions/.

[26] *Protecting the American People Against Invasion*, Exec Ord No 14159, 90 Fed Reg 8443 (29 January 2025), online: https://www.federalregister.gov/documents/2025/01/29/2025-02006/protecting-the-american-people-against-invasion.

[27] *Ibid.*

[28] *Designating Aliens for Expedited Removal*, 90 Fed Reg 8139 (24 January 2025), online: https://www.federalregister.gov/documents/2025/01/24/2025-01720/designating-aliens-for-expedited-removal.

[29] "Fact Sheet: Expanded Expedited Removal" (14 May 2025), online: *ForumTogether* https://www.forumtogether.org/article/fact-sheet-expanded-expedited-removal/.

[30] U.S. Department of Homeland Security, *Guidance Regarding How to Exercise Enforcement Discretion* (23 January 2025), online (pdf): https://www.dhs.gov/sites/default/files/2025-01/25_0123_er-and-parole-guidance.pdf.

The recent and ongoing changes surrounding expedited removal bring up concerns about the legality and procedural fairness of DHS's expanded enforcement authority. The rulemaking and policy actions undertaken by the Trump Administration appear to stretch beyond the statutory limits set by Congress in the INA and may have been implemented without the notice-and-comment procedures required under the *Administrative Procedure Act*.[31] These developments raise fundamental questions about the erosion of procedural safeguards that are designed to prevent arbitrary or erroneous removals, particularly in cases involving vulnerable individuals who may be deprived of meaningful opportunities to seek protection or review.[32] The consolidation of enforcement and adjudicative functions within DHS heightens the risk of bias and undermines transparency, due process, and accountability in expedited removal proceedings.[33]

A.3 Third Country Removals and the Limits of Court-Imposed Process (D.V.D.)

In the circumstance that the Government is unable to remove a foreign national to any country covered by that person's order of removal, the Government may remove a foreign national to any country whose government will accept them.[34] Congress codified this "fallback" authority in the 1996 *Illegal Immigration Reform and Immigrant Responsibility Act*, which sought to improve deterrence of illegal immigration to the U.S.[35] These are called third country removals, and a third country is one not specified on the removal order. Deportations to countries where the foreign national would face persecution or torture based on their race, religion, nationality, membership in a particular social group, or political opinion is prohibited.[36] This incorporates the international law principle of non-refoulement, where "no one should be re-turned to a country where they would face torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm."[37]

On April 18, 2025, U.S. District Judge Brian E. Murphy of the U.S. District Court for the District of Massachusetts entered a preliminary injunction (temporary court order) that bars DHS from removing any foreign national to a "third country" without meeting certain conditions.[38] The order

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[31] *Make the Road New York v Noem*, No 1:25-cv-00190-JMC (DDC filed 10 June 2025), Plaintiffs' Memorandum in Support of Motion to Postpone Effective Date of Agency Action at 7, online (pdf): https://assets.aclu.org/live/uploads/2025/01/Motion-Make-the-Road-NY-v.-Noem.pdf.

[32] *Ibid* at 18.

[33] *Ibid* at 9–10.

[34] 8 USC § 1231(b)(2)(E)(vii).

[35] US House of Representatives, Committee on the Judiciary, *House Report 104-828: Illegal Immigration Reform and Immigrant Responsibility Act of 1996*, 104th Cong, H Rept 104-828, Pt 1 (1996), online: https://www.congress.gov/committee-report/104th-congress/house-report/828/1.

[36] 8 USC § 1231(b)(3)(A); 28 CFR § 200.1.

[37] Office of the United Nations High Commissioner for Human Rights, "The Principle of Non-Refoulement under International Human Rights Law" (01 January 2018), online (pdf): *OHCHR* https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf.

[38] *D.V.D. v US Department of Homeland Security*, Civil Action No 25-10676-BEM (D Mass 18 April 2025), reproduced in *Department of Homeland Security v D.V.D.*, Application for Stay, No 24A1153 (US Sup Ct 27 May 2025) at 51a–52a, online (pdf): *Supreme Court of the United States* https://www.supremecourt.gov/DocketPDF/24/24A1153/359703/20250527153743499_DHS_v._DVD_et_al-app_stay.pdf. The District Court's order required DHS to provide, prior to any removal to a third country: (1) written notice to the foreign national and their counsel, if applicable, identifying the third country in a language the foreign national can understand; (2) a meaningful opportunity to raise a

implemented basic due-process protections at the post-order removal stage with notice of the intended country and a real chance to assert fear with a path to review before removal.[39]

On May 21, 2025, after reports that DHS attempted to deport eight men to South Sudan, Judge Murphy held that the Government had violated the April 18 injunction and issued a remedial order.[40] The court found DHS's notice/opportunity was not "meaningful," emphasizing that due-process review must be real, not perfunctory, especially when the proposed "third country" (in this case, South Sudan) carries acute risk.[41]

On June 23, 2025, on an emergency application, the Supreme Court stayed (froze) Judge Murphy's April 18 preliminary injunction in full while appeals proceeded on whether the injunction could remain in effect during appellate review.[42] Practically, the stay permitted DHS to resume third-country removals without the notice and fear-based opportunity-to-respond framework ordered by the district court, subject to any other applicable legal constraints. Assistant Secretary Tricia McLaughlin celebrated the court's ruling as a victory for the Trump Administration. McLaughlin stated that the Administration "can exercise its undisputed authority to remove these criminal illegal aliens and clean up this national security nightmare."[43]

This case shows an important shift in which expedited removal has become a vehicle for the expansion of executive power at the expense of procedural fairness. The *D.V.D.* litigation illustrates how the Trump administration's approach to removal, particularly through third-country removals, tested the limits of due process by prioritizing administrative efficiency and deterrence over refugee rights protection and review. The Supreme Court's stay set a precedent in which the courts' ability to impose process-based constraints on removal decisions was reduced in favour of executive discretion, creating a gap between the formal recognition of due-process rights and their practical enforcement.

In this context, the case serves as a cautionary example for Canada, highlighting how the erosion of institutional procedural safeguards, when combined with political rhetoric around "efficiency" or "security", can transform exceptional removal powers into routine practices that undermine access to refugee protection and the integrity of fair-decision-making systems.

Convention Against Torture fear claim; (3) an opportunity to reopen the proceedings if the foreign national demonstrates "reasonable fear"; and (4) if the foreign national is not found to demonstrate "reasonable fear," a meaningful opportunity, with a minimum of 15 days, for the foreign national to obtain review and reopen the immigration proceedings to challenge the third-country removal.

[39] *Department of Homeland Security v D.V.D.*, No 24A1153, 606 US (2025) at 7, online: https://www.supremecourt.gov/opinions/24pdf/24a1153_l5gm.pdf.

[40] *D.V.D. v US Department of Homeland Security*, Case No 1:25-cv-10676 (D Mass 21 May 2025), ECF No 119, online: *CourtListener* https://www.courtlistener.com/docket/69775896/119/dvd-v-us-department-of-homeland-security/.

[41] *Ibid.*

[42] *D.V.D. v US Department of Homeland Security*, Case No 1:25-cv-10676 (D Mass 23 June 2025), ECF No 183 at 17, online: *CourtListener* https://www.courtlistener.com/docket/69775896/183/dvd-v-us-department-of-homeland-security/.

[43] U.S. Department of Homeland Security, "DHS Releases Statement on Major Victory for the Trump Administration and the American People" (23 June 2025), online: *DHS* https://www.dhs.gov/news/2025/06/23/dhs-releases-statement-major-victory-trump-administration-and-american-people.

A.4 Conclusion

Taken together, the evolution of expedited removal shows a clear institutional pattern. What began as an exceptional, border-limited mechanism designed for "quick" inadmissibility decisions has gradually been normalized, widened, and operationalized as a routine interior enforcement tool. Each expansion has reduced the role of independent adjudication and increased the weight placed on frontline administrative discretion, with the burden shifting onto individuals to prove entitlement to remain rather than on the state to justify removal through a full hearing. As a result, expedited removal functions as a governing framework that prioritizes speed, deterrence, and administrative control over individualized assessment and procedural safeguards. The Trump administration's 2025 policy timeline illustrates how rapidly this normalization can accelerate when executive priorities align with securitized political narratives.

The U.S. example shows how enforcement power expands through institutional convergence where information-sharing grows, roles blur, and the distinction between "administration" and "enforcement" weakens. As such, the U.S. experience is not a unique product of U.S. constitutional doctrine and works as a cautionary case study in how the normalization of a security-based returns regime, where state interests in control steadily displace the procedural conditions that make non-refoulement and fair determination real.

B. Canadian Removal Framework and the Convergence Pressures

Canada is vulnerable to a drift similar to that of the U.S. because the current policy environment contains the same structural parts, such as rising political pressure to demonstrate control, legislative proposals framed around border integrity and security, expanded information-sharing and enforcement capacity, and increasing reliance on faster, paper-based, discretionary mechanisms as substitutes for full oral-hearing pathways. Even if Canada does not adopt a formal expedited removal label, a functionally similar outcome can emerge if access to independent adjudication narrows, risk review is displaced into thinner processes, and enforcement agencies gain broader data and discretion with fewer checks. As such, the Canadian question is whether recent legal and policy shifts are creating a comparable structure, not whether Canada will copy the U.S. verbatim.

B.1 IRPA/IRPR Removal Structure and the Security Turn

The *Immigration and Refugee Protection Act* (IRPA) is the primary federal legislation that regulates immigration to Canada.[44] The Immigration and Refugee Protection Regulations (IRPR)

[44] Public Safety Canada, "Summary of the Evaluation of the Immigration and Refugee Protection Act Division 9/National Security Inadmissibility Initiative" (6 April 2022), online: *Government of Canada* https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/2020-irpa/smmry-en.aspx.

set out how provisions of the IRPA are applied.[45] The IRPA sets out the legal basis for deciding when someone is inadmissible to Canada and for carrying out their removal. Both foreign nationals abroad and those already inside Canada may be found inadmissible on various grounds.[46] Once inadmissibility is determined, a removal order can be issued. Individuals subject to a removal order can either leave Canada on their own or be removed by the Canada Border Services Agency (CBSA).[47] The authority to issue a removal order rests with the Minister of Public Safety or with the Immigration Division of the Immigration and Refugee Board of Canada (IRB).[48] Deportation orders result in a permanent ban on returning to Canada unless written authorization is granted, exclusion orders impose a temporary re-entry ban, and departure orders do not impose any re-entry bar.[49]

B.1.1 Post-9/11 Orientation of IRPA

To explain how convergence pressures can build without a formal "expedited removal" label, it helps to situate IRPA in its post-9/11 security turn and the cross-border governance environment it emerged from. The political context that framed the Canadian legal framework is marked by the 9/11 paradigm shift and was shaped in coordination with U.S. legislative and enforcement changes and policies,[50] reflecting the bilateral pressures that shape North American border governance.

The Canadian return policy is driven by a two-fold objective: to facilitate the arrest, detention, and removal of foreign nationals, particularly those who pose a security risk, while simultaneously safeguarding the human rights of foreign nationals and refugee protection claimants.[51] Specifically, the IRPA was enacted in November 2001 to facilitate the refusal of entry, arrest, detention, and removal of individuals for security reasons following 9/11.[52] The new Act was seen to expand the scope of removals on security grounds and strengthen officers' authority to arrest and detain, including without a warrant, those deemed a security risk, compared to the previous *Immigration Act*.[53]

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[45] Immigration and Refugee Board of Canada, "Act, regulations and rules" (modified 21 February 2025), online: *Government of Canada* https://www.irb-cisr.gc.ca/en/legal-policy/act-rules-regulations/Pages/index.aspx.
[46] *Ibid.*
[47] *Regulations Amending the Immigration and Refugee Protection Regulations (Emergencies Act and Quarantine Act)*, SOR/2020-91, (2020) C Gaz II, Vol 154, Extra No 2, online: *Canada Gazette* https://gazette.gc.ca/rp-pr/p2/2020/2020-04-24-x2/html/sor-dors91-eng.html.
[48] *Ibid.*
[49] *Ibid.*
[50] Sharryn J Aiken, "Of Gods and Monsters: National Security and Canadian Refugee Policy" (2001) 14:2 Revue Québécoise de droit international 1 at 3–4; Sharryn J Aiken, "Risking Rights: An Assessment of Canadian Border Security Policies" in Ricardo Grinspun & Yasmine Shamsie, eds, *Whose Canada? Continental Integration, Fortress North America, and the Corporate Agenda* (Montreal & Kingston: McGill-Queen's University Press, 2007) 180 at 181.
[51] Younes Ahouga, *Legal and Policy Infrastructures of Returns in Canada. WP2 Country Dossier* (GAPs, 19 March 2024) at 4, online: *Zenodo* doi:10.5281/zenodo.10836598.
[52] *Ibid* at 3.
[53] *Ibid.*

B.1.2 Information Exchange as Eligibility Screening: IRPA s. 101(1)(c.1)

Canada's eligibility structure also contains an ineligibility ground that links expedited screening to information exchange. In 2019, as part of the *Budget Implementation Ac*t (Bill C-97), Parliament added IRPA s. 101(1)(c.1),[54] which renders a claim ineligible for referral to the Refugee Protection Division (RPD) where the claimant previously made a refugee claim in another country,[55] and the fact of that prior claim is confirmed through an information sharing agreement or arrangement concluded to facilitate the administration and enforcement of immigration and citizenship laws.[56] The amendment should be understood as a policy response to secondary movements that turns information exchange into an eligibility filter and accelerates decision-making in ways that resemble expedited screening, limiting access to a full merits determination and channeling claimants toward narrower forms of review rather than on access to a full hearing on the merits.[57]

B.2 Framing the Inadmissibility Procedures (s. 44 & IRPR s. 228)

The legal framework of the IRPA and IRPR establishes a two-track structure to determine the inadmissibility of permanent residents and foreign nationals,[58] one of which is the administrative process outlined in section 44. Under s. 44(1) IRPA, if an officer believes that a permanent resident or foreign national in Canada is inadmissible, the officer may prepare a written report outlining the relevant facts and send it to the Minister.[59]

Accordingly, IRPR s. 228 allows officers to prepare inadmissibility reports that, if accepted by the Minister, result in direct removal orders for foreign nationals in prescribed situations, bypassing a formal admissibility hearing to maintain efficiency and preserve adjudicative oversight for complex cases.[60]

Under s. 44(2), if the Minister (or Minister's Delegate) agrees that the report is well-founded, the case will generally be referred to the Immigration Division (ID) for a formal admissibility hearing.[61] However, there are two exceptions where the Minister may issue a removal order directly without a hearing: (1) permanent residents who are inadmissible only for failing to meet the residency

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[54] Canada, House of Commons, Bill C-97, *An Act to implement certain provisions of the budget tabled in Parliament on March 19, 2019 and other measures*, 1st Sess, 42nd Parl, 2019 (first reading 8 April 2019), online: *Parliament of Canada* https://www.parl.ca/DocumentViewer/en/42-1/bill/C-97/first-reading.
[55] Canada, Immigration, Refugees and Citizenship Canada, *Privacy Impact Assessment Summary – Four Country Conference High Value Data Sharing Protocol* (16 October 2017), online: *Government of Canada* https://www.canada.ca/en/immigration-refugees-citizenship/corporate/transparency/access-information-privacy/privacy-impact-assessment/four-country-conference.html. This provision targets asylum seekers who have already initiated a protection claim in jurisdictions with which Canada has established information sharing frameworks, including the U.S., the United Kingdom, Australia, and New Zealand, that emerged from the Five Country Conference, and allows these countries to conduct 'immigration checks' through biometric data exchanges.
[56] IRPA, s 101(1)(c.1).
[57] Idil Atak, Zainab Abu Alrob & Claire Ellis, "Expanding Refugee Ineligibility: Canada's Response to Secondary Refugee Movements" (2021) 34:3 J Refugee Stud 2593 at 2595.
[58] Ahouga, *supra* note 51 at 9.
[59] IRPA, s 41(1).
[60] *Immigration and Refugee Protection Regulations*, SOR/2002-227, s 228 [IRPR].
[61] IRPA, s 44(2).

obligation (s. 28) or (2) foreign nationals in circumstances prescribed by regulation.[62] In these situations, the Minister's Delegate may make a removal order immediately, instead of sending the matter to the ID.[63] The ID handles cases that require more complex legal and factual evaluation. These matters may involve national security concerns, human or international rights violations, or organized criminality, and fall under IRPR s. 229(1).[64]

B.3 Where Discretion Sits: Front-End Gatekeeping and Thin Process

The Enforcement 5 manual guides CBSA officers on preparing the foundational inadmissibility reports under section 44(1).[65] The manual sets out the specific procedures for initiating and documenting the decision to write an A44(1) report.[66] This places the initial gatekeeping function for removal firmly within the administrative enforcement branch.

The Federal Court has repeatedly emphasized that the duty of fairness in administrative proceedings is flexible, variable, and context-dependent.[67] In the A44 process, the Court has held that a lower level of procedural fairness may apply to decisions made at the s. 44(1) reporting stage and the s. 44(2) referral stage, depending on the nature and circumstances of the decision and the discretion exercised by the officer and the Minister's Delegate.[68] In other words, the law permits less process at the front end of the removal pipeline. Because the A44 report sets the removal process in motion, the fairness baseline at this stage is consequential even if a hearing happens later.

The practical problem is how that flexibility is being operationalized. In *Cha v Canada (Minister of Citizenship and Immigration)*,[69] the Federal Court of Appeal concluded that officers and the MD are on a fact finding mission at the A44 stage, disagreeing with the Federal Court's conclusion that the officer breached his duty of fairness during the A44(1) interview process.[70] The result is a low procedural fairness threshold early in the process, paired with constrained consideration of humanitarian and compassionate factors, which can make removal faster, less individualized, and more difficult to meaningfully contest, raising concerns that the Canadian process can replicate the liberty and accountability deficits associated with U.S. expedited removal.

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[62] *Ibid.*
[63] *Ibid.*
[64] IRPR, s 229(1).
[65] Immigration, Refugees and Citizenship Canada, *ENF 5: Writing 44(1) Reports* (20 February 2025) at s 1, online (pdf): https://www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf05-eng.pdf [*ENF 5*].
[66] *Ibid.*
[67] *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817.
[68] IRCC, *ENF 5*, *supra* note 65 at s 6.1.
[69] *Cha v Canada (Minister of Citizenship and Immigration)* is a Federal Court of Appeal decision about the scope of discretion and procedural fairness at the IRPA s 44(2) stage for a foreign national found inadmissible for criminality. The Court held that, in these prescribed circumstances, the Minister's Delegate and officers are essentially engaged in a fact-finding exercise tied to the conviction, with little or no room to weigh personal mitigating factors when deciding to issue a removal order under the regulatory "direct removal order" pathway. It also held that the duty of fairness at this stage is low, and there is no general duty to proactively advise of a right to counsel (though the failure to properly notify the person of the purpose of the initial interview was a fairness breach on the facts, it did not warrant relief because a new hearing would have been futile and the deportation order was restored).
[70] *Cha* v *Canada (Minister of Public Safety and Emergency Preparedness),* 2006 FCA 126 at para 35.

IRPA s. 170(h) grants the ID broad powers to conduct admissibility hearings and gather evidence, allowing decisions to be based on material considered merely "credible or trustworthy" thus intentionally reducing the evidentiary burden on the Minister.[71] The Division is also not bound by "any strict legal or technical rules of evidence".[72] Further, the Division holds broad inquisitorial powers, including the authority to "inquire into any matter that it considers relevant" to the case.[73] Even when a case reaches the ID, the hearing model itself is structured to prioritize administrative efficiency.

Together, these provisions are presented as efficient and procedurally safeguarded,[74] but their practical effect is to expedite the administrative removal stream and to reduce how much evidence is needed at key points in removal proceedings. By denying criminal law protections for immigrants in admissibility proceedings, relying on an inquisitorial, rather than an adversarial, process and delegating decision-making authority to the administrative branch, risks of convergence toward the pitfalls of the U.S. expedited removal model, defined by its speed and lack of procedural safeguards, are increased. These front-end design choices interact with later statutory limits on appeal and humanitarian relief, which further reduce the ability to interrupt removal once inadmissibility is found.

B.4 Expanded Deportability and Weakened Review: Serious Criminality and Oversight Gaps

Legislative changes since the 2010s have narrowed the scope of meaningful review and constrained access to appellate safeguards for foreign nationals and permanent residents, particularly in cases framed through "serious criminality" and related inadmissibility grounds. For example, the restriction of access to the Immigration Appeal Division (IAD) in serious criminality cases[75] increases the likelihood that removal orders become effectively final without the kind of merits equitable review that historically operated as a meaningful check. These reforms, taken together, function to make deportability more automatic and to reduce the practical space for individualized consideration once an inadmissibility finding is made. Like U.S. expedited processes that rely on administrative decision making and limited review, Canada's tightened inadmissibility and appeal structure can operate as a procedural funnel. The clearest example is the serious criminality regime, which expands deportability while shrinking merits-based review.

B.4.1 Serious Criminality, Appeal Loss, and H&C Constraints

Findings of inadmissibility for criminality or serious criminality are made through a combination of enforcement decisions by immigration officers and adjudication before the ID of the IRB.[76] Once

[71] IRPA, s 170(h).
[72] IRPA, s 170(g).
[73] IRPA, s 170(a).
[74] *ENF 5*, *supra* note 65 at s 6.1.
[75] IRPA, s 64(1).
[76] Canada, Immigration and Refugee Board, *Admissibility hearings before the Immigration Division (ID)* (22 March 2021), online: *Government of Canada* https://irb-cisr.gc.ca/en/transparency/pac-binder-nov-2020/Pages/pac5a.aspx.

a finding is made, a removal order is issued, and the scope of available procedural protections is determined by statute.[77]

Legislative amendments to the IRPA, such as Bill S-8, have expanded the category of individuals who may be found inadmissible on grounds of serious criminality that allowed for quicker removal orders and lowered the threshold for losing the right to appeal.[78] Section 36 of IRPA defines serious criminality and applies to both permanent residents and foreign nationals.[79] Amendments enacted through the *Faster Removal of Foreign Criminals Act* lowered the sentencing threshold for serious criminality from two years to six months, including conditional sentences.[80] This change has broadened the range of offences capable of triggering removal and collapsed earlier distinctions between lesser criminality and conduct previously understood as warranting the most severe immigration consequences, thereby accelerating the deportation process.[81]

These changes are reinforced by the elimination of appeal rights for certain groups. Section 64 of IRPA removes access to the IAD for permanent residents and foreign nationals found inadmissible on grounds of serious criminality.[82] Unable to appeal, individuals captured by s. 64 are instead limited to seeking judicial review at the Federal Court, a discretionary remedy that is narrow in scope and does not permit a full reconsideration of the merits.[83]

Legislative reforms have also curtailed access to humanitarian and compassionate relief. Amendments to s. 25 of IRPA restrict the availability of humanitarian and compassionate applications for individuals inadmissible on grounds of serious criminality.[84] This restriction precludes an avenue that previously allowed decision-makers to consider hardship, rehabilitation, and long-term residence as mitigating factors against removal.

Taken together, these developments reflect a structural shift in Canada's immigration system. Through expanded definitions of inadmissibility, reduced appeal rights, increased officer discretion, and constrained access to humanitarian relief, both foreign nationals and permanent residents are rendered more easily and more quickly deportable. This trajectory parallels the logic of expedited removal in the U.S, where immigration officers are empowered to order removals with minimal adjudicative oversight and sharply limited judicial review, reflecting a shared prioritization of speed and enforcement over procedural protection.

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[77] IRPA, s 44(2).
[78] Canada, Parliament, *Bill S-8, An Act to amend the Immigration and Refugee Protection Act, to provide for the taking of samples of DNA from designated foreign nationals and designated permanent residents, and to make consequential amendments to other Acts,* 1st Sess, 44th Parl, 2023 (assented to 22 June 2023), online: https://www.parl.ca/DocumentViewer/en/44-1/bill/S-8/royal-assent at 4.
[79] IRPA, s 36.
[80] Canada, Parliament, Bill C-43, *An Act to amend the Immigration and Refugee Protection Act, the Federal Courts Act, the Citizenship Act, the Canadian Multiculturalism Act and the Criminal Code (Faster Removal of Foreign Criminals Act)*, 1st Sess, 41st Parl, 2013 (assented to 19 June 2013), online: *Parliament of Canada* https://www.parl.ca/DocumentViewer/en/41-1/bill/C-43/royal-assent cl 24.
[81] Canada, House of Commons, Standing Committee on Citizenship and Immigration, *Evidence*, 1st Sess, 41st Parl, No 60 (19 November 2012) at 1, online: (pdf) https://publications.gc.ca/collections/collection_2012/parl/XC64-1-2-411-60-eng.pdf.
[82] IRPA, s 64(1).
[83] *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 135, [2009] 1 S.C.R. 339.
[84] IRPA, s 25(1.01).

B.4.2 Oversight Gap and Informational Control

The above dynamics create a second convergence risk. One practical expression of that discretion is informational control at the pre-removal stage. When removal decisions are accelerated and procedural checks narrow, the system depends heavily on front-line officer discretion. Without credible independent oversight of CBSA, there is little institutional barrier preventing Canada's enforcement culture from drifting toward the same accountability deficits that have been criticized in U.S. immigration enforcement, including ICE.

An individual being confused about the deportation process shapes how they negotiate it, and because CBSA offices make decisions based on their perception of the individual's conduct, the outcome is that one's confusion could lead to them acting against their own interests.[85] Reasons that contribute to the opacity of the system include lack of publicly available information about the deportation process and people's legal options, lack of interpreters at pre-deportation interviews, difficulties securing legal representation to provide expert assistance and support, and misinformation provided by CBSA officers.[86] "Misinformation serves CBSA's mandate, which is to enforce deportation rather than to prevent refoulement."[87]

Limited independent oversight undermines CBSA's legitimacy, even where individual officers may act in ways that align with basic principles of justice.[88] In the absence of independent oversight, complaint mechanisms can appear ineffective or risky for people facing deportation, where some individuals were discouraged by CBSA officers from filing complaints because they believed it would be futile or could negatively affect their case.[89] Individuals are also less likely to file complaints for CBSA misconduct as the current complaint mechanism could lead to retaliation from CBSA officers, leading to abuse going unreported, structural gaps in policies and procedures persisting, and other forms of harm against individuals especially those who are racialized.[90]

As Canada expands deportability through narrower statutory safeguards and relies on CBSA discretion within an oversight gap, the system becomes structurally more capable of enforcement-first removals.

B.5 The Role of the Charter

The Canadian Charter of Rights and Freedoms forms part of the constitution and serves as the paramount constitutional safeguard against overreach by the executive branch.[91] It also guarantees many basic human rights and fundamental freedoms.[92] As such, the Charter subjects Canadian immigration and refugee law, including removal orders, to robust judicial oversight.

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[85] Dennler & Garneau, *supra* note 14 at 28.
[86] *Ibid.*
[87] *Ibid* at 31.
[88] *Ibid* at 26.
[89] *Ibid.*
[90] *Ibid* at 27.
[91] Department of Justice Canada, "The Canadian Charter of Rights and Freedoms" (modified 16 April 2025), online: *Government of Canada* https://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccdl/.
[92] *Ibid.*

Any Canadian model of expedited removal similar to the U.S. model would be constitutionally limited by section 7 of the Charter, which guarantees life, liberty, and security of the person and requires that deprivations comply with the principles of fundamental justice.[93] The scope and content of these protections in the immigration context were first clearly detailed in *Singh v Minister of Employment and Immigration*.[94]

In *Singh*, the Supreme Court of Canada (SCC) held that Section 7 protects everyone physically present in Canada, including refugees and individuals without legal status.[95] The Court further recognized that removal decisions engage the security of the person, because deportation may expose individuals to persecution or serious harm.[96] *Singh* held that where credibility is at issue, an oral hearing before an independent decision-maker is required, and administrative efficiency cannot justify limiting these rights.[97]

Charter protections extend beyond procedure. The SCC has also recognized substantive limits on the state's removal power. In *Suresh v Canada (Minister of Citizenship and Immigration)*,[98] the Court affirmed that deporting an individual to a real risk of torture presumptively violates Section 7 and will almost never be justified under Section 1.[99] This incorporates the international law principle of non-refoulement into Canadian constitutional law. This approach has been reaffirmed in cases involving deportation and extradition, where Canada participates in an outcome that foreseeably endangers the life or safety of an individual.[100]

Because of *Singh* and *Suresh*, any Canadian removal process must include mechanisms capable of assessing personal risk before removal. In current practice, this is performed through the PRRA, which provides a final review to ensure removal does not expose the person to persecution, torture, or serious harm.[101] Further, all removal orders and risk assessment decisions

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[93] *Canadian Charter of Rights and Freedoms*, s 7, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

[94] This case is the leading Supreme Court of Canada decision confirming that s. 7 of the Charter applies to "everyone" physically present in Canada, including refugee claimants. The Court held that a negative refugee determination can engage life, liberty, or security of the person, and that fundamental justice may require an oral hearing where credibility and serious consequences are at stake. On that basis, the Court found that the then-existing refugee determination procedures were constitutionally deficient because they could deny claimants a meaningful opportunity to be heard before an independent decision-maker.

[95] *Singh v Minister of Employment and Immigration*, [1985] 1 SCR 177, at para 35 [*Singh*].

[96] *Ibid* at para 47.

[97] *Ibid* at para 58.

[98] In this case, the Court held that deportation to a substantial risk of torture generally violates s. 7 and will be permissible only in exceptional circumstances, if ever. It confirmed that decisions to deport on security grounds must comply with fundamental justice, including a meaningful opportunity to know and meet the case (subject to limited confidentiality for security reasons) and a decision grounded in an adequate evidentiary basis.

[99] *Suresh v Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3, 2002 SCC 1 at para 44 [Suresh].

[100] *United States v Burns,* [2001] 1 S.C.R. 283, 2001 SCC 7, at paras 59-60, 124; *Suresh*, *supra* note 183 at para 54.

[101] Immigration, Refugees and Citizenship Canada, "Pre-removal risk assessment" (modified 5 September 2025), online: *Government of Canada* https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/protection/refusal-options/pre-removal-risk-assessment.html.

remain subject to judicial review in the Federal Court.[102] This judicial oversight functions as the constitutional backstop against arbitrary or unconstitutional removal decisions.[103]

However, *Singh* has been watered down by courts and tribunals. The Multiple Borders Strategy (MBS) is "a broad strategy that re-charts Canada's borders for the purposes of enhanced migration regulation."[104] The MBS frames the border as a fixed territorial line and as mobile and layered, thereby extending Canada's border practices beyond the cartographic boundary, while also maintaining the concept of an "actual" border located at that boundary line.[105] As such, it produces an internal tension in which Canada's border is presented as stable and shifting at the same time, and both real and strategically re-positioned.[106]

As a result, refugees are required to "present themselves at the 'actual' border" to access the protections associated with *Singh*, even as the border is operationalized in ways that make such access more difficult to realize in practice.[107] The MBS can function to extend the reach of Canadian legal control over refugees while limiting when, where, and how constitutional and legal duties are treated as engaged by physical presence at the "actual" border.[108] In effect, this dynamic weakens *Singh* by narrowing the circumstances in which its protections are practically available, and by diminishing its broader normative force for refugee protection.

The SCC reaffirmed the centrality of procedural fairness in *Charkaoui v Canada (Citizenship and Immigration)*, which concerned the use of security certificates in national security cases.[109] The Court held that even where national security is at stake, the state cannot dispense with the basic requirements of fundamental justice under s. 7. Although protecting national security is a legitimate state interest, it "cannot be used to excuse procedures that do not conform to fundamental justice".[110] This decision confirms that no context permits the government to bypass meaningful rights to know the case and respond to it.

B.6 Analysis of the Pre-Removal Risk Assessment (PRRA)

The PRRA is an alternative to independent assessments through the IRB that assess whether an individual faces "potential danger of torture, risk of persecution, risk to life or cruel and unusual treatment or punishment."[111] A PRRA is the final opportunity for an individual to argue risk before deportation and is only eligible if a year has passed since the final decision on one's refugee

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[102] Canada Border Services Agency, "Enforcing removals from Canada" (modified 3 October 2025), online: *Government of Canada* https://www.cbsa-asfc.gc.ca/security-securite/rem-ren-eng.html.
[103] *Ibid.*
[104] Efrat Arbel, "Bordering the Constitution, Constituting the Border" (2016) 53:3 Osgoode Hall LJ 824 at 826.
[105] *Ibid* at 844.
[106] *Ibid*
[107] *Ibid.*
[108] *Ibid.*
[109] In this case, the Court struck down key parts of the security certificate regime as inconsistent with s. 7 because the process could rely on secret evidence without adequate safeguards, preventing the named person from meaningfully responding. The Court held that national security does not justify procedures that fall below fundamental justice, and it required stronger protections (later addressed through mechanisms like special advocates) to make the regime constitutionally compliant.
[110] *Charkaoui v Canada (Citizenship and Immigration)*, 2007 SCC 9, [2007] 1 S.C.R. 350 [Charkaoui] at paras 23, 27.
[111] Canada Border Services Agency, *supra* note 102.

claim.[112] Its protective role has been undermined by legislative and policy choices that narrow access to PRRA,[113] and there are also reports that CBSA officers have, at times, discouraged eligible individuals from pursuing a PRRA application.[114]

IRCC officers carry out PRRA assessments through a written, discretionary procedure that operates under tight and often compressed timelines.[115] Generally, PRRA applicants do not receive an oral hearing, have limited access to legal assistance, and must meet a demanding evidentiary standard to receive a positive decision.[116] Because PRRA officers are not required to follow the IRB's evidentiary rules, procedural safeguards, or interpretive standards, the outcomes are inconsistent and frequently overlook factors such as trauma, language limitations, and forms of persecution tied to identity.[117] Further, a paper-based risk review carried out without an oral hearing and housed within the same department responsible for enforcing removals does not meet Canada's obligations under the Refugee Convention and the Charter.[118]

Legislative reforms and government policy materials indicate that since 2012, Canada has increasingly prioritized accelerating each stage of the refugee and deportation process.[119] For instance, amendments to IRPA s. 48 strengthened CBSA's statutory mandate to carry out removals of foreign nationals "as soon as possible," replacing the earlier "as soon as practicable" standard.[120] Changes also include the one-year bar on PRRA, which reduces access to risk review immediately after a refusal, and "timely removal" is treated as a key performance target, thus reflecting the view that longer claim and waiting timelines reduce the likelihood of deportation.[121] A shorter waiting period also narrows practical legal options by limiting time to secure counsel, develop H&C establishment factors, or bring forward new evidence as country conditions change, which in turn facilitate CBSA's mandate to enforce and makes removals easier to execute and sustain.[122]

B.7 The Safe Third Country Agreement (STCA)

The Safe Third Country Agreement (STCA) came into effect in 2004 under the post-9/11 Smart Border Action Plan that was highlighted as part of a commitment to border security by Canada

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[112] Dennler & Garneau, *supra* note 14 at 15.
[113] Canada, Immigration, Refugees and Citizenship Canada, *Evaluation of the Pre-Removal Risk Assessment Program* (2016) at 9, online: https://www.canada.ca/en/immigration-refugees-citizenship/corporate/reports-statistics/evaluations/removal-risk-assessment-program/prra.html.
[114] Dennler & Garneau, *supra* note 14 at 20.
[115] Immigration, Refugees and Citizenship Canada, "Guide 5523 – Applying for a Pre-Removal Risk Assessment" (modified 30 April 2025), online: *Government of Canada* https://www.canada.ca/en/immigration-refugees-citizenship/services/application/application-forms-guides/guide-5523-applying-removal-risk-assessment.html.
[116] *Ibid.*
[117] Canadian Civil Liberties Association, "Submission to the House of Commons Standing Committee on Public Safety and National Security (SECU): Study of Bill C-12" (12 November 2025) at 3, online (pdf): *CCLA* https://ccla.org/wp-content/uploads/2025/11/2025.10.12-CCLA_SECU_Brief_C-12-1.pdf.
[118] *Ibid.*
[119] Idil Atak, Graham Hudson & Delphine Nakache, *Making Canada's Refugee System Faster and Fairer: Reviewing the Stated Goals and Unintended Consequences of the 2012 Reform* (Toronto: Toronto Metropolitan University, 2023) at 13, online: https://doi.org/10.32920/24233092.v1.
[120] *Ibid.*
[121] Dennler & Garneau, *supra* note 14 at 22.
[122] *Ibid* at 23.

and the U.S.[123] The STCA requires refugee claimants to make a claim in the first safe country they arrive in, Canada or the U.S., unless they meet a designated exception.[124] The agreement was justified as promoting "responsibility sharing",[125] and discouraging "asylum shopping",[126] based on the assumption that both countries provide equally fair asylum procedures.[127]

By designating the other country as "safe," the STCA allows either Canada or the U.S. to return an asylum seeker to the country from which they arrived, requiring them to pursue their claim in the country they just came from rather than in the country where they sought protection.[128] During its implementation, a parliamentary report noted that making a selection based on personal preference or for economic reasons does not belong within the asylum context, but in the domain of immigration.[129]

At U.S./Canada land border points, individuals who request asylum in the U.S. must first pass a Safe Third Country eligibility screening.[130] If they do not meet an STCA exception, U.S. officials may return them to Canada without providing a credible-fear interview, placing them directly into expedited removal pathways unless they meet certain exceptions.[131] In Canada, CBSA or IRCC officers determine whether a refugee claim is eligible for referral to the RPD, and where the STCA applies,[132] the claim is found ineligible and is not referred to the IRB, with the claimant generally returned to the U.S. rather than receiving a full hearing in Canada.[133] As such, access to the Canadian asylum system is indirectly filtered through U.S. expedited removal procedures, even before any refugee claim is heard which can also prevent access to PRRA when the claim is ineligible due to the STCA.[134]

In Canada, originally, the STCA only applied at official Ports of Entry (POEs), which left open irregular crossing points such as Roxham Road in Quebec.[135] However, in March 2023, Canada and the U.S. negotiated an additional protocol extending the STCA to the entire land border, not

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[123] Philippe Gagnon, Robert Mason & Madalina Chesoi, "Overview of the Canada–United States Safe Third Country Agreement" *HillStudies* (Publication No 2020-70-E, 15 January 2021; revised 1 September 2023), online: *Library of Parliament* https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/202070E.
[124] *Ibid.*
[125] UN High Commissioner for Refugees (UNHCR), "Considerations on the 'Safe Third Country' Concept" (July 1996), online: *Refworld* https://www.refworld.org/policy/legalguidance/unhcr/1996/en/15886.
[126] House of Commons, Standing Committee on Citizenship and Immigration, *The Safe Third Country Regulations*, First Report, 37th Parl, 2nd Sess, (December 2002), online: *House of Commons of Canada* https://www.ourcommons.ca/documentviewer/en/37-2/CIMM/report-1/page-72.
[127] UNHCR, *supra* note 125.
[128] Muzaffar Chishti & Julia Gelatt, "Roxham Road Meets a Dead End? U.S.-Canada Safe Third Country Agreement Is Revised" (27 April 2023), online: *Migration Policy Institute* https://www.migrationpolicy.org/article/us-canada-safe-third-country-agreement.
[129] House of Commons, *supra* note 126.
[130] U.S. Citizenship and Immigration Services, "Credible Fear Screenings", online: *USCIS* https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/credible-fear-screenings.
[131] *Ibid.*
[132] IRPA, s 101(1)(e).
[133] Canada, Immigration, Refugees and Citizenship Canada, *Claiming refugee protection (asylum) from within Canada* (23 January 2025), online: https://www.canada.ca/en/immigration-refugees-citizenship/services/asylum/in-canada/after-apply.html.
[134] Canada, Immigration, Refugees and Citizenship Canada, *Pre-removal risk assessment* (19 December 2025), online: *Government of Canada* https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/protection/refusal-options/pre-removal-risk-assessment/eligibility.html.
[135] Chishti & Gelatt, *supra* note 128.

just official POEs, adding a 14-day rule preventing individuals who cross the border from making a refugee claim within Canada and being sent back to the U.S. within 14 days.[136] This also applies to individuals crossing through designated bodies of water.[137] The 14-day limit stems from a 2004 notice by the DHS that authorizes them to place foreign nationals encountered within 14 days of entry and within 100 miles of any U.S. international border in expedited removal proceedings.[138]

B.7.1 Critique

The Office of the United Nations High Commissioner for Refugees (UNHCR) expressed concern over the expedited removal process in the U.S. and commented on a need for "greater procedural guarantees to ensure that bona fide refugees are not removed to a country of feared persecution (refoulement), and are treated humanely while their applications are being considered".[139] The recommendation was for Canada to "create an exception in the regulations for asylum-seekers who may be placed in expedited removal proceedings in the U.S. and/or subject to detention contrary to international norms."[140]

Organizations in Canada urged the government to withdraw from the STCA as it is the only effective way to ensure the rights and protection of refugees as the U.S. is not a safe country for all refugees, especially under the Trump administration, thus undermining the foundational premise of the agreement and backing the need for it to be rescinded.[141] That critique also situates the STCA within a wider pattern of border governance. The Agreement operates as a tool of exclusion that allows protection obligations to be displaced and managed through enforcement and pre-entry screening. In this sense, the STCA is part of the broader turn toward securitized responses to the refugee movement described below.

As such, the STCA is best understood as a mechanism of exclusion rather than a principled framework for responsibility sharing.[142] It does not allocate protection obligations between Canada and the U.S. by reference to equity, capacity, or any meaningful fairness-based metric.[143] Nor does it rest on the narrative of "asylum shopping," which often dismisses the legitimate reasons refugees may seek protection in a particular country rather than in the first state they enter.[144] Instead, the STCA leverages Canada's geographic position to limit access to its refugee

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[136] Immigration, Refugees and Citizenship Canada, "Final text of the Additional Protocol to the Safe Third Country Agreement" (modified 24 March 2023), online: *Government of Canada* https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/policies-operational-instructions-agreements/agreements/safe-third-country-agreement/additional-protocol.html.
[137] *Ibid.*
[138] *Designating Aliens for Expedited Removal*, *supra* note 28.
[139] UN High Commissioner for Refugees (UNHCR), "UNHCR Comments on the Proposed Regulations Amending the Immigration and Refugee Protection Regulations" (14 November 2002), online: *Canadian Council for Refugees* https://ccrweb.ca/sites/ccrweb.ca/files/static-files/regula_11.html.
[140] *Ibid*.
[141] Canadian Council for Refugees, "CCR Renews Call for Canada to Withdraw from STCA in Joint Statement" (4 February 2025), online: *CCR* https://ccrweb.ca/en/ccr-joint-statement-canadas-need-withdraw-stca.
[142] Hardip Johal, "Efrat Arbel and Audrey Macklin: Why the Safe Third Country Agreement Does Not Live Up to Its Name" *The Vancouver Sun* (2022), online: ProQuest https://www.proquest.com/docview/2721877148.
[143] *Ibid.*
[144] *Ibid.*

determination system and, in doing so, reduces the practical reach of the protection obligations Canada accepted under the Refugee Convention.[145] Transferring responsibility for a refugee claimant from one country to another, even if the receiving country is designated a "safe third country", raises concerns about whether the sending state can still meet all its obligations under international refugee and human rights law once it has exercised jurisdiction over that individual.[146]

B.7.2 Litigation

A 2017 Federal Court STCA challenge[147] succeeded in 2020 on s. 7 grounds,[148] was later reversed by the Federal Court of Appeal in 2021.[149] In June 2023, the SCC unanimously concluded that the legislative scheme that implements the STCA provides safety valves that guard against risks of refoulement, and thus does not breach the right to life, liberty, and security of the person under section 7 of the Charter.[150] Most notably in the decision, the SCC found that the Federal Court's conclusion concerning the automatic detention of STCA returnees was erroneous and found no support for the Federal Court's finding that detention gives rise to "real and not speculative" risk of refoulement from the U.S., given the presence of mechanisms to appeal claims in place.[151] Further, the SCC noted the "safety valves" offered by the IRPA that protect against instances of fundamental injustice, such as administrative deferrals of removal orders, temporary resident permits, and discretionary ministerial exemptions based on humanitarian and compassionate grounds through temporary public policies.[152] However, the President of the CCR, Diana Gallego, stated that those safety valves are illusory and cannot offer real protection to those at risk if sent back to the U.S.[153] The SCC emphasized that the decision was in relation to the constitutionality of the STCA, not its administrative conduct and "Cabinet's obligation to ensure the continuous review of the U.S.'s designation as a safe third country was beyond the scope of the decision.[154]

Further, the SCC decision did not consider the additional protocol to the STCA announced in March 2023.[155] As such, the judgment is one that does not consider the full scope of the STCA following the changes implemented and its impacts argued by the claimants in the 2017 challenge.

Given the critiques, the STCA imports the U.S. expedited removal logic into Canada at the border. Despite several amendments, the STCA does not consider the impacts of the newest Trump

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[145] *Ibid.*
[146] María-Teresa Gil-Bazo, "The Practice of Mediterranean States in the Context of the European Union's Justice and Home Affairs External Dimension: The Safe Third Country Concept Revisited" (2006) 18:3-4 International Journal of Refugee Law 571 at 599.
[147] *Canadian Council for Refugees v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 1131.
[148] *Canadian Council for Refugees v Canada (Immigration, Refugees and Citizenship)*, 2020 FC 770, [2021] 1 FCR 209 at para 140.
[149] *Canada (Citizenship and Immigration) v Canadian Council for Refugees*, 2021 FCA 72, [2021] 3 FCR 294 at paras 78, 96.
[150] *Canadian Council for Refugees, supra* note 13.
[151] *Ibid* at paras 99, 101, 143.
[152] IRPA, ss 24(3), 25.1(1), 25.2(1), 48(2).
[153] Canadian Council for Refugees, *supra* note 141.
[154] Canadian Council for Refugees, *supra* note 13 at para 53.
[155] Ahouga, *supra* note 51 at 4.

administration, and the policy changes implemented in 2025 alone. The evolution of the STCA demonstrates how policy shifts can restructure access to refugee protection without formally removing legal safeguards. Through the STCA, Canada has already adopted a border-stage filtration model grounded in speed, deterrence, and enforcement by outsourcing initial screenings to the U.S. expedited removal system and later expanding the agreement to irregular crossings. Domestic reforms increase the risk of extending the logic of expedited removal from the border into the interior of its refugee system. The STCA could be perceived as a warning that if the current safeguards that the SCC assumed remain functional after domestic reforms and policy drifts, Canada could then follow a trajectory that mirrors the system whose consequences the STCA has already exposed at the border.

Bill C-12 seeks to expand the STCA, introducing more harm to the regime, as will be discussed below in section B.8.2.2.

B.8 The Carney Government's Executive Actions and Impacts

The question that now follows is how the above safeguards operate when confronted with new federal policy directions that expand ministerial discretion, restrict access to asylum procedures, and restructure information-sharing and enforcement authority. The Carney government's recent executive actions and legislative proposals represent a change in Canada's immigration system that moves away from independent adjudication and toward centralized ministerial control, information-integrated enforcement, and time-based exclusions on access to asylum.

These shifts introduce procedural and structural pressures on the constitutional safeguards affirmed in *Singh*, *Suresh*, and *Charkaoui*, specifically on the right to a meaningful hearing and protection against refoulement. This section analyzes how these bills reshape the balance between enforcement and due process and assesses their impacts on whether they move Canada closer to the expedited removal process seen in the U.S.

B.8.1 Immigration Levels Plan (2026-2028)

On November 4, 2025, the Immigration Levels Plan for the years 2026-2028 was released and is committed to reducing the temporary population to less than 5% of the total population by the end of 2027 and a return to sustainable immigration levels to be achieved through "decreases to temporary residents and stabilized permanent resident admissions."[156] This change reflects the growing and ongoing public concern over immigration levels, which has become heavily politicized.[157] The policy change to cut temporary residents drastically is one with the goal to

[156] Immigration, Refugees and Citizenship Canada, "Supplementary Information for the 2026-2028 Immigration Levels Plan" (modified 5 November 2025), online: *Government of Canada* https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/corporate-initiatives/levels/supplementary-immigration-levels-2026-2028.html.

[157] Keith Neuman, "Canadian Public Opinion about Immigration and Refugees – Fall 2025" (16 October 2025), online: *Environics Institute for Survey Research* https://www.environicsinstitute.org/projects/project-details/canadian-public-opinion-about-immigration-and-refugees---fall-2025.

reduce the pressure on housing and infrastructure access and accommodate for the ongoing shift in public sentiment on immigration levels being too high.[158]

IRCC conducts research using surveys with stakeholders and partners across Canada working in areas tied to immigration, as well as public opinion research surveys used to help share the Immigration Levels Plan, immigration policies, programs, and services to "better reflect the needs and views of diverse communities across Canada".[159] The results from individuals showed a consensus of the numbers for temporary resident levels and permanent resident levels to be too high and favoured a steep decrease in them. Further, both organizations and individuals leaned towards specifically "decreasing refugees, protected persons, and persons in Canada on humanitarian grounds".[160] Moreover, the support for immigration levels decreased dramatically between 2023 and 2024, going from 35% thinking there are too many immigrants coming to Canada to 54% thinking so in 2024. IRCC states that this decrease in immigration support is a low not seen in 30 years,[161] showing the shift in the public's opinion.

As such and given the power of the court of public opinion on the Immigration Levels Plan, immigration policies, programs, and services, a shift in policies focused on deportation and bars from entry is to be expected.

Securitization is the process by which migrants, asylum seekers, and refugees are framed as security threats, which is a narrative circulated by politicians, media, and political movements that licenses expanded bureaucratic control at, and increasingly inside, national borders.[162] That includes heightened surveillance, physical barriers (walls and fences), biometric tracking, armed patrols and drones, population profiling and risk scoring, and interconnected databases that sort people into categories.[163] These techniques have also reworked state authority by placing military and security agencies at the center of unaccountable migration regimes.[164] In turn, securitization reinforces broader authoritarian traits of contemporary neoliberal states, extending surveillance and cataloguing beyond border points to the wider resident population.[165] Public hostility toward immigrants can diffuse through society and translate into policy demands for exclusion, which then become reflected in government action.[166]

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[158] Colin R Singer, "Canada's 2026–2028 Immigration Levels Plan: Sharp Temporary Cuts, Permanent Stability" (5 November 2025), online: *Law360 Canada* https://www.law360.ca/ca/articles/2407765/canada-s-2026-2028-immigration-levels-plan-sharp-temporary-cuts-permanent-stability.

[159] Immigration, Refugees and Citizenship Canada, "2025 consultations on immigration levels – final report" (modified 30 October 2025), online: *Government of Canada* https://www.canada.ca/en/immigration-refugees-citizenship/corporate/transparency/consultations/2025-consultations-immigration-levels-report.html.

[160] *Ibid.*

[161] Immigration, Refugees and Citizenship Canada, "Public Opinion Research on Canadians' Attitudes Towards Immigration" (modified 11 September 2025), online: *Government of Canada* https://www.canada.ca/en/immigration-refugees-citizenship/corporate/transparency/transition-binders/minister-2025-05/public-opinion-research-canadians-attitudes-immigration.html.

[162] Genevieve Ritchie, Sara Carpenter & Shahrzad Mojab, eds, *Marxism and Migration* (Cham: Palgrave Macmillan, 2022) at 44-45.

[163] *Ibid.*

[164] *Ibid.*

[165] *Ibid.*

[166] *Ibid* at 75.

President Trump's campaign and policies have increased hostility towards immigrants, migrants, and refugees, othering them in ways that have gained popularity.[167] With that same sentiment growing in Canada,[168] and policies shifting to appease to that shift, the concern of converging towards U.S. exclusionary practices is legitimized and is already taking place despite Mark Carney's response to Trump's comments on annexing Canada as the 51st U.S. state during his election campaign, where Carney emphasized that "Canada is not America, and it never will be, but we need to do more to just recognize that. We need a plan to deal with this new reality."[169]

The rise in removals represents the government's priorities, which include a tough stance on migration as a means to show effective policing at the border.[170] Canada pledged $1.3 billion toward border security and the immigration system,[171] argued by some to be a way to appease Donald Trump following threats of tariffs on Canadian imports.[172] Aisling Bondy, president of the Canadian Association of Refugee Lawyers, stated concerns surrounding the deportation of individuals, especially refugee claimants, who could be subject to removal while still in the process of appealing decisions about fears or risks if returned to their countries.[173] In 2024, 14,066 individuals were inadmissible refugee claimants for noncompliance out of the 17,357 total ordered for removal.[174] From the beginning of 2025 to October 31, 2025, 15,605 refugee claimants were subject to removal for non-compliance.[175]

B.8.2 Bill C-12 and Bill C-2

Bill C-12 is the most pressing risk of convergence in this paper because it operationalizes, in streamlined form, the central structure of the earlier *Strong Borders Act package* (Bill C-2), while moving faster toward implementation. Bill C-2 is discussed here only to the extent necessary to show continuity. Bill C-12 is explicitly framed as drawing on elements of Bill C-2 and was introduced to advance priority measures while other components receive further study.[176] The throughline matters for my comparative argument. Both bills reorganize migration governance

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[167] Alma Vančura, "Walls, borders, and the rhetoric of fear: A Longitudinal Study of Trump's Campaign Addresses" (October 2025) 12:3 Res Rhetorica 32, DOI:10.29107/rr2025.3.2.
[168] Reena Kukreja, "Anti-immigrant Politics Is Fueling Hate Toward South Asian People in Canada" (7 November 2024), online: *Queen's University Faculty of Arts and Science* https://www.queensu.ca/artsci/news/anti-immigrant-politics-is-fueling-hate-toward-south-asian-people-in-canada.
[169] Al Jazeera, "Canada's PM Carney Plans for Stronger Defence, Broader Trade amid US Rift" (19 April 2025), online: *Al Jazeera* https://www.aljazeera.com/news/2025/4/19/canadas-pm-carney-plans-for-stronger-defence-broader-trade-amid-us.
[170] Anna Mehler Paperny, "Canada Deports More People, Predominantly Those Rejected for Refugee Status" (26 February 2025), online: *Reuters* https://www.reuters.com/world/americas/canada-deports-more-people-predominantly-those-rejected-refugee-status-2025-02-26/.
[171] Government of Canada, "Strengthening Border Security" (modified 27 November 2025), online: *Government of Canada* https://www.canada.ca/en/services/defence/securingborder/strengthen-border-security.html.
[172] Paperny, *supra* note 170.
[173] *Ibid.*
[174] Canada Border Services Agency, "Canada Border Services Agency removals program statistics" (modified 25 November 2025), online: *Government of Canada* https://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/security-securite/removals-renvois-eng.html.
[175] *Ibid.*
[176] Public Safety Canada, *supra* note 10.

around border security and national security frames, expand executive tools to manage foreign nationals through document and stream control, compress access to an independent oral hearing by adding front-end ineligibility screens that divert protection review toward paper-based PRRA, and increase the institutional capacity for information sharing within immigration administration.

B.8.2.1 Bill C-2

Bill C-2, the *Strong Borders Act*, titled "an Act respecting certain measures relating to the security of the border between Canada and the United States and respecting other related security measures"[177] introduced a broad border-security package that combined immigration, enforcement, and information-sharing reforms. Parliamentary debate on the bill continued through September 17, 2025,[178] before the government advanced a streamlined successor, Bill C-12, to move priority measures forward while other components remained under review.

Greenpeace Canada argues that Bill C-2 is "Trump-inspired" and mirrors U.S. expedited removal logics (being surveillance-forward, enforcement-first, narrowed access to independent hearings), pointing to the expanded CBSA powers, reduced due-process access, and enhanced data-sharing.[179] Migrant Rights Network spokesperson Syed Hussan called the bill a "deliberate expansion of a mass deportation machine".[180] Former CBSA officer, Kelly Sundberg, said all the bill does is appease the Trump Administration.[181] The CCR argues that the STCA and the proposed measures in Bill C-2 endorse current U.S. policies to end refugee protection and deport refugee claimants to places where they face harm by making it harder for claimants to receive due process at refugee hearing in Canada.[182]

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[177] Bill C-2, *An Act respecting certain measures relating to the security of the border between Canada and the United States and respecting other related security measures*, 1st Sess, 45th Parl, 2025 (first reading 3 June 2025), online: *Parliament of Canada* https://www.parl.ca/DocumentViewer/en/45-1/bill/C-2/first-reading.

[178] Parliament of Canada, *LEGISinfo*, "C-2 (45-1): *An Act respecting certain measures relating to the security of the border between Canada and the United States and respecting other related security measures* (Strong Borders Act)", online: https://www.parl.ca/legisinfo/en/bill/45-1/c-2?view=progress.

[179] Jessica da Silva, "Bill C-2, Immigration Raids, and the Trump-Inspired Threat to Human Rights in Canada" (28 August 2025), online: *Greenpeace Canada* https://www.greenpeace.org/canada/en/story/72193/bill-c-2-immigration-raids-and-the-trump-inspired-threat-to-human-rights-in-canada.

[180] Migrant Rights Network, "Migrant Rights Network Condemns Bill C-2's Anti-Refugee & Mass Deportation Provisions" (3 June 2025), online: *Migrant Rights Network* https://migrantrights.ca/c2pressrelease.

[181] CTV News, "Strong Borders Act Made to 'Appease the Trump Administration' | Former CBSA Officer" (3 June 2025), online: *YouTube* https://www.youtube.com/watch?v=sPshO0zR4qI at 1:35.

[182] Canadian Council for Refugees, Canadian Sanctuary Network & Bridges Not Borders, "On this World Refugee Day, Call on the Canadian Government to Withdraw from the STCA" (20 June 2025), online: *CCR* https://ccrweb.ca/en/world-refugee-day-2025-call-canadian-government-withdraw-stca.

B.8.2.2 Bill C-12

Bill C-12, the *Strengthening Canada's Immigration System and Borders Act*, is at consideration in committee in the Senate as of February 13, 2026,[183] and is going through an accelerated study to meet a February 24, 2026 deadline to make amendments at the committee stage.[184] It is titled "an Act respecting certain measures relating to the security of Canada's borders and the integrity of the Canadian immigration system and respecting other related security measures."[185] The new bill "draws on the elements of Bill C-2 to combat transnational organized crime, stop the flow of illegal fentanyl, crack down on money laundering, dismantle criminal networks, and improve the integrity of our immigration system."[186] The bill pushes for the most sweeping changes in immigration law since the early 2000s.[187]

Among many amendments, it seeks to:

> "(1) Protect the asylum system against sudden increases in claims by introducing new ineligibility rules; (2) Improve how asylum claims are received, processed, and decided; (3) Strengthen authorities to cancel, suspend or change immigration documents, and to cancel, suspend or stop accepting new applications; and (4) Improve how client information is shared within Immigration, Refugees and Citizenship Canada (IRCC) and with federal, provincial and territorial partners."[188]

These objectives matter because they expand discretion, narrow IRB access, and scale data-sharing.

Tim McSorley, National Coordinator of the International Civil Liberties Monitoring Group, argues that Bill C-12 does not fix Bill C-2, but fast-tracks its most concerning components.[189] He contends that the government continues to defend the privacy-violating elements of C-2 and has introduced C-12 primarily to implement restrictions on migrant and refugee rights more quickly.[190] Matt Hatfield, Executive Director of OpenMedia, characterizes C-12 and C-2 as legislative packages

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[183] Parliament of Canada, *LEGISinfo*, "C-12 (45-1): An Act respecting certain measures relating to the security of Canada's borders and the integrity of the Canadian immigration system and respecting other related security measures (Short title: *Strengthening Canada's Immigration System and Borders Act*)", online: *Parliament of Canada* https://www.parl.ca/LegisInfo/en/bill/45-1/c-12.

[184] David Baxter, "Diab says C-12 could ease some refugee claims, critics call it a two-tier system" (12 February 2026), online: *CTV News* https://www.ctvnews.ca/politics/article/diab-says-c-12-could-ease-some-refugee-claims-critics-call-it-a-two-tier-system/.

[185] Bill C-12, *An Act respecting certain measures relating to the security of Canada's borders and the integrity of the Canadian immigration system and respecting other related security measures*, 1st Sess, 45th Parl, 2025 (first reading 8 October 2025), online: *Parliament of Canada* https://www.parl.ca/DocumentViewer/en/45-1/bill/C-12/first-reading.

[186] Public Safety Canada, *supra* note 10.

[187] Canadian Muslim Lawyers Association, *Submission on Bill C-12, An Act Respecting Certain Measures Relating to the Security of Canada's Borders and the Integrity of the Canadian Immigration System and Respecting Other Related Security Measures* (Brief No 5, Standing Senate Committee on Social Affairs, Science and Technology, 9 February 2026), online (pdf): Senate of Canada https://sencanada.ca/Content/Sen/Committee/451/SOCI/briefs/2026-02-09_SOCI_SM-C-12_Brief_CMLA_e.pdf at 2 [*CMLA Brief*].

[188] Public Safety Canada, *supra* note 10.

[189] International Civil Liberties Monitoring Group, "Bill C-12's introduction solves none of Bill C-2's problems" (9 October 2025), online: *ICLMG* https://iclmg.ca/joint-statement-bill-c-12.

[190] *Ibid.*

that are politically motivated, both driven by the desire to satisfy political expectations from the Trump administration.[191]

There is a growing concern about how C-12 reframes immigration governance through a national security lens and consolidates broad executive powers with limited procedural safeguards.[192] If passed, it would impact fundamental principles similar to the ongoing developments in the U.S.[193] The Canadian Immigration Lawyers Association warns that Bill C-12 shifts the function of immigration away from the established legislative structure to a national security framework.[194] Historically, expanded omnibus national security bills create harm to specific communities as seen post 9/11 when governments relied on an urgent border securitization rhetoric to enhance national security.[195] Such measures penalize those who are already in Canada and do not secure the border or maintain national security.[196] The provisions specify that decrees issued in the name of "public interest" could be applied selectively to "certain persons" or to specific "categories of requests".[197] This is the same logic that has driven U.S. expansion of security-driven immigration powers that portrays immigration administration as a border risk problem that requires swift executive action. Consistent with that framing, at the second reading in the Senate, the Honourable Tony Dean emphasized border security as a top priority for the U.S. and Canada and the proposed amendments in the bill would enable Canada to "act swiftly" to respond to "exceptional events" to protect the public interest and "secure the Canadian border."[198]

Bill C-12 would give the Governor in Council broader powers to suspend, cancel, or refuse valid immigration documents issued to temporary and permanent residents.[199] Without clear standards, timelines, or independent oversight, these powers carry a high risk of arbitrary or politically motivated use.[200] These measures are also meant to take place in the "public interest", a term not defined in the Act and creates uncertainty in the law and unpredictability for immigrants.[201] Vague immigration laws allow for unchecked direction with limited oversight, as seen when the U.S. government relied on vague immigration laws to revoke the legal status of international students whose protests were deemed to be against the country's interest or national security.[202] The result would be deep insecurity for foreign nationals who have built lives in Canada, without reliable

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[191] *Ibid.*

[192] Canadian Immigration Lawyers Association (CILA), "Bill C-12 introduces sweeping changes to immigration law under the guise of border security" (16 October 2025), online: *CILA* https://cila.co/bill-c-12-introduces-sweeping-changes-to-immigration-law-under-the-guise-of-border-security.

[193] *Ibid.*

[194] *Ibid.*

[195] *CMLA Brief*, *supra* note 187.

[196] Québec Common Front, *Brief submitted by the Québec Common Front against Bill C-12: Bill C-12, Strengthening Canada's Immigration System and Borders Act*, (Standing Senate Committee on Social Affairs, Science and Technology, 12 February 2026), online (pdf): *Senate of Canada* https://sencanada.ca/Content/Sen/Committee/451/SOCI/briefs/2026-02-12_SOCI_SM-C-12_Brief_QCF_e.pdf at 6.

[197] *Ibid* at 2.

[198] Canada, Senate, *Debates of the Senate*, 45th Parl, 1st Sess, No 48 (5 February 2026) at 1380 (Hon. Tony Dean), online (pdf): https://sencanada.ca/content/sen/chamber/451/debates/pdf/048db_2026-02-05-e.pdf.

[199] *Ibid.*

[200] *Ibid* at 1386 (Hon. Paula Simons).

[201] *CMLA Brief*, *supra* note 187 at 4.

[202] Rick Baldoz, "From the Chinese Exclusion Act to pro-Palestinian activists: The evolution of politically motivated deportations" (30 April 2025), online: *The Conversation* https://theconversation.com/from-the-chinese-exclusion-act-to-pro-palestinian-activists-the-evolution-of-politically-motivated-deportations-254683.

access to basic procedural safeguards.[203] It would also increase the number of people without status and would "make communities more precarious and create an immigration system similar to that of the United States, paving the way for unequal treatment, dehumanization and violations of fundamental rights."[204]

Bill C-12 creates expansive discretionary powers with weak safeguards, applies them to people already in Canada as opposed to only those seeking entry, and offers little notice or meaningful recourse. Further, such powers have no need given that the IRPA already contains national security and public safety inadmissibility provisions, as well as misrepresentation tools (including s. 44) that can address fraud while preserving procedural protections and independent oversight.[205]

At the second reading in the Senate, the Honourable Paula Simons criticized the lack of objective evidence the Governor-in-Council would need to cancel visas en masse and instead rely on a subjective opinion that it be in the "public interest" to do so.[206] She also challenged Senator Dean's reassurance that loss of cards or papers does not equate to loss of status, referencing immigration and refugee groups she has consulted as evidence of the opposite being the reality.[207]

Risks of convergence to the U.S. model of expedited removal were also brought up at the second reading in the senate. Senator Woo warned that discretionary cancellation and suspension powers may drive some vulnerable immigrants into hiding and non-engagement with government systems, possibly on a large scale, and queried what enforcement response would follow, including whether CBSA would be given increased authority and power to locate and remove people, and whether that trajectory would make Canada's approach resemble U.S. enforcement models.[208]

Senator Simons warned that Part 7 of the bill creates a tool that looks similar to U.S. efforts to invalidate temporary protected statuses previously granted to Haitians, and she emphasized that comparable authority in Canada could be exploited by a future government to target vulnerable groups similar to the U.S. She maintained that lowering immigration levels and raising barriers for refugees will not appease "MAGA and 'Maple MAGA'", and framed Bill C-12 as an unnecessary erosion of Canada's immigration framework for political signaling.[209]

Simons also cautioned that if the bill drives individuals underground to avoid authorities, Canada could replicate the U.S. "shadow population" dynamic, where people lose access to essential services and are pushed out of lawful work, education, and tax compliance.[210] She added that a growing "hidden" population can amplify social anxieties and widen space for disproportionate enforcement.[211]

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[203] *Debates of the Senate*, *supra* note 198 at 1386 (Hon. Paula Simons).
[204] Québec Common Front, *supra* note 196 at 5.
[205] *CMLA Brief, supra* note 187 at 4–5.
[206] *Debates of the Senate*, *supra* note 198 at 1386 (Hon. Paula Simons).
[207] *Ibid.*
[208] *Ibid* at 1388 (Hon. Yuen Pau Woo).
[209] *Ibid* at 1387 (Hon. Paula Simons).
[210] *Ibid* at 1388.
[211] *Ibid*.

The CBSA is deporting about 400 individuals a week, most of whom are failed refugee claimants, a pace not seen in over a decade.[212] Refugee lawyer Aisling Bondy says that this is a way the government is preparing for the passing of Bill C-12.[213] There is also an expectation that if Bill C-12 is passed, deportations are set to increase and take place as speedily as possible.[214] The deportees are not all asylum seekers, some are foreign workers and international students, showing that the number of individuals who are deemed "removable" is increasing, as supported by the immigration levels plan to slow population growth.[215] The proposed amendments will generate significant administrative and procedural strain and may increase loss of status, administrative detention, and removals.[216] The measure would increase vulnerability of migrants and create a vulnerable “illegal” class, allowing for a violation of international law and s. 7 Charter rights. [217]

C-12 expands the STCA rules to reach inland, where people who would previously have gotten a full IRB hearing despite STCA constraints are now pushed into a narrower PRRA-only track or excluded altogether,[218] reinforcing the STCA’s deterrent effect inside Canada’s territory. C-12 makes refugee claims ineligible for IRB referral if (a) they are made more than one year after the person first arrived in Canada (after June 24, 2020), or (b) they are made by people who enter from the U.S. between POEs and wait more than 14 days to claim.[219] These ineligibility rules are meant to “deter people from using the asylum system to bypass regular immigration rules (including the Safe Third Country Agreement)” and to protect the system against surges in claims.[220] As such, the remaining safeguard for many claimants is the PRRA, which is inadequate and, combined with C-12’s expanded STCA rules, creates serious risk.

C-12 would amend IRPA s. 101(1), to expand refugee-claim ineligibility, including for people who claim more than one year after their first entry to Canada and for people who enter from the U.S. through an irregular land-border crossing.[221] These bright-line exclusions assume reduced need for individualized risk assessment and replace the usual IRB hearing with categorical bars.

Continuing to return individuals to the U.S. under the STCA risks participating in indirect refoulement, going against the 1951 Refugee Convention, the Convention Against Torture, and section 7 of the Charter.[222] Redirecting STCA-barred claimants into the PRRA process converts a “rights-based protection regime into a gatekeeping mechanism that prioritizes border management over human rights and life at a time when rapidly degrading U.S. asylum conditions

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[212] CBC News: The National, “Canada Deporting Nearly 400 People a Week, Fastest Pace in a Decade” (24 December 2025), online (video): *YouTube* https://www.youtube.com/watch?v=ennNTXWhAIs at 0:07.
[213] *Ibid* at 0:20.
[214] *Ibid* at 0:35.
[215] *Ibid* at 1:31.
[216] Québec Common Front, *supra* note 196 at 2.
[217] *Ibid*.
[218] Government of Canada, “Understanding Strengthening Canada’s Immigration System and Borders Act, Bill C-12” (modified 7 November 2025), online: *Government of Canada* https://www.canada.ca/en/services/defence/securingborder/strengthen-border-security/understanding-stregthening-canada-immigration-system-borders-act.html.
[219] *Ibid.*
[220] *Ibid.*
[221] *Ibid.*
[222] Canadian Civil Liberties Association, “Brief on Bill C-12: Strong Borders Act: Submission to House of Commons Standing Committee on Public Safety and National Security (SECU)” (12 November 2025) at 6, online (pdf): *CCLA* https://ccla.org/wp-content/uploads/2025/11/2025.10.12-CCLA_SECU_Brief_C-12-1.pdf.

demand heightened, independent scrutiny."[223] Senator Simons questioned the worth of the STCA, asking: "What is that agreement worth when every night, on our television screens and our phones, we see evidence that the third country is no longer safe for thousands and thousands of claimants?"[224]

Because the IRB already treats delay in claiming and failure to seek protection elsewhere as relevant factors within its fact-specific protection analysis, it is difficult to see why Bill C-12 requires additional categorical ineligibility bars.[225] The effect is to displace independent, specialized adjudication in favour of broad legislative exclusions. While a PRRA is framed as a safeguard against refoulement, it is not an adequate substitute for an oral hearing before an independent decision maker.[226]

The Charter Statement for Bill C-12 recognizes that several components of the bill potentially engage sections 7 and 8 of the Charter.[227] Although the Statement concedes that these measures touch on liberty, security of the person, and privacy interests, it ultimately concludes that they are Charter compliant. It emphasizes the continued availability of IRPA "safety valves," including humanitarian and compassionate exemptions, deferral of removal, the Minister's discretion to lift PRRA bars, and judicial review, as safeguards that prevent unjustified deprivations of rights.[228]

A key enabling feature is expanded information-sharing authority.

On the new power for the Minister of Immigration to consent to the release of personal information of foreign nationals to foreign entities, Senator Dean framed the bill's information-sharing amendments as a targeted modernization that would allow applicant data to move more effectively within government and with provinces and territories, while remaining "secure and transparent" and "strengthening privacy protections."[229] He emphasized that the current framework is administratively burdensome because information sharing often requires a case-by-case legal assessment, which can slow down routine integrity checks.[230]

Although the provision incorporates a prohibition tied to Canada's obligations under the *Avoiding Complicity in Mistreatment by Foreign Entities Act*, this protection is too narrow because the statute's definition of "mistreatment" focuses on torture and cruel, inhuman, or degrading treatment or punishment, leaving other serious harms, such as discrimination and persecution, outside its constraint. Further, the absence of clear statutory limits increases the risk that information provided for humanitarian or protection purposes could be repurposed for enforcement or intelligence objectives and could be further shared beyond Canada's control once disclosed internationally.[231]

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[223] *Ibid.*
[224] *Debates of the Senate*, *supra* note 198 at 1386 (Hon. Paula Simons).
[225] *CMLA Brief*, *supra* note 187 at 5-6.
[226] *Debates of the Senate*, *supra* note 198 at 1386 (Hon. Paula Simons).
[227] Department of Justice Canada, "Bill C-12: An Act respecting certain measures relating to the security of Canada's borders and the integrity of the Canadian immigration system and respecting other related security measures: Charter Statement" (modified 17 November 2025), online: *Government of Canada* https://www.justice.gc.ca/eng/csj-sjc/pl/charter-charte/c12_3.html.
[228] *Ibid.*
[229] *Debates of the Senate*, *supra* note 198 at 1381 (Hon. Tony Dean).
[230] *Ibid.*
[231] *CMLA Brief, supra* note 187 at 7.

Bill C-12's core logic mirrors key features of the U.S. expedited removal model in form, even if the Canadian institutional setting is different. The convergence lies in procedural reductions at the front end, where eligibility and risk are increasingly filtered through accelerated screens that restrict access to an independent oral hearing, shift review into paper-based processes, and rely on discretionary executive tools that are weakly constrained by prelisted triggers in the "public interest" or robust individualized safeguards. The parallel is reinforced by the securitization frame and the growing reliance on information sharing as an enforcement tool, which makes rapid identification and removal operationally easier once a person is deemed removable. The same convergence pressure appears in the new information sharing authorities that increase the consequences of being flagged as high risk by turning data flows into a pathway for enforcement action, including outside the IRB process. Senate debate also anticipated a U.S.-style "shadow population" dynamic, where fear of status loss and removal drives people into hiding and non-engagement with institutions and services, which in turn creates pressure for more aggressive enforcement tools. Finally, while the most extreme outcomes associated with U.S. immigration enforcement are more visible in that system, Canada's record includes deaths in immigration custody and longstanding concerns about oversight,[232] which is enough to treat "it cannot happen here" claims with caution as enforcement powers expand.

B.8.3 Bill C-8

The information-sharing amendments in Bill C-12 are framed as an immigration integrity tool, but they also signal a broader institutional shift toward greater executive control over when, how, and with whom personal information is shared to advance national security goals. That same framing appears again in Bill C-8, although in a non-immigration setting and both bills normalize executive-driven information sharing with limited transparency and meaningful constraints on onward disclosure, which increases the risk of function creep. Read together, the two bills illustrate how Canada is expanding state capacity through data centralization and discretionary sharing across domains, in ways that mirror U.S. governance patterns and create conditions for convergence even when the policy area is not formally immigration.

Bill C-8 (previously Bill C-26) is at consideration in committee in the House of Commons as of February 13, 2026.[233] It is titled "an Act respecting cyber security, amending the *Telecommunications Act* and making consequential amendments to other Acts."[234] The proposed Act respecting cyber security, is highly controversial because it grants sweeping, confidential powers to the executive branch.

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[232] Canadian Council for Refugees, Canadian Association of Refugee Lawyers & British Columbia Civil Liberties Association, *One Year After Lucía Vega Jiménez's Death, Rights Organizations Condemn Federal Failure to Make CBSA Accountable* (12 February 2015), online: *CCR* https://ccrweb.ca/en/release-immigration-detainees-still-at-risk-feb-2015.

[233] Parliament of Canada, *LEGISinfo,* "C-8 (45-1): An Act respecting cyber security, amending the Telecommunications Act and making consequential amendments to other Acts", online: https://www.parl.ca/legisinfo/en/bill/45-1/c-8.

[234] Bill C-8, *An Act respecting cyber security, amending the Telecommunications Act and making consequential amendments to other Act*, 1st Sess, 45th Parl, 2025 (first reading 18 June 2025), online: *Parliament of Canada* https://www.parl.ca/DocumentViewer/en/45-1/bill/C-8/first-reading.

Ms. Kate Robertson, Senior Research Associate and Citizen Lab of Munk School of Global Affairs and Public Policy at University of Toronto, warned that Bill C-26 could enable the Communications Security Establishment to repurpose collected information across its broader intelligence mandates.[235] She noted the National Security and Intelligence Review Agency reporting that the Communications Security Establishment does not consider itself prohibited under its home statute from repurposing information about Canadians across its mandates.[236]

Despite critiques, the government reintroduced Bill C-26 as Bill C-8 without critical changes. The Electronic Frontier Foundation cautioned that without adequate safeguards, it could replicate similar practices and orders of U.S. national security laws.[237] It replicates the secrecy of the orders that in the U.S that have made it impossible to be challenged on mass surveillance in court.[238] In the U.S., some companies have been presented with false orders surrounding "national security letters" asking to hand over information.[239] The U.S. experience is a warning that in the way the U.S. government created a broad exception to the Constitution that "allows the government to spy on all Americans and denies them any viable means of challenging that spying" in the name of national security, and the bill would allow the Canadian government to do the same in the name of cybersecurity.[240]

Bill C-8 provides for legislatively mandated data sharing and centralization of information among federal agencies. This trajectory focused on centralized data flows, executive-controlled information sharing, and reduced oversight mirrors the institutional conditions that enable the U.S. expedited removal regime, and as such, raises concerns that a similar enforcement structure could emerge in Canada. It may also raise the risk of function creep, where data collected for cybersecurity is later used to generate risk flags that trigger enhanced screening, detention, or inadmissibility action without meaningful notice or an effective opportunity to challenge the underlying inference.

C. Conclusion

This paper has argued that Canada's risk is not limited to adopting a formal "expedited removal" label. Movement toward expedited, policy-driven removals is not isolated and reflects a broader convergence toward an internationally normalized security-based governance model of return. The building blocks are already present: (1) administrative removal pathways (IRPA s. 44 and IRPR s. 228), (2) diversion of protection into narrower screening mechanisms (PRRA), (3) border-stage outsourcing through STCA expanded across the land border, (4) expanded information-sharing and data integration that can scale enforcement, and (5) political and population-level pressures.

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[235] House of Commons, Standing Committee on Public Safety and National Security, Evidence, 44-1, No 094 (12 February 2024), online: *House of Commons of Canada* https://www.ourcommons.ca/DocumentViewer/en/44-1/SECU/meeting-94/evidence.
[236] *Ibid.*
[237] Corynne McSherry et al, "Security, Surveillance, and Government Overreach – the United States Set the Path but Canada Shouldn't Follow It" (6 June 2024), online: *Electronic Frontier Foundation (Deeplinks Blog)* https://www.eff.org/deeplinks/2024/06/security-surveillance-and-government-overreach-united-states-set-path-canada.
[238] *Ibid.*
[239] *Ibid.*
[240] *Ibid.*

The U.S. experience shows how procedural safeguards can remain formally recognized while becoming practically fragile under compressed timelines and expanded discretion. Canada's response, if it aims to avoid functional convergence, must focus on preserving access to independent hearings, maintaining meaningful review, and preventing the expansion of executive information-sharing without meaningful constraints and oversight. Securitized "returns" governance reframes the return of crisis affected individuals as a solution and conceptualizes them as a policy problem,[241] which takes place through policy documents that reflect the way governments represent it as an issue to be governed and the end to be achieved.[242]

Therefore, the conclusion is not that Canada is destined to replicate the U.S. expedited removal model. It is that Canada must actively choose not to, by refusing policy choices that normalize securitized returns governance and by adopting reforms that preserve independent hearings, constrain discretion, protect privacy, and maintain genuine barriers against refoulement. In an era where disinformation and securitized politics make it easier to treat human mobility as an emergency to be managed, Canada's legal commitments depend on whether rights protections remain operational realities rather than interpretive aspirations.[243]

[241] Carol Bacchi & Susan Goodwin, *Poststructural Policy Analysis: A Guide to Practice* (New York: Palgrave Pivot, 2016) at 38.
[242] Mitchell Dean, *Governmentality: Power and Rule in Modern Society*, 2nd ed (London: SAGE Publications Ltd, 2009) at 268.
[243] Bacchi & Goodwin, *supra* note 241 at 38; Dean, *supra* note 242 at 268.

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28 CFR § 200.1.

8 CFR § 212.5.

8 CFR § 235.3.

8 USC § 1225(b)(1)(B)(iii)(I).

8 USC § 1231(b)(2)(E)(vii).

8 USC § 1231(b)(3)(A).

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