

Border Enforcement and Criminal Law: How States Regulate Unauthorized Entry. A Comparative Analysis of Canada, the United States, and International Legal Standards-2026

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ABSTRACT

Border enforcement sits at the intersection of immigration law, criminal law, and international human rights obligations. States differ in how they treat unauthorized entry: some criminalize it, while others treat it mainly as a civil immigration issue. These choices show deeper legal and political values about sovereignty, punishment, and humanitarian protection. This paper compares Canada and the United States and assesses their approaches against international legal standards, especially the 1951 Refugee Convention and the UN Smuggling Protocol. The United States criminalizes unauthorized entry under 8 U.S.C. §§ 1325 and 1326, thereby leading to widespread federal prosecutions. Contrastingly, Canada, mainly treats unauthorized entry as an administrative immigration matter under the Immigration and Refugee Protection Act (IRPA), reserving criminal law for serious offences such as human smuggling. The paper finds that the U.S. model relies more on criminal prosecution, and raises concerns about proportionality, due process, and consistency with international refugee protection. However, Canada's system is more aligned with international standards but still faces enforcement and administrative challenges. Hence, the paper concludes that criminalizing entry is a policy choice rather than a legal necessity and suggests reform toward more proportionate and rights-based enforcement systems.

Keywords: Border enforcement, unauthorized entry, immigration law, criminal law, IRPA, 8 U.S.C. § 1325, 8 U.S.C. § 1326, crimmigration, Refugee Convention, comparative law

INTRODUCTION

Borders are legal, administrative, and political constructs designed to regulate movement between states. Yet they are also sites of intense legal conflict when individuals arrive without lawful authorization. How states respond to unauthorized entry shows fundamental choices about sovereignty, security, human rights, and international legal obligations (Chacón, 2024; Hathaway, 2022). The systems of border governance in Canada and the United States exemplify two different models in contemporary migration control, both shaped by legal history, political context, and international pressures.

In the United States, unauthorized entry has long been treated not only as an immigration issue but also as a federal crime. Under 8 U.S.C. § 1325, entering or attempting to enter the country at any place other than a designated port of entry is a legal offense, and under 8 U.S.C. § 1326, reentry after removal is a felony. Together, these provisions have made immigration-related crimes among the most frequently prosecuted categories in the federal system, and accounting for more than half of federal criminal prosecutions at high-demand periods (TRAC Reports, 2025). Additionally, in 2025, filings under § 1325 alone nearly doubled within a single month, reflecting intensified enforcement priorities under the sitting administration (TRAC Reports, 2025; American Immigration Council, 2026).

This criminalized model subjects individuals to dual legal exposure: one civil removal process through the Department of Homeland Security (DHS) and, concurrently, a federal criminal prosecution through the Department of Justice (DOJ). The coexistence of these tracks creates systemic pressure on courts, immigration authorities, and non-citizens themselves. Critics argue that this model prioritizes punishment over adjudication and that mass prosecutions such as those conducted through initiatives like Operation Streamline, undermine major principles of due process (Meissner and Kerwin, 2024; Urban Institute, 2025).

Conversely, Canada's approach, in contrast, treats unauthorized entry principally as a civil immigration violation. The Immigration and Refugee Protection Act (IRPA) sets out procedures for admissibility assessment, removal, and refugee determination without automatically criminalizing the mode of arrival (IRPA, SC 2001, c. 27). Criminal sanctions are reserved for organized human smuggling and serious criminality rather than the act of entry itself. This reflects a legal philosophy that differentiates administrative immigration enforcement from criminal punishment (Hyndman and Mountz, 2023).

Despite this structural difference, Canada's border system is also under pressure. Recent CBSA data indicate tens of thousands of inadmissibility findings and removals at land ports of entry, coupled with significant increases in enforcement staffing and operational activity (CBSA, 2025). Administrative backlogs, rising cross-border irregular migration, and political calls for stricter enforcement mirror challenges seen in the United States, though within a different legal framework.

Both systems must also contend with international legal obligations. For instance, the 1951 Refugee Convention and its 1967 Protocol, to which both states are parties, prohibit penalizing refugees for unauthorized entry when they present themselves promptly to authorities and demonstrate valid grounds for protection (UNHCR, 1951). The UN Protocol Against the Smuggling of Migrants similarly clarifies that the act of being smuggled should not itself trigger criminal liability for the migrant (UN Smuggling Protocol, 2000). Therefore, tensions between domestic enforcement practices and these international standards are evident in both jurisdictions (Maurer, 2025).

Furthermore, these intersecting pressures legal, political, administrative, and humanitarian demonstrates that border governance is not merely a regulatory function but a complex system under strain. Hence, Canada and the United States offer comparative insights into how different legal traditions manage similar pressures: one through a predominantly administrative regime with limited use of criminal law, and the other through a system where criminal prosecution is central to border enforcement. Understanding these models requires an examination of not only statutory texts and institutional frameworks, but also how they operate in practice within broader international and constitutional contexts.

In this comparative analysis, the present review explores four important themes: the legal characterizations of unauthorized entry; institutional and procedural mechanisms of enforcement; the impact on due process and constitutional rights; and compliance with international legal standards. By focusing on these themes, the study seeks to clarify where current frameworks succeed, where they fail, and what reform might look like in each system.

International Legal Framework

Border enforcement does not occur in a legal loophole. States exercise sovereignty at their borders, but that authority is restrained by international law, including human rights instruments and refugee safety regulations. These international legal standards shape how states may regulate unauthorized entry, protect refugees, and distinguish between the criminal punishment of smugglers and the treatment of migrants themselves. Yet, as border pressures rise from global displacement and political struggle, tensions between domestic enforcement practices and international legal duties have intensified.

The Refugee Convention and Unauthorized Entry

The 1951 Convention Relating to the Status of Refugees (Refugee Convention) and its 1967 Protocol make up

the foundation of international refugee protection. Article 31 of the Convention plays an important role in limiting state authority to penalize refugees for unauthorized entry. It states that refugees shall not be penalized for their illegal entry or presence if they arrive directly from a territory where their life or freedom was threatened, present themselves without delay, and show good cause for their unauthorized entry or presence (UNHCR, 1951, Art. 31).

This provision is based on the recognition that many refugees cannot obtain valid travel documents from the states from which they are fleeing. In practice, penalizing them for crossing a border without authorization would, undermine the very protection the Convention intends to secure. Therefore, Article 31 is not a marginal rule but central to the Refugee Convention's protective regime (Hathaway, 2022).

Despite this clear international obligation, the criminalization of unauthorized entry continues in many domestic legal systems. In the United States, for example, 8 U.S.C. § 1325 criminalizes unauthorized entry, a provision that has been applied to asylum seekers who present themselves to authorities, including at official ports of entry (Cornell Law School, 2024). Critics argue that this practice conflicts with the spirit, if not the letter, of Article 31 by subjecting asylum seekers to criminal prosecution based on the manner of their arrival rather than their reasons for seeking protection (Maurer, 2025; American Immigration Council, 2026).

Canada's regime under the Immigration and Refugee Protection Act (IRPA) does not criminalize unauthorized entry itself and allows refugee claimants to present claims regardless of the mode of arrival. This framework is more aligned with Article 31, though challenges remain in its practical implementation, including resource constraints in refugee adjudication (CBSA, 2025; IRPA, 2001).

Furthermore, the legal pressures on Article 31 have increased as irregular migration has grown worldwide. The UN High Commissioner for Refugees (UNHCR) has often reaffirmed that penalization of refugees for unauthorized entry is prohibited and urged states to interpret Article 31 in a way that upholds the Convention's protective purpose (UNHCR, 2023).

The Smuggling Protocol: Distinguishing Smugglers from Migrants

The Protocol Against the Smuggling of Migrants by Land, Sea and Air (Smuggling Protocol), adopted in 2000 as part of the broader Palermo Convention, aims to fight smuggling while safeguarding the rights of migrants. Explicitly, Article 5 of the Protocol states that migrants who are smuggled shall not be criminally liable for the fact of having been smuggled. The Protocol's focus is on criminalizing the organizers and facilitators of smuggling rather than the migrants themselves (UN General Assembly, 2000).

This distinction is clear. Smuggling involves a consensual transaction where migrants pay facilitators to assist them in crossing borders, often in dangerous conditions. By contrast, human trafficking, covered by the adjacent Protocol to Prevent, Suppress and Punish Trafficking in Persons does not require consent and involves exploitation (Gallagher, 2021). The Smuggling Protocol's separation of migrants from smugglers reveals an international consensus that criminal law should target profit-driven facilitation rather than the act of crossing a border without authorization.

Both Canada and the United States have ratified the Smuggling Protocol. Yet, the United States' domestic enforcement framework sometimes conflates unauthorized entry with migrant smuggling by prosecuting individuals under statutes that fail to differentiate between consensual migrant movement and smuggling facilitation (Maurer, 2025). In contrast, Canada's enforcement under IRPA section 117 focuses on individuals who knowingly facilitate irregular entry, reflecting closer conformity with the Protocol's emphasis on targeting smuggling facilitators, not migrants (IRPA, 2001).

Other International Human Rights Obligations

Beyond refugee and smuggling law, a host of other international human rights instruments shape border enforcement. The International Covenant on Civil and Political Rights (ICCPR) protects procedural fairness, freedom from arbitrary detention, and non-discrimination (United Nations, 1966). The International Covenant

on Economic, Social and Cultural Rights (ICESCR) recognizes rights related to work, health, and family life; rights that may be implicated when states detain or remove non-citizens without adequate due process.

Moreso, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) further limits removal practices by prohibiting the return of individuals to countries where they face a real risk of torture or other serious harm (United Nations, 1984). This principle of non-refoulement overlaps with, but is broader than, the refugee security framework and applies to all individuals, irrespective of immigration status.

International human rights mechanisms have progressively examined border enforcement practices, noting that criminalization of migration can worsen vulnerabilities, lead to discrimination, and weaken due process rights (UN Human Rights Committee, 2023; Special Rapporteur on the Human Rights of Migrants, 2024). These pressures reflect the broader stress on the international legal framework as states struggle with rising migration, partisanship, and competing security and humanitarian priorities.

Tensions Between Domestic Enforcement and International Law

The interaction between domestic immigration enforcement and international legal instruments reveals considerable tensions that have sharpened in recent years. For instance, in the United States, the use of §§ 1325 and 1326 to criminally prosecute unauthorized entry and re-entry has been challenged as conflicting with international refugee standards and human rights obligations, especially when applied to asylum seekers (American Immigration Council, 2026; Maurer, 2025). Canada's civil enforcement model aligns closely with international regulations, but pressures on its refugee adjudication systems and rising inadmissibility determinations stress that adherence to international law is challenged not only by statutory design, but also by administrative capacity and political context (CBSA, 2025).

Furthermore, international institutions, including UNHCR and various human rights treaty bodies, have called on states to ensure that border enforcement does not undermine international legal protections. This includes urging that refugees not be penalized for their manner of entry and that smuggling laws focus on facilitators rather than migrants themselves (UNHCR, 2023; UN Human Rights Committee, 2023). Therefore, as states constantly adopt strict border measures, these international legal frameworks will remain essential reference points in assessing the legality and legitimacy of national enforcement practices.

Administrative Enforcement Model in Canada

Canada's approach to unauthorized entry reflects a foundational legal principle: immigration violations are first and foremost administrative matters, not criminal offenses. This principle is rooted in the Immigration and Refugee Protection Act (IRPA) and in operational practice by the Canada Border Services Agency (CBSA). Under this model, enforcement focuses on examination, admissibility assessment, removal decisions, and humanitarian adjudication rather than confinement for just crossing a border without authorization. While not free of challenges, Canada's framework demonstrates how administrative enforcement can function within both national law and international legal obligations.

Legal Principles and the IRPA Framework

The Immigration and Refugee Protection Act, SC 2001, c. 27 (IRPA), is Canada's primary immigration statute and provides the legal architecture for regulating entry, presence, and removal of non-citizens. Unlike the criminal provisions in the United States, IRPA generally treats unauthorized entry as an immigration violation that prompts administrative processes. IRPA establishes categories of admissibility and grounds for removal, and it sets out procedures for detention, hearings before the Immigration and Refugee Board (IRB), and refugee status adjudication (IRPA, 2001).

Under IRPA, an individual landing in Canada without proper documentation is subject to examination by CBSA officers. If officers determine that the person is inadmissible, they may issue a removal order, detain the person under tight statutory criteria, or refer the case to an IRB hearing. Notably, unauthorized entry itself does

not trigger a criminal charge against the entrant; instead, it initiates an immigration process designed to assess admissibility and protection needs (IRPA, 2001).

IRPA does include criminal sanctions, but these are generally targeted at organizers and facilitators of irregular migration, not migrants themselves. Section 117 of IRPA makes it an offense to “knowingly organize, induce, aid or abet the coming into Canada” of persons who lack necessary travel documents. Penalties for this offense can include fines and imprisonment of up to 10 years, and in cases involving more than ten persons, life imprisonment is possible. This shows an enforcement strategy focused on discouraging smuggling networks while preserving a civil character for migration control (IRPA, 2001).

The Canadian model has two major legal effects:

1. It separates unauthorized entry from criminal punishment for migrants, and
2. It reserves criminal law for cases where there is evidence of wrongdoing beyond mere unauthorized presence (e.g., smuggling, serious crime).

These legal design choices are consistent with international regulations, including the UN Smuggling Protocol’s directive that migrants should not be criminalized simply for being smuggled (UN General Assembly, 2000; see Section 2).

Border Enforcement Institutions

Operationalizing Canada’s administrative model is the Canada Border Services Agency (CBSA). The CBSA is responsible for border enforcement, admissibility screening, detention decisions, removals, and intelligence functions at more than 1,200 ports of entry nationwide. The agency employs a combination of field personnel, intelligence personnel, and administrative decision-makers to manage compliance with IRPA and related regulations (CBSA, 2025).

CBSA’s mandate combines immigration control, customs enforcement, and trade facilitation, illustrating the integrated nature of its functions. At ports of entry, officers conduct primary and secondary inspections to determine whether an individual meets the legal criteria for entry. If admissibility issues arise such as lack of documentation or concerns about security or criminality, officers may refer the individual to further examination or take action under IRPA’s removal provisions.

Recent official statistics highlight the scale and activity of the CBSA’s enforcement operations:

1. Nearly 19,000 foreign nationals were removed from Canada in 2025 for violating IRPA, including individuals with serious inadmissibility findings.
2. Over 35,000 foreign nationals seeking entry at land borders were judged inadmissible in the same year.
3. CBSA screened 61,960 asylum claimants for security concerns in 2025 alone.
4. The agency continues to expand its workforce, with plans to hire over 1,000 additional officers to strengthen border operations (CBSA, 2025).

These data demonstrate that Canada’s border enforcement is sound and actively enforced, even within an administrative reform. Enforcement priorities include risk assessment, documentation verification, and security screening, which together aim to ensure compliance without resorting to criminal prosecution for unauthorized entry alone.

Inadmissibility, Detention, and Removal under IRPA

In Canada’s administrative model, the primary legal consequences for unauthorized entry are inadmissibility findings and removal orders, rather than imprisonment for entry itself.

Inadmissibility and Removal Orders

When a person is found inadmissible under IRPA, they may be subject to one of three types of removal orders:

1. **Departure Order:** The person must leave Canada at their own expense by a specified date.
2. **Exclusion Order:** The person is barred from returning to Canada for one year.
3. **Deportation Order:** The person is permanently barred from returning unless they obtain ministerial permission (IRPA, 2001).

These removal orders differ in severity and reflect the seriousness of the inadmissibility finding. A departure order is the least severe, while a deportation order carries the greatest restriction on future return.

Detention Criteria and Oversight

Detention under IRPA is authorized only in limited circumstances. A CBSA officer may detain a non-citizen when the officer has reasonable grounds to believe that:

1. The individual is unlikely to appear for examination or removal,
2. The individual is a danger to public safety, or
3. The individual's identity cannot be confirmed without detention (IRPA, 2001).

Importantly, IRPA also establishes procedural safeguards: detained individuals are entitled to a review of their detention by the IRB within 48 hours of detention and at regular intervals thereafter. These safeguards aim to balance state interests in effective enforcement with individual rights and due process (IRPA, 2001; CBSA Detention Statistics, 2025).

Refugee Determination within the Administrative Framework

Canada's enforcement system must also accommodate asylum seekers and refugee claimants. Unlike criminal jurisdictions where asylum may not suspend prosecution for unauthorized entry, Canada's administrative process allows individuals to make a refugee claim regardless of how they entered the country (IRPA, 2001; Hathaway, 2022).

Once a claim is made, the refugee determination process is administered by the Immigration and Refugee Board (IRB), an independent administrative tribunal. Refugee claimants are afforded hearings, legal representation opportunities, and adjudication based on established legal criteria. Although delays and backlogs have posed challenges with some claimants waiting extended periods for a decision, this system preserves access to protection and aligns Canada closely with international refugee obligations, including the 1951 Refugee Convention's non-penalization principles (UNHCR, 2023; CBSA, 2025).

Strengths and Challenges of the Administrative Model

Canada's administrative enforcement model offers several strengths. By avoiding criminal prosecution for unauthorized entry itself, it reduces the penal consequences imposed on migrants and keeps immigration enforcement within a civil framework. This approach aligns more with international guidelines and reduces the burden on the national criminal justice system.

However, challenges persist. Administrative backlogs, especially in refugee adjudication and IRB hearings, remain significant. Processing delays can result in prolonged stays for individuals with no legal right to remain, creating administrative inefficiencies and human rights concerns (Canadian Council for Refugees, 2025). Additionally, enforcement equity such as whether individuals from certain regions experience different outcomes at the border, requires further empirical study.

Criminalized Border Enforcement in United States

The United States' response to unauthorized entry combines civil immigration enforcement with an expansive system of criminal prosecution. Unlike Canada's primarily administrative model, U.S. law treats certain forms of unauthorized entry and reentry as federal crimes under the Immigration and Nationality Act (INA). This criminalized framework has shaped enforcement policy, agency practice, and judicial results for years, even as legal scholars and human rights advocates increasingly challenge its proportionality, fairness, and consistency with international obligations.

Legal Architecture

U.S. border enforcement operates through two intersecting systems:

1. Civil immigration law, administered by the Department of Homeland Security (DHS) through U.S. Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE), which governs detention, removal, and admissibility; and
2. Criminal law, administered by the Department of Justice (DOJ), which prosecutes certain unauthorized entry and reentry offenses in federal court.

However, the central federal criminal statutes for unauthorized entry are 8 U.S.C. § 1325 and 8 U.S.C. § 1326 as stated:

- a. Section 1325 (Improper Entry by an Alien) makes it a violation for an alien to enter or attempt to enter the United States at any time or place other than as designated by immigration officers, or to elude examination or inspection. A first offense may result in a fine, up to six months in prison, or both; subsequent offenses carry higher penalties.
- b. Section 1326 (Reentry of Removed Aliens) makes it a felony for a non-citizen previously removed, excluded, or deported to re-enter or be found in the United States without authorization. Penalties can range from up to two years' imprisonment for a standard violation to up to 20 years for individuals with previous enhanced felony convictions (Cornell Law School, 2025).

These criminal provisions operate in parallel with civil deportation proceedings under the INA, meaning an individual may face both deportation and criminal prosecution for the same border crossing event.

Scale and Patterns of Prosecution

Criminal prosecutions for immigration offenses have played major role in the U.S. federal case schedule, especially in the 21st century. According to the Transactional Records Access Clearinghouse (TRAC), immigration offenses under §§ 1325 and 1326 have, at times, comprised a majority of all federal criminal prosecutions, surpassing drug trafficking and fraud cases during peak periods (TRAC, 2025).

Recent statistics show enforcement at historically high levels:

- i. § 1325 prosecutions nearly doubled in March 2025 compared with the previous month amidst intensified enforcement priorities (TRAC, 2025).
- ii. Thousands of additional prosecutions under § 1326 occur annually, and linked to re-entry after removal (American Immigration Council, 2026).
- iii. A large proportion of § 1326 cases involve individuals from Mexico, Guatemala, Honduras, and El Salvador, reflecting migration flows in the Western Hemisphere (TRAC, 2025).

This scale of criminal enforcement is unparalleled in comparable liberal democracies and represents a distinctive feature of the U.S. approach to irregular migration.

Group Prosecutions and Operational Models

The criminalized system includes institutional practices designed to generate high volumes of prosecutions. One prominent example is Operation Streamline, initiated in 2005 in Del Rio, Texas. Under this model, large numbers of defendants often dozens at a time are processed in mass criminal hearings with limited individual legal representation and compressed timelines (Meissner and Kerwin, 2024; Urban Institute, 2025).

Analysts suggest that Operation Streamline and similar approaches compromise due process, including:

- i. Defendants may plead guilty quickly to avoid harsh sentences without fully understanding their rights or the consequences of conviction.
- ii. The practice of “flip-flop” pleas, where a defendant charged under § 1326 is offered a plea to the less § 1325 offence, further complicates defendants’ informed decision-making. Therefore, accepting a § 1325 appeal may transform future unauthorized entries into felonies, thus increasing potential punishment over time (Urban Institute, 2025).

Such pro-secutorial strategies raise concerns about fairness, access to counsel, and meaningful participation in the legal process.

State Law Enforcement and “Operation Lone Star”

In addition to federal criminal law, some states, notably Texas have pursued their own state criminalization strategies for unauthorized entry. Under Texas’s Operation Lone Star, state law enforcement has filed large numbers of criminal trespass charges against migrants found crossing the border outside official ports of entry. In 2024 alone, Texas reportedly filed over 10,000 state trespass charges (National Immigration Project, 2025).

The combination of federal immigration charges and state criminal trespass charges multiplies the legal requirements on migrants, as sentences can run consecutively rather than concurrently, meaning individuals serve separate time for essentially overlapping conduct. This dual prosecution model has no direct analogue in Canada and has drawn constitutional challenges under the Supremacy Clause of the U.S. Constitution, which establishes federal law as supreme over conflicting state law in immigration matters (*Arizona v. United States*, 567 U.S. 387 (2012)).

Constitutional and Legal Critiques

The criminalized enforcement framework has attracted sustained legal and constitutional critique on several fronts, including:

Equal Protection and Statutory Origins: Both §§ 1325 and 1326 trace their roots to the Immigration Act of 1929, enacted amid explicit racial and eugenic ideology in U.S. legislative history. Defendants have challenged § 1326 on equal protection grounds, arguing that its discriminatory origins and disproportionate enforcement against non-White migrants violate constitutional norms (*United States v. Carrillo-Lopez*, 2021). Some courts, especially in the Ninth Circuit have accepted these arguments in part, leading to dismissals of § 1326 charges in a minority of cases (National Immigration Project, 2025). Other circuits have rejected such challenges, producing a circuit split with differing outcomes depending on geographic jurisdiction.

Due Process and Right to Counsel: The mass prosecution practices criticized in Operation Streamline have influenced due process concerns, regarding the Sixth Amendment right to counsel. Group hearings and rapid appeal processes can compromise meaningful access to legal representation and leave defendants unaware of critical immigration consequences connected to criminal convictions (Urban Institute, 2025).

Preemption and Federal Supremacy: State efforts like Operation Lone Star raise questions under the Supremacy Clause. In *Arizona v. United States* (2012), the U.S. Supreme Court reaffirmed that immigration enforcement is mainly a federal responsibility, limiting states’ ability to enforce laws that contradict with

federal immigration policy. Ongoing litigation continues to test the boundaries of state participation in immigration enforcement.

Interaction with Asylum and International Law

The U.S. criminalization model also creates tension with international legal obligations, especially the 1951 Refugee Convention's non-penalization standard (UNHCR, 1951). As noted in Section 2, refugee law prohibits penalizing refugees for unauthorized entry if they immediately present themselves for protection. However, individuals seeking asylum, many of whom present themselves to CBP officers or at ports of entry can still be prosecuted under § 1325 based on the location and manner of their entry.

This tension has drawn criticism from international human rights bodies and refugee advocates, who argue that penal sanctions for entry methods undermine the protective intent of international refugee law (UN Human Rights Committee, 2023; Maurer, 2025).

Crimmigration

Crimmigration refers to the convergence of criminal law and immigration law into a single regulatory and enforcement framework. This blending confuses the traditional difference between civil administrative processes (such as removal proceedings) and criminal punishment, producing legal and social consequences that extend far beyond isolated statutory provisions. Originally theorized in the early 21st century, the concept has become central to understanding contemporary migration control in jurisdictions like the United States and, to an extent, Canada (Stumpf, 2006; Hernández, 2018).

However, the rise of crimmigration reflects prevailing movements in global governance, including the securitization of migration, the expansion of state surveillance capabilities, and political movements that frame unauthorized movement as inherently dangerous (Stumpf, 2018; Bosworth and Guild, 2008). While the term is useful as a conceptual lens, it also describes concrete legal mechanisms that intertwine immigration status with criminal exposure.

Theoretical Foundations of Crimmigration

Historically, immigration control and criminal law developed as separate legal entities. Immigration law regulated entry and stay through administrative procedures, with remedies such as exclusion, deportation, and visa denial. Criminal law, by contrast, punished conduct that violated societal norms or harmed public safety. Crimmigration theory posits that these domains have crossed over: immigration law has adopted punitive, criminal-like features, and criminal law has incorporated immigration concerns into its substantive scope (Stumpf, 2006; 2018).

Academics explain this convergence through several interlocking dynamics:

- a. **Securitization of Migration:** Migration is framed as a threat to national security, public order, or cultural integrity, thereby legalizing criminal sanctions against migrants (Huysmans, 2006).
- b. **Administrative Overflow:** As governments expand immigration enforcement capacity, civil administrative agencies adopt enforcement mechanisms resembling criminal justice systems, including detention, surveillance, and punishment (Hernández, 2018).
- c. **Political Mobilization:** Political actors exploit public anxiety about irregular migration to justify aggressive enforcement and expanded pro-secutorial authority (Chacón, 2015).

These dynamics help explain why unauthorized entry might be processed in federal criminal court in the United States or why non-citizens with minor criminal histories face immigration removal as though the conduct were inherently dangerous.

Crimmigration in the United States

The U.S. immigration enforcement architecture exemplifies crimmigration because it directly integrates

criminal prosecution into migration control. The interplay can be seen in three distinct ways:

Criminal Penalties for Immigration Violations

As discussed in Section 4, unauthorized entry and re-entry are federal crimes under 8 U.S.C. §§ 1325 and 1326 (Cornell Law School, 2025). These provisions treat migration conduct traditionally, a civil matter in many jurisdictions as criminal offenses punishable by imprisonment. The criminalization of reentry under § 1326 is significant because it attaches severe felony penalties to the act of returning after removal, even when removal followed an asylum claim or a long period of residence (American Immigration Council, 2026).

Immigration Consequences of Criminal Convictions

Conversely, criminal convictions can trigger civil immigration consequences. U.S. immigration law defines categories of criminal conduct that make non-citizens removable, including “aggravated felonies,” “crimes involving moral turpitude,” and drug offenses, many of which carry immigration consequences disproportionate to their criminal law equivalents (Zigler and Provine, 2019). This means that even relatively minor criminal convictions such as shoplifting or simple assault can result in deportation or denial of relief.

The combined effect is that immigration status and criminal history become mutually reinforcing liabilities. Therefore, a criminal conviction increases the likelihood of removal, and an immigration violation (such as unauthorized entry) leads to criminal prosecution.

Institutional Practices

Institutional mechanisms further entrench crimmigration. Immigration authorities, such as ICE, maintain Secure Communities and other data-sharing programs that automatically notify criminal justice systems of a non-citizen’s immigration status, effectively directing individuals from local jails into immigration enforcement pipelines (Eagly and Shafer, 2015). Meanwhile, federal prosecutors have discretion to pursue immigration cases selectively, shaping enforcement results in response to political and administrative priorities.

These methods have drawn criticism from scholars and human rights advocates, who argue that crimmigration affects racial and ethnic minorities and undermines due process protections disproportionately (Hernández, 2018; Provine, Monahan and Adler, 2015).

Crimmigration in Canada

Canada’s immigration enforcement retains a stronger administrative foundation than the U.S. model. Nonetheless, elements of crimmigration are present. IRPA considers certain criminal convictions as grounds for inadmissibility, such that individuals convicted of crimes punishable by a term of imprisonment of 10 years or more, or those whose convictions lead to removal, face deportation processes (IRPA, 2001).

However, Canada’s model diverges from the U.S. in important ways:

1. Unauthorized entry itself is not criminalized.
2. Criminal penalties generally attach to smuggling organizers or serious offenses unrelated to migration status.
3. Individuals facing removal because of criminality retain access to discretionary relief measures, such as humanitarian and compassionate applications and pre-removal risk assessments (IRPA, 2001; Canadian Council for Refugees, 2025).

Thus, while criminal convictions may affect immigration status in Canada, the administrative machinery preserves a clearer conceptual separation between civil immigration control and criminal punishment.

Consequences of Crimmigration

The blending of immigration and criminal law has significant legal, social, and normative consequences such as:

Due Process and Legal Complexity

Crimmigration complicates procedural protections. Individuals subject to both removal proceedings and criminal prosecution confront several legal systems with different standards, indicative rules, and rights guarantees. For example, the right to counsel is guaranteed in criminal proceedings but is not guaranteed in immigration court, where representation is essential for navigating complex legal defenses (Hernández, 2018).

Inequality and Racial Disparities

Empirical studies indicate that enforcement of immigration-related crimes disproportionately affects non-White and non-citizen populations. In the United States, for example, the vast majority of § 1326 prosecutions involve individuals from Mexico and Central America, reflecting broader demographic patterns and geopolitical pressures (TRAC, 2025; American Immigration Council, 2026).

Deterrence and Enforcement Paradigms

Proponents of crimmigration argue that criminal sanctions deter irregular migration and enhance border security. Critics counter that such sanctions produce limited deterrent effects while imposing high societal costs, including over-crowded detention facilities, increased pro-secutorial burden, and long-term social exclusion for affected individuals (Chacón, 2015; Meissner and Kerwin, 2024).

International Law Tensions

Crimmigration sometimes conflicts with international legal standards. Penalizing asylum seekers for unauthorized entry may contravene Article 31 of the Refugee Convention, which prohibits penalization of refugees arriving without documents when they present promptly for protection (UNHCR, 1951). Similarly, conflating smuggled migrants with smugglers violates the UN Smuggling Protocol's distinct legal treatment of these groups (UN General Assembly, 2000).

Crimmigration as Policy Choice

Importantly, the degree of crimmigration within a legal system is not inevitable; it is a policy choice. Canada and the United States illustrate how similar pressures such as irregular migration flows, political demands for enforcement, and international obligations can produce different legal responses. Canada's administrative model limits the criminalization of migration conduct, while the U.S. model embeds criminal sanctions deeply within its enforcement architecture.

Therefore, reforming crimmigration practices requires untangling punitive criminal law tools from immigration control without abandoning necessary administrative and security functions. Furthermore, policy proposals have included decriminalizing unauthorized entry, expanding access to due process protections, and refining the criteria for removal to reduce unequal impacts (American Immigration Council, 2026; Hernández, 2018).

Constitutional and Legal Challenges (U.S.)

The U.S. model of criminalized border enforcement has generated persistent constitutional and legal controversies. Although Congress has long empowered the federal government to regulate immigration and criminal law, courts, advocates, and scholars increasingly question whether major practices within the current enforcement regime violate constitutional norms. However, three primary fault lines dominate U.S. legal challenges: equal protection and discriminatory intent, due process and procedural fairness, and federalism and state preemption.

Equal Protection and Discriminatory Origins of Border Criminalization

One of the most contested constitutional challenges to federal immigration criminal statutes centers on equal protection principles embedded in the Fifth Amendment's Due Process Clause. Although the Fifth Amendment does not contain an explicit Equal Protection Clause like the Fourteenth Amendment, federal courts have long held that it incorporates equal protection principles applicable to federal legislation (*Bolling v. Sharpe*, 347 U.S. 497 (1954)).

Moreso, statutes criminalizing unauthorized entry, most notably 8 U.S.C. §§ 1325 and 1326 trace their roots to the Immigration Act of 1929. The legislative history of that era reveals explicit racial and nativist intent, including debates influenced by eugenicist ideologies and attempts to control migration from non-European countries (Motomura, 2014; American Immigration Council, 2026). Critics argue that the continued enforcement of these statutes without addressing their discriminatory origins perpetuates unequal treatment of non-citizens based on national origin and race.

In recent years, federal district courts have entertained equal protection challenges to § 1326 on the grounds that its enforcement disproportionately impacts migrants from Mexico, Central America, and other non-European regions. In *United States v. Carrillo-Lopez* (D. Nev., 2021), a federal judge held § 1326 unconstitutional as applied, therefore; relying on evidence of discriminatory intent in its legislative history and a demonstrable disparate impact on Hispanic migrants. This decision, though limited in scope, resulted in dismissals of charges in the Ninth Circuit and ignited broader legal process across various jurisdictions (National Immigration Project, 2025).

However, other federal circuits, including the Fifth and Tenth have rejected similar constitutional challenges, creating a conflict in the circuit on whether § 1326's enforcement violates equal protection principles. For example, courts in the Fifth Circuit have upheld § 1326, emphasizing Congress's legitimate authority over immigration policy and deferring to legislative judgment about border enforcement priorities. This split leaves defendants subject to geographically contingent results for identical conduct, raising concerns about equitable application of federal law.

Due Process and Procedural Fairness

Criminal prosecutions under §§ 1325 and 1326 also raise due process concerns under the Fifth and Sixth Amendments. These procedural rights guarantees are salient in the context of mass prosecutions, expedited hearings, and mandatory plea offerings that characterize much of the U.S. immigration criminal enforcement apparatus.

Mass and Expedited Hearings

Initiatives such as Operation Streamline, which began in 2005 and expanded to several border districts, institutionalize group criminal proceedings for unauthorized entry cases. In these settings, groups of defendants sometimes dozens, are brought before a judge in rapid succession, often with limited or no interaction with counsel (Meissner and Kerwin, 2024; Urban Institute, 2025). Observers have documented that defendants may have only minutes to consult with appointed counsel, if represented at all.

Defendants in group settings face pressure to enter quick plea agreements to avoid longer incarceration, even when they may have valid defenses or asylum claims. Legal scholars and human rights advocates argue that these circumstances weaken meaningful access to counsel and informed decision-making, potentially violating the Sixth Amendment right to counsel and the Fifth Amendment guarantee of fundamental fairness (Hernández, 2018; Meissner and Kerwin, 2024).

“Flip-Flop” Pleas and Collateral Consequences

Another due process concern relates to so-called “flip-flop” plea practices, where prosecuting authorities offer defendants charged under § 1326 a plea to the lesser § 1325 misdemeanor. Although a violation plea may yield a shorter sentence in the immediate criminal case, it carries profound immigration consequences: a § 1325

conviction forecloses future defenses and can trigger harsh penalties under § 1326 for any subsequent unauthorized entry. Defendants may accept these bargains without fully understanding the long-term impact on their immigration status or liberty interests.

Legal observers argue that such plea practices, especially in high-volume court settings produce uninformed waivers of constitutional rights, diminishing the procedural integrity of proceedings and raising questions about whether defendants truly understand the rights they are giving up (Urban Institute, 2025; Hernández, 2018).

Federal vs. State Authority

U.S. immigration enforcement also implicates federalism concerns, especially when states attempt to craft their own criminal enforcement measures related to unauthorized entry. The Supremacy Clause of the U.S. Constitution establishes that federal law is “the supreme Law of the Land,” pre-empting conflicting state statutes (U.S. Const. Art. VI, Cl. 2).

The Supreme Court re-affirmed the primacy of federal authority in immigration matters in *Arizona v. United States* (567 U.S. 387 (2012)), where the Court invalidated several Arizona state provisions that intruded upon federal immigration enforcement territory. Although *Arizona* did not directly address state criminal trespass statutes, its reasoning stresses that states may not enact laws that conflict with federal immigration objectives or frustrate the uniformity of national policy.

Despite *Arizona*, recent state-level initiatives, most prominently Texas’s Operation Lone Star have sought to criminalize unauthorized border crossing under state law (e.g., criminal trespass). In 2024 alone, Texas reportedly filed over 10,000 state criminal trespass charges against migrants, in addition to simultaneous federal prosecutions under §§ 1325 and 1326 (National Immigration Project, 2025). Because these state sentences often run consecutively, individuals may serve back-to-back penalties for substantively identical conduct, further intensifying the punitive impact of dual prosecution.

Federal courts are now tasked with assessing whether such state criminal enforcement is pre-empted by federal immigration law. While some lower courts have blocked state enforcement actions pending constitutional review, the broader litigation remains unsettled. The outcome of these cases will significantly shape the contours of federal–state authority in immigration control for years to come.

First Amendment and Other Constitutional Claims

Although less frequently litigated in the border enforcement context, other constitutional claims arise in immigration criminal cases. For example, the First Amendment may be invoked when enforcement practices appear to target advocacy or protest-related conduct near border areas where activists, attorneys, and journalists operate. Challenges under the Fourth Amendment (protection against unreasonable search and seizure) also occur in contexts where migrants allege unlawful detention or arrest practices by law enforcement personnel.

Additionally, defendants sometimes assert excessive fines or cruel and unusual punishment claims under the Eighth Amendment when mandatory minimums or cumulative sentencing schemes result in disproportionate penalties relative to the underlying conduct. While these claims have had mixed success, they reflect the broader constitutional legal process landscape surrounding criminalized immigration enforcement.

Tension with International Law as a Constitutional Consideration

Although international treaties do not automatically have domestic legal force as statutes do, they inform constitutional arguments in U.S. courts, especially when domestic law appears inconsistent with international duties. As noted in Section 2, the 1951 Refugee Convention prohibits penalizing refugees for unauthorized entry when they promptly present themselves to authorities (UNHCR, 1951). Civil society organizations and foreign policy scholars have urged courts to consider treaty obligations as interpretive guidance against overly punitive domestic enforcement practices (Maurer, 2025; UN Human Rights Committee, 2023).

While U.S. courts generally hold that non-self-executing treaties are not enforceable absent implementing legislation, their existence nevertheless adds pressure to legislative and administrative actors to align domestic law with international legal standards.

Comparative Analysis

The present review detailed how Canada and the United States each regulate unauthorized entry and border enforcement. While both states confront similar migration pressures and share commitments to international legal duties, their domestic legal reforms and institutional practices differ markedly. This comparative analysis draws out these differences systematically, explores underlying justifications, and assesses how each model aligns with constitutional, procedural, and international law obligations.

Legal Characterization of Unauthorized Entry

Canada treats unauthorized entry principally as a civil administrative issue under the Immigration and Refugee Protection Act (IRPA). Individuals who arrive without lawful status are subject to examination, admissibility assessment, and potential removal, but they are not criminally charged for the act of entry alone (IRPA, 2001). Criminal sanctions in Canada are reserved for conduct such as organizing or facilitating irregular entry, an offense targeting smugglers rather than migrants themselves (IRPA s.117, 2001).

By contrast, the United States criminalizes major forms of unauthorized entry in federal law. Under 8 U.S.C. § 1325, improper entry or attempted entry at non-designated locations is a misdemeanor offense, and under 8 U.S.C. § 1326, re-entry after deportation is a felony offense with potentially long prison terms (Cornell Law School, 2025). These criminal statutes operate alongside civil removal proceedings, often resulting in dual exposure to civil and criminal processes for the same individual.

Comparative Insight: Canada's model keeps immigration violations within the administrative realm, reducing reliance on criminal punishment for non-violent migrant conduct. The U.S. model makes immigration enforcement inseparable from criminal prosecution, an approach that expands the role of the criminal justice system in managing migration.

Institutional Enforcement Architecture

Canadian Enforcement Architecture: The Canada Border Services Agency (CBSA) administers border enforcement, admissibility assessments, detention decisions, and removals. CBSA officers operate across over 1,200 ports of entry, conducting primary and secondary inspections and referring cases to the Immigration and Refugee Board (IRB) for hearings when necessary (CBSA, 2025). The focus is on documentation verification, security screening, and operational compliance rather than incarceration for entry itself.

United States Enforcement Architecture: In the U.S., enforcement is shared among multiple agencies:

- i. **U.S. Customs and Border Protection (CBP):** primary responsible for border interception and initial processing;
- ii. **Immigration and Customs Enforcement (ICE):** interior enforcement, detention, and removal;
- iii. **Department of Justice (DOJ):** federal prosecution of criminal immigration offenses under §§ 1325 and 1326.

This bi-furcated system results in overlapping authority and frequent interactions between civil immigration enforcement and federal criminal prosecution including detention in criminal custody pending trial and subsequent civil removal proceedings (American Immigration Council, 2026).

Comparative Insight: Canada consolidates enforcement under one administrative agency with oversight by an independent tribunal, whereas the U.S. diffuses responsibility across civil and criminal institutions, which can complicate procedural experience for migrants and increase institutional complexity.

Penalties and Consequences

A major point of comparison (Table 1) is the range and severity of legal consequences for unauthorized entry:

Table 1: Comparison range and severity of legal consequences for unauthorized entry into Canada and the United States

Feature	Canada (IRPA/CBSA)	United States (INA/DHS/DOJ)
Unauthorized Entry as a Crime	No criminal charge for entrants	Yes – §§ 1325 (misdemeanor), 1326 (felony)
Civil Removal/Deportation	Yes (departure, exclusion, deportation)	Yes (removal proceedings)
Criminal Jail Sentence	Not for entry itself	Up to 6 mo (first offense § 1325); up to 20 yrs (§ 1326)
Criminal Enforcement Agency	N/A	Federal prosecutors (DOJ)
Detention for Immigration vs. Criminal Purposes	Civil detention with periodic review	Criminal custody during prosecution, then civil removal detention

The U.S. model, with its potential for incarceration under criminal law, introduces punitive severity that Canada’s administrative model avoids for entry itself. While both systems can detain individuals, Canada’s detention is governed by civil criteria and regular IRB review, thereby reducing the period of deprivation of freedom, compared to prolonged criminal custody followed by removal processes (IRPA, 2001; CBSA Detention Statistics, 2025; Urban Institute, 2025).

Comparative Insight: Criminal sanctions in the U.S. elevate unauthorized entry beyond administrative compliance, increasing the risks for migrants and amplifying collateral impacts on families, employment prospects, and future eligibility for relief.

Refugee Protection and Procedural Access

Both countries are parties to the 1951 Refugee Convention and the 1967 Protocol, which prohibit penalizing refugees for unauthorized entry when they present themselves promptly at the border (UNHCR, 1951).

In practice:

- Canada allows asylum claimants to pursue refugee protection regardless of why or how they arrived, and those claims typically stay civil enforcement (IRPA, 2001; UNHCR, 1951).
- The United States also permits asylum claims, but individuals may still be prosecuted under § 1325 for entering outside designated points of entry before their asylum claim is adjudicated (American Immigration Council, 2026). This practice has drawn criticism from refugee advocates as inconsistent with the non-penalization principles of the Refugee Convention.

Comparative Insight: Canada’s approach to asylum claim processing aligns uniformly with international refugee regulations by separating criminal prosecution concerns from asylum adjudication. The U.S. model creates procedural tension where asylum seekers may be treated as criminal defendants for their mode of arrival.

Crimmigration and Due Process

As noted in Section 5, the concept of crimmigration captures how immigration and criminal law intersect in ways that intensify legal vulnerability for non-citizens. The U.S. system is a strong example: an individual charged with unauthorized entry may face criminal prosecution with Sixth Amendment implications, and upon conviction, face civil removal with distinct procedural rules where the right to appointed counsel is not guaranteed (Hernández, 2018; Meissner and Kerwin, 2024).

Canada's system largely resists this blurring: unauthorized entry does not automatically drag the migrant into the criminal justice system, and civil immigration proceedings before the IRB preserve safeguards such as regular detention review and opportunities for judicial review (IRPA, 2001; CBSA Detention Statistics, 2025).

Comparative Insight: The U.S. model's blending of criminal and immigration pathways increases procedural complexity and raises due process concerns, while Canada's model preserves clearer legal boundaries between civil administrative proceedings and criminal law.

Constitutional and Federalism Challenges

The constitutional regimes in each country also shape enforcement architecture:

1. In the U.S., robust constitutional protections including equal protection, due process, and federal supremacy principles are central to ongoing litigation over §§ 1325/1326, state criminal trespass statutes, and other enforcement measures (Arizona v. United States, 2012; see Section 6).
2. In Canada, constitutional challenges to immigration enforcement typically arise under the Charter of Rights and Freedoms, especially with respect to procedural fairness and deprivation of liberty, but the administrative model's civil nature often reduces the catalogue of hardcore punitive challenges (Canadian Charter; e.g., Singh v. Minister of Employment and Immigration, [1985] 1 S.C.R. 177).

Comparative Insight: The U.S. constitutional landscape produces frequent judicial confrontation with enforcement statutes, whereas Canada's administrative focus channels disputes into civil procedural arenas.

Alignment with International Law

Both states claim fidelity to international law in their enforcement frameworks, but their alignment differs in practice:

- a. Canada's civil enforcement model minimizes criminal penalties for asylum seekers and unauthorized entry while preserving paths for refugee protection, aligning more with international refugee and human rights norms (UNHCR, 1951; UN Human Rights Committee, 2023).
- b. The U.S. criminal model has generated international criticism for potential conflicts with non-penalization obligations under the Refugee Convention and interpretation of the UN Smuggling Protocol, which directs that smugglers, rather than smuggled migrants should be the targets of criminal sanctions (UN General Assembly, 2000; see Sections 2 and 4).

Comparative Insight: Canada's model is structurally more compatible with international norms prohibiting the penalization of migrants for entry conduct, whereas U.S. criminal enforcement remains under international scrutiny.

DISCUSSION

Policy Implications

Border enforcement is not merely a set of legal rules; it is a policy framework shaped by public priorities, institutional incentives, and competing values including sovereignty, security, human rights, and economic integration. The differences between Canada's administrative model and the United States' criminalized framework have substantial implications for migrants, enforcement agencies, judicial systems, and international commitments. They include four major policy areas: deterrence and enforcement goals, due process and fairness, international legal compliance, and systemic costs and operational capacity.

Deterrence, Law Enforcement, and Migration Control

One guiding rationale for strict criminal enforcement of unauthorized entry in the U.S. is deterrence. Policymakers often justify criminal penalties by arguing that they discourage future unauthorized border

crossings (American Immigration Council, 2026). However, the empirical evidence supporting the deterrent value of criminal prosecution, especially for complex migration shifts inspired by economic need, violence, or climate pressures is limited. Research indicates that individuals who undertake irregular migration often do so despite the risk of criminal sanction, motivated by factors outside the control of border policy alone (Massey *et al.*, 2024; Clemens, 2023).

Because Canada treats unauthorized entry as a civil matter, its enforcement model offers less restrictive measures but still conducts tens of thousands of removals annually and maintains strong admissibility screening (CBSA, 2025). The fact that Canada upholds migration control objectives without criminalizing entry suggests that deterrence can be pursued effectively through administrative pathways without resort to imprisonment.

Policy implication: Criminal sanctions may not significantly enhance prevention, but can increase disciplinary actions and strain enforcement resources without proportionate public safety benefits.

Due Process, Procedural Fairness, and Access to Justice

A major policy concern relates to procedural fairness and the protection of fundamental rights. Criminal prosecution triggers full constitutional protections, including the right to counsel, a jury trial (where applicable), and intensify procedural safeguards. Yet in practice, high-volume criminal immigration dockets such as those produced by practices like Operation Streamline have constrained access to counsel and informed decision-making, thus; undermining the procedural protections they are designed to uphold (Meissner and Kerwin, 2024; Urban Institute, 2025).

Conversely, civil immigration proceedings provide lesser procedural guarantees. For example, in U.S. immigration court proceedings, there is no constitutional right to appointed counsel, even when individuals face removal to countries where they may face harm (Eagly and Shafer, 2015). Canada's civil administrative model includes statutory safeguards, such as timely reviews of detention and access to an independent tribunal (the Immigration and Refugee Board) to decide admissibility and protection claims (IRPA, 2001). The availability of independent review and the absence of criminal penalties for entry itself support procedural fairness without depending on the criminal justice system.

Policy implication: Systems that minimize the criminalization of migration reduce procedural risks associated with coercive plea practices and promote fairness by matching legal processes to the civil nature of immigration status.

Compliance with International Legal Obligations

Both Canada and the United States are parties to basic international instruments, including the 1951 Refugee Convention/1967 Protocol and the UN Smuggling Protocol (UNHCR, 1951; UN General Assembly, 2000). International law prohibits penalizing refugees for unauthorized entry where they present themselves without delay to authorities and discourages conflating migrants with smugglers (UNHCR, 1951; UN Human Rights Committee, 2023).

Canada's civil enforcement model, where asylum seekers can claim protection regardless of entry mode and are not criminally charged for entry alone aligns more closely with these obligations. By contrast, the U.S. practice of prosecuting asylum seekers under criminal statutes like 8 U.S.C. § 1325 for crossing between ports of entry has drawn international criticism and raises questions about compliance with non-penalization norms (American Immigration Council, 2026; Maurer, 2025).

Policy implication: Aligning domestic enforcement with international legal standards may reduce conflict between national border control goals and global human rights commitments, thereby strengthening legitimacy and international cooperation.

Systemic Costs and Enforcement Capacity

Criminal enforcement imposes major systemic costs that are often overlooked in policy debates. Federal prosecutions under §§ 1325 and 1326 require dedicated pro-secutorial resources, expanded case summary, and increased detention expenditures. In addition to direct costs, criminal convictions carry collateral consequences including barriers to lawful immigration status, career limitations, and long-term social exclusion (Hernández, 2018; American Immigration Council, 2026).

Canada's administrative model, while not immune to backlogs and resource pressures, avoids funneling large numbers of non-violent migrants into the criminal justice system. Instead, administrative enforcement relies on specialized immigration adjudicators and civil processes, which may be more cost-effective and tailored to the complexities of status determination.

Policy implication: Resource allocation decisions that shift enforcement from criminal to administrative channels can reduce fiscal burdens and redirect limited public safety resources to high-priority criminal threats.

Political Dynamics and Public Perception

Border enforcement is deeply political. In both countries, political rhetoric about sovereign control, "border security," and national identity fuels policy choices. In political discourse, criminalization often figures as a symbolic assertion of deterrence and control, even when empirical evidence for effectiveness is weak (Chacón, 2015). Policymakers benefit rhetorically from appearing tough on unauthorized entry, but this framing can lead to unstructured causes of migration and minimize complex policy responses.

Also, public perception also plays a role. Criminal enforcement can create the impression that migration is inherently criminal, which may increase public support for punitive measures but also stigmatize migrants and distract from harm-reduction approaches or humanitarian pathways.

Policy implication: Policy design should be based in evidence and human rights principles rather than symbolic politics. Public communication about border enforcement should distinguish between criminal threats (e.g., human trafficking networks) and civil migration dynamics that merit nuanced administrative responses.

Long-Term Integration and Social Outcomes

Criminalization can affect broader social integration outcomes. Hence, migrants convicted of immigration offenses may face barriers to future lawful migration, reduced opportunities for family reunification, and heightened vulnerability to exploitation. Conversely, administrative models that avoid criminal records for migration conduct may enhance a smooth social and economic integration for those who subsequently qualify for authorized status or protection.

Policy implication: A non-criminal administrative framework can support better long-term social and economic results for migrants who may contribute positively to host societies, especially when legal pathways to regularization are accessible.

CONCLUSION

Border enforcement occupies a central part at the intersection of criminal law, immigration regulation, constitutional governance, and international legal obligations. This comparative analysis of Canada and the United States demonstrates that while both countries face similar migration pressures and share commitments under international refugee and smuggling frameworks, they have adopted fundamentally different legal architectures to manage unauthorized entry. These differences are not just technical; they reflect distinct policy philosophies about whether migration control should be primarily administrative or punitive in nature.

The United States has developed a criminalized enforcement model in which unauthorized entry and re-entry are treated as federal crimes under 8 U.S.C. §§ 1325 and 1326. This framework has expanded over time into a

large-scale enforcement system involving federal prosecution, extensive use of detention, and more recently, state-level criminalization initiatives that further intensify penalties for border crossing conduct (American Immigration Council, 2026; TRAC Reports, 2025). The result is a system where migration control is deeply embedded within the criminal justice apparatus, producing significant constitutional litigation, including ongoing challenges related to equal protection, due process, and federalism (*Arizona v. United States*, 2012; Hernández, 2018).

By contrast, Canada operates a civil-administrative enforcement model under the Immigration and Refugee Protection Act (IRPA), where unauthorized entry is treated as a matter of admissibility and regulatory compliance rather than criminal wrongdoing (IRPA, 2001). Criminal sanctions are generally reserved for facilitation, smuggling, or serious security-related conduct rather than for migrants themselves. Enforcement is carried out through the Canada Border Services Agency (CBSA) and reviewed by an independent quasi-judicial tribunal, the Immigration and Refugee Board, which provides structured procedural safeguards for detention, admissibility, and protection claims (CBSA, 2025).

The comparative evidence suggests that criminalization is not a necessary condition for effective border control. Canada continues to maintain firm enforcement outcomes, including significant annual removals and inadmissibility determinations, while largely avoiding the use of criminal courts to process migration violations. This indicates that administrative systems, when adequately resourced and institutionally structured, can achieve enforcement objectives without extending corrective criminal consequences to irregular migration itself (CBSA, 2025; UNHCR, 1951).

At the international level, both systems operate under obligations that caution against penalizing refugees for unauthorized entry and emphasize the distinction between migrants and smugglers. However, the U.S. criminal enforcement framework creates persistent tension with these norms, particularly where asylum seekers are prosecuted for conduct directly related to seeking protection (UNHCR, 1951; UN Human Rights Committee, 2023). Canada's model, while not without operational challenges, aligns more closely with the principle of non-penalization and the broader humanitarian objectives of international refugee law.

From a constitutional perspective, the U.S. system continues to generate extensive litigation. Challenges to § 1326 based on discriminatory intent and impact, due process concerns arising from mass plea-based adjudication systems, and disputes over state involvement in immigration enforcement all reflect structural tensions within a system that merges civil migration regulation with criminal punishment (*United States v. Carrillo-Lopez*, 2021; Urban Institute, 2025). These tensions highlight the difficulty of reconciling high-volume migration enforcement with the procedural safeguards expected in criminal adjudication.

The broader normative implication of this study is that the choice to criminalize unauthorized entry is ultimately a policy decision rather than a legal inevitability. It reflects how a state conceptualizes borders: either as regulatory checkpoints managed through administrative law or as sites of criminal sanction. The evidence from Canada demonstrates that a civil-first framework can still produce strong enforcement outcomes while reducing the constitutional, humanitarian, and systemic costs associated with criminalization.

At the same time, neither model is without limitations. Canada continues to face processing delays, resource constraints, and enforcement backlogs, while the United States faces challenges of proportionality, racialized enforcement patterns, and institutional strain on its criminal justice system. These shared imperfections suggest that the central policy question is not whether enforcement should exist, but how it should be structured to balance sovereignty, fairness, and legal coherence.

In conclusion, this comparative analysis supports a growing body of scholarship that advocates for decriminalization of migration-related conduct paired with strengthened administrative enforcement capacity. Such an approach would preserve state sovereignty over borders while better aligning domestic systems with constitutional principles and international legal standards. It would also reduce reliance on punitive mechanisms that may be neither necessary nor proportionate to the regulatory objectives they are intended to serve.

Furthermore, effective border governance depends not on the expansion of criminal law, but on the careful calibration of administrative systems that are legally coherent, rights-respecting, and operationally efficient.

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