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A Paradox of Integration at the Forty-Ninth Parallel

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Key Points

- For decades, Canada and the United States have pursued a policy of intensifying border integration characterized, in part, by systematic reciprocal information and intelligence sharing, as well as recognizing each other as safe jurisdictions for asylum seekers and requiring people to claim asylum in the first country of arrival.
- Since Donald Trump's election to his second term in office, the mutual trust and shared commitment to upholding the rule of law that has underpinned these collaborations has eroded through direct threats to Canadian sovereignty and a spate of actions — such as mass deportations without due process — that threaten the basic rights of migrants in the United States.
- In formulating a response, Canadian lawmakers must contend with a paradox of integration. Ongoing information and intelligence sharing and continuing to return asylum seekers to the United States under existing agreements directly implicates Canada in potentially unlawful activities. Yet Canada's capacity to push back against these policies is limited by both the prospect of American retaliation as well as dynamics of asymmetric reliance that have developed over decades of border integration.
- While the Trump administration has leaned into public controversies arising from its rapidly evolving policies, it would be wise for Canada to take a slower, more deliberative approach to re-asserting autonomy and defending the rule of law in Canadian border security.
- Specifically, Canada should pause negotiations on expanded information sharing pending a comprehensive review of existing practices and explore options for extending binding oversight over decisions about determining "safe" countries and high-risk information sharing. Additionally, Canada must invest in expanding domestic intelligence capacity and broadening security alliances, while invoking existing legal safeguards to protect at-risk populations.

Introduction

Canada's long-standing alliance with the United States has reached a critical inflection point. In late 2024, US President Donald Trump upended relations with false claims about flows of fentanyl and illegal migration from Canada as a legal pretext to impose punishing tariffs, alongside repeated threats to annex Canada as the fifty-first state (Kapoor 2025). Canadian lawmakers responded with several measures to harden border security, promising to expand collaborative digital surveillance and information sharing with American authorities (Public Safety Canada 2024, 2025a).

Since September 11, 2001, Canadian leaders have set a precedent of intensifying information sharing and border integration with the United States. Historically, these collaborations are legitimated by shared commitments to democracy and the rule of law. In his first 100 days in office, Trump undermined this premise through an escalating series of actions against vulnerable migrants including deportations without due

process and indefinitely suspending parts of the American asylum system (Riccardi and Garcia Cano 2025).[1]

In this context, Canadian lawmakers face a paradox of integration. Halting cooperation risks escalating the situation, presenting risks to national security and political stability. Inaction risks complicity in activities that are both unlawful and inconsistent with Canada's democratic values. The Trump administration has sought to overwhelm resistance to its policies by "flooding the zone" with controversial actions (Broadwater 2025). But preserving the rule of law at the Canadian border calls for a slower, more deliberative approach.

This working paper demonstrates how border integration has constrained Canadian sovereignty and advances strategies to re-assert Canadian autonomy by:

- pausing proposals to deepen border collaboration to study its risks and benefits;
- strengthening oversight of immigration and information sharing decisions made by ministers;
- protecting vulnerable populations by invoking existing legal safeguards; and
- reducing reliance on American intelligence through investments in Canada's domestic capacity and international alliances.

From Security Vulnerability to Security Perimeter

Before September 11, 2001, the Canada-US border was not treated as a national security priority. People could travel relatively freely across the border. Government presence was largely oriented to collecting customs revenue, administering immigration and facilitating trade (Côté-Boucher 2020; Sutcliffe and Anderson 2018). The Canadian border — which was not a factor in the attacks — was nevertheless re-defined as a weak link in American national security (Adelman 2002). The fallout of September 11 has precipitated more than two decades of coordinated legal, organizational and infrastructural transformations in North American border security.

Canada and the United States updated legislation to align polices and facilitate cooperation. In 2001, the USA PATRIOT Act[2] and Canada's Anti-Terrorism Act[3] expanded the surveillance powers of national security and law enforcement agencies, imposing stronger penalties for terror offences. New counterterrorism mandates transformed border and immigration bureaucracies. The United States created the Department of Homeland Security to host Customs and Border Protection as well as Immigration and Customs Enforcement (ICE), while the Canada Border Services Agency (CBSA) formed to

1 See Executive Office of the President (2025).

2 See *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act* (USA PATRIOT Act) of 2001, Pub L No 107-56, 115 Stat 272.

3 See *Anti-terrorism Act*, SC 2001, c 41.

fold customs and several immigration enforcement functions into Canada's Public Safety portfolio.

In 2004, the Canada-US Safe Third Country Agreement (STCA)[4] came into effect. Through the agreement, the two countries recognize each other as safe jurisdictions for asylum seekers and, with limited exceptions, require asylees to make their claim in their first country of arrival (Gagnon, Mason and Chesoi 2023). Additionally, the 2001 Smart Border Declaration[5] and 2011 Declaration on a Shared Vision for Perimeter Security and Economic Competitiveness[6] guided the procurement of interoperable infrastructures for biometric identity management, as well as the establishment of integrated law enforcement and intelligence teams.[7]

These agreements set a precedent of ever-expanding information sharing. Over two decades, information sharing to enforce the STCA and establish a common approach to air traveller targeting evolved into an expansive system of automated exchanges that implicates millions of people travelling or immigrating to Canada and the United States every year (Immigration, Refugees and Citizenship Canada 2019, 2025; CBSA 2019).

Systematic immigration and border information sharing also extends to the Five Eyes alliance, which in addition to Canada and the United States also includes Australia, New Zealand and the United Kingdom (U.S. Customs and Border Protection 2022). Most recently, in 2023, Canada finalized an agreement with the European Union to share airline passenger information after a previous effort was deemed incompatible with fundamental rights by the European Court of Justice.[8] While multilateral border collaborations are growing in importance, the United States remains Canada's most significant partner. Recent American actions have undermined the trust that forms the basis of these collaborations

A Constitutional Crisis to the South

In November 2024, Donald Trump instigated a political crisis in Canada, through an ongoing and ever-evolving series of threats to impose punishing tariffs alongside repeated expressions of his desire to make Canada the fifty-first state of America (Ettinger 2025). He issued contradictory claims that the border is both the site of a national security crisis related to illegal drugs and migration and little more than an imaginary line preventing Canada's annexation (Benen 2025; Kenyon 2025).

4 See Immigration, Refugees and Citizenship Canada (2002).

5 See *Agreement between the Government of Canada and the Government of the United States of America for cooperation in the examination of refugee status claims from nationals of third countries*, 5 December 2004, Can TS 2004 No 2 (entered into force 29 December 2004), online: <www.treaty-accord.gc.ca/details.aspx?id=104943>.

6 See www.publicsafety.gc.ca/cnt/brdr-strtgs/bynd-th-brdr/ctn-pln-en.aspx.

7 Ibid.

8 See EU, *Agreement between Canada and the European Union on the transfer and processing of passenger name record data*, [2024] OJ, L 2025/841, online: <https://eur-lex.europa.eu/eli/agree_internation/2025/841/oj/eng>; Opinion 1/15 of the Court (Grand Chamber) of 26 July 2017, online: <https://curia.europa.eu/juris/document/document.jsf?docid=193216&doclang=EN>.

Canadian lawmakers responded urgently with measures to harden the border (Public Safety Canada 2024, 2025a, 2025b). Despite American threats, the proposals included several commitments to further align Canadian border policy with the US including procuring new surveillance technologies to detect illegal narcotics and monitor irregular migration; listing seven Central American drug cartels as terrorist entities; establishing a "Joint Strike Force to target transnational organized crime"; appointing a "Fentanyl Czar" to oversee collaborative efforts; and committing to further increase information and intelligence sharing.

Notwithstanding the radical shift in tone and rhetoric, the proposals outlined in Canada's border plan are best understood as a continuation of a long-standing process rather than a sudden rupture in border policy. The early actions of the US administration, including instigating a global trade war and, ostensibly, a constitutional crisis, caused much broader ruptures to the international order (Chotiner 2025; Douglas and Fairless 2025). This makes the prospect of ongoing border integration much less ethically and legally tenable for Canada.

The capacity for a legal system to hold lawmakers accountable for their actions is a defining tenet of the rule of law (Macklin 2018). In his first 100 days in office, Trump actively sought to test this accountability. He issued 143 executive orders,[9] which, as of May 1, 2025, led to 222 legal challenges on a wide range of topics.[10] Immigration enforcement and border security — the subject of more than 50 lawsuits — have served as a testing ground for some of the administration's boldest efforts to undermine the rule of law and the independence of the judiciary.

One of the first executive orders invoked emergency powers to halt "an invasion across the southern border" by indefinitely suspending parts of the American asylum system.[11] Federal law enforcement has arrested and sought to deport several permanent residents and international students who have protested Israel's alleged genocide in Gaza (Bekiempis 2025). The administration invoked the 1798 Alien Enemies Act[12] to send over 200 accused of being gang members to El Salvador's notorious Terrorism Confinement Center without due process and in contravention of a judicial order (Riccardi and Garcia Cano 2025). El Salvador has been broadly condemned for widespread human rights abuses including arbitrary and indeterminate detention and systematic torture in custody (Amnesty International 2024). Among those rendered to El Salvador was Kilmar Abrego Garcia, a legal resident with no criminal history or credible accusations of criminality (Sardarizadeh et al. 2025). The lack of due process has caused alarm as Garcia's case shows that anyone, including legal immigrants and American citizens, risk facing similar treatment (Keitner 2025; Ricciardi 2025).

It is important to acknowledge that, over the past 25 years, Canadian leaders have, at times, demonstrated willful ignorance and, in limited cases, direct complicity in

9 See www.presidency.ucsb.edu/statistics/data/executive-orders.

10 See www.justsecurity.org/107087/tracker-litigation-legal-challenges-trump-administration/. For comparison, this number represents more than both George W. Bush and Barack Obama across all four years of their second terms and more than half of the 220 orders issued by Trump in his first four years.

11 See Executive Office of the President (2025).

12 See The White House (2025).

practices that exposed people to torture and other human rights violations.[13] But Canada is faced with the prospect of participating in transgressions at a larger scale. Turning away asylum seekers under the STCA, as well as ongoing information and intelligence sharing, create significant risk of complicity in the systematic mistreatment of people at the hands of American authorities and foreign proxies such as the Salvadorean government.

Expanding cooperation or maintaining the status quo risks directly implicating Canada in this unlawful conduct. Yet the extent of Canada's security reliance on the United States — both at the border and more generally — narrows the field of possible responses (Wark 2025). Canadian efforts to uphold the rule of law will necessarily contend with this context of constrained sovereignty.

Constrained Sovereignty and the Rule of Law

The Safe Third Country Agreement

The STCA has always been controversial and has faced repeated legal challenges. Federal courts ruled the agreement unconstitutional in 2007 and 2020, citing risks of arbitrary detention, deportation to unsafe countries and torture. Yet both rulings were overturned on appeal (Gagnon, Mason and Chesoi 2023). In 2023, the Supreme Court re-affirmed that responsibility for determining whether the United States is a safe country remains a ministerial authority.[14] The court highlighted "safety valves" in the Immigration and Refugee Protection Act (IRPA) and its regulations including the power to defer removals, issue temporary residency permits, and grant humanitarian and compassionate exemptions (ibid.).[15] The ruling emphasized that administrative decisions in this context continue to merit "the most anxious scrutiny" under the Canadian Charter of Rights and Freedoms, leaving room for individual claims.[16] However, judicial reviews — which are expensive, time consuming and retrospective — provide narrow limits to ministerial discretion.

Canadian governments led by both the Conservative and Liberal parties have opted to uphold the STCA. In part, this is likely because the agreement is seen as shielding Canada from the impacts of harsh American immigration policies (Beazley 2025). During his first term, Trump's hardline immigration policies prompted tens of thousands of people to flee to Canada. They used a gap in the STCA, which allowed them to lodge a claim by crossing "irregularly" between ports of entry (Côté-Boucher, Vives and Jannard 2023). Liberal lawmakers extended the STCA in 2023 to close this gap, allowing

13 A full account of these controversies is outside the scope of this paper but see for example: House of Commons (2009); O'Connor (2006); *Canada (Prime Minister) v Khadr*, 2010 SCC 3, 1 SCR 44; *Charkaoui v Canada (Citizenship and Immigration)*, 2007 SCC 9, 1 SCR 350.

14 See *Canadian Council for Refugees v Canada (Citizenship and Immigration)*, 2023 SCC 17 [*Canadian Council for Refugees*], online: <https://canlii.ca/t/jxp04>.

15 See *Canadian Council for Refugees, supra* note 14; *Immigration and Refugee Protection Act*, SC 2001, c 27; Ministry of Justice (2025).

16 See *Canadian Council for Refugees, supra* note 14.

authorities to return asylum seekers who crossed irregularly from the United States (Gagnon, Mason and Chesoi 2023).

Despite well-justified humanitarian concerns, from a political perspective, it appears strategically impractical for Canada to unilaterally exit the STCA. Declaring America an unsafe country for asylum seekers, as some advocate (c.f. Canadian Council for Refugees 2025; Amnesty International 2025), would invite retaliation and increase American leverage. Indeed, the United States may choose to withdraw for exactly this reason (Beazley 2025). American leaders could conceivably direct people they deem undesirable to the Canadian border as a pressure tactic, mimicking Republican governors who sent busloads of asylum seekers to Democratic states critical of their hardline immigration policies (Haberman and Bender 2022). As of 2023, there were an estimated 13.7 million unauthorized immigrants in the United States — if just 2.9 percent of this population came to Canada, it would exceed official immigration targets across all permanent streams of entry for 2025 (Batalova 2025; Immigration, Refugees and Citizenship Canada 2024).

While some suggest concerns of a large influx are overblown (Beazley 2025), the political pressures caused by increased irregular migration during Trump's first administration, alongside the perception that Canada's immigration system has been mismanaged over the past decade, has eroded public support for high levels of immigration (Thompson 2025; Yousif and Murphy 2024). A sharp increase in newcomers, especially if perceived as outside the control of the Canadian government, risks further eroding public support for migration and thus Canada's capacity to protect vulnerable people.

Systematic Information Sharing

Compared to the STCA, Canada's systematic information sharing with the United States has received less attention. Some experts and advocates have raised privacy concerns (Bronskill 2017; Donovan 2025) and watchdog agencies have provided periodic scrutiny (Office of the Privacy Commissioner of Canada [OPC] 2006; National Security and Intelligence Review Agency [NSIRA] 2022). Yet information sharing has rarely escalated into public controversy.

One controversy erupted when media coverage revealed Canadians were being denied entry to the United States because the Royal Canadian Mounted Police (RCMP) was automatically sharing police records containing information about previous suicide attempts (Bridge 2011; CBC News 2014). Investigations by the Ontario and federal privacy commissioners led the RCMP to revise its policy (Information and Privacy Commissioner of Ontario 2016; OPC 2017). The OPC concluded the changes were insufficient but it lacks the power to issue binding orders (Department of Justice 2022). Despite its limited power, the privacy commissioner provides crucial oversight of cross-border information sharing.

Another partial safeguard is the Avoiding Complicity in Mistreatment by Foreign Entities Act (ACA).[17] The ACA requires national security agencies to restrict information sharing when there is a "substantial risk of mistreatment." The official "test of a substantial risk of mistreatment will be satisfied when it is more likely than not that there will be

17 See *Avoiding Complicity in Mistreatment by Foreign Entities Act*, SC 2019, c 13, s 49.1.

mistreatment; however, in some cases, particularly where the risk is of severe harm, the 'substantial risk' standard may be satisfied at a lower level of probability" (NSIRA 2024). Mistreatment is defined under the act in accordance with the 1984 Convention against Torture,[18] which includes provisions against deportation to countries with a pattern of gross human rights abuses (article 3) and any treatment deemed cruel, inhuman or degrading.

While NSIRA is responsible for reporting annually on the implementation of the ACA, proactive oversight is limited.[19] The responsibility for limiting high-risk disclosures is ultimately a ministerial authority, although cases rarely escalate to this level (ibid.). NSIRA findings indicate that working-level decision makers are often asked to interpret and apply thresholds without clear directions. Additionally, risk assessments are inconsistently applied across agencies and tend to underestimate risks of mistreatment (ibid.). Effective implementation of the ACA is thus potentially limited by the political will of elected officials and insufficiently rigorous government-wide standards.

As with exiting the STCA, halting reciprocal information sharing would invite American retaliation, including potential restrictions to intelligence and access to American security and law enforcement databases. Experts suggest the politicization of the American national security apparatus — including though ideological appointments and perceived purges of non-aligned officials — reduces the credibility and reliability of intelligence from US sources (Maher 2025; Meyn, Gangitano and Mitchell 2025). But the prospect of getting cut off will undoubtedly give elected officials pause before choosing to restrict access to Canadian information.

Canada remains reliant on American intelligence both at the border and in general (Wark 2025). Access to American information, databases and technical expertise supports Canada's border operations through improved identity verification and threat targeting.[20] Despite working for several years to better leverage internal data holdings and cultivate local expertise, recent reporting shows Canada still lacks sufficient capacity to collect and analyze border-related intelligence (CBSA 2020, 2024). This dynamic of reliance provides the American government with considerable leverage over Canada.

Toward an Autonomous Canadian Border

Canadian policy makers face a paradox of integration. Ongoing cooperation with the United States is increasingly at odds with Canada's democratic values. Continuing to share information and return asylum seekers to the United States risks breaching both domestic and international legal obligations. Yet Canada is constrained in its capacity to respond and defend the rule of law due to reliance on American intelligence and the risk of retaliation.

18 See *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984 (entered into force 26 June 1987), online: <www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>.

19 See *National Security and Intelligence Review Agency Act*, SC 2019, c 13, s 2 at 8(2.2).

20 See www.publicsafety.gc.ca/cnt/brdr-strtgs/bynd-th-brdr/ctn-pln-en.aspx.

The Trump administration has transformed a rapid series of controversial actions into a global spectacle. While it is tempting to publicly condemn perceived injustices unfolding in the United States, it would be unwise for Canada to make a show of withdrawing from border cooperation. American retaliation could involve restricting access to critical intelligence and exposing Canada to national security risks. Or it could involve the weaponization of migration to undermine public support for an independent, rights-respecting Canadian immigration and border policy.

Instead, Canada should pursue a deliberate and measured strategy. Rather than contributing to the spectacle by publicly declaring America an unsafe country for immigrants and an unreliable intelligence partner, an approach rooted in bureaucratic due diligence and procedural oversight may mitigate some risk of retaliation through a relative lack of narrative appeal. While Canada cannot control the actions of the American administration, the following recommendations could extend safeguards to defend the rule of law and protect the most vulnerable individuals while defending against further escalation.

Key Findings and Recommendations

Finding 1: Reciprocal information sharing exposes the Canadian government to the risk of violating domestic and international law.

Recommendation 1: Delay all negotiations on expanding information sharing with the United States pending a comprehensive review of Canada's existing information-sharing obligations.

- Request the National Security and Intelligence Committee of Parliamentarians conduct a comprehensive review of immigration- and border- related information-sharing agreements between Canada and the United States.
- The study should examine the risks associated with ongoing information sharing; the legality of ongoing information sharing; the standards of scrutiny merited from American sources; and the extent to which ongoing information sharing remains in the interests of Canada.

Finding 2: Canada relies on access to American intelligence, which constrains Canada's capacity to act independently.

Recommendation 2: Increase domestic intelligence capacity and build on existing multilateral alliances.

- Invest in domestic border intelligence capacity by allocating resources from the CDN$1.3 billion dollars committed to border security to targeted intelligence hiring initiatives and accelerating existing data strategy priorities.
- Coordinate with the United Kingdom, Australia and New Zealand at the ministerial and working levels to identify and coordinate policy alignments and advance a

shared commitment to defending the rule of law in ongoing immigration and security-related information sharing.

- Open discussions about extending existing information and intelligence sharing for immigration and border security with the European Union.

Finding 3: The risk of targeted retaliation discourages elected officials from using their discretionary power to protect vulnerable people.

Recommendation 3: Study mechanisms for extending quasi-judicial oversight as a check and balance to ministerial discretion exercised under the IRPA and ACA.

- Direct the Standing Committee on Citizenship and Immigration to explore and assess possible mechanisms for introducing binding independent oversight of designations and renewals of Safe Third Country status under the IRPA.
- Direct the Standing Committee on Public Safety and National Security to explore and assess possible mechanisms for introducing independent oversight of high-risk information-sharing decisions under the ACA.

Finding 4: Cancelling the STCA or information-sharing agreements outright may escalate tensions with the United States counter to Canadian interests.

Recommendation 4: Invoke regulatory "safety valves" to protect individuals at risk.

- The minister of public safety should direct organizations with obligations under the ACA to establish or revise a government-wide standardized country risk profile for the United States specifying circumstances under which information may or may not be shared with the United States.
- The country risk profile should identify populations at heightened risk of persecution or mistreatment by American authorities or their proxies.
- The minister of immigration should invoke powers under the IRPA to stay removals of at-risk individuals to the United States under the STCA and enable specific populations targeted by the Trump administration to claim asylum in Canada.

About the Author

Jamie Duncan is a former Digital Policy Hub doctoral fellow, a Ph.D. candidate at the University of Toronto's Centre for Criminology and Sociolegal Studies and an affiliate of the Schwartz Reisman Institute for Technology and Society. Jamie is an interdisciplinary social scientist studying information policy, technology governance and security. His work has appeared in academic journals such as *The British Journal of Criminology* and *Internet Policy Review*, as well as popular outlets such as *The Globe and Mail*. Jamie's doctoral research investigates the role of technology adoption in deepening international cooperation on border security among the Five Eyes partners (Australia, Canada, New Zealand, the United Kingdom and the United States).

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