

## **Comments on the Preclearance Act, 2016**

by

**Canadian Unitarians for Social Justice<sup>1</sup>**

2017-03-09

### **Background**

At present, the US Customs and Border Protection (USCBP) operates preclearance areas for US bound travellers at eight Canadian airports. The Canadian government is intent on increasing the number of US preclearance operations in Canada, and extending them from their present use at airports to include rail and cruise ship terminals, because of the anticipated economic benefits. There is also talk of establishing Canada Border Services Agency (CBSA) preclearance areas in the US but no concrete proposals have been published.

The existing preclearance areas operate under the authority of Canada's Preclearance Act, adopted in 1999. It provides the Canadian legislative basis for the 2001 Agreement on Air Transport Preclearance between the governments of Canada and the U.S.A.<sup>2</sup> Although that Agreement only covers air transport, the Preclearance Act 1999 allows the Minister to designate preclearance areas at will and does not limit them to airports.

Although there are no Canadian CBSA preclearance areas in the US at present, US legislation in the US Code Titles 8 and 19 would enable them:

- Title 8 paragraph 1103(a)(8-9) empowers the US Secretary of Homeland Security to “authorize officers of a foreign country to be stationed at preclearance facilities in the United States ... Those officers may exercise such authority and perform such duties ... and they shall enjoy such reasonable privileges and immunities ... as the government of their country extends to United States immigration officers”.<sup>3</sup>
- Title 19 paragraph 1629(e) empowers the US Secretary of State to “enter into agreements with any foreign country authorizing the stationing in the United States of customs and agriculture inspection officials of that country ... [they] may exercise such functions, perform such duties, and enjoy such

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1 Website cusj.org . President Margaret Rao <[president@cusj.org](mailto:president@cusj.org)>.

Regarding this submission contact Jack Dodds <[brmdamon@hushmail.com](mailto:brmdamon@hushmail.com)> 905-727-4097.

2 2001-01-18. Agreement on Air Transport Preclearance Between the Government of Canada and the Government of the United States of America. <http://www.treaty-accord.gc.ca/text-texte.aspx?id=103842> accessed 2017-03-02.

3 <http://uscode.house.gov/view.xhtml?req=%28title:8%20section:1103%20edition:prelim%29%20OR%20%28granuleid:USC-prelim-title8-section1103%29&f=treesort&edition=prelim&num=0&jumpTo=true> accessed 2017-03-02.

privileges and immunities as United States officials may be authorized to perform or are afforded in that foreign country ... .”<sup>4</sup>

These appear to be the most relevant paragraphs; there may be others. They allow the US administration to give CBSA agents in the US the same powers that the Preclearance Act 1999 gives to USCBP agents in Canada without further legislation. Take note that there is no obligation on the part of the US administration to create a preclearance area in response to a Canadian request.

(The Promoting Travel, Commerce, and National Security Act, US Public Law 114-316, was signed by President Barack Obama on 2016-12-16. It had been adopted by Congress earlier that month.<sup>5</sup> This was celebrated by newspapers<sup>6,7</sup> and politicians as the US legislation that reciprocates the proposed Preclearance Act 2016. This is incorrect. The only effect of Public Law 114-316 is to allow extraterritorial prosecution of USCBP agents in preclearance areas in Canada for actions that would be offences if committed in the US. The power to reciprocate C-23 by allowing Canadian preclearance areas in the US already existed as outlined above.)

The Preclearance Act 1999 does not give CBSA agents at preclearance areas in the US any authority under Canadian law. Legal analysis is needed to determine if such agents would need additional Canadian legislation, such as Part 2 of C-23, to perform effectively. These comments focus only on USCBP preclearance areas in Canada.

There are existing immigration preclearance facilities in Victoria and Sidney, B.C. for ferries and hovercraft. It is not clear to us whether these operate under the authority of the Preclearance Act 1999 or if they are some kind of informal arrangement. It appears that there are no preclearance facilities for freight.

In summary, the existing Preclearance Act 1999 allows the Canadian government to increase the number of USCBP preclearance areas in Canada and to extend them to other modes of transportation including railways and cruise ships; while the existing US legislation allows the US government to reciprocate by authorizing the establishment of CBSA preclearance areas in the US.

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4 <http://uscode.house.gov/view.xhtml?req=%28title:19%20section:1629%20edition:prelim%29%20OR%20%28granuleid:USC-prelim-title19-section1629%29&f=treesort&edition=prelim&num=0&jumpTo=true> accessed 2017-03-02.

5 U.S. Congress. 2016. H.R.6431 - Promoting Travel, Commerce, and National Security Act of 2016. <https://www.congress.gov/bill/114th-congress/house-bill/6431> accessed 2017-03-02.

6 Globe and Mail. 2016-12-10. U.S. Congress passes bill to enact long-awaited reforms for Canada-U.S. border. Globe and Mail. <http://www.theglobeandmail.com/news/world/us-congress-passes-canadian-border-bill-to-enact-long-awaited-reforms/article33293468/> accessed 2017-03-02.

7 Globe and Mail. 2016-12-13. Rejoice! Congress just gave the green light to a smarter Canada-U.S. border. <http://www.theglobeandmail.com/opinion/editorials/rejoice-congress-just-gave-the-green-light-to-a-smarter-canada-us-border/article33316285/> accessed 2017-03-02.

The proposed Preclearance Act 2016 adds to the powers and immunities of USCBP agents in preclearance areas in Canada, as we will show. Its proponents state the changes are a prerequisite to opening new preclearance areas in Canada, at some rail and cruise ship terminals. It is claimed that this will generate substantial economic benefits, and that it will benefit human rights by increasing the number of travellers who will be precleared by USCBP agents while under the protection of Canadian legislation. Yet the desired increase in the use of preclearance could be accomplished using the existing 1999 Act and existing US legislation.

Given these questions about the necessity of the Preclearance Act 2016, it is important to look beyond its anticipated economic benefits to its overall effect on Canadians.

### **Canadian society is peaceful because the democratic vision is honoured**

Canadians are held together by a number of defining ideas. The most important of these is the idea that Canada is a democracy. This does not refer just to our machinery of elections and government. In the democratic vision, power is vested in the people. There is equality of rights and privileges between people and between each person and the government. When people come into conflict with the government, they have access to impartial judges and juries and appear before them on an equal footing with their governmental adversaries. The relationship of equality between people and government is crucial to the legitimacy of government power.

The equality that is central to the democratic vision is rooted in the tradition of the Golden Rule, that enjoins us to treat others as one would wish to be treated oneself, which appears in different forms in many religions and ethical traditions.<sup>8</sup> This ethical principle, and the human rights that flow from it, apply to all people and all governments in all circumstances. As ethical principles they are not limited or neutralized at national borders or when governments have dealings with non-citizens. The 1951 Convention Relating to the Status of Refugees, with 144 state signatories, makes it clear that even stateless persons have legally binding human rights regardless of where they are located.<sup>9</sup>

Evidence from the social sciences shows that “people comply with the law not so much because they fear punishment as because they feel that legal authorities are legitimate and that their actions are generally fair”. The perception of legitimacy

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8 Wikipedia. 2017. Golden Rule. [https://en.wikipedia.org/wiki/Golden\\_Rule](https://en.wikipedia.org/wiki/Golden_Rule) accessed 2016-12-02.

9 Wikipedia. 2017. Convention Relating to the Status of Refugees. [https://en.wikipedia.org/wiki/Convention\\_Relating\\_to\\_the\\_Status\\_of\\_Refugees](https://en.wikipedia.org/wiki/Convention_Relating_to_the_Status_of_Refugees) accessed 2017-03-03.

depends in part on whether law enforcement officers treat people with proper respect as human beings, each with his or her own needs for dignity, privacy, and so on. Our submission on Canada's National Security Framework supports this analysis in more detail.<sup>10</sup> It demonstrates that honouring the democratic vision is not only the right thing to do, it also fosters a society that is peaceful and that allows people to fulfil their greatest potential.

When considering measures related to law enforcement and security, legislators must consider the overall long term effect on Canadian society. To be effective, it is not enough that they, for example, make travel more efficient or produce economic benefits. It is crucial that those measures be fair, moral, and respectful to every person so that they foster voluntary compliance with the law. The perceived legitimacy of government, though intangible, is ultimately what has created an enviable level of peace and safety in Canadian society.

The Preclearance Act 2016 gives new powers to USCBP agents in Canada. To maintain the relationship between government and people in Canada, it is essential to determine the effect that the new powers will have on Canadian travellers. What assurances are there that they will be treated justly and respectfully?

Citizens rightly expect their government to support them, should they find themselves in conflict with a foreign government. In the case of citizens who are in a foreign country, this support is enabled by treaties, for example the Vienna Convention on Consular Relations<sup>11</sup>. Consular assistance may include providing advice and contact information for local police to citizens who are victims of crime while abroad, or visits and assistance in contacting local lawyers to those who are detained by authorities abroad. Most of us would agree that, regardless of guilt or innocence, it may be particularly difficult for a citizen to obtain justice when dealing with a foreign government and that such assistance is appropriate.

For example, the USCBP has the authority to refuse entry to a traveller or goods for any reason or no reason regardless of Canadian law. The proper role of the Canadian government is to support its citizens in their dealings with USCBP. This is particularly true when cultural differences may make misunderstanding and disrespect on the part of USCBP more likely. Substantial cultural differences exist between Canadian and US society and between their respective border control agencies, as documented below. Our safe and peaceful society presupposes legitimate government, making it imperative that the CBSA be seen as supporting

10 Canadian Unitarians for Social Justice. 2016-12-14. Submission to the Public Safety Canada Consultation on National Security.  
<https://cyberspirit.dyndns.org/CUSJ/NationalSecurityConsultation2016-12-14Submitted.pdf>  
accessed 2017-03-07.

11 Vienna Convention on Consular Relations. 1963-04-24.  
[http://legal.un.org/ilc/texts/instruments/english/conventions/9\\_2\\_1963.pdf](http://legal.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf) accessed 2017-03-02.

Canadians in interactions with USCBP and that CBSA agents avoid the role of accomplices to USCBP. To this end, the new powers given under the Preclearance Act 2016 must be clearly understood.

### **Powers of USCBP agents under the existing Preclearance Act 1999**

Existing preclearance areas operate under the authority of the 1999 Act. These general statements are drawn from the more complex language of the Act itself.

- A USCBP agent in Canada may refuse to preclear travellers or goods for any reason at all or for no reason. This includes ordering anyone to leave a preclearance area.
- A USCBP agent may conduct a frisk search of a traveller, or may detain a traveller for a strip search, if the agent has a reasonable suspicion that a the traveller is carrying anything that would present a danger to human life or safety or anything that would provide evidence that the traveller has made a false or misleading statement to the agent. In the case of a strip search, the USCBP agent must request a Canadian officer of the same sex as the traveller to perform the search and the Canadian officer must share the reasonable suspicion.
- A USCBP agent may detain a traveller if the agent has a reasonable belief that the traveller has committed an indictable or summary offence or has made a false or deceptive statement to the agent.
- If a USCBP agent detains a traveller the agent must in every case deliver the traveller to a Canadian officer “without delay” or “as soon as possible”.
- At any stage in the preclearance a traveller has the right to leave the preclearance area unless the USCBP agent has a reasonable suspicion that the traveller has made a false or deceptive statement to the agent. (It seems logical that this right does not exist if the traveller has been detained, but this is not clearly stated.) The traveller is not required to answer any question. Refusal to answer questions is not by itself grounds for reasonable suspicion.
- An agent is authorized to use as much force as is necessary but is only authorized to use lethal force if necessary to protect himself or others from death or grievous harm.
- The agent is subject to Canadian criminal law, including firearms laws, but is immune from civil actions.

## **Powers of USCBP agents under the proposed Preclearance Act 2016**

These general statements are drawn from the 2016 Act, with emphasis on changes from the 1999 Act.

- The grounds for a USCBP agent to perform a frisk search, or to detain for a strip search, are broadened to include reasonable suspicion that the traveller has concealed goods on their person. The requirement that those goods be evidence of a false or misleading statement is replaced by a reasonable suspicion that “the search is necessary for the purposes of preclearance”. There is no requirement that the goods be contraband. “Goods” includes “any document in any form”. The agent is permitted to actually conduct the strip search if a CBSA officer is unavailable or declines to conduct the search. This effectively eliminates the requirement that the CBSA must concur in the reasonable suspicion.
- Powers to detain for additional types of invasive searches are added: the “supervised bowel movement”, “body cavity search”, and “x-ray search”. [I watched Minister Frank Goodale's presentation at the second reading of C-23 on 2017-02-21. I was curious to see if he would have the fortitude to argue for the need to compel “supervised bowel movements” to the House of Commons. He did not.]
- Restrictions are placed on the right to withdraw from preclearance. A person who has been detained does not have the right to withdraw. A person who withdraws is required to produce identification and to answer truthfully any question for the purpose of identifying them or determining their reason for withdrawing. It is stated that this must not “unreasonably” delay the traveller's withdrawal, but the basis for determining reasonableness is unstated. The prohibition against basing reasonable suspicion on a refusal to answer questions has been removed. The traveller's identification may be copied, their photograph taken, and their “conveyance” searched.

Together the above provisions put the agent in a position to detain a traveller and perform an invasive search if they refuse to answer any question.

- A USCBP agent is immune from the Firearms Act when possessing, transferring, importing or exporting a firearm (including prohibited or restricted firearms and ammunition) for the purpose of their duties or employment.
- The US government can claim criminal jurisdiction over actions of a USCBP agent in Canada. Canada is then obliged to stay proceedings against the

USCBP agent and can only recommence them if the US does not prosecute and the agent has returned to Canada. This gives the US government the power to make a USCBP agent immune from Canadian criminal law.

### **What is the government's reason for enacting the Preclearance Act 2016?**

The government has stated its objective of increasing the number of preclearance areas including some at rail and cruise ship terminals in Canada. Yet this could have been done using the existing 1999 Act and existing US legislation. Although the government has been repeatedly pressed in House of Commons debates to explain the need for new legislation, it has not done so. The existing legislation has been touted by the government as highly successful, which makes the need for new legislation even more of a mystery. This leaves speculation as the only means by which this question can be addressed.

Possibly the US government has demanded more power and immunity for its agents as a quid pro quo for allowing more preclearance areas in Canada and approving Canadian preclearance areas in the US.

If this is the case, it begs the question, why does the US government want its agents to have more power and immunity? One possibility is that it wants to extend its ability to capture and prosecute wrongdoers outside its own territory. That is, if one of its agents suspects that a traveller is a drug “mule” or a terrorist, it wants to go beyond simply denying them entry to the US to ensure that the person is arrested in Canada. This would help explain the bizarre emphasis on supervised bowel movements, body cavity searches, x-ray searches, and compelled questioning of people who wish to withdraw from a search. Unfortunately this objective goes beyond the fundamental purpose of preclearance, which is to control entry of goods and people into the US, and infringes on the role of Canadian law enforcement, especially considering that possession of illegal drugs and conspiracy to commit terrorist acts are violations of Canadian law in their own right.

Some US proponents of preclearance, like Senator Patrick Leahy of Vermont, appear to genuinely believe, like the Canadian government, that it will provide economic benefits to their states. Yet, other more powerful legislators explicitly advocate preclearance primarily as a way for the USCBP to capture terrorists before they reach US soil. Viewed in that light, the power to detain and compel answers to questions on mere suspicion makes sense. So does the wish to carry firearms.

Possibly the Canadian government want to economize by reducing the Canadian staff required to support USCBP agents in Canada. This also could reduce the cost

of Canadian preclearance areas in the US because the CBSA agents would get reciprocal powers allowing them to operate in the US with minimal USCBP support. (US legislation requires that the US government recover its preclearance operations expenses from users.)

Possibly the government wants to be seen as aggressively advancing the economic benefits of the 2015 agreement on preclearance between the former Conservative and Democratic governments.<sup>12</sup> To do that it would be obliged to accept the terms of that agreement.

### **The impact of the Preclearance Act 2016 on legitimacy of government**

The government has argued that the Preclearance Act 2016 will result in more travellers to the US being precleared in Canada where the Charter of Rights and other human rights legislation will be followed, rather than in the US where this legislation does not apply. Yet the Act provides no assurance that this will be the case. It contains what amounts to a toothless admonition to comply with Canadian human rights legislation. It provides no assurance that USCBP agents will receive any training regarding the differences between US and Canadian culture, nor does it mandate any mechanism by which USCBP agents can be held accountable for human rights violations.

There are substantial differences between US and Canadian national culture as well as the institutional culture of the agencies charged with administering law at the border. Divergences in our national cultures include capital punishment, which is still used in 31 out of 50 US states, whereas Canada abolished it in 1976; the current fear of Syrian refugees in the US, whereas they are accepted in Canada; the ongoing US resistance to same-sex marriage (despite it having been validated by the Supreme Court in 2015) whereas it was accepted in Canada between 2001 and 2005; the fact that ordinary people carry handguns in the US, while guns are relatively scarce in Canada; the ongoing US controversy about universal health care—something in place since 1966 in Canada; and so on. There is considerable overlap between the two countries in the range of public opinion on many of these issues, but clear differences exist. All the differences listed have some connection to different concepts human rights.

This is particularly relevant to border agents, who are encouraged to use intuition in assessing the travellers who appear before them. The repeated use of the term “reasonable suspicion” in both the 1999 and 2016 Acts is evidence of this. Intuition

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12 2015-03-16. Agreement on Land, Rail, Marine, and Air Transport Preclearance between the Government of Canada and the Government of the United States of America. <https://cyberspirit.dyndns.org/CUSJ/AgreementOnPreclearance2015.pdf> accessed 2017-03-08.

has had some notable successes, but it can be a conduit for unconscious prejudice<sup>13</sup>, reducing its effectiveness and creating a system in which law abiding people are not treated with respect. A mismatch between the culture of the agent and the traveller increases the probability of this disrespect.

If the USCBP agents are allowed to detain and perform invasive searches of travellers, instead of the CBSA, difference in national cultures makes disrespect and excessive use of force likely and accountability unlikely. In stepping aside to allow the USCBP agents to do as they will, the Canadian government is compromising its own legitimacy. This affects peoples' inclination to comply voluntarily with the law, thereby damaging Canadian democracy.

Concerns of this kind, combined with the recent US travel ban against some majority Muslim states, may explain why the Netherlands terminated discussions with the US about extending preclearance to its Schiphol airport on 2017-02-02, while the Irish government is reported to be reviewing the existing preclearance operation at Dublin airport.<sup>14</sup>

### **USCBP institutional culture and accountability**

An indication of the difference in institutional cultures between the USCBP and the CBSA can be seen in the way that each presents its mission to the public on the “About” page of its website. The USCBP states under “About USCBP”,

With more than 60,000 employees, U.S. Customs and Border Protection, CBP, is one of the world's largest law enforcement organizations and is charged with keeping terrorists and their weapons out of the U.S. while facilitating lawful international travel and trade. ...<sup>15</sup>

In contrast, The CBSA states, under “About Us”,

The Canada Border Services Agency (CBSA) ensures Canada's security and prosperity by facilitating and overseeing international travel and trade across Canada's border. ...<sup>16</sup>

The agents of USCBP echo the mood of its mission statement in their union's endorsement of the President: “There is no greater physical or economic threat to

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13 Bruce Schneier. 2004. Behavioral Assessment Profiling. [https://www.schneier.com/blog/archives/2004/11/profile\\_hinky.html](https://www.schneier.com/blog/archives/2004/11/profile_hinky.html) accessed 2017-03-01.

14 CBC News. 2017-02-03. Canada looking at legality of enforcing Trump travel ban on Canadian soil <http://www.cbc.ca/news/politics/pre-clearance-trump-ban-1.3965666>. Accessed 2017-03-02.

15 About CBP. <https://www.cbp.gov/about> accessed 2017-03-02.

16 About the Canada Border Services Agency. <http://www.cbsa-asfc.gc.ca/agency-agence/menu-eng.html> accessed 2017-03-02.

Americans today than our open border. ... [the union] asks the American people to support Mr. Trump in his mission to finally secure the border of the United States of America, before it is too late.”<sup>17</sup> The exaggerated emphasis on external threats in the USCBP statements is being validated from the highest levels of the US administration. It expresses a siege mentality that provides a ready motive and excuse for disrespect and abuse.

More alarming evidence of the institutional culture of the USCBP is the history of violence on the US-Mexican border coupled with the inadequate institutional response to it. Many people have been killed on that border. “Of the 50 individuals killed since 2010, 19 were US citizens and six were people standing on Mexican soil — including three teenagers — when shot and killed by Border Patrol agents standing in the United States. No agent has been held accountable since January 2010 in any of the on-duty deaths caused by excessive force. In only one case, an agent is currently facing federal charges of homicide in Arizona for shooting a teenager in Mexico in the back at least 10 times.”<sup>18</sup>

The USCBP official who was charged with investigating such incidents was removed from his position in 2014. He subsequently went public with allegations that “at least a quarter of the 28 fatalities at the hands of US Customs and Border Protection agents and officers since 2010 were 'highly suspect' and officials have distorted facts to try to hide any missteps”. He also alleged that there is widespread corruption in the USCBP which impedes change.<sup>19</sup> An independent investigation of “use of force” commissioned by the USCBP found, “some cases seemed to be a clear cut self-defense reaction to close and serious rock threats or assaults, while other shootings were of more questionable justification.” The report recommended “officers/agents should be prohibited from using deadly force against subjects throwing objects not capable of causing serious physical injury or death to them.”<sup>20</sup> Strangely, this report did not mention fatalities even though they are known to have occurred. In that sense it corroborates both the allegations of

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17 National Border Patrol Council. 2016. National Border Patrol Council Endorses Donald Trump for President. <http://www.bpunion.org/index.php/newsroom/press-releases/1824-national-border-patrol-council-endorses-donald-trump-for-president> accessed 2017-03-07.

18 Vicki B. Gaubeca. 2017-01-06. Trump’s Pick for Homeland Security Secretary Is Inheriting a Border Agency Known for Human Rights Abuses. American Civil Liberties Union. <https://www.aclu.org/blog/washington-markup/trumps-pick-homeland-security-secretary-inheriting-border-agency-known-human> accessed 2017-03-01.

19 Andrew Becker. 2014-08-16. Border agency’s former watchdog says officials impeded his efforts. Washington Post. [https://www.washingtonpost.com/politics/border-agencys-former-watchdog-says-officials-impeded-his-efforts/2014/08/16/ce143288-2304-11e4-8593-da634b334390\\_story.html?utm\\_term=.b63d0c9ea97f](https://www.washingtonpost.com/politics/border-agencys-former-watchdog-says-officials-impeded-his-efforts/2014/08/16/ce143288-2304-11e4-8593-da634b334390_story.html?utm_term=.b63d0c9ea97f) accessed 2017-03-01.

20 Police Executive Review Forum. 2013. U.S. Customs And Border Protection - Use Of Force Review: Cases And Policies. <https://www.cbp.gov/sites/default/files/documents/PERFReport.pdf> accessed 2017-03-01.

excessive use of lethal force and the allegation that the USCBP has failed to come to grips with it in a forthright manner.

CBSA has itself been the subject of controversy because 13 people have died while in its custody since 2000, but its agents do not appear to have been responsible for unjustified lethal use of firearms at the border. In fact sidearms were only recently introduced to the CBSA, between 2007 and 2016.<sup>21</sup> USCBP has had them for decades.

Minister Goodale has argued :

With respect to Bill C-23 itself, ... by having the arrangement in place, it would mean that more and more Canadians would go through the process of clearing American customs and immigration procedures while they are still in Canada, before they cross the border. Therefore, being in Canada, they would have the protection of Canadian law, including the Charter of Rights and Freedoms.<sup>22</sup>

This argument does not survive scrutiny. The fact that the legislation cites Canadian human rights law does mean that the law will be honoured. There is nothing in the legislation that will prevent a USCBP agent from asking any questions and reaching any conclusions in preclearance that they would ask or make at a port within the US. It is a given that the US has absolute power to determine who may enter their territory. Furthermore, the 2016 Act gives USCBP agents the power to demand invasive searches, in some cases without involving a CBSA agent. There is no requirement in the Act for appropriate training of USCBP agents nor is there a robust mechanism for accountability if Canadian law is violated. If the actions of a USCBP agent reach the level of a criminal act, the US government has the power to assert jurisdiction and prevent Canada from prosecuting. The USCBP has resisted holding its agents accountable for homicides at the Mexican border. The probability is extremely remote that a USCSBP agent will be held accountable by the US for (to pick a possible example) an unjustified strip search.

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21 Wikipedia. 2017. Canada Border Services Agency.  
[https://en.wikipedia.org/wiki/Canada\\_Border\\_Services\\_Agency](https://en.wikipedia.org/wiki/Canada_Border_Services_Agency) accessed 2017-03-01.

22 Ralph Goodale. 2017-02-21. in House of Commons Debates. Hansard (time 16:30).

## **Recommendations**

We recommend that the following principles be formally accepted by the government:

- USCBP agents should be authorized to work in preclearance areas only when a CSBA agent or Canadian peace officer is nearby and available to assist, regardless of cost considerations.
- No person should be required to answer any question posed by a USCBP agent. If a person refuses to answer a question the USCBP agent may refuse preclearance and require them to leave the preclearance area.
- A person's refusal to answer any question should not be grounds for "reasonable suspicion".
- A person who has not been detained should be permitted to leave the preclearance area without departing for the US at any stage of the preclearance process.
- When a USCBP agent detains a person in a preclearance area for any reason, that person should be delivered to a CBSA agent or a Canadian peace officer "without delay".
- When a detained person is delivered by a USCBP agent, the CBSA agent or Canadian peace officer should immediately and independently assess the grounds for detention in order to determine if it is justified under Canadian law. If not, the person should be released.
- A strip search or other invasive search other than a frisk search should, without exception, be performed by a CBSA agent or a "suitable" Canadian person authorized by a CBSA agent. The person conducting the search should be person of the same sex as the traveller. The criteria for "suitability" should be defined by regulation.
- CSBA and USCBP should be required to annually publish statistics for each preclearance area on the number of persons respectively who were precleared, who were refused entry to the US and who withdrew from the preclearance process; and the number of searches of each type conducted at each preclearance area.
- USCBP agents in Canada should not be permitted to carry firearms.
- A USCBP agent who commits a crime committed in Canada should be prosecuted in Canada unless the Canadian government (not the US) decides to cede jurisdiction for such a crime to the US

## Canadian Unitarians for Social Justice

Present day Unitarian-Universalism has its historic roots in the Christian churches of the Protestant reformation in 16th century Europe and of 18th century America. In the present day, it is a non-creedal faith which embraces a wide range of beliefs; significant numbers of members espouse humanist, Christian, agnostic, atheist and other beliefs. With no prescribed doctrine, members are bound together by a number of principles, including one that each person will engage in a “free and responsible search for truth and meaning”. Unitarian-Universalists generally agree spiritual values are relevant to the everyday world; that spiritual values of their faiths and others demand that each person should promote the well-being of other people; and that a free society is necessary in order for full spiritual development to occur. Unitarian-Universalists generally agree to “affirm and promote the right of conscience and the use of the democratic process within our congregations and in society at large.” In Canada today there are 48 recognized Unitarian-Universalist congregations from coast to coast.

Unitarian-Universalist congregations have a history of involvement with human rights and social justice issues. This includes diverse actions, from performing the first same-sex marriages in several Canadian provinces<sup>23</sup>, to sponsoring 172 Syrian refugees (as of 2017-02) with 176 more in progress<sup>24</sup>

Canadian Unitarians for Social Justice (CUSJ) is a federally incorporated national non-profit organization. Among its purposes are to provide opportunities for Unitarian-Universalists and others to apply their religious, humanistic, and spiritual values to social action. CUSJ is not a registered charity and is able to speak freely on legislative issues.

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23 Wikipedia. 2017. Unitarian Universalism and LGBT people.  
[https://en.wikipedia.org/wiki/Unitarian\\_Universalism\\_and\\_LGBT\\_people](https://en.wikipedia.org/wiki/Unitarian_Universalism_and_LGBT_people) accessed 2017-03-07.

24 Canadian Unitarian Council. 2017-03. How CUC Was of Value To the World in 2016.  
<http://us2.campaign-archive1.com/?u=14cdbcb20d193a5636bf18bdd&id=8ad2817b45> accessed 2017-03-07.