

“Safe” Designations for Unsafe Countries: Security Discourses and the Construction of
the
Mexican Refugee Applicant “Threat” in Canada

By

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Abstract

The Designated Countries of Origin (DCO) Policy was implemented to deter “bogus” refugee claims from “safe” countries. As a result, this thesis questions how Mexico’s designation on the DCO policy is justified by the official stance, or the Canadian Government, its actors and institutions. I engage with theorists of Critical Security Studies (CSS) to conduct a discourse analysis of official government documents, speeches, data and case decisions to analyze Mexico’s designation. I argue that Mexico’s designation as a “safe” DCO country aims to significantly limit Mexican refugee applicants from seeking refuge in Canada. The official stance has constructed Mexico as a “safe” country, Mexican refugee claims as “bogus” and the presence of Mexican refugee applicants in Canada as a “threat” to society. The official stance’s use of orthodox security discourses unjustly labels Mexican refugee applicants, eclipsing their personal narratives and restricting their ability to successfully obtain refuge in Canada.

Keywords:

Refugee, Applicant, Designated Countries of Origin Policy, DCO, Official Stance, CSS, Security and Mexico.

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Table of Contents

Abstract	I
Acknowledgements	II
Table of Contents	III
List of Tables	V
Abbreviations	VI
Introduction	1
Argument	7
Theory: Critical Security Studies	9
Methodology	17
1. Chapter 1: The Designated Countries of Origin (DCO) Policy	20
1.1. Canada's Refugee System Overview: Security Institutions	20
1.1.1. Post-9/11 Security Institutions	26
1.2. The DCO Policy	28
1.2.1. The Procedural Impact of the DCO Policy	31
1.3. The Official Stance	34
1.3.1. Speech Act Theory	39
1.4. Opposition to the Official Stance: Procedural	46
1.5. Opposition to the Official Stance: Discourse	53
1.5.1. My Stance: The DCO Policy	53
1.5.2. My Stance: Mexico as a "Safe" Country	54
2. Chapter 2: Mexico as a DCO Country	61
2.1. The History of Mexican Migration to Canada	61
2.2. The History of Mexican Refugees to Canada	65
2.2.1. The ELZN	65
2.2.2. The Acteal Massacre	66
2.2.3. The Mexican "Drug War"	67
2.3. Canada's Response to Mexican Refugees	73
2.3.1. The Visa Requirement	73
2.4. Mexican Refugee Applicants & The DCO Policy	81
2.4.1. Lifting the Visa Requirement	81
2.4.2. Connecting Labour to National Belonging	82
2.4.3. DCO Mexican Refugee Applicants	85
2.5. Mexico as a Fragile State	86
3. Chapter 3: The DCO Policy's Impact on Mexican Refugee Applicants	89
3.1. Case Study: Quantitative Data	89
3.1.1. Mexico	89
3.2. Quantitative Data Analysis	102
3.3. Case Study: Qualitative Data	105
3.3.1. Case #1	109
3.3.2. Case #2	111
3.3.3. Case #3	113
3.3.4. Case #4	116
3.4. Qualitative Data Analysis	118
Conclusion	125
The Future of Human Insecurity: Emancipation	126

My Plan for Emancipation	133
Concluding Remarks	135
Bibliography	140

List of Tables

Table 1 89

Abbreviations

AI	Amnesty International
ATA	Anti-Terrorism Act
ATIP	Access to Information and Privacy
BOC	Basis of Claim
BRRA	Balanced Refugee Reform Act
CanLII	Canadian Legal Information Institute
CBA	Canadian Bar Association
CBSA	Canadian Border Services Agency
CCR	Canadian Council for Refugees
CIC	Citizenship and Immigration Canada (Now Known as the IRCC)
Convention	1951 <i>Convention and 1967 Protocol Relating to the Status of Refugees</i>
CSS	Critical Security Studies
DCO	Designated Countries of Origin Policy
DCOs	Designated Countries Under the Designated Countries of Origin Policy
EZLN	Ejército Zapatista de Liberación Nacional
FFP	Fund for Peace
FSI	Fragile State Index
H&C	Humanitarian and Compassionate Consideration
IA	Immigration Act of 1978
IAD	Immigration Appeal Division
ID	Immigration Division
IFA	Internal Flight Alternative
IRB	Immigration and Refugee Board of Canada
IRCC	Immigration, Refugees and Citizenship Canada
IRPA	Immigration and Refugee Protections Act
The Minister	Minister of Immigration, Refugees and Citizenship (Formerly Known as the Minister of Citizenship and Immigration Canada)
NAFTA	North American Free Trade Agreement
NATO	North Atlantic Treaty Organization
NGO	Non-Governmental Organization
PRRA	Pre-Removal Risk Assessment
RAD	Refugee Appeal Division
RPD	Refugee Protection Division
SAWP	Seasonal Agricultural Workers Program
TCO	Transnational Criminal Organization
TFWP	Temporary Foreign Workers Program
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
U.S.	United States
U.S.D.	United States Dollar
WWII	Second World War
Y.Z	<i>G.S. and C.S. v The Minister of Citizenship and Migration</i>
9/11	September 11, 2001

Introduction

Her name is now Grise. Grise is the post-mortem pseudonym for a 24-year-old Mexican refugee applicant, used to protect the identity of her family in Canada and in Mexico. Although she was not born as Grise, she is now a shocking reminder of the high stakes of refugee status determination. Grise, along with her mother Nuemi and younger sister Bebe (also pseudonyms), first arrived in Canada in 2004.¹ Their family made the hasty trip to Canada to apply for refugee status after Nuemi's ex-husband had been murdered by Colombian drug traffickers linked with the Mexican gang La Familia Michoacana.² In their joint applications for refugee status, it states that the gangsters believed Nuemi's ex-husband had stolen their drug money, and when the money could not be located, they believed he had given it to Nuemi.³ Grise, Nuemi and Bebe became the gang's targets. Regardless of their very real fear of death upon their return to Mexico, the family's claim for refugee status was denied in 2005.⁴ Nuemi and her daughters had changed residence ten times to avoid the attackers, but they were found every single time. Yet the Immigration and Refugee Board of Canada's (IRB) Refugee Protection Division (RPD) had cited, among other things, that the family had not made a concerted effort to seek assistance from Mexican authorities.⁵ The federal official who conducted the family's Pre-Removal Risk Assessment (PRRA) determined that the family faced only a subjective fear in Mexico, and the family did not challenge the arguments that they could

¹ Nicholas Keung, "Mexican Woman Deported to Her Death" *Immigration Reporter* (23 October 2009), online: The Toronto Star <https://www.thestar.com/news/gta/2009/10/23/mexican_woman_deported_to_her_death.html> at para 3.

² *Ibid* at para 11.

³ *Ibid*.

⁴ *Ibid* at para 12.

⁵ *Ibid* at para 13.

have been protected by the Mexican state.⁶ Deportation was imminent and the family subsequently went into hiding in Canada.

In August of 2008, Grise made the difficult decision to leave Canada and return to Mexico to say her final goodbye to her dying grandmother.⁷ Upon her return to Mexico, it was not long before members of La Familia Michoacana had found her. Grise was attacked, badly beaten and raped, leaving her pregnant with her attacker's baby.⁸ She returned to Canada in a desperate attempt to flee the gang violence, but she was deported in December of 2008. Nuemi and Bebe were deported back to Mexico in February of 2009.⁹ In March of 2009, when Grise was seven months pregnant, she was kidnapped by members of La Familia Michoacana.¹⁰ As her autopsy report states, while still held captive and approaching her due date, a caesarian section was performed on her in May.¹¹ It is unclear by whom it was performed.¹² In June of 2009, Grise's lifeless body was found badly beaten with a single gunshot wound to the head.¹³ The whereabouts of her baby are still unknown today.¹⁴ Grise's tragic story is a stark reminder of the high stakes of refugee status determination and the consequences of Canadian refugee authorities getting a refugee claim "lethally and irreversibly wrong."¹⁵ The family's refugee lawyer, Aviva Basman of Toronto's Refugee Law Office, stated that her clients' tragic story is

⁶ *Ibid* at para 15.

⁷ *Ibid* at para 16.

⁸ *Ibid*.

⁹ *Ibid*.

¹⁰ *Ibid* at para 17.

¹¹ Oakland Ross, "Fleeing the Drug War, but Finding Doors Closed in Canada" *Feature* (19 June 2011), online: The Toronto Star <https://www.thestar.com/news/world/2011/06/19/fleeing_the_drug_war_but_finding_doors_closed_in_canada.html> at para 3.

¹² *Ibid*.

¹³ *Ibid* at para 4.

¹⁴ *Ibid* at para 7.

¹⁵ *Ibid* at para 6.

“symbolic of Canada’s attitude towards asylum seekers from Mexico, which Ottawa doesn’t see as a refugee-producing country.”¹⁶

I felt it was necessary to share Grise’s story to illustrate the very real and detrimental consequences of denying potentially legitimate refugee claims. Unfortunately, her story is not the only example of Mexican refugee applicants suffering a tragic fate once their claims for refuge are denied, and they are then deported. Veronica Castro, another denied Mexican refugee applicant in Canada, was deported back to Mexico in 2011. She stated that her deportation was a matter of “life or death.”¹⁷ On January 12, 2012, Veronica’s premonition came true and she was badly beaten and robbed.¹⁸ She had succumbed to her injuries and died three days later.¹⁹ Lucia Vega Jimenez is yet another victim of the Canadian refugee determination system. An identity check by Transit Police in December of 2014 revealed she was evading deportation back to Mexico after her refugee claim had been denied in 2010.²⁰ She was put into the custody of Canadian Border Services Agency (CBSA) while awaiting her immediate flight back to Mexico.²¹ However, what is different in Lucia’s case was that while in the holding cell at Vancouver International Airport, Lucia attempted to kill herself.²² She hung herself from the shower rod in the holding cell after insisting she would rather die

¹⁶ Keung, *supra* note 1 at para 20.

¹⁷ Mary Sheppard, “Deported Mexican Refugee Claimant Dies After Beating: The Life and Death of Veronica Castro” *CBC News Canada* (24 April 2012), online: CBC News <<http://www.cbc.ca/news/canada/deported-mexican-refugee-claimant-dies-after-beating-1.1166530>> at para 5.

¹⁸ *Ibid* at para 6.

¹⁹ *Ibid*.

²⁰ Andrea Woo, “Woman Who Died in CBSA Custody Feared Returning to Domestic Trouble in Mexico” *The Globe and Mail* (31 January 2014) online: The Globe and Mail <<https://www.theglobeandmail.com/news/british-columbia/woman-who-died-in-cbsa-custody-feared-returning-to-domestic-trouble-in-mexico/article16644691/>> at para 6.

²¹ *Ibid*.

²² *Ibid*.

than be sent back to Mexico. She was transported to a nearby hospital, but she died eight days later.²³

Grise, Veronica and Lucia all lost their lives after having their refugee claims denied and being deported, or faced deportation, back to the country from which they sought refuge. All three women were of Mexican descent and all three women's refugee claims had predicted their own deaths. As Mexican refugee applicants, Grise, Veronica and Lucia's refugee claims were subject to the visa requirement implemented by the Conservative Government in 2009, a measure to supposedly deter baseless refugee claims in Canada from Mexico.²⁴ Once the stories of their tragic deaths received increased media attention, one might have hoped for administrative changes in the refugee status determination system and the Canadian Government's response and perspective on Mexico and Mexican refugee applicants. In response to Grise's death, Immigration, Refugees and Citizenship Canada (IRCC) made a statement to the Toronto Star newspaper that "the government makes every effort to ensure that people are not removed to a situation of risk."²⁵ However, "in rare cases, persons removed from Canada fall victim to unfortunate circumstances, which may or may not be related to factors examined in the PRRA."²⁶ This was a weak response from a government that stacks the odds against claimants from countries like Mexico. By 2011, Mexican refugee applicants were subject to a bleak 17% acceptance rate and an overwhelming 61% rejection rate.²⁷ Grise, Veronica and Lucia each fell victim to this 61% rejection rate.

²³ *Ibid.*

²⁴ Liette Gilbert, "The Discursive Production of a Mexican Refugee in Canadian Media and Policy" (2013) 39:5 JEMS 827 at 828.

²⁵ Keung, *supra* note 1 at para 21.

²⁶ *Ibid.*

²⁷ Immigration and Refugee Board of Canada. Access to Information and Privacy, Request No. A-2016-01448 at 14.

(Not so) “luckily” for them, another thing their claims had in common were that they were all made prior to February 15, 2013. What is significant about this date is that their claims were not yet subject to the Designated Countries of Origin (DCO) policy. Even after their deaths and the already tight regulations to which the Canadian Government had subjected Mexican refugee applicants, Mexico was designated on the DCO policy list of allegedly “safe” countries that do not usually produce refugees.²⁸ Had their claims been made after February 15, 2013, all three women would have had their claims subjected to additional procedural restrictions such as having their claims heard by the IRB within a shorter timeframe, making their cases difficult to prepare, and upon denial, the applicants would be eligible to be deported back to Mexico even quicker.²⁹ However, more importantly, the DCO policy labels certain nations as “safe” and therefore applicants from DCO countries are assumed not to be in need of refuge. This effectively results in the overshadowing of the refugee experience, as their DCO status becomes more important to their claim than their experience of fleeing persecution. Instead, the DCO policy labels claimants from DCO countries as “fraudulent,” posing a “threat” to the Canadian refugee system because they clog the system with their “bogus” claims. This is done in an effort to curb and deter the alleged “abuse” to the Canadian refugee system from “bogus” refugee claims it receives from “safe” Mexican applicants.³⁰ Mexican refugee applicants fall victim to the “othering” which is still a significant part of the classical conception of security orthodoxy, leading the Canadian state to paint select groups of non-Canadians as a “threat” to Canadian society.

²⁸ Government of Canada, “ARCHIVED – Backgrounder – Designated Countries of Origin,” *Immigration, Refugees and Citizenship Canada* (1 February 2013), online: Government of Canada, <<http://www.cic.gc.ca/english/department/media/backgrounders/2012/2012-11-30.asp>> at para 1.

²⁹ *Ibid* at para 5.

³⁰ Citizenship and Immigration Canada, “Speaking Notes for the Honourable Jason Kenney, P.C., M.P. Minister of Citizenship, Immigration and Multiculturalism. Ottawa, Ontario” *Government of Canada* (29 June 2012), online: The Government of Canada. <<http://www.cic.gc.ca/english/department/media/speeches/2012/2012-06-29.asp>>.

In spite of such realities, Canada's reputation on the world stage has been a positive one. Refugee approval has become an important part of Canada's national identity, and the country has been praised for its humanitarian acceptance of others. According to the United Nations High Commissioner for Refugees (UNHCR), also known as the UN Refugee Agency, Canada is listed as one of the world's top refugee resettlement countries under the UNHCR's resettlement programme.³¹ Refugee acceptance and integration is a recognized and respected part of Canada's international reputation. At the forefront of the acceptance or denial of refugees is the IRB, which reflect Canada's humanitarian and security values, and respect for Canada's international obligations.³² Through the IRB's acceptance of refugees, the sentiment that "Canada is truly a nation of immigrants"³³ has been repeated by scholars throughout the history of Canadian refugee and immigration policy. Canadian citizenship is described as a "more open-ended concept in Canada than in most other Western countries,"³⁴ as Canadian identity is constantly being reconstructed and redefined by the arrival and acceptance of newcomers to Canada.

This shared sentiment of Canada was echoed again recently in early 2017, when United States (U.S.) President Donald Trump's administration imposed Executive Order 13769, a policy which placed an immigration ban on seven Muslim-majority nations.³⁵ In response to this, Canadian Prime Minister Justin Trudeau was quick to take to Twitter, tweeting to the nation and all of the international community on social media "to those

³¹ The United Nations Refugee Agency, "'Resettlement,'" *UNHCR The United Nations Refugee Agency* (8 June 2016), online: UNHCR <<http://www.unhcr.org/resettlement.html>>.

³² Government of Canada, "About the Board: Mandate" *Immigration and Refugee Board of Canada* (2 December 2016), online: Government of Canada <<http://www.irb-cisr.gc.ca/Eng/BoaCom/Pages/index.aspx>>.

³³ Reg Whitaker, *Double Standard: The Secret History of Canadian Immigration* (Toronto, ON: Lester & Orpen Denny Publishers, 1987) at 302.

³⁴ *Ibid.*

³⁵ Todd Scribner, "You are Not Welcome Here Anymore: Restoring Support for Refugee Resettlement in the Age of Trump" (2017) 5:2 *Journal on Migration and Human Security* 263 at 372 (ProQuest).

fleeing persecution, terror & war, Canadians welcome you, regardless of your faith. Diversity is our strength #WelcomeToCanada.”³⁶ If Canada is so welcoming, how can it justify its use of the DCO policy? If Canada welcomes those fleeing persecution, violence and war, how can Mexico’s designation on the DCO policy list be justified, and Mexican refugee applicants be denied? I will argue that these narratives of humanitarianism are just reconstructions of the mythology of Canada’s reputation as a “nice”, “safe” and “humanitarian” country, and do not reflect the reality of Canadian policies in practice. Sherene Razack addresses this shared and reproduced mythology best as she contends that “Canadian naïveté and passivity as a nation constitute a narrative of innocence... that blocks accountability for racist violence within Canada. A nation so gentle could not possibly have participated in acts of violence reported by the press.”³⁷ I question how the Canadian Government and the IRB reconcile its humanitarian identity with its continued use of the DCO policy, which has proven to be detrimental to refugee applicants fleeing DCO countries due to the presupposition of their fraudulence.³⁸ I will focus on how the DCO policy has been detrimental to Mexican applicants. I believe Canada hides behind the mythology and narrative that it is a humanitarian country to support its exclusionary security agenda.

Argument

Since the start of my research into the DCO policy, Mexico’s designation has always stood out among the other countries on the list. Considering the DCO policy is marketed as a way to stop “bogus” applicants from “safe” countries not typically known

³⁶ David Ljunggren and Anna Mehler Paperny, “Justin Trudeau Tweets Message of Welcome to Refugees as Trump Travel Ban Sets In.” *Reuters* (28 January 2017), online: Global News <<https://globalnews.ca/news/3212041/justin-trudeau-refugees-donald-trump-travel-ban/>>.

³⁷ Sherene Razack, ““From the “Clean Snows of Petawawa”: The Violence of Canadian Peacekeepers in Somalia” (2000) 15:1 *Cultural Anthropology* 127 at 135.

³⁸ Petra Molnar Diop, “The “Bogus” Refugee: Roma Asylum Claimants and Discourses of Fraud in Canada’s Bill C-31” (2014) 30:1 *Refuge* 67 at 76.

to produce refugees, I question how and why Mexico's designation on the DCO policy list has been, and continues to be justified. As a country rife with nation-wide government corruption, rampant crime and violence as seen in Grise, Veronica and Lucia's cases, and heavy drug and gang activity, Mexico seems to fall short of being a "safe" country. My research also questions why does the DCO policy exist? And why is Mexico on the list? I have found that the official stance, which comes from the Minister of Immigration, Refugees and Citizenship (the Minister) both past and present, official IRB case decisions and also some scholars, has provided a convenient answer to both of these questions, establishing that Mexico has either met or surpassed its quantitative or qualitative thresholds for designation, thus labelling Mexico as a "safe" country, while labelling applicants from this "safe" country as fraudulent "threats" to Canada's refugee system, social services and national security as a whole that must be thwarted.³⁹ However, I refuse to accept this answer at face value.

The following thesis refutes the official stance by addressing the contradictions between Canada's humanitarian reputation and its refugee policies in practice, as well as the continued prioritization of national security over human security. In this thesis I argue that the DCO policy, as publicized through the official stance, falsely portrays Mexico as "safe" and in doing so, the policy presents grave disadvantages to DCO applicants not only because of the procedural constraints associated with DCO designations, but also due to the labelling of applicants that is part of the state's security objectives. My research has been guided by the research question "what are the implications of designating a country and its applicants as "safe" under the DCO policy and how has this discourse of safety affected DCO applicants, specifically those from Mexico?" I argue

³⁹ Citizenship and Immigration Canada, supra note 30.

that Canada designated Mexico as a “safe” country under the DCO policy in an attempt to significantly limit and discourage refugee applicants from Mexico seeking refuge in Canada in the name of security, and under the guise of humanitarianism. The DCO policy constructs Mexican refugee applicants as “bogus” and “fraudulent” because of the inconceivable presumption of Mexico as a “safe” country. Canada is using the DCO policy to avoid its international humanitarian obligations to protect and maintain human security because, in reality, the security discourse that labels Mexican refugee applicants ultimately results in the state erasure of the Mexican refugee experience, making Mexican refugee applicants’ personal narratives less relevant due to their designation. Mexico’s designation on the DCO policy allows Canada to overlook or diminish the very real experiences of Mexican refugee applicants, posing risks to the lives of applicants upon their denial just like Grise, Veronica and Lucia. I argue that this is done in part to maximize the presence of “productive” Mexican migrants in Canada, and thus contribute to the Canadian economy through the North American Free Trade Agreement (NAFTA) and other programs. Canada prioritizes the economy over financially supporting Mexican refugees and upholding its international humanitarian obligations that would come with recognizing Mexico as a “fragile” state under the Fragile State Index (FSI), or at the very least an “unsafe” country. The official stance ultimately redefines what “safety” and “security” mean in regards to Mexican refugee applicants in order to support its own agenda.

Theory: Critical Security Studies

The following thesis is framed through the theory of Critical Security Studies (CSS). According to Ken Booth, CSS:

Is an issue-area study, developed within the academic discipline of international politics, concerned with the pursuit of critical knowledge about security in world politics. Security is conceived comprehensively, embracing theories and practices at multiple levels of society, from the individual to the whole human species. “Critical” implies a perspective that seeks to stand outside prevailing structures, processes, ideologies, and orthodoxies while recognizing that all conceptualizations of security derived from particular political/theoretical positions; critical perspectives do not make a claim to objective truth but rather seek to provide deeper understandings of prevailing attitudes and behaviour with a view to developing more promising ideas by which to overcome structural and contingent human wrongs.⁴⁰

By taking a critical stance, CSS seeks to challenge the assumptions underpinning the dominant discursive understanding of what “security” means.⁴¹ There is a consensus over the standard definition of security or “being or feeling safe from threats and danger.”⁴² This standard definition of security is commonly used to justify security measures as necessary to protect individual nations, or to ensure national security.⁴³ As Booth argues, being and feeling safe from threats and danger implies both an objective and subjective aspect of security.⁴⁴ However, both the objective and subjective aspects of security may obscure what or who may be labelled as the threat and the danger, as well as what justifies feeling safe from these perceived threats or dangers. The objective dimension of security can be articulated better by examining security historically.⁴⁵ In doing so, one can understand how the government participates in the construction of what the public should perceive as objective threats and dangers to one’s security. It will also show “whether particular threats are exaggerated, or whether people felt safe when they were not.”⁴⁶ The objective aspect of security does not provide one uncontested standard of security, but instead it provides a historically constructed, typically governmental

⁴⁰ Ken Booth, “Critical Explorations” in Ken Booth, eds, *Critical Security Studies and World Politics* (Boulder, CO: Lynne Rienner Publishers Inc., 2005) at 15 – 16.

⁴¹ *Ibid* at 5.

⁴² *Ibid* at 13.

⁴³ Ken Booth, “Security and Self: Reflections of a Fallen Realist” in Keith Krause and Michael C. Williams eds, *Critical Security Studies: Concepts and Cases* (Minneapolis, MN: University of Minnesota Press, 1997) at 83.

⁴⁴ Booth, *supra* note 40 at 21.

⁴⁵ *Ibid*.

⁴⁶ *Ibid*.

interpretation of security.⁴⁷ The subjective factor of security has the potential to “leave open considerable space for unjustified fear and miscalculation.”⁴⁸ The subjective aspect of security depends on what objective constructions of threats and danger have influence on the subjective construction, as well as one’s own construction of threats and danger which may or may not reflect those of the objective dimension. Subjectively, objectively or both, all constructions and definitions of security are heavily influenced by national and international politics.⁴⁹ Not all nations, political positions and theoretical perspectives agree on one definition or conceptualization of security.⁵⁰ As a result, security continues to be a highly contested political concept, that continues to develop over time. It is defined differently within different nations depending on the internal climate of that state and its external obligations to the international community.⁵¹ Consequently, CSS seeks to challenge historical constructions of security by analyzing both the objective and subjective aspects of security. CSS aims to develop its own critical conception of security.

Political realists draw on a political philosophy that assumes that power is the primary objective in both national and international relations.⁵² Political realists have relied upon the classical tradition of theorizing “security” as the struggle for power between political units.⁵³ In other words, political realists turn to orthodox security studies which reflects the classical theorization of security. Orthodox security studies offers a picture of security consisting of “the dominating significance of sovereign states is the drive of states to survive and maximize power, the expectation of interstate

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² *Ibid* at 4.

⁵³ *Ibid* at 5.

struggles, crises, and war, and the sanction of military forces as an instrument of policy.”⁵⁴ Along with political realists, the Canadian Government adheres to this picture of security. The drive for the Canadian state to survive and maximize its power is predicated on its conception of national security which is deeply embedded in systems of control, domination and power, to manage and protect the lives of its citizens and residents. Canadian regulations to ensure national security have been constructed along the lines of the realist orthodoxy of security studies: even in the post-Cold War era where state elites seek to “legitimize their own power and interests by claiming to be representative of, or defenders of, the community. Political realists define security orthodoxy as the statist belief, advocating for a political system in which the state has control over all affairs.”⁵⁵ Through this realist view of security, the state “mobilize[s] particular understandings of the people, the nation, of culture, of national identity; and seek[s] to suppress other imaginings of community.”⁵⁶ In doing so, the state also constructs notions of security, danger and threats to safety from inside their construction of national identity.⁵⁷

At the very heart of the construction of security is the notion of securing the border from perceived invasion. Since states are “the main container and providers of security,”⁵⁸ so too are its border policies. Refugee policies are produced from within this system of control, granting the privilege of refuge and inclusion to some, at the exclusion

⁵⁴ *Ibid.*

⁵⁵ *Ibid* at 6.

⁵⁶ Jan Jindy Pettman, “Questions of Identity: Australia and Asia” in Ken Booth, eds, *Critical Security Studies and World Politics* (Boulder, CO: Lynne Rienner Publishers Inc., 2005) at 159.

⁵⁷ *Ibid.*

⁵⁸ Andrew Linklater, “Political Community and Human Security” in Ken Booth, eds, *Critical Security Studies and World Politics* (Boulder, CO: Lynne Rienner Publishers Inc., 2005) at 114.

of many others, in the name of national security.⁵⁹ The realist orthodoxy of security studies emphasizes the importance of the post-Cold War era in conceptualizing security studies.⁶⁰ What is significant about this time period is that despite the end of the Cold War, the Cold War perception of security persisted. CSS scholars refer to this time period as the post-Cold War era as modern states, definitions and measures of security are still dominated by the beliefs of the Cold War. As will be discussed in the first chapter, during this time, there has been a preoccupation with “statism, strategizing, and stability”⁶¹ to support the nation. During the same time, CSS emerged to provide an alternative to the political and statist definition of security.⁶² However, much of Canada’s national security measures such as border policies were developed in the Cold War era of security and have continued to be fundamental to the post-Cold War era of security that Canada recognizes today.

Canada’s DCO policy was constructed in the post-September 11, 2001 (9/11) orthodox security era, which reaffirmed the post-Cold War realist orthodoxy of security where harsh border patrols and policies of exclusion were supported in the name of security. Once again the realist-defined theory of orthodox security acts much like the official stance by constructing a particular narrative for the public: war is inevitable, terrorism is inevitable and fraud is inevitable, therefore security, through securitized and exclusionary borders, is necessary because the government deems it to be so. Anything or anyone deemed to be, or labelled as, a “threat” under this orthodox construction of security must be eliminated or at least excluded.

⁵⁹ Gurinder K. Bhambra, “Citizens and Others: The Constitution of Citizenship Through Exclusion” (2015) 40:2 *Alternative: Global Local Political* 1 at 1.

⁶⁰ Booth, *supra* note 40 at 12.

⁶¹ *Ibid.*

⁶² *Ibid.*

The realist-defined theory of orthodox security is centered on national security, and does not consider that the appropriate gauge for security may actually be the individual rather than the nation.⁶³ This definition of “security” does little to articulate or consider the security of individuals.⁶⁴ Since the beginning of the post-Cold War era, many scholars have attempted to theorize an alternative to the realist-defined theory of orthodox security, one which provides alternatives to the militarized common conception of security.⁶⁵ Currently, the Government of Canada website provides a picture of Canada’s national security and defence agenda. Alongside militarized strategies such as counter-terrorism, the military operations of the Canadian Armed Forces, one of the pillars of Canada’s current national security agenda is securing the border.⁶⁶ The Government of Canada’s National Security and Defence website states that “border security keeps Canadians safe by screening people and goods.”⁶⁷ The CBSA is responsible for screening all visitors to Canada, including those who place claims for immigration or refugee status at the border.⁶⁸ The CBSA agent will screen the individual to ensure the safety of Canada and Canadian society.⁶⁹ During this preliminary screening, which includes a background check for criminality or security risks, if the individual is deemed inadmissible or considered a risk to Canada’s national security, they will not be allowed to enter or remain in Canada.⁷⁰ If there are no immediate risks to national

⁶³ Ken Booth, “Part 3: Emancipation” in Ken Booth, eds, *Critical Security Studies and World Politics* (Boulder, CO: Lynne Rienner Publishers Inc., 2005) at 182.

⁶⁴ *Ibid* at 181.

⁶⁵ Booth, *supra* note 43 at 85.

⁶⁶ Government of Canada, “National Security and Defence” (4 May 2018) online: Government of Canada <<https://www.canada.ca/en/services/defence.html>> at para 4.

⁶⁷ Government of Canada, “Securing the Border” (24 April 2017) online: Government of Canada <<https://www.canada.ca/en/services/defence/securingborder.html>> at para 1.

⁶⁸ Government of Canada, “Security Screening” (13 May 2015) online: Government of Canada <<http://www.cbsa-asfc.gc.ca/security-securite/screen-verific-eng.html>> at para 1.

⁶⁹ *Ibid*.

⁷⁰ *Ibid* at para 3.

security, the CBSA will transfer the individual or the claim to an officer at the IRCC.⁷¹ The CBSA works with the IRCC, as well as international and Canadian law enforcement agencies to screen all individuals entering Canada.⁷² Thus far, Canada's IRB has been a central security institution. It is used in conjunction with other national security institutions such as the CBSA to defend the national security of Canada by securing the border and screening people attempting to enter Canada.⁷³ Canada's refugee law has also played an integral role in ensuring the national security of Canada by securing the border.⁷⁴ National security has been the focus of Canadian security efforts, overshadowing the more human aspects of security.

Consequently, my thesis employs CSS to draw on human security or "the safety for people from both violent and non-violent threats"⁷⁵ characterized by freedom from threats to people's rights, safety or their lives.⁷⁶ This is a brief summarization of a proper definition of human security as there have been three conceptions of it. The first argues that "serious threats to human security come from the denial of fundamental rights such as the right of minority (self-determination) and the lack of the rule of law."⁷⁷ The second comes from the United Nations Development Programme (UNDP) Human Development Report in 1994, which defined human security as a two pronged concept.⁷⁸ The first prong is "safety from such chronic threats as hunger, disease and repression. And second, protection from sudden and hurtful disruptions in the patterns of daily life—whether in

⁷¹ *Ibid* at para 4.

⁷² *Ibid* at para 2.

⁷³ Natasha M. Ezrow and Erica Frantz, *Failed States and Institutional Decay: Understanding Instability and Poverty in the Developing World* (New York, NY: Bloomsbury Academic Publishing Plc, 2013) at 173.

⁷⁴ *Ibid*.

⁷⁵ Alexandra Dobrowolsky, Sandra Rollings-Magnusson and Marc G. Doucet, "Security, Insecurity and Human Rights" in Sandra Rollings-Magnusson eds, *Anti-Terrorism: Security and Insecurity After 9/11* (Halifax, NS: Fernwood Publishing, 2009) at 18.

⁷⁶ *Ibid*.

⁷⁷ Hawre Hasan Hama, "State Security, Societal Security, and Human Security" (2017) 21:1 JJIR 1 at 14.

⁷⁸ *Ibid*.

homes, in jobs or in communities.”⁷⁹ The UNDP report states that human security is defined by seven areas including economic security, health security, environmental security, community security, personal security, food security and political security.⁸⁰ The third perspective on human security is simply freedom from fear.⁸¹ Although standard definitions of ‘fear’ exist, ‘fear’ is also an emotion which is highly subjective and can be difficult to interpret and define.⁸² This third perspective has been highly debated because of how broad it is.

My use of human security will adhere to the UNPD perspective on human security. All seven areas of human security are integral to societal life both within and outside of the nation state. The definition provided by the UNPD provides the most inclusive perspective on human security. As a result, I will use this definition to describe what I will refer to as human security or social security and will focus on the social aspects of security. My use of CSS permits a critical stance on how the orthodox definition of “security” is not upheld to ensure the human security of refugee applicants from DCO countries who seek refuge in Canada. Instead, the absence of human security leads to insecurity, which for those refugee applicants from DCO’s means being open to the danger and risks from which they seek refuge.⁸³

CSS is typically used in the study of international relations. However, because of the intersection of international relations with politics and law when discussing an issue such as security, I believe CSS is the best theory to provide a different perspective on issues that challenge human security. I use CSS to take a critical stance on the border

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ Dobrowolsky, *supra* note 75 at 23.

policies of the Canadian state to challenge the official stance and classical security studies which claims that state sovereignty equals security.⁸⁴ Using CSS throughout my evaluation of the DCO policy with respect to its impact on Mexican refugee applicants, I assess the situation based on “its origins, development, institutions and its potentiality for change.”⁸⁵ By taking a critical stance on traditional security as defined by the Canadian state, I will show that border policies such as the DCO policy do not in fact represent humanitarian acceptance in the name of human security, but instead *represent mass exclusion in the name of national and human security of Canadians.*⁸⁶

Methodology

The research design I believe will be best to conduct an accurate evaluation of the DCO policy and its impact on Mexican refugees is to use the CSS discourse analysis. CSS discourse analysis is influenced by Michel Foucault’s work. Foucault explains that knowledge constructs, and is constructed by,⁸⁷ rules, procedures and systems.⁸⁸ These rules, procedures and systems encompass the discursive practices in which knowledge is formed, produced and implemented, otherwise known as the “the order of discourse.”⁸⁹ Discourse is not simply language, but also the systems that give language meaning.⁹⁰ Discourse is defined in CSS broadly as “any archive of statements, the institutions and configurations of power/knowledge and truth”⁹¹ that influence the way these statements are made, said and interpreted.

⁸⁴ Booth, *supra* note 40 at 1.

⁸⁵ *Ibid* at 11.

⁸⁶ *Ibid.*

⁸⁷ Michel Foucault, “The Order of Discourse” Translated by Robert Young in *Untying the Text: A Post-Structuralist Reader* (Boston, Mass: Routledge & Kegan Paul, 1981) at 49.

⁸⁸ Derek Hook, *Foucault, Psychology and the Analytics of Power* (UK: Palgrave Macmillan, 2007) at 101.

⁸⁹ *Ibid.*

⁹⁰ Mark B. Salter, “Research Design: Introduction” in Mark Salter and Can Mutlu, eds, *Research Methods in Critical Security Studies, An Introduction* (New York, NY: Routledge, 2013) at 20.

⁹¹ *Ibid.*

The DCO policy and its impact on Mexicans is the object of my analysis.⁹² First, CSS discourse analysis encourages a “genealogy” or the study of “historical production of particular forms of truth.”⁹³ In this instance, I evaluate how the state constructs DCO countries and applicants as “safe” and how that labelling is part of the dominant discourse of “security” in modern Canadian society. My analysis will address the performative linguistic connection between the issue at hand and the role of security in regards to the issue.⁹⁴ CSS argues that the power of security as a speech act in traditional security studies is used by governmental actors to advance the state’s position above any other on security.⁹⁵ I use CSS Speech Act Theory to demonstrate how the language of the official stance constitutes the state’s historical construction of refugees as “risks” and under the DCO policy to transfer that “risk” to “safe” and “bogus” DCO applicants from Mexico. Next, CSS seeks to deconstruct the data through archival and content analysis. Mexico is the subject of my deconstruction. I evaluate how Mexico does in fact produce genuine refugees due to the inner turmoil of the nation, but also how their presence is demonized as a “threat” to Canada. Then, CSS discourse analysis attempts to “fit”⁹⁶ it all together. However, CSS does not promise any definitive answers as to the nature of things and the future direction of the phenomena. Instead, the “fit” of the issue will address any changes in the meaning of politically significant terms. Using CSS discourse analysis I show that “security” takes on new meaning depending on whose security is being assumed at the

⁹² Richard Wyn Jones, “‘Message in a Bottle’? Theory and Praxis in Critical Security Studies” (1995) 16:3 *Contemporary Security Politics* 299 at 301.

⁹³ Salter, *supra* note 90 at 19.

⁹⁴ *Ibid.*

⁹⁵ Richard Wyn Jones, *Security, Strategy, and Critical Theory: Critical Security Studies* (Boulder, CO: Lynne Rienner Publishers Inc., 1999) at 165 – 166.

⁹⁶ Salter, *supra* note 90 at 19.

time and under what conditions.⁹⁷ The final part of a CSS discourse analysis encourages emancipation politics, or to “invent humanity, with a view of freeing people, as individuals and collectives, from contingent and structural oppression.”⁹⁸ Emancipation is envisioned as a philosophical anchorage to test whether something is true or the production of knowledge should be seriously considered.⁹⁹ Emancipation is a strategic, reflexive process with continued complexities to encourage the freeing of peoples, and it is considered a guide for tactical goal setting.¹⁰⁰ After analyzing security discourses and the impact of DCO policy on Mexican refugee applicants, I conclude by attempting to envision the emancipation of Mexican refugee applicants and all DCO applicants in my concluding remarks. CSS recognizes that emancipation is an ongoing goal. My strategy of emancipation will attempt to determine the direction of human security and insecurity in spite of regulations such as the DCO policy.

⁹⁷ R. B. J. Walker, “The Subject of Security” in Keith Krause and Michael C. Williams eds, *Critical Security Studies: Concepts and Cases* (Minneapolis, MN: University of Minnesota Press, 1997) at 69.

⁹⁸ Booth, *supra* note 43 at 181.

⁹⁹ *Ibid.*

¹⁰⁰ Booth, *supra* note 63 at 182.

1. Chapter 1: The Designated Countries of Origin (DCO) Policy

1.1. Canada's Refugee System Overview: Security Institutions

The IRB was created in 1989, and has the authority to decide who gets to belong within Canada's borders. The IRB consists of four divisions: the Immigration Division (ID), the Immigration Appeal Division (IAD), the RPD, and the Refugee Appeal Division (RAD).¹⁰¹ Each board is comprised of a Chairperson and board members of the divisions. The following research focuses on the RPD and RAD. The IRB's mandate states that "as an organization responsible for applying administrative justice, the IRB adheres to the principles of natural justice and its decisions are rendered in accordance with the law, including the *Canadian Charter of Rights and Freedoms*."¹⁰² The IRB reports to Parliament through the Minister. The IRB's "mission, on behalf of Canadians, is to resolve immigration and refugee cases, efficiently, fairly, and in accordance with the law."¹⁰³

The IRB is one of Canada's security institutions. Security institutions, as defined by CSS, are authorized by the state to engage in defense (both military and otherwise), law enforcement, protecting citizens and controlling of the borders.¹⁰⁴ Modern national security institutions are Cold War constructs of securitization. After the Second World War (WWII), the Soviet Union and the U.S. engaged in a rivalry of ideas. The Soviet Union believing in communism, and the U.S. believing in capitalism, the two superpowers and their allied countries engaged in a standoff of political, economic and

¹⁰¹ Lorne Waldman and Jacqueline Swaisland. *Canada's Refugee Determination Procedure: A Guide for the Post Bill C-31 Era* (Markham: LexisNexis Canada, 2013) at 61.

¹⁰² Government of Canada, *supra* note 32 at para 2.

¹⁰³ *Ibid* at para 3.

¹⁰⁴ Ezrow, *supra* note 73 at 173.

international ideologies.¹⁰⁵ Contemporary security values developed in this climate and aimed to separate and exclude anyone who adheres to the opposite ideology.¹⁰⁶ The major divide between these two nations that resulted from the differing ideologies, made the two major superpowers grow increasingly wary of spies from rivalling nations infiltrating the borders and gaining sensitive information that could lead to the destruction of the nation. Although war was never fought between the two superpowers themselves, the need for security-building measures intensified for all allied countries. It became integral to the security of the countries involved that vetting systems were in place to scrutinize everyone who wished to gain access to the nation in any capacity. For Canada, these measures included new political and military strategies to deal with the tensions. As a result, Canada's post-Cold War security orthodoxy assumes that "security" is a matter of state sovereignty and military force.¹⁰⁷ Cold War tensions remained even after the dissolution of the Soviet Union in 1991.¹⁰⁸ To date, Canada still ascribes to this notion of security even decades after the end of the Cold War.

With tensions dissolving, the end of the Cold War sparked further discussion on theorizing national and international security and what each should entail.¹⁰⁹ The dominant statist belief supported a militarized perspective on international security.¹¹⁰ Prior to WWII, there were few international security institutions in place, and national

¹⁰⁵ Simon Dalby, "Contesting an Essential Concept: Reading the Dilemmas in Contemporary Security Discourse" in in Keith Krause and Michael C. Williams eds, *Critical Security Studies: Concepts and Cases* (Minneapolis, MN: University of Minnesota Press, 1997) at 12.

¹⁰⁶ *Ibid* at 18.

¹⁰⁷ Philippe Bonditti, et al. "Genealogy" in Claudia Aradau, Jef Huysmans, Andrew Neal and Nadine Voelkner eds, *Critical Security Methods: A Framework for Analysis* (New York, NY: Routledge, 2015) at 177.

¹⁰⁸ Graeme Cheeseman, "Military Force(s) and In/security" in Ken Booth, eds, *Critical Security Studies and World Politics* (Boulder, CO: Lynne Rienner Publishers Inc., 2005) at 68.

¹⁰⁹ Louise Fawcett, "Regional Institutions" in Paul D. Williams eds, *Security Studies: An Introduction* (New York, NY: Routledge, 2008) at 313.

¹¹⁰ *Ibid*.

security institutions were almost non-existent.¹¹¹ By the end of the Cold War, international security institutions had already been established. There have been few new international security institutions since the end of the Cold War, but existing institutions such as the North Atlantic Treaty Organization (NATO), an international security institution for the U.S. and Western Allied countries, have continued to expand and develop.¹¹² What is significant about the end of the Cold War and the post-Cold War era was the development of and emphasis on national security institutions. As the world transitioned into the post-Cold War era, individual nations were beginning to bring Cold War militarized strategies of security into national security institutions. For Canada, this meant that along with building and consolidating intelligence agencies, strengthening the Canadian military, and enhancing Canada's weaponry, border enforcement through security institutions like the IRB became an integral part of ensuring the continued safety of Canada and Canadian society from possible war and threats of invasion by other states and their citizens.¹¹³ In the post-Cold War era, Cold War security traditions still persisted. Some national security institutions were developed prior to the end of the Cold War, such as the IRB, and it still currently holds and exercises the security beliefs of the Cold War.

The primary objective of security institutions is to guarantee the internal and external safety and security of the citizenry.¹¹⁴ The IRB, acting as one of Canada's main security institutions to control the borders, is responsible for one aspect of national security. The IRB's obligation to Canada and Canadian society is to ensure national security by enforcing the border. The IRB's national security objective is to substantiate whether a refugee applicant's human security is truly in danger. The IRB's obligation to

¹¹¹ *Ibid* at 312.

¹¹² *Ibid* at 312 – 313.

¹¹³ Ezrow, *supra* note 73 at 173.

¹¹⁴ *Ibid* at 174.

the international community is in regards to human security. The IRB regulates the acceptance and denial of refugee applicants and ensures the protection of Canadian society from the “threat” of outside invaders defrauding the border for immigration or refugee status.¹¹⁵ The IRB ensures the national security of Canada by assessing anyone wishing to be granted access to Canada and distinguishing between those who are non-threatening and therefore allowed access into the country, and those who are deemed to be any sort of a threat and therefore denied access to the country. The *Immigration Act* of 1978 (IA) was developed during the Cold War and continued to influence Canada’s national security institutions in the post- Cold War era. The IA gave the IRB its mandate. It has since been replaced with the *Immigration and Refugee Protections Act* (IRPA) of 2002, which is currently in place today.¹¹⁶ Both acts have given and continue to afford the IRB a lot of discretionary power as Canada’s security institution for border control. As section 162 of the IRPA states, the RPD of the IRB has “sole and exclusive jurisdiction to hear refugee claims... and has sole jurisdiction to make determinations of law and fact.”¹¹⁷ The IRB, regardless of the division, is expected to use its discretion to make responsible, fair and justified decisions on matters of immigration and refugee status determination.

Refugees are defined as those who have been forced to flee their country of origin due to fear of persecution.¹¹⁸ In Canada, in order to be accepted as a refugee by the IRB, a refugee claimant must meet the criteria for Convention refugee status. The UNHCR 1951 *Convention and 1967 Protocol Relating to the Status of Refugees* (Convention)

¹¹⁵ Government of Canada, supra note 28.

¹¹⁶ Government of Canada, supra note 32 at para 1.

¹¹⁷ Waldman, supra note 101 at 62.

¹¹⁸ “The Refugee System in Canada” *Immigration and Refugee Board of Canada* (16 June 2016) online: Government of Canada <<http://www.cic.gc.ca/english/refugees/canada.asp>>.

states that one is considered a Convention refugee if “you have left your home country or you have a well-founded fear of persecution based on your race, religion, nationality, political opinion or membership in a particular social group; and you are unable or, because of your fear, unwilling to try to get the protection of your home country.”¹¹⁹ This definition makes it reasonable to assume that the person fleeing, and making a refugee claim in Canada, believes that their civil, political or other status puts them at serious risk of harm in their home country, and their own government cannot or will not protect them.¹²⁰ Those seeking refuge are unprotected persons. This is not only because basic human rights are not afforded them, but also because they are unable to work within the current structure of their nation or national community to exercise those human rights.¹²¹

Currently, claims for refugee status can be initiated by notifying an immigration officer, which include CBSA or IRCC officials.¹²² Canada has two refugee program streams. The first is In-Canada Asylum which is when entrants make a refugee claim at a port of entry or inland in Canada and status determination is made by the IRB. The second stream is Resettlement from Overseas where visa officers select refugees from overseas to be resettled in Canada.¹²³ For the purposes of my thesis, I will focus on the In-Canada Asylum stream of Canada’s refugee system. For In-Canada Asylum, when a claim is made, the officer has three days to determine if the claim is eligible or ineligible to be sent to, and heard by, the RPD.¹²⁴ The burden of proof is on the claimant to demonstrate that their claim is eligible to be heard by the RPD.¹²⁵ If the initial claim does

¹¹⁹ *The Geneva Convention and Protocol Relating to the Status of Refugees*, 31 January 1967, UNHCR 1951 at Article 1(A)(I).

¹²⁰ James C. Hathaway, *The Law of Refugee Status* (Toronto, ON: Butterworths Canada Ltd., 1991) at v.

¹²¹ *Ibid* at 135.

¹²² *Ibid* at 2.

¹²³ Immigration, Refugees and Citizenship Canada. Access to Information and Privacy, Request No. A-2015-34080 at 02.

¹²⁴ *Ibid*.

¹²⁵ *Ibid* at 03.

not meet any of the ineligibility criteria set out in the IRPA section 101(1)(a) to (f) such as serious criminality,¹²⁶ and at the immigration officer's discretion has been deemed eligible, it will then be sent to the IRB's RPD for the status determination process to begin.¹²⁷

Once eligible claims are referred to the RPD, DCO claimants have their hearings scheduled in thirty to forty-five days, and non-DCO claimants have their hearings scheduled after a minimum of sixty days.¹²⁸ Most hearings are before one board member who can accept any evidence he or she deems credible, and who can question the claimant on any issues that may arise during the course of the hearing.¹²⁹ After hearing all of the evidence, the member must render a decision on the claim and provide reasons for the decision. If the claimant is determined to be a person in genuine need of protection, their human security is truly in danger, and they satisfy the criteria and definition of a refugee, then they will be granted refugee protection in Canada and thus refugee status. Reasons for the decision may be provided at the successful claimant's request. If the claimant is denied, then the member must provide written reasons for the decision.¹³⁰ Denied refugee claimants have not satisfied the definition or criteria for refugee status and are assumed not to be in need of protection.¹³¹ The RPD can further assess and determine how the denied claimant will leave Canada and when. Most denied claimants will expect a deportation order, however some claimants can be subject to immediate deportation if they are assessed as a direct risk to Canadian national security.¹³²

¹²⁶ *Immigration and Refugee Protection Act*, SC 2001, c 27, s 101(1)(f).

¹²⁷ Lorne Waldman, *Canadian Immigration & Refugee Law Practice 2009* (Markham: LexisNexis Canada, 2008) at 17.

¹²⁸ Waldman, *supra* note 101 at 5.

¹²⁹ *Ibid* at 6.

¹³⁰ *Ibid*.

¹³¹ *Ibid* at 245.

¹³² *Ibid*.

1.1.1. Post-9/11 Security Institutions

Although refugee law has remained in the post-Cold War tradition, recent refugee policies have been developed in the post-9/11 security society. On September 11, 2001, the U.S. experienced an unprecedented terrorist attack on the Pentagon and World Trade Center.¹³³ These attacks resulted in the deaths of nearly 3,000 people.¹³⁴ The fallout of 9/11 was felt globally. Canada's response was dominated by border security.¹³⁵ The Anti-Terrorism Act (ATA) of 2001, which amended the *Criminal Code of Canada*, extended the reach and powers of the Canadian Government and security institutions to respond to any perceived threat of terror.¹³⁶ Defrauding the Canadian border to gain access to Canada, or access to the U.S. through Canada, was one such "threat" that became a major concern for the Canadian Government and Canadian society alike.¹³⁷ This led Canada to "thicken" border controls in an attempt to make it harder to reach Canada.¹³⁸ The proliferation of the border through increased security, tough and costly visa programs, trusted traveler programs, CBSA travel checks etc. extended the borders outward.¹³⁹ These security provisions aimed to deter risky newcomers from coming to Canada altogether.

The fallout of 9/11 created a spectacle of terrorism, deepening the post-Cold War security mentality that suggests "threats" to security are imminent and must be thwarted. Nine months after 9/11 in June of 2002, the IRPA replaced the IA. Immigration and refugee law was not changed substantially with the IRPA because many of its changes had been discussed since 1999, before the events of 9/11. It did however establish harsher

¹³³ Kent Roach, *The 9/11 Effect: Comparative Counter-Terrorism* (New York, NY: Cambridge University Press, 2011) at 1.

¹³⁴ *Ibid.*

¹³⁵ *Ibid.* at 424.

¹³⁶ *Anti-Terrorism Act*, S.C. 2001, c. 41 at s. 2.

¹³⁷ Efrat Arbel, "Bordering the Constitution, Constituting the Border" (2016) 53 *Osgoode Hall Law Journal* 824 at 827.

¹³⁸ Benjamin Muller, "Borders, Risk, Exclusions" (2009) 3:1 *Studies in Social Justice* 67 at 68.

¹³⁹ *Ibid.*

language than the IA to cater to the climate in the wake of 9/11, making it easier for officials to propose it to Canadians.¹⁴⁰ For example, the IRPA established and strengthened “the protection of genuine refugees... and maintains the safety of Canadian society.”¹⁴¹ However, ‘genuine refugees’ are defined and understood restrictively under the IRPA. Canada’s emphasis on increased border controls led many to believe that anyone attempting to cross the border into Canada could be the embodiment of “threats” to security. Canadian society was wary of newcomers, especially refugees. Securitizing individuals was done based on their nation of origin, at this time particularly targeting Muslim-majority countries. It became easy for politicians and citizens to “blame foreigners... for perpetuating, aiding, or abetting terrorist and criminal activities...and prevents majority group members from being considered suspect.”¹⁴² It helped to create a guilty until proven innocent mentality where refugees were assumed to be terrorist “threats” until the IRB determined their true status otherwise.¹⁴³

The Government of Canada’s imposition of tough border policies employs, reiterates, reinforces and redefines the new discourse of “safety” in the post-9/11 security society.¹⁴⁴ Canada’s response initiated the theme of using immigration and refugee law as antiterrorism law, to equate all newcomers with some level of criminality until their status is officially determined at the IRB.¹⁴⁵ The fear invoked into society through issues such as the “risks” posed by fraudulent refugee applicants and the permeability of the border to allow these threats into Canadian society, granted the Canadian Government

¹⁴⁰ Lori Wilkinson, “Are Human Rights Jeopardized in Twenty-First-Century Canada?: An Examination of Immigration Policies Post-9/11” in Sandra Rollings-Magnusson eds, *Anti-Terrorism: Security and Insecurity After 9/11* (Halifax, NS: Fernwood Publishing, 2009) at 103.

¹⁴¹ *Ibid.*

¹⁴² *Ibid* at 116.

¹⁴³ *Ibid.*

¹⁴⁴ Muller, *supra* note 138 at 69.

¹⁴⁵ Roach, *supra* note 133 at 363.

power to take control of labelling the issue, what groups it labels as the problem, and how it justifies the issue as a true threat.¹⁴⁶ The ability to move and cross borders created and still creates a deep fear; refugee applicants are treated “like the terrorist, an agent of fear, who may destroy ‘our home.’”¹⁴⁷

1.2. The DCO Policy

The Canadian Government’s policy responses to “threats” to the border are still influenced by the security concerns of 9/11. The DCO policy is no exception. The Conservative Government under former Prime Minister Stephen Harper proposed Bill C-31, Protecting Canada’s Immigration System Act. The Bill was given Royal assent on June 29, 2010 and was enacted to amend the IRPA and the Balanced Refugee Reform Act (BRRA). Bill C-31 includes the DCO policy to “provide for the expediting of the processing of refugee protection claims.”¹⁴⁸ The DCO policy officially came into effect on December 15, 2012 and allows the Minister to designate countries that are to be considered “safe” and less likely to produce refugees. According to the Government of Canada’s website, “Canada is currently receiving a disproportionately high number of refugee claimants who come from countries that historically have very low acceptance rates at the IRB.”¹⁴⁹ DCO countries (DCOs) have “solid democratic and human rights,”¹⁵⁰ making the country less likely to produce refugees, and instead more likely to respect human rights and offer state protection. Since these countries are considered “safe” there is a presumption that individuals are less likely to suffer persecution in that country.¹⁵¹

Thus, the DCO policy is used as a tool to deter possible applicants and accelerate claims

¹⁴⁶ Muller, *supra* note 138 at 69.

¹⁴⁷ Diop, *supra* note 38 at 76.

¹⁴⁸ “Bill C-31 (Historical) Protecting Canada’s Immigration System Act” *OpenParliament*, online: OpenParliament <<https://openparliament.ca/bills/41-1/C-31/>>.

¹⁴⁹ Government of Canada, *supra* note 28 at para 1.

¹⁵⁰ *Ibid* at para 2.

¹⁵¹ *Ibid*.

from DCOs to ensure that Canadian tax dollars are not spent on claimants who are not in genuine need of protection.¹⁵²

All claims referred to the RPD of the IRB after 2012 are considered “new system claims”¹⁵³ and are subject to the DCO policy if they are from a DCO. Section 109 of the IRPA sets out the Minister’s authority to designate countries under the DCO policy according to both quantitative and qualitative criteria. Quantitatively, the Minister may designate a country if (a) “the number of claims for refugee protection made to the RPD by nationals of the country in question has a final determination equal to or greater than the number provided by the Minister for designation.”¹⁵⁴ In the briefing notes prepared for the former Minister, Chris Alexander (former Minister Jason Kenney’s successor), it states that the Minister has the authority to designate any country based on any criteria or figure the Minister chooses.¹⁵⁵ The quantitative figures for designation are defined in former Deputy Minister of Citizenship and Immigration Canada (formerly known as the CIC, now known as the IRCC) Neil Yeates’ memorandum to Minister Alexander. It states that the quantitative threshold for designation is “a) a combined refusal, withdrawal and abandonment rate of 75% or higher; or b) a combined withdrawal and abandonment rate of 60% or higher.”¹⁵⁶ Quantitative triggers for designation also include any countries “having at least 30 finalized claims in any consecutive twelve-month period in the three years preceding designation.”¹⁵⁷ Considering that many countries, regardless of the

¹⁵² *Ibid.*

¹⁵³ “Refugee Protection Claims (New System) by Country of Alleged Persecution- 2017” *Immigration and Refugee Board of Canada* (11 November 2017), online: The Government of Canada. <<http://www.irb-cisr.gc.ca/Eng/RefClaDem/stats/Pages/RPDStat2017.aspx>>.

¹⁵⁴ *Immigration and Refugee Protection Act*, supra note 126 at s 109.1 (1)(a).

¹⁵⁵ Immigration, Refugees and Citizenship Canada, supra note 123 at 04.

¹⁵⁶ Canada. Citizenship and Immigration Canada, Hon. Neil Yeates, Deputy Minister of Citizenship and Immigration, “Memorandum to the Minister: Designating Countries of Origin” F-8484 SECRET (November 2012) <<http://meurrensonimmigration.com/wp-content/uploads/F-8484.pdf>> at 000064.

¹⁵⁷ *Ibid.*

degree of their national turmoil, could have easily met and surpassed 30 finalized claims in a single year, this final quantitative criterion is the Government's way of indicating that any country may be triggered for further review to be designated on the DCO policy list.¹⁵⁸

Qualitatively, the Minister may designate a country based on if (b) it has: "(i) an independent judicial system, (ii) basic democratic rights and freedoms are recognized and mechanisms for redress are available if those rights or freedoms are infringed, and (iii) civil society organizations exist."¹⁵⁹ Percentages, numbers, periods and thresholds for designation are also left to the Minister's designation.¹⁶⁰ Meeting or surpassing quantitative and qualitative criteria for designation does not automatically result in designation on the DCO policy. Instead, the country is triggered for further review.¹⁶¹

Yeates' memorandum specifies that the DCO Country Review provides the evidence base for policy recommendations for designation.¹⁶² The DCO Country Review is a detailed report on countries which have triggered either the quantitative or qualitative criteria for designation (or both). The report is done to review the human rights, state protection methods and other types of related indicators that may influence a designation. The DCO Country Review "draws on a wide range of open source and classified information, including materials generated by government and international organizations, as well as United Nations bodies."¹⁶³ The DCO Country Reviews are not publically released and are considered privileged information to the Minister and his policy-makers. However, some information it is based upon may be available. Since

¹⁵⁸ Audrey Macklin, "A Safe Country to Emulate? Canada and the European Refugee" in Jane McAdam et al. eds, *The Global Research of European Refugee Law* (New York: Cambridge University Press, 2013) 99 at 121 – 122.

¹⁵⁹ *Immigration and Refugee Protection Act*, supra note 126 at s 109.1 (1)(b)(i) – (iii).

¹⁶⁰ *Ibid* at s 109.1 (3).

¹⁶¹ Canada, supra note 156 at 000050.

¹⁶² *Ibid*.

¹⁶³ *Ibid*.

classified documentation is used to render decisions for designation, the true reason for a country's designation may be subjective and is unclear. After the DCO Country Review, each member of the Minister's party is given a list of annexed countries and the policy-makers either concur with the designation or do not concur with the designation. It is not known how many policy-makers must agree in order for the country to be designated, or how many dissent for the country to be removed from further review.

1.2.1. The Procedural Impact of the DCO Policy

Once a country is designated on the DCO policy list as a "safe" country, the DCO policy subjects DCO refugee claimants to procedural measures that differ from other applicants. If a refugee applicant is from a DCO, their claims are processed faster by the RPD. Likewise, unfounded claims and claimants may be deported and sent back to their nation of origin faster.¹⁶⁴ The Government of Canada website states that all eligible asylum claimants, including those from DCO countries, will continue in the claims process and receive a hearing at the IRB.¹⁶⁵ As stated previously, those who are found to be eligible DCO refugee applicants have their claims sent to an independent IRB for their claims to be heard within thirty to forty-five days once referred to the IRB. Eligible refugee applicants who do not come from DCO countries can expect a sixty-day minimum waiting period for their claims to be heard by an independent IRB.¹⁶⁶ The Government of Canada states that the difference in processing times for refugee claims "will ensure that people in need of protection get it quickly, while those with unfounded claims are sent home faster through expedited processing."¹⁶⁷

¹⁶⁴ Lorne Waldman and Jacqueline Swaisland, *Inadmissible to Canada – The Legal Barriers to Canadian Immigration*, (Markham: LexisNexis Canada, 2012) at 134.

¹⁶⁵ Government of Canada, *supra* note 28 at para 4.

¹⁶⁶ Waldman, *supra* note 164 at 135.

¹⁶⁷ Government of Canada, *supra* note 28 at para 5.

Since December 15, 2012, there have been four published lists of DCO countries, resulting in a total of forty-two countries with the designation. These countries include: Andorra, Australia, Austria, Belgium, Chile, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel (excluding Gaza and the West Bank), Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Monaco, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, San Marino, Slovak Republic, Slovenia, South Korea, Spain, Sweden, Switzerland, United Kingdom and the U.S..¹⁶⁸

It must be noted that at first, DCO claimants had no access to the RAD, and no right to appeal decisions from the RPD. As stated in the Minister's briefing notes "RAD access is barred for claimants from DCOs."¹⁶⁹ DCO applicants were given no recourse for appealing denied claims. However, as of July 23, 2015, three years after the initial implementation of the DCO policy, refugee claimants who come from a DCO country now have the right to appeal their decisions to the RAD.¹⁷⁰ The RAD can make decisions on errors of law and fact, errors of law, or errors of fact.¹⁷¹ The decision to allow for review was granted during the case *G.S. and C.S. v The Minister of Citizenship and Migration (Y.Z)* which analyzed the DCO policy in-depth. The Federal court found that the DCO policy violates the *Canadian Charter of Rights and Freedoms* under Section 15¹⁷² which outlines equality rights before and under the law, and equal protection and

¹⁶⁸ Government of Canada, "Designated Countries of Origin Policy" *Immigration, Refugees and Citizenship Canada* (3 April 2017) online: The Government of Canada <<https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/claim-protection-inside-canada/apply/designated-countries-policy.html>> at para 8.

¹⁶⁹ *Immigration and Refugee Protection Act*, supra note 126 at s 109.1 (1).

¹⁷⁰ *Immigration, Refugees and Citizenship Canada*, supra note 123 at 04.

¹⁷¹ *Immigration and Refugee Protection Act*, supra note 126 at s 110. (1).

¹⁷² *Ibid.*

¹⁷² (Y.Z) *G.S. and C.S. v The Minister of Citizenship and Immigration*, [2015] FC 892 at para 130.

benefit of the law.¹⁷³ Justice Boswell, who presided over the case, ultimately determined that the lack of right to the RAD was not saved under section 1 of the Charter's reasonable limits clause and was not prescribed by law. It is stated that "denying an appeal to all claimants from DCOs is not proportional to the government's objectives; it is an inequality that is disproportionate and overbroad and cannot be saved under section 1 of the Charter."¹⁷⁴ From then on, DCO applicants had a right to review RPD decisions. The means of appealing a decision of the IRB are the same for DCO and non-DCO claimants as established within the IRPA, and are subject to the same restrictions.¹⁷⁵ For example, an appeal made to the RAD for a RPD decision rejecting a claim that has no credible basis will not be allowed to be reviewed by the RAD.¹⁷⁶ Decisions within the RAD are usually rendered within ninety days of receiving the claim.¹⁷⁷

The DCO policy, however, still limits access to post-claim measures other than appeals to the RAD. This includes applications for PRRA provisions and Humanitarian and Compassionate Considerations (H&C).¹⁷⁸ These post-claim measures are used by unsuccessful claimants to request further review by the government. Applicants applying for the PRRA, have to prove to an immigration officer that the country they will be sent back to will put them at risk.¹⁷⁹ Likewise, H&C include proving substantial family ties in Canada, and the best interest of any children involved.¹⁸⁰ Former Minister Chris

¹⁷³ *The Canadian Charter of Rights and Freedoms*, RS Q c C-12 s 15(1).

¹⁷⁴ Y.Z, supra note 172 at para 125.

¹⁷⁵ *Immigration and Refugee Protection Act*, supra note 126 at s 110. (2)(a).

¹⁷⁶ *Ibid* at s 110. (2)(c).

¹⁷⁷ *Ibid* at s 109.1 (1).

¹⁷⁷ Immigration, Refugees and Citizenship Canada, supra note 123 at 04.

¹⁷⁸ *Ibid*.

¹⁷⁹ Government of Canada, "Pre-Removal Risk Assessment – Refugee Claims in Canada" *Immigration and Refugee Board of Canada* (11 October 2017), online: Government of Canada <<https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/claim-protection-inside-canada/after-apply-next-steps/refusal-options/pre-removal-risk-assessment.html>>.

¹⁸⁰ Government of Canada, "Humanitarian and Compassionate Grounds" *Immigration, Refugees and Citizenship Canada* (13 September 2017), online: Government of Canada <[33](https://www.canada.ca/en/immigration-refugees-</p></div><div data-bbox=)

Alexander's briefing notes state that post-claim measures "could be used to delay removal from Canada"¹⁸¹ and as a result they are limited for non-DCO applicants.¹⁸² DCO claimants are highly restricted in their access to post-claim measures and are less likely to receive the PRRA and H&C.¹⁸³ In the next section I evaluate the effect of labelling countries as "safe" and how the official rhetoric of security around the DCO policy presupposes the fraudulence of DCO applicants.

1.3. The Official Stance

The former Ministers' speech acts constitute much of the official stance. To undertake a CSS discourse analysis, I have drawn upon archival documents such as Access to Information and Privacy (ATIP) requests, the Ministers' notes and government websites to construct what I refer to as the official stance and the official governmental position on the DCO policy. The entirety of the official stance represents the basis for the language used to justify the DCO policy, the construction of the DCO refugee "threat" and is used to convince Canadian society that the DCO policy should be normalized as part of modern security measures.

The Government of Canada website cites the DCO policy as an abuse deterrence measure. It states that Canada receives a high volume of false, fraudulent and unfounded refugee claims and "too many tax dollars are spent on refugee claimants who are not in need of protection."¹⁸⁴ The DCO policy is an additional measure to ensure that the "generosity" of Canada's refugee system is not extended to "queue-jumpers" (those who take unfair precedence over others, in this case over more "legitimate" refugee

[citizenship/services/refugees/claim-protection-inside-canada/after-apply-next-steps/refusal-options/humanitarian-compassionate-grounds.html](#)>.

¹⁸¹ Immigration, Refugees and Citizenship Canada, *supra* note 123 at 04.

¹⁸² *Ibid.*

¹⁸³ *Ibid.*

¹⁸⁴ Government of Canada, *supra* note 28 at para 1.

claimants).¹⁸⁵ This response to DCO refugees was reflected by the former Minister Jason Kenney during a public consultation speech he delivered on June 29, 2012, in order to introduce the DCO policy. In his speech he states:

In order for us to maintain that tradition of openness to the talents of newcomers and our strong tradition of refugee protection, we must demonstrate to Canadians that our immigration system is characterized by the consistent application of fair rules, by the rule of law, and that immigration is working in Canada's interest. That's why we proposed the measures in Bill C-31 to demonstrate to Canadians and the vast majority of immigrants who are law-abiding that we will not tolerate those who seek to abuse our generosity, including bogus asylum claimants, human smugglers and those who might represent a risk to Canadian security and safety.

As you know, in the last Parliament, we adopted the *Balanced Refugee Reform Act*, which provides for a faster but fairer refugee determination system. It helps us to correct the dysfunctionality of the current broken system, but since the adoption of that law in 2010, we've seen a troubling growth in fake asylum claims coming particularly from the democratic European Union. In fact, we now receive more asylum claims from the European Union than we do from Asia, Africa, or Latin America, and almost none of those European asylum claims turn out to be well-founded or in need of Canada's protection.

The vast majority – over 90% – of those European claimants abandon or withdraw their own claims, choosing of their own volition not to seek Canada's protection, but virtually all of them enroll in Canada's generous welfare social income, health care, subsidized housing and other social support programs. That's why we had to take additional measures in this bill, C-31, to deter bogus asylum claimants from abusing Canada's generosity, to stop them from clogging up the system which makes it slower moving for the bona fide refugees to whom we want to grant protection and certainty as soon as possible. That's why in Bill C-31, we've streamlined the process for the designation of certain countries of origin from which claims will receive accelerated treatment.¹⁸⁶

The official stance, from the Minister, has stressed that there is fraud in the refugee determination system. Many applicants from DCO countries are allegedly making manifestly unfounded claims, or no credible basis (which would be finalized as a negative decision)¹⁸⁷, or there are a greater number of withdrawn or abandoned claims clogging the refugee system.¹⁸⁸ The Minister has justified the use of DCO lists because refugee applicants from DCOs are “opportunistic migrants exploiting the refugee system

¹⁸⁵ *The Oxford English Dictionary*, 2d ed, *sub verbo* “Queue-Jumper”.

¹⁸⁶ Citizenship and Immigration Canada, *supra* note 30 at para 2 – 5.

¹⁸⁷ Please note that the Minister does not specifically include manifestly unfounded claims and no credible basis claims in the quantitative criteria for designation on the DCO policy. However, according to the IRB, manifestly unfounded claims and no credible basis claims would render a negative decision that would not grant the applicant status. Negative decisions fall under the combined ‘Denied’, ‘Abandoned’ and ‘Withdrawn & Other’ rates, which determine whether a country has met or surpassed the quantitative threshold for designation on the DCO policy list. The data for manifestly unfounded claims and no credible basis claims are typically included under the ‘Other’ section of the ‘Withdrawn & Other Category’. The quantitative data will be discussed further in Chapter 3. The data for manifestly unfounded and no credible basis claims will not be discussed specifically, but it is included in the ‘Withdrawn & Other Category’ of Table 1.

¹⁸⁸ Citizenship and Immigration Canada, *supra* note 30 at para 2 – 5.

to circumvent more restrictive admissions regimes for non-citizens.”¹⁸⁹ The efficiency of the Canadian refugee determination systems has supposedly been compromised due to being “clogged up”¹⁹⁰ with applications for refugee status. As a result, the DCO policy’s harsh pre-emptive mechanism to accelerate the denial and removal of unworthy refugee applicants by way of border control, securitization and outright deterrence of refugee applicants from the designated nations then becomes justified.¹⁹¹ Although Canada holds the reputation for being a humanitarian country, according to the official stance, the strict measures of DCO policy are essential to the betterment of the refugee system, and the sanctity of Canada’s established borders by determining what nations the “threats” come from, and making sure they stay out of Canada.¹⁹²

Similarly, former Minister Chris Alexander’s notes suggest that the DCO policy is necessary because it is working. According to the Minister’s notes, in 2009, prior to the implementation of the policy, there were a total number of 7,592 Intake Applications made from Mexico alone.¹⁹³ Mexico was ranked in the top 10 source countries for asylum claims leading up to the introduction of the DCO policy.¹⁹⁴ According to the Minister’s notes, the same year of Mexico’s designation, only 84 Intake Applications¹⁹⁵ were made for refugee status in 2013.¹⁹⁶ The radically decreased number of applications are held as proof that the DCO policy is working.¹⁹⁷ It is also held as proof that if the

¹⁸⁹ Macklin, *supra* note 158 at 102.

¹⁹⁰ Citizenship and Immigration Canada, *supra* note 30 at para 3 – 4.

¹⁹¹ Macklin, *supra* note 158 at 103.

¹⁹² Diop, *supra* note 38 at 68.

¹⁹³ Immigration, Refugees and Citizenship Canada, *supra* note 123 at 029.

¹⁹⁴ *Ibid* at 028.

¹⁹⁵ Please note Intake Applications are different from finalized claims. As will be presented in the Quantitative Case Study, Table 1 shows that in 2013 there were a total of 1025 claims finalized. Some of these claims may have initially been made in an earlier year, but carried over where a final determination on the claim was rendered in 2013. According to the Minister’s notes, only 84 Intake Applications were made meaning 84 claims were filed, opened and began the process of seeking status in 2013. Intake Applications are made and filed by an officer at a port of entry and passed onto the IRB.

¹⁹⁶ Immigration, Refugees and Citizenship Canada, *supra* note 123 at 028.

¹⁹⁷ *Ibid* at 019.

claims made were legitimate, the number of claims would not have decreased with the enforcement of the DCO policy.¹⁹⁸ The former Minister mistakenly linked an overall decrease in the number of applications as an indication that applications in former years were “bogus” and therefore applicants were deterred because of the DCO policy after its implementation. In addition to this, in 2015 Minister Alexander stated in a speech about Canada’s refugee system that “we continue to have a strong asylum system focused on countries where there’s real persecution,¹⁹⁹ no longer taking large numbers of asylum claimants from the EU or Mexico or other safe countries.”²⁰⁰ The Minister admitted that Canada was accepting fewer refugees which may be the real cause for the decrease in intake applications as opposed to the DCO policy catching “bogus” applicants.²⁰¹

The Canadian Government has also used the media to endorse the official stance. Reporting on the DCO policy has legitimized the continued rhetoric of “fraud,” “backlog,” and “opportunistic” refugees are emphasized in its use of media programs to influence the public to believe that the DCO policy is necessary and it is working. The Government’s use of media has perpetuated the “bogus” refugee stereotype.²⁰² For example, former Minister Kenney used the media to publicly criticize the refugee system in order to justify the DCO policy. “To be blunt, Canada’s asylum system is broken”²⁰³ he said after tabling Bill C-31 on February 16, 2012.²⁰⁴ In his editorial to the *Montreal Gazette*, Kenney continued by stating that:

¹⁹⁸ *Ibid.*

¹⁹⁹ Please note the use of the word “real” in regards to Mexican refugee applicants will be discussed further in the next chapter.

²⁰⁰ Citizenship and Immigration Canada, “Speaking Notes for Chris Alexander, Canada’s Citizenship and Immigration Minister, at the Economic Club of Canada” *Government of Canada* (19 June 2015), online: The Government of Canada. <<https://www.canada.ca/en/news/archive/2015/06/speaking-notes-chris-alexander-canada-citizenship-immigration-minister-economic-club-canada.html>>.

²⁰¹ Please note the contradictions in the language of the Ministers will be analyzed further at the end of this chapter.

²⁰² Diop, *supra* note 38 at 73.

²⁰³ *Ibid.*

²⁰⁴ *Ibid.*

We are strengthening our system by cracking down on the abuse of Canada's generosity by human smugglers, bogus asylum claimants, fake immigration marriages, crooked immigration consultants and immigration queue-jumpers... Canada's immigration and refugee system is the most fair and generous in the world, and will continue to be so under the new, improved system.²⁰⁵

“Fairness,” “generosity” and “abuse” of the system by “bogus” refugee applicants are the repeated rhetoric that underlines and justifies the DCO policy and creates discourses of exclusion and selectivity.²⁰⁶ The official stance's use of media contributes to its position that the existing system needed to be overhauled because of its disruption to the status quo and dysfunction leading to the alleged abuse.²⁰⁷ James Walsh argues that the use of media legitimates the exclusionary security agenda of the DCO policy.²⁰⁸ Walsh states that “media spectacles construct government authorities as heroic defenders protecting the nation from an array of external threats and fearful others, the program legitimates state agendas; addresses anxieties associated with neoliberal globalization; and enrolls citizens as co-producers of national security.”²⁰⁹ By giving the Minister an outlet to express how the DCO policy is needed and coverage of the alleged abuse, the use of the media becomes a strategic tool of the official stance's agenda to reach a large audience and sell the DCO policy to the public. Walsh expresses that the government must reflect the attitudes of the society at some level. Yet, even if citizens do not believe the Minister's arguments, they are susceptible to the common rhetoric used to construct refugees and refugee politics in the binaries of security versus humanitarianism, accepted versus denied and legitimate versus bogus. Walsh states that news media “constitutes and prefigures the reality of border enforcement, rendering it inevitable, necessary, and

²⁰⁵ *Ibid* at 74.

²⁰⁶ *Ibid*.

²⁰⁷ *Ibid* at 73.

²⁰⁸ James Walsh, “Border Theatre and Security Spectacles: Surveillance, Mobility and Reality-Based Television” (2015) 11:2 S&SL 201 at 244 (SAGE).

²⁰⁹ *Ibid* at 202.

desirable.”²¹⁰ The use of news media further influences public opinion. This is what has happened with the DCO policy through the official stance.

1.3.1. Speech Act Theory

The official stance does not explicitly identify DCO applicants or Mexican DCO applicants as “threats”. Instead, this idea is socially constructed by Canadian society’s acceptance of the orthodox security mentality and then reaffirmed by the actors associated with the official stance. Since the official stance frames DCO applicants as the perpetrators of abuse of the refugee system, their fraudulence is presupposed by their status as DCO applicants. It is because of a widespread Canadian belief in the orthodox security perspective that security institutions and border controls may become harsher and more selective as they evolve in order to exclude those who are deemed to be “risks”. These “risk” are ultimately equated with invaders of the border, which have traditionally been treated as “threats”. The “threats” become linked to the abuser countries and their citizens. Therefore, the narrative of the DCO refugee applicant “threat” to our border and national security, (specifically the Mexican DCO refugee applicant “threat”), is socially constructed by the language and rhetoric that constitute the official stance.

To analyze this construction of the “threat”, CSS discourse analysis engages with Speech Act Theory, which places particular importance on the use of linguistic and social aspects of language, speech and its impact on society.²¹¹ Security measures, the object of security measures and threats to security are all defined by and within deliberate speech acts. Agents, or in this case the official stance, influence the structure, or in this case the refugee determination system, by declaring a particular issue, dynamic, actor, group or

²¹⁰ *Ibid* at 220.

²¹¹ Juha A. Vouri, “Speech Act Theory” in in Mark Salter and Can Mutlu, eds, *Research Methods in Critical Security Studies, An Introduction* (New York, NY: Routledge, 2013) at 134.

population as an “‘existential threat’ to the referent object,”²¹² or in this case DCO refugee applicants to the Canadian population and Canada as a whole. Speech acts, such as the ones which comprise the official stance, manipulate the issue of “security” to be concretely rooted in the backbone of social reality.²¹³ In other words, speech acts convince society that security is integral to ensuring the protection of the nation, societal communities and one’s personal life. Political actors and state representatives, such as the Minister, are the agents and facilitators of the speech acts, translating them into action.²¹⁴ “Bogus,” “fraud” and “abuse” to describe DCO applicants have become the buzz words to construct the official security realities which deem refugee applicants from DCOs as a “threat” to the society Canadians know and enjoy. In doing so, the official stance strategically positions the object of the speech, language or use of the media into the realm of national security, the Canadian economy, and societal life, “thereby claiming a special right to use whatever means are necessary to block [the risk].”²¹⁵ The DCO policy then becomes welcomed as necessary to eliminate that threat.²¹⁶ In this way, security becomes “a powerful tool in claiming attention for priority items in the competition for government attention. It also helps to establish a consciousness of the importance of the issues so labelled in the minds of the population at large.”²¹⁷ The DCO policy is the powerful political tool outlined in speech acts of the official stance to deal with the “threat” DCO refugee applicants pose to the Canadian population and Canada as a whole.

This idea is substantiated by Sunera Thobani, who took issue with the way the

²¹² Matt McDonald, “Constructivism” in Paul D. Williams eds, *Security Studies: An Introduction* (New York, NY: Routledge, 2008) at 69.

²¹³ *Ibid* at 66.

²¹⁴ *Ibid*.

²¹⁵ *Ibid* at 69.

²¹⁶ Vouri, *supra* note 211 at 135.

²¹⁷ Barry Buzan, *People, States and Fear: An Agenda for International Security Studies in the Post-Cold War Era*, 2 ed. (London, UK: Harvest Wheatsheaf, 1991) at 370.

Government of Canada has often structured its public consultations. The Government of Canada website states that the IRCC “regularly consults the public on issues that affect Canadians. Consultations help us make program and policy decisions. They let us better understand the views of a wide range of: citizens, stakeholders and experts.”²¹⁸ Consulting the public is done to determine what is considered best for Canada as a whole, as well as what each Canadian desires in terms of “their” Canadian refugee system and “their” safety concerns.²¹⁹ However, the strategy employed by the Ministers’ speeches present the alleged problem in Canada’s refugee system as well as what the best solutions ought to be.²²⁰ From the start, consultation was framed in a way that the Canadian Government had predetermined what and who the problems were to Canadians prior to the consultation.²²¹ By framing it in such a way, the Minister shaped not only the issue, but the reform policies deemed appropriate to handle the issue.²²² These consultations “enabled the ‘problems’ defined by the state to be made into the major ‘concerns’ of Canadians. The consultations therefore became an exercise to draw Canadians into a pre-set agenda and popularize it, first by getting participants to agree these were, indeed, the most urgent ‘problems’ and, second, by giving them a stake in ‘solving’ them.”²²³

The Minister’s speeches portrayed a shared national belonging and agenda where DCO applicants were purposely excluded from the national imagery, by being listed as one of the main sources of the “abuse” and “threats” that Canadian society, identity,

²¹⁸ Government of Canada, “Public Consultations – IRCC” *Immigration, Refugees and Citizenship Canada* (1 November 2017) online: Government of Canada <<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/transparency/consultations.html>> at para 1.

²¹⁹ Sunera Thobani, “Closing Ranks: Racism and Sexism in Canada’s Immigration Policy” (2000) 42:1 *Institute of Race Relations* 35 at 37.

²²⁰ *Ibid.*

²²¹ *Ibid.* at 38.

²²² *Ibid.*

²²³ *Ibid.*

culture, and economy were experiencing.²²⁴ This national belonging was based on citizenship, mainly focusing on born Canadians or those lucky enough to have already earned citizenship or residency. The security rhetoric imposed by the speech acts reaffirmed the language of the Canadian state as the protectors of Canadian society, and the proprietors of the security Canadian society is granted. The idea that Canadian society must be saved *by* the DCO policy *from* “bogus” refugee applicants perpetuates the idea that the Canadian collective is only “secure” so long as the DCO policy is employed. All speech acts of the official stance portray the Canadian Government and its actors such as the IRB as the national, heroic saviors of Canada by continually reiterating that the DCO policy will protect and ensure Canada’s “generosity” and its human security for all admitted to Canada.²²⁵

The speech acts created a clear binary between the “us” versus “them”. The “them” has been constructed to be opportunistic, not eligible, not persecuted, undeserving and therefore fraudulent refugee claimants. The Ministers’ speeches were critical of the refugee determination system, but also of how Canadians too generously provide moral and financial support to all applicants.²²⁶ The process of refugee determination is said to be “‘too generous’ with the taxpayer’s money.”²²⁷ The “bogus” refugees make a choice to come to Canada, but Canadians do not have the choice as to whether their tax dollars are used to support them. Therefore, “we” as Canadians “become the victims of allegedly fraudulent refugee applicants, the refugee determination process and international refugee law altogether.”²²⁸ The Canadian Government then becomes the protectionist hero by

²²⁴ *Ibid.*

²²⁵ Diop, *supra* note 38 at 74.

²²⁶ Gilbert, *supra* note 24 at 835.

²²⁷ *Ibid.*

²²⁸ *Ibid.*

creating a “moral and national superiority,”²²⁹ which calls into question the worthiness of DCO refugee applicants and prevents the victimization of Canadian society that their presence poses.²³⁰

As Petra Molnar Diop contends, “in times of decreasing national security, unstable economic climates, and fears of border infiltration and terrorism works to justify increasing state interventions and performance of sovereign power,”²³¹ thus allowing the government to welcome some and exclude others. The speech acts which repeat the rhetoric and discourses of “fraud” and “threats” to security help to legitimize the DCO policy and maintain Canada’s reputation as a humanitarian nation even though there is open and wide-scale dismissal of reasonably legitimate refugees on the grounds of their nation of origin. Since Mexican refugee applicants have been held out by the Minister as an example of the abuse to the system,²³² Mexican refugee applicants started to fit the image of the “bogus” refugee. It is reasonable to assume that it then becomes easier to justify their denials and hinder their ability to seek refuge under the guise of protecting Canada’s refugee system from people who are considered “frauds”.²³³ The official stance, using rhetoric of abuse and discourses of fraud, has reinforced the need for the DCO policy and other restrictive refugee policy reform.²³⁴

The official stance slants the production of power and knowledge in regards to issues of national and human security in its own perception. Power and knowledge production consists of “discourses, institutions, architectural forms, regulatory decisions, laws, administrative measures, scientific statements, philosophical, moral and

²²⁹ *Ibid* at 834.

²³⁰ *Ibid*.

²³¹ Diop, *supra* note 38 at 74.

²³² Immigration, Refugees and Citizenship Canada, *supra* note 123 at 029.

²³³ Diop, *supra* note 38 at 74.

²³⁴ *Ibid*.

philanthropic propositions.”²³⁵ The official stance reconstructs the security orientation of Canada’s borders and refugee determination system, allowing for the construction of a particular issue to be portrayed as a significant problem, thus legitimizing its development of procedures to address the problem.²³⁶ In this instance, the official stance turns the issue of the DCO policy’s impact on Mexican refugee applicants and the construction of Mexican refugees as a “threat”, legitimized again by the official stance, orienting its position on security to substantiate the Mexican refugee “threat” while also legitimizing Mexico as a “safe” country. Thus far, the official stance has been able to construct, produce and legitimize its own version of security through the discourses of security it employs and the institutions responsible for upholding these beliefs while protecting its security beliefs, the refugee laws and administrative measures such as the DCO policy to substantiate the official stance’s view of security and project that view onto Canadian society.

The idea of security created by the official stance seeks to influence what Canadian society is meant to believe “security” means. The Government of Canada explicitly states that matters of securing the border are issues of national security.²³⁷ This includes screening persons attempting to enter Canada.²³⁸ However, the former Minister’s speech acts emphasize how DCO applicants threaten “Canada’s generous welfare social income, health care, subsidized housing and other social support programs”²³⁹ which are matters of human security. The Government’s definition of security thus becomes crossed and unclear by the Minister’s speech acts. In Reg Whitaker’s “Refugees: The Security

²³⁵ Michel Foucault, *Power/Knowledge: Selected Interviews and Other Readings 1972 – 1977* Translated by Colin Gordon, Leo Marshall, John Mepham and Kate Soper (New York, NY: Pantheon Books, 1980) at 194 – 195.

²³⁶ Philippe Bonditti, “Act Different, Think Dispositif” in Mark Salter and Can Mutlu, eds, *Research Methods in Critical Security Studies, An Introduction* (New York, NY: Routledge, 2013) at 103.

²³⁷ Government of Canada, *supra* note 66.

²³⁸ Please refer to the discussion on national security and defence on page 14 – 15.

²³⁹ Citizenship and Immigration Canada, *supra* note 30 at para 3 – 4.

Dimension”, he states that Western governments known to accept large numbers of refugees will typically emphasize their ability to control and exclude those who may be accepted into the state.²⁴⁰ Canada is no exception and its ability to control and exclude has become an integral part of national sovereignty. Through the speech acts and the official stance, “the ‘refugee’ [applicant] is being reconstructed in the dominant state discourses as an object of fear.”²⁴¹ The refugee applicant then becomes “a maker of false or unfounded claims that must be unmasked through effective bureaucratic scrutiny... the refugee is criminalized or politicized as a threat.”²⁴² Governments will emphasize their capacity to protect their citizens from the threat posed by refugee applicants typically by invoking their responsibility to protect the national security of the state.²⁴³ The security “dimension” of refugee applicants is covered by the state’s claim to protect national security, but is most likely presented to the public as threats to resources and economic takeover,²⁴⁴ which are within the realm of human security. The “threat” posed by refugee applicants then becomes more relatable to the public and privileges the government’s power to exercise control and justify exclusionary measures.²⁴⁵ If Mexican refugee applicants, through their DCO status, pose a “threat” to Canada’s human security and not to national security, then security with regards to Mexican refugee applicants means protection against the depletion of resources, rather than an immediate threat to the lives and safety of Canadian society. Mexican refugee applicants pose a “threat” to human security, rather than national security. Their exclusion and dissuasion from applying for refugee status in Canada is reinforced by Canada’s ability to invoke its priority to defend

²⁴⁰ Reg Whitaker, “Refugees: The Security Dimension” (1998) 2:3 Citizenship Studies 413 at 414.

²⁴¹ *Ibid.*

²⁴² *Ibid.*

²⁴³ *Ibid* at 417.

²⁴⁴ *Ibid.*

²⁴⁵ *Ibid.*

national security. The idea of security created by the official stance and the speech acts conflates the dimension of security that refugee applicants should be considered under. Again, it is dependent upon whose security is being assumed²⁴⁶ and in this regard, the human security of Canadian society is being “threatened” by Mexican refugee applicants and the protection of Canadian human security is upheld by Canada’s national security and defence agenda. The human security of Canadian society takes precedence over the human security of potentially vulnerable refugee applicants.

The DCO policy also works to ensure the “safety” of Canadian society by dissuading desperate Mexicans from seeking refuge in Canada to eliminate the “threat” they pose to the refugee system through their “bogus” applications. In these ways, the meaning of “security” for Canada has changed. “Security” for Canadians now means fewer Mexican refugees in Canada. The use of the DCO policy, and its branding impact on Mexican refugee applicants, has become normalized. The official stance has created and reinforced this idea throughout its campaign to support the DCO policy. The construction of DCO refugee applicants from Mexico as the perpetrators of these security “threats” reflects the problematic nature of the DCO policy and the official stance.

1.4. The Opposition to the Official Stance: Procedural

The DCO policy has politicized refuge on an individual and national basis. On an individual level, it establishes how a DCO refugee applicant may live, move and make claims for refugee status in Canada. Likewise, it works to constrain individual agency exercised by refugee applicants.²⁴⁷ In doing so, the DCO policy frames what limited agency a refugee applicant is afforded, and shapes Canada’s collective understanding of

²⁴⁶ Walker, *supra* note 97.

²⁴⁷ Heather L. Johnson, *Borders, Asylum and Global Non-Citizenship: The Other Side of the Fence* (Cambridge, UK: Cambridge University Press, 2014) at 65. (Although Ms. Johnson does not address Canada or the DCO policy specifically, her work addresses the politics of border policies and how it shapes and restricts the lives of all non-citizens in general.)

the political status of refugee applicants.²⁴⁸ The DCO policy becomes the individual's restricted reality and those restrictions on movement and action (and sometimes the speech of the applicant) are interpreted and affirmed as a necessary reality.²⁴⁹ On a national level, the DCO policy attempts to balance the demands of national security and human security with international obligations to provide refuge.²⁵⁰ However, the DCO policy tips the scales to unjustifiably favour Canadian national and human security, rather than its international obligations for refuge. Canada has prioritized its security with the DCO policy and emphasized "management and control rather than enabling access to protection."²⁵¹

As a result, many scholars, political institutions and non-governmental organizations (NGO) have criticized the official stance on the DCO policy and the way it has constructed DCO refugees. The opposition has challenged the idea that Canada's refugee determination system is "fair" and "generous" as the Minister contends. One such NGO is Amnesty International (AI). In its 2012 "Human Rights Agenda for Canada", it was emphasized that the DCO policy "sacrifices fairness, violates rights and are [sic] punitive in nature."²⁵² Canada's approach to refugee determination is also considered inconsistent and has given rise to concerns about discrimination. For example, AI stated the DCO policy "list includes Mexico, which [AI] has described as facing 'spiraling human rights violations.'"²⁵³ As a result of the continued use and justification of the DCO policy, AI determined that the DCO policy encourages the perception that human rights

²⁴⁸ *Ibid.*

²⁴⁹ *Ibid.*

²⁵⁰ *Ibid.*

²⁵¹ *Ibid* at 66.

²⁵² Amnesty International, "Time for Consistent Action - Amnesty International's Human Rights Agenda for Canada" *Amnesty International Canada* (2012), online: Amnesty International <<http://www.amnesty.ca/news/news-releases/time-for-consistent-action-amnesty-international's-human-rights-agenda-for-canada>>.

²⁵³ Amnesty International, "Human Rights Agenda for Canada" *Amnesty International Canada* (18 December 2013) online: Amnesty International at 7 <<http://www.amnesty.ca/sites/amnesty/files/canadahreport18december13.pdf>>.

are less important to Canada than commercial and other interests.²⁵⁴ Justice Boswell in the Y.Z case also determined that the DCO policy is in fact discriminatory.²⁵⁵ She stated that “the disadvantage suffered by DCO refugee claimants under paragraph 110(2) (d.1) of the IRPA is discriminatory on its face. It also serves to further marginalize, prejudice, and stereotype refugee claimants from DCO countries.”²⁵⁶ Justice Boswell further noted that the DCO policy “perpetuates a stereotype that refugee claimants from DCO countries are somehow queue-jumpers or “bogus” claimants who only come here to take advantage of Canada's refugee system and its generosity.”²⁵⁷ In fact, “safe” designations are not in fact safe for the applicants from the designated countries. Instead, Canada’s security agenda affirming the DCO policy is a deterrence strategy intended to dissuade and prevent DCO applicants from seeking refuge in Canada on vague and subjective grounds. It further marginalizes people who seek refuge from nations in peril, because they are now constructed as undesirable “threats” that abuse Canada’s generosity.

Similarly, the Canadian Council for Refugees (CCR) and the Canadian Bar Association (CBA) have also made appeals to the Government of Canada about the detrimental nature of implementing the DCO policy. Both NGOs have established and emphasized that this policy violates many international laws. For example, the DCO policy directly violates Article 3 of the Refugee Convention, specifically, the Non-Discrimination Clause which states “the Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.”²⁵⁸ However, that is precisely what the DCO policy aims to do by adding

²⁵⁴ *Ibid.*

²⁵⁵ Y.Z, supra note 172 at para 125.

²⁵⁶ *Ibid.*

²⁵⁷ *Ibid.*

²⁵⁸ *The Geneva Convention*, supra note at 119 Article 3.

procedural restrictions on refugee applicants based on their nation of origin. Both NGOs cite the Supreme Court of Canada in *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689 case which held that “race, nationality, and to some extent religion are examples of characteristics which the individual has no capacity to change.”²⁵⁹ They claim the nationality of a refugee is an immutable characteristic, much like someone’s race.²⁶⁰ Such categories have been recognized as worthy of special protection under the non-discrimination category of the UNHCR.²⁶¹ As such, both NGOs have concluded that the DCO policy is discriminatory on both a national and international level.

The CBA and the CCR also take issue with the shortened time for a DCO refugee to have their claim heard imposed by the DCO policy. The CBA has stated that it does not provide a sufficient period for the refugee lawyer, nor the applicant, to gather necessary documentation or prepare for the RPD hearing.²⁶² The CCR has stated that refugee lawyers have been finding it difficult to assist in the production of a viable case to satisfy the requirements for refugee status in the condensed timeline given to DCO applicants. Conversely, DCO refugee applicants will find it necessary to proceed to hearings at the RPD unrepresented by a refugee lawyer because of the hefty legal fees and the high probability of failure.²⁶³ The CCR also argues that the DCO policy makes it extremely difficult for a decision on the status of a DCO applicant to be rendered fairly

²⁵⁹ *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, at 733.

²⁶⁰ Mark R. von Sternberg, *The Grounds of Refugee Protection in the Context of International Human Rights and Humanitarian Law: Canadian and United States Case Law Compared* (New York, NY: Martinus Mijhoff Publishers, 2002) at 27.

²⁶¹ *Ibid* at 192.

²⁶² “Fixing the Asylum System: For Starters, Ditch the DCO” *The Canadian Bar Association* (25 August 2016), online: The Canadian Bar Association <<https://www.cba.org/Our-Work/cbainfluence/Submissions/2016/August/Fixing-the-asylum-system>>.

²⁶³ Canadian Council for Refugees, “Bill C-31 – Diminishing Refugee Protection: A Submission to the House of Commons’ Standing Committee on Citizenship and Immigration” *The Canadian Council for Refugees* (April 2012), online CCRWeb: <<http://ccrweb.ca/sites/ccrweb.ca/files/ccrbriefc31.pdf>> at para 3.

and within the principles of natural justice.²⁶⁴ In effect, the DCO policy seeks to preemptively control the outcome of the case by making it more difficult to be considered a genuine refugee.

To demonstrate this, a number of case studies have been done since the implementation of the DCO policy to track its impact on applicants from “safe” countries. Almost all of the case studies have been conducted on the impact of the DCO policy on applicants from Hungary, as it is listed as one of the countries imposing the most abuse on Canada’s asylum system, alongside Mexico. Sean Rehaag, Julianna Beaudoin, and Jennifer Danch’s “No Refuge: Hungarian Romani Refugee Claimants in Canada” is an in-depth case study on the effect the DCO policy has had on Hungarians. As stated previously, in 2012, Minister Jason Kenney specifically named Hungarian refugee claimants as an example of the abuse of the refugee system. The Minister noted that a large number of Hungarian refugee claims were made in Canada between 2008 and 2012, but very few of them were accepted as refugees and many applications were abandoned or withdrawn, prompting the implementation of the DCO policy.²⁶⁵ In 2014, his successor, Minister Chris Alexander, also emphasized the “success” of the policy, stating it has been a benefit to Canada and to the nation’s taxpayers.²⁶⁶ There were 4,453 Intake Applications made from Hungary in 2011.²⁶⁷ Hungary was ranked number 1 in the number of applications made in 2011. In 2015, three years after the DCO policy came into effect, Hungary fell to second place with a total of 982 applications made.²⁶⁸

²⁶⁴ *Ibid* at para 6.

²⁶⁵ *Ibid*.

²⁶⁶ Government of Canada, “Speaking Notes for Chris Alexander, Canada’s Citizenship and Immigration Minister at the News Conference Regarding Canada’s Asylum System.” (22 January 2014). online Government of Canada: <<https://www.canada.ca/en/news/archive/2014/03/speaking-notes-chris-alexander-canada-citizenship-immigration-minister-news-conference-regarding-canada-asylum-system.html>>.

²⁶⁷ Immigration, Refugees and Citizenship Canada, supra note 123 at 028.

²⁶⁸ *Ibid*.

Minister Alexander claimed that the decrease in cases from Hungary was an indication that the DCO policy was working.²⁶⁹ However, the former Ministers both mistakenly took an overall decrease in the number of applications as an indication that the applications were *fraudulent* and therefore deterred as a direct result of the policy.

It must not be forgotten that throughout Europe, Romani travelers have been systemically discriminated against.²⁷⁰ Anti-Romani rhetoric is sprawled across Europe and anti-Romani persecution has historical roots in Hungary.²⁷¹ The stereotypes engrained in Hungary about the Romani have made their already precarious status in Hungary more difficult. Many of the claims for refugee status from Hungary to Canada are from the Romani.²⁷² Their decrease in applications overall is not likely because their claims are fraudulent. In fact, the persecution of Roma has been acknowledged by the Canadian Government.²⁷³ Instead, it is likely that the Romani have been discouraged because of the DCO policy in general as well as shortened timelines and the added expense of the rushed hearing. The expedited process imposed on the Romani from Hungary through the DCO policy can “exacerbate the risks of legitimate applications being rejected without a thorough analysis of the merits of the claims.”²⁷⁴ Atak, Hudson and Nakatchi conclude that Romani applicants are at risk of being denied on the basis of their nation of origin rather than the content of their claim and the nature of their persecution. Also as travelers, the Romani are known for not being economically “well-

²⁶⁹ *Ibid.*

²⁷⁰ Roma Community Centre, “Roma Refugees in Canada and Bill C-31: Brief Submitted to Canadian Government Standing Committee on Citizenship and Immigration.” (29 April 2012), online the RCC: <http://www.romatoronto.org/pdf/Roma_Community_Centre_brief_to_CIMM_re_Bill_C-31.pdf>.

²⁷¹ *Ibid.*

²⁷² *Ibid.*

²⁷³ Sean Rehaag, Julianna Beaudoin, and Jennifer Danch. “No Refuge: Hungarian Romani Refugee Claimants in Canada.” (2013) 11:3 Osgoode Hall Law School Law Journal 2 at 22.

²⁷⁴ Idil Atak, Graham Hudson and Delphine Nakache, “The Securitisation of Canada’s Refugee System: Reviewing the Unintended Consequences of the 2012 Reform” (2018) 37:1 Refugee Survey Quarterly 1 at 11.

off”²⁷⁵ and are less likely to retain counsel for their hearing at the IRB. That, coupled with the pressure of collecting as much documentation as possible and the refugee lawyer’s expenses for an already unfair trial, means many Romani have been discouraged from applying to Canada for refugee status altogether.

Further discouragement came in January of 2013, when the Canadian Government launched a campaign in Hungary to advertise the DCO policy and the changes the policy made to the IRPA.²⁷⁶ Six billboards were put up in the Hungarian town of Miskolc, which is known to have a large Romani population.²⁷⁷ The billboards were displayed prominently, brandished with the Government of Canada logos, with a notice about the reform to the refugee determination system stating: “people who make a claim without sound reasons will be processed faster and removed faster.”²⁷⁸ The government was taking a pre-emptive step to discourage the “bogus” Hungarian refugees from making claims to begin with, and were deterring otherwise conceivably legitimate refugees from seeking refuge in Canada. In fact, only a few months earlier Miskolc was swarmed by thousands of Hungarian nationalists marching, holding torches and chanting “Gypsy crime! Gypsy criminals!”²⁷⁹ in an attempt to run the Romani community of Miskolc out of Hungary.²⁸⁰ However, according to their designation on the DCO list, Hungarian refugee applicants are likely not in need of refuge and unlikely to face persecution. By deeming Hungary a “safe” country, Canada has made life for the targeted community of the Romani increasingly unsafe. Even if an applicant does retain counsel, under the procedural restrictions of the DCO policy “there is a consequent, unjustifiable

²⁷⁵ Rehaag, *supra* note 273 at 22.

²⁷⁶ *Ibid.*

²⁷⁷ *Ibid.*

²⁷⁸ *Ibid.*

²⁷⁹ *Ibid.* at 21.

²⁸⁰ *Ibid.*

risk of refoulement for DCO claimants,”²⁸¹ that is, being forcibly returned to the persecution the claimant is fleeing. The impact the DCO policy has had on Romani applicants from Hungary is similar to the impact it has had on Mexicans.

1.5. The Opposition to the Official Stance: Discourse

1.5.1. My Stance: The DCO Policy

It is clear that the DCO policy presents some procedural hurdles to DCO applicants. Many critical legal scholars who oppose the DCO policy emphasize the procedural obstacles that the policy imposes. These are indeed important issues with regards to the treatment of DCO applicants in Canada’s refugee determination system. However, the focus of my thesis is not solely on the procedural restrictions of the DCO policy, but also how the discourses of security, labelling applicants and the resulting speech acts of the official stance in regards to justifying the DCO policy have affected DCO applicants. I agree with the opposition that it is discriminatory to implement a policy that negatively affects claimants based on their nation of origin. Although it must be emphasized that the DCO policy is not being used as a tool to exclude all DCO applicants from receiving status in Canada, and some are still being allowed into Canada, the policy has been crudely implemented to exclude many deserving applicants from the privilege of refugee status in Canada.²⁸² This is also true for the DCO applicants from Mexico. What is even more troubling than the procedural hurdles is the language, terminology and the developing security discourses at the core of the DCO policy, which has yet to be widely pursued by scholars and NGOs. Since the IRB boasts that their board members are given considerable discretion to determine refugee claims on a case by case

²⁸¹ Atak, *supra* note 274 at 12.

²⁸² Marina Stefanova, “The “Safe” Need Not Apply: The Effects of the Canadian and EU “Safe Country of Origin” Mechanisms on Roma Asylum Claims.” (2014) 49:121 *Texas International Law Journal* 122 at 140.

basis on the merit of each individual case, labelling refugees via the DCO policy justifies the deterrence of potential applicants and may result in denial of applicants based on their nation of origin. The discourse of labelling DCO countries also results in the decreased importance of the refugee experience by presupposing the fraudulence of DCO applicants. These notable discursive deficiencies of the refugee determination system “heighten the risk of false negative determinations.”²⁸³ The discourses labelling DCO applicants also affirms the traditional orthodox conceptualization of security, as it ignores the fact that these beliefs of security are deeply dependent upon assumptions about the nature of politics.²⁸⁴ In other words, the DCO policy is perceived as a necessary modern tool for the climate of the refugee system, but it can accurately be considered a political strategy aimed to label and exclude, as well as ignoring international obligations.

1.5.2. My Stance: Mexico as a “Safe” Country

It also seems highly contradictory for former Minister Alexander to recognize Mexico as a DCO “safe” country, meaning it does not typically produce refugees, but in his notes and other speeches to denounce Mexican refugee applicants as illegitimate because the IRB receives one of the largest proportions of applications for refugee status from Mexico.²⁸⁵ The Minister’s speech, notes and language are contradictory, as, in acknowledging the high number of applications, he in effect described Mexico as a refugee producing country rather than a “safe” country. Though few Mexican refugee applicants are actually accepted as genuine refugees in Canada, I believe the former Minister has at the very least described Mexico as a refugee applicant producing country, which still contradicts his claim that Mexico is a “safe” country. Yet the Minister will

²⁸³ Macklin, *supra* note 158 at 103.

²⁸⁴ Jones, *supra* note 95 at 165.

²⁸⁵ Please refer to page 35 – 36, where I explain Minister Chris Alexander’s notes and speech.

still defend the implementation of the DCO policy list and Mexico's place on it. The fact that Canada receives applications for refugee status from Mexico should be an indication that Mexico is not in fact "safe." The international community must rely on the refugee applicants who make claims from certain nations to uncover the truth about the human rights abuses they suffer. The fact that Mexico has been one of the top refugee claims producing countries should be seen as an indication that human rights abuses exist in Mexico on a large scale.

As the CCR states, under the DCO policy, the Minister is granted sole authority to designate countries as "safe", but in doing so there are no safeguards to protect vulnerable nations from being designated on "the basis of erroneous or irrelevant political, trade or other considerations."²⁸⁶ Based on the subjective designation criteria, it is unclear on what grounds the former Ministers based their designation criteria or why they chose certain nations for designation. However, I believe the CCR is right when it says that both Ministers' "references to "bogus" claims are an egregious misrepresentation"²⁸⁷ of Mexican refugee applicants, and their designation was based on other political considerations.

For example, the Canadian Government must be aware of the reality of the plight of Mexican refugee applicants. However, if Canada were to admit that the DCO policy unjustly limits Mexican refugee applicants from seeking refuge in Canada, then Canada would have to adequately address the concerns for providing refuge for Mexican refugee applicants (or provide answers as to why it is not doing so). According to Canada's international obligations, Canada is committed to "the promotion and protection of

²⁸⁶ Canadian Council for Refugees, *supra* note 263.

²⁸⁷ *Ibid.*

human rights”²⁸⁸ and upholds the value of “inclusive and accountable governance, peaceful pluralism and respect for diversity and human rights including the rights of women and refugees.”²⁸⁹ When intervention is needed because human rights are not being upheld, Canada is called upon as per its international obligations to provide aid (for example financial and military assistance). This includes “footing the bill” so to speak, for Mexican refugees. The alternative to providing refuge for a country in turmoil is to declare the opposite and designate Mexico as a “safe” country to justify the denial of large numbers of potentially legitimate Mexican refugees and do so legally. However, if Canada were to admit that Mexico fails to provide adequate security for its citizens, then Canada would also be liable for declaring Mexico a “fragile” or “failed” state. A failed state is a nation in turmoil, one unable to support itself or its citizens. These states lack the key features of statehood and cannot guarantee reciprocal rights to its citizenry.²⁹⁰ A failed state does not have the ability to function.²⁹¹ A fragile state may appear to be sovereign, developing, democratic and may have an established political system, but it may be economically underdeveloped or vice versa.²⁹² What may be lacking in both cases is the ability to connect the voices and opinions of the citizenry to their government and the government’s accountability to citizens for its decisions.²⁹³ Prior to the Cold War, repairing fragile and failing states was considered a matter left solely to that state to fix.²⁹⁴ However, in the age of post-Cold War security, nation-building and repairing these

²⁸⁸ Government of Canada, “Canada’s Approach to Advancing Human Rights” (13 June 2017), online: The Government of Canada <http://international.gc.ca/world-monde/issues_developpement-enjeux_developpement/human_rights-droits_homme/advancing_rights-promouvoir_droits.aspx?lang=eng> at para 1.

²⁸⁹ *Ibid* at para 2.

²⁹⁰ Ezrow, *supra* note 73 at 15.

²⁹¹ *Ibid* at 16 – 17.

²⁹² Ashraf Ghani and Clare Lockhart, *Fixing Failed States: A Framework for Rebuilding a Fractured World*, (New York, NY: Oxford University Press, 2008) at 21.

²⁹³ *Ibid*.

²⁹⁴ Ezrow, *supra* note 73 at 286.

states is almost entirely spearheaded and funded by other states and members of the international community.²⁹⁵ Neighboring states are called upon to help supply foreign aid, or financial resources to the fragile or failed state.²⁹⁶ In some instances intervention is needed, and neighboring states physically ensure the safety of the fragile or failed state.²⁹⁷

Fragile or failed states can affect neighboring nations. The degradation of the state in question could act as a drain on Canadian institutions, such as the Canadian refugee determination system receiving a large number of claims from a fragile or failed state. Fragile or failed states are also very costly and require intense co-ordination and investment from other states. “Fragile states are highly aid dependent as they cannot effectively mobilize domestic resources and cannot rely on other sources of financing such as remittances and foreign direct investment.”²⁹⁸ Not effectively addressing the problem, or turning a blind eye to a country’s fragility can be very costly to the state in question and it’s citizens, as well as the international community.²⁹⁹ Canada is considered a donor country.³⁰⁰ As a country with a prospering economy, lack of national conflict, and its international commitment to uphold human rights, Canada is considered a country that is capable of assisting other nations in need. For fragile states specifically, it is suggested that “in line with the growing recognition of the role that economic and social rights play in security, Canada could focus attention on ways to address issues such as resource-sharing, equitable access to the benefits of resource extraction, fair taxation, and reducing the gap between elites and large numbers of people with legitimate

²⁹⁵ *Ibid* at 285.

²⁹⁶ *Ibid* at 292.

²⁹⁷ *Ibid* at 304.

²⁹⁸ David Carment and Yiagadeesen Samy, “Policy Paper: Canada, Fragile States and the New Deal: Looking Beyond 2015” (2014) Canadian Defence & Foreign Affairs Institute 1 at 2.

²⁹⁹ *Ibid*.

³⁰⁰ *Ibid* at 1.

grievances.”³⁰¹ Canada’s aid budget allocates a significant amount of its budget to providing aid to fragile countries. It is estimated that Canada’s financial aid to fragile states has increased from 18.2% in 2001 to 38.4% in 2010, and has been steadily increasing.³⁰² Likewise, Canada will be held accountable to assist countries with which it holds a vested or direct economic interest.³⁰³ Though Canada is not exclusively responsible for providing aid to countries it holds agreements with, it is responsible for allocating considerable measures for both short term and long term assistance.

Mexico fits the profile of a fragile state. Mexico has in fact been listed officially as a fragile state on the FSI. Nonetheless, if Canada were to officially recognize Mexico as a fragile state, economic trade and labour agreements could suffer. Also, Canada would undoubtedly be called upon by the international community to provide support and aid to Mexico and its citizens. As a result of these political variables, the “safe” designation of the DCO policy is used by Canada to avoid its international obligations to assist Mexico, both financially and otherwise, in strengthening its nation to comply with international human rights. The DCO policy diverts attention away from the fragility of Mexico and the resulting displacement of Mexican refugee applicants, and shifts attention onto the “threat” Mexican applicants pose to the security of Canadians. It is a disguise, a political excuse not to assist a country with which Canada holds bilateral and unilateral agreements for its own gain. The DCO policy effectively allows Canada to focus nearly exclusively on the national and social security of Canada to the detriment of Mexican

³⁰¹ Canadian Council for International Co-operation, “Human Rights and “Fragile States” Policy: Discussion Papers Part 3” (January 2007), online: Canadian Council for International Co-operation <http://www.cci.ca/_files/en/what_we_do/002_peace_2006-12_failed_states_part_3.pdf> at 6.

³⁰² Carment, *supra* note 298 at 2.

³⁰³ *Ibid* at 8.

refugee applicants' human security, letting the fragile condition of Mexico remain unresolved.

CSS states that orthodox strategies of security may deem someone or something a “threat” as an avoidance measure to evade honouring international, bilateral or other obligations.³⁰⁴ Security measures aimed to severely restrict movement and entrance into a nation is a strategy of denial which includes avoidance, attacking the “threat” to legitimize the policy or agenda, and redefining the issue.³⁰⁵ By focusing on the “threat” Mexican applicants pose to the Canadian refugee and welfare systems, the official stance has created a security agenda of avoidance. The focus on Mexican refugee applicants is an attack measure to shift the blame from Canada not honouring its international obligation to provide refuge, to Mexico not upholding its national obligations to honour its citizens' human security. Listing Mexico as a “safe” country and having its designation continually portrayed through the official stance legitimizes that blame. If the blame is on “safe” Mexico, there would be no reason for Canada to accept more Mexican refugee applicants than it does under the DCO policy. Likewise, if “safe” Mexico is to blame, there would be less reason for its citizens to seek refuge in the first place, as it is now redefined as “safe”. Canada holds the power of designation as well as refugee acceptance or denial and thus Mexico and its citizens are at the mercy of their designation. This strategy of denial through avoidance, attack and redefinition has now branded Mexico, thus rendering outstanding issues such as its weak human rights record, the turmoil of the Mexican “Drug War”, its position on the FSI and other factors

³⁰⁴ Roger W. Cobb and Marc Howard Ross, “Denying Agenda Access: Strategic Considerations” in Roger W Cobb and Marc Howard Ross eds, *Avoidance, Attack, and Redefinition: Cultural Strategies of Agenda Denial* (Lawrence, KS: University Press of Kansas, 1997) at 32.

³⁰⁵ *Ibid* at 33.

irrelevant, while validating Canada's unforgiving position on Mexican refugee applicants.

The Canadian Government has strategically, legally and discursively constructed Mexico as a "safe" country, but Mexican refugee applicants as a "threat" to Canada to protect its own security agenda, while avoiding its international humanitarian obligations. In the following chapter, I trace the history of the Mexican presence in Canada. I show how the presence of Mexicans in Canada has always been demonized and perpetuated as a "threat" except for when Mexican workers are meeting tight labour demands. The following chapter will deconstruct the claim that Mexico is a "safe" country. All of the following sections and subsections will outline just how Mexico produces refugees, even though their designation on the DCO policy list suggests otherwise. Each factor that contributes to refugee production also substantiates Mexico as a fragile state. I then attempt to test the criteria for designation, both quantitatively and qualitatively to advance my argument that Canada is shamelessly trying to avoid having to jeopardize its own economic interests and take on the burden that comes with declaring Mexico a fragile state. Instead, it applied a radical solution and declared Mexico a "safe" country even though I will show Mexico is far from safe.

2. Chapter 2: Mexico as a DCO Country

2.1. The History of Mexican Migration to Canada

Prior to the 1990's, the presence of Mexican citizens in Canada was common because of government agreements and programs. Most Mexicans in Canada were traditionally either landed migrants or guest workers. In 1966, Canada prompted migration in the form of labour through the guest workers program which enabled Canada to meet its labour demands.³⁰⁶ This included the Seasonal Agricultural Workers Program (SAWP) which attracted around 5,000 Mexican workers to participate annually.³⁰⁷ The Temporary Foreign Workers Program (TFWP), which started in 1973, allowed Canadian employers to fill the gaps in their workforce and hire foreign nationals.³⁰⁸ Employers who filled labour gaps with migrant workers did not have to pay wages similar to those paid to Canadian citizens.³⁰⁹ It was much cheaper for employers to pay Mexican migrant workers, than employ citizens. However, the positions that were filled with migrant workers were usually agricultural farming positions, which few Canadian workers were willing to fill. Along with the lower wages, Indigenous Mexican farming practices made Mexican migrants more attractive for the agricultural sector, producing higher crop yields than traditional Canadian farming practices.³¹⁰

Canada, America and Mexico signed NAFTA, which came into force on January 1, 1994 and facilitated even more movement of Mexican workers to Canada.³¹¹ NAFTA bolstered bilateral relations between Canada and Mexico through trade and economic

³⁰⁶ Tanya Basok, "Migration of Mexican Seasonal Farm Workers to Canada and Obstacles to Productive Investment" (2000) 34:1 Int. Migr. Rev 79 at 81.

³⁰⁷ *Ibid* at 84.

³⁰⁸ Government of Canada, "Temporary Workers" *Immigration, Refugees and Citizenship Canada* (19 December 2017) online: Government of Canada <<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/foreign-workers.html>> at para 2.

³⁰⁹ Tanya Chute, "Globalization, Security and Exclusion" (2005) 3 CRS Working Paper Series 2 at 7.

³¹⁰ *Ibid.*

³¹¹ Wei Wei Da, "Mexicans in Canada: Contexts of Departure and Arrival" (2002) Latin American Research Group 1 at 2.

exchanges. There were increases in the automotive and electronics sectors which “jointly represent about 65% of Mexican exports to Canada and 35% of Canadian exports to Mexico.”³¹² Sectors such as oil, gas, meat and grains “represent a higher proportion of Canadian exports to Mexico than manufacturing goods.”³¹³ NAFTA facilitated the bilateral relations between these two nations, which was predicated on significantly reducing the cost of trade, while significantly increasing the efficiency of trade.³¹⁴

NAFTA and the workers programs made it easier for Mexican participants to obtain a work visa for their travels to Canada, unlike Mexican travelers who were not participants.³¹⁵ Economic, social and political contacts between Canada and Mexico increased, leading to the exchange of people, ideas and most importantly labor and commodities. Although NAFTA does not make specific reference to opening the borders to Canada or Mexico, it does list measures for “the temporary entry for business persons including business visitors, traders, investors, and intercompany transferees and professionals.”³¹⁶ By 2001, Canada saw a 122% increase in the number of temporary Mexican workers entering Canada.³¹⁷ The largest flow of Mexican migrants was through the SAWP which continued to offer low-skilled or clerical positions for employment.³¹⁸ By 2004, the ten-year anniversary of the signing of NAFTA, there were 18,755

³¹² Isabel Studer, “A Joint Research Agenda” in Alex Bugailiskis and Andres Rozental eds, *Canada Among Nations 2011 – 2012: Canada and Mexico’s Unfinished Agenda* (Montreal, QC: McGill-Queen’s University Press, 2012) at 70.

³¹³ *Ibid.*

³¹⁴ *Ibid.*

³¹⁵ *Id.*, supra note 311 at 3.

³¹⁶ T. John Samuel, Rodolfo Guterrez and Gabriela Vazquez, “International Migration Between Canada and Mexico: Retrospect and Prospects” (1995) 22:1 *Canadian Studies in Population* 49 at 51.

³¹⁷ Usha George, “Mexican Migration to Canada: Case Study Report” (2008) 6:3 *Journal of Immigration & Refugee Studies* 463 at 464.

³¹⁸ *Ibid.*

agricultural farm workers entering Canada annually through the SAWP program.³¹⁹ Approximately 10,000 farm workers were from Mexico.³²⁰

What is important to note here is that the presence of Mexicans in Canada has been welcomed and encouraged so long as they are contributing to the Canadian economy. Even then, there are set time limits for the work to be completed, usually around five to eight months.³²¹ It was Canada's ability to "deport" the Mexican migrants or send them home after their contracts expired that rendered Mexican labour a disposable commodity, and ultimately the presence of Mexicans in Canada was viewed in the same way as well.³²² NAFTA introduced many contradictory issues to the bilateral relations between Mexico and Canada. For example, the agreement privatized a new era of globalization and mobility.³²³ Only a select few Mexican migrants and businessmen could cross the border, specifically those given permission to come to Canada via NAFTA and the migrant workers programs. Migrants and businessmen not given permission were less likely to be accepted to cross the border into Canada. This selectivity favoured the concentration of wealth in the North, and new strategies were used to protect that wealth. This new strategy was to ensure that members of the South were allowed to contribute to "our" Canadian economy, but not allowed to take "our" Canadian jobs, only those with set timelines.³²⁴ NAFTA divided society along class lines creating a paradox of globalization: that borders must be kept open to capital and goods, but relatively closed to people. Canada was guarding its wealth through selectivity and

³¹⁹ *Ibid.*

³²⁰ *Ibid.*

³²¹ Basok, supra note 306 at 81 – 82.

³²² Nicholas De Genova, "The Legal Production of Mexican/Migrant "Illegality"" (2004) 2 *Latino Studies* 160 at 179.

³²³ Chute, supra note 309 at 5.

³²⁴ *Ibid.*

exclusion.³²⁵ NAFTA created the borderless economy simultaneously with barricaded borders.³²⁶

Much of Mexican society accepted Mexico joining NAFTA.³²⁷ Many believed that opening trade relations with the North would strengthen Mexico's ties with North America and increase economic prosperity for the majority of Mexico. As Jonathan Heath contends, "the general acceptance of NAFTA was grounded in the belief that the welfare of the majority would improve."³²⁸ Instead, the economic expansion and labour opportunities created through NAFTA and the foreign workers programs increased the already existent gaps between social groups in regions of Mexico and made the distribution of wealth even more disproportionate.³²⁹ Increased economic prosperity also led to increased borrowing, and the Mexican Peso eventually decreased in value. The devaluation led to an economic crisis in 1996, what is known as the Mexican Peso Crisis.³³⁰ This crisis hit the Mexican middle and working class quite hard and prompted the amplified movement of economic migrants to Canada. NAFTA rapidly integrated three unequal economies. The asymmetry of the borders led to competitions for positions in Canadian programs, increased migratory pressures, while also increasing economic disparity.³³¹ Each of these issues between Mexico and Canada, and within Mexico itself, fed into each other, creating a feedback loop for Mexico, its weaker economy and the working class which was hit the hardest.

³²⁵ *Ibid.*

³²⁶ *Ibid.*

³²⁷ Jonathan Heath, "Economic Sovereignty in Mexico" in Joyce Hoebing, Sidney Weintraub and M. Delal Baer eds., *NAFTA and Sovereignty Trade-offs for Canada, Mexico, and the United States* (Washington, DC: The Centre for Strategic & International Studies, 1996) at 88.

³²⁸ *Ibid* at 89.

³²⁹ *Da*, supra note 311 at 3.

³³⁰ *Ibid* at 3 – 4.

³³¹ Chute, supra note 309 at 6.

2.2. The History of Mexican Refugees to Canada

2.2.1. The ELZN

Although Mexican migrants were common, Mexican refugees in Canada are a rather recent occurrence.³³² A steady flow of approximately 200 Mexican refugee applicants had been received at the IRB per year since 1989. In 1995, that number tripled to 612 refugee claims, growing to 947 claims in 1996 and 1039 claims in 1997.³³³ Every year since then the number of annual applications from Mexico has remained in the thousands. This is due to a number of factors. First, on January 1 1994, (the same day NAFTA came into force) the Zapatista Army of National Liberation (Ejército Zapatista de Liberación Nacional, EZLN) rose up in an armed rebellion in Chiapas, a southern state in Mexico.³³⁴ This was in response to NAFTA which cancelled Article 27 of Mexico's constitution that protected Indigenous communal landholdings from sale. Indigenous farmers feared the loss of their land and loss of business due to cheaper U.S. and Canadian imports as a result of NAFTA. NAFTA was considered a "death sentence for Indigenous peoples."³³⁵ The EZLN, which attracted more than 3,000 Indigenous peoples to participate in the uprising, attacked city buildings, civic centres and city hall, barricading themselves in the building. The EZLN took possession of six towns in Chiapas. Though they were armed, the EZLN rejected using violent means in their rebellion. The Mexican Government responded with a military offensive which reclaimed all towns. The rebellion only lasted eleven days, but led to large scale protests and civil unrest in Mexico calling for peace and Indigenous land rights in February of 1994.

³³² Samuel, *supra* note 316 at 50.

³³³ *Da*, *supra* note 311 at 2.

³³⁴ George A. Collier and Jane F. Collier, "The Zapatista Rebellion in the Context of Globalization" (2005) 32:4 J. Peasant Stud 450 at 451.

³³⁵ *Ibid.*

2.2.2. The Acteal Massacre

By 1996 only one accord for Indigenous rights had been signed by the Mexican Government, but it was not implemented. The conflicts with the EZLN also went unresolved.³³⁶ Roman Catholic Indigenous towns-people of Acteal, Chiapas Mexico started a small pacifist group called Las Abejas (Spanish for ‘The Bees’).³³⁷ They had publicly aligned themselves with the EZLN and the rebellion. On December 22, 1997, members of the Las Abejas were attending a prayer meeting when a paramilitary (an armed civilian group) group called Mascara Roja (Spanish for ‘Red Mask’) slaughtered the 45 men, women and children in attendance.³³⁸ This event became known as the Acteal Massacre and has been the source of added civil unrest in Mexico and violence against Mexican Indigenous populations.³³⁹

It is common for the Mexican Government to grant informal exemption to paramilitary groups and state agents who are “defending the state” from human rights advocates and protestors.³⁴⁰ Essentially it can turn a blind eye to armed civilians who are on the government’s side. AI’s report in 2000 addressed the Acteal Massacre and the state of the Mexican Government. It states that during 1999 “significant advances were made in the investigation of the 1997 Acteal massacre, but a number of judicial proceedings were still under way in connection with it. However, a largely ineffective judicial system contributed to the ongoing impunity for human rights violations.”³⁴¹ Since the 1990’s, AI reports that in Mexico arbitrary detention, torture, killings, forced disappearances, and death threats against peasants and Indigenous peoples, human rights

³³⁶ Da, supra note 311 at 2 – 3.

³³⁷ Richard Stahler-Sholk, “Massacre in Chiapas” (1998) 25:4 *Latin American Perspectives* 63 at 63.

³³⁸ *Ibid.*

³³⁹ *Ibid* at 64.

³⁴⁰ Amnesty International, *Amnesty International Report 2000: Annual Report Summaries 2000* (London, UK: Amnesty International Press, 2000) at 7.

³⁴¹ *Ibid.*

advocates and political activists continued to plague the country.³⁴² The most vulnerable populations including Indigenous peoples, migrant workers and street children are increasingly at risk of harassment, acts of violence, injustice and police brutality.³⁴³ AI's report states that for these vulnerable groups of society, "the chances of seeing justice done are almost non-existent."³⁴⁴ These insecurities of human rights in Mexico are contrary to the Minister's qualitative designation criteria of an independent judicial system, and basic democratic rights and freedoms are recognized and mechanisms for redress are available if those rights or freedoms are infringed. There is a noted lack of access to justice in Mexico. If these basic rights are not upheld it becomes increasingly difficult to define and label Mexico as a "safe" country.

2.2.3. The Mexican "Drug War"

By 2006, gangs, paramilitary groups, Transnational Criminal Organizations (TCOs) from all across Central America and numerous security forces had been responsible for approximately 40,000 lives lost in Mexico.³⁴⁵ These criminal militias have committed nation-wide atrocities in a Mexican turf war, all in an effort to control drug-trafficking routes.³⁴⁶ What came to be known as Mexico's "Drug War" has been responsible for much of the displacement and applications for refugee status that Canada has received. These clashes between rival TCOs, and between TCOs and Mexican police and security forces have culminated into a hotbed of violence and human rights violations in the form of civilian deaths, forced disappearances, failure to improve public security

³⁴² *Ibid* at 8.

³⁴³ *Ibid*.

³⁴⁴ *Ibid*.

³⁴⁵ Ami C. Carpenter, "Changing Lenses: Conflict Analysis and Mexico's "Drug War"" (2013) 55:3 LAPS 139 at 139.

³⁴⁶ *Ibid* at 145.

and failure to decrease drug production and trafficking.³⁴⁷ Though Mexico had both a gang problem and a drug cartel problem, some Mexican gangs would run sects of the cartels and other cartels would hire known Mexican gangs to secure drug trafficking routes and run the drugs.³⁴⁸ I will attempt to distinguish between Mexican gangs and drug cartels, however this can become difficult because they are sometimes considered one in the same.

Colombia was known to provide the drugs, mainly cocaine, to Mexico. In the early 2000s, Americans spent approximately \$36.1 billion U.S. Dollars (U.S.D.) on cocaine, the majority of which was trafficked from Mexico and originated in Colombia. Drug cartels in Mexico were being paid by Colombian drug lords for each kilogram of cocaine they could smuggle into the U.S., due to the proximity to the border.³⁴⁹ Statistics from 2002 suggest that illicit drugs in Mexico had become a billion U.S.D. market.³⁵⁰ This hefty price tag also prompted corruption from Mexican public servants tasked with cracking down on the drug cartels. Crooked cops were paid for the impunity, free movement and production of the drugs, making it easier to smuggle them into the U.S.³⁵¹ NAFTA is believed to have facilitated much of the freer movement of drugs to the U.S..³⁵² Three main cartels ran the extensive cocaine trade along border areas and the southeast coast.³⁵³ These cartels were the Sinaloa Cartel, the Gulf Cartel and the Tijuana Cartel, all of which consist of violent gang members and all of which have waged and

³⁴⁷ *Ibid* at 139.

³⁴⁸ Aimee Rawlins, “Backgrounder: Mexico’s Drug War” (2011) Council on Foreign Relations 1 at 1.

³⁴⁹ Tomas Kellner and Francesco Pipitone, “Inside Mexico’s Drug War” (2010) 27:1 World Policy Journal 29 at 30.

³⁵⁰ Paul Rexton Kan, *Cartels at War: Mexico’s Drug-Fueled Violence and the Threat to U.S. National Security* (Washington, DC: Potomac Books, 2012) at 15 – 16.

³⁵¹ “Refugees: Mexico’s Good Fight” *ProQuest Historical Newspapers (1936 – Current): The Globe and Mail* (21 October 2008), online: The Globe and Mail <<https://search-proquest-com.proxy.library.carleton.ca/docview/1412662662?pq-origsite=summon>> (ProQuest) at A20 para 3.

³⁵² Kan, *supra* note 350 at 4.

³⁵³ Stephanie Hanson, “Backgrounder: Mexico’s Drug War” (2008) 1 Council on Foreign Relations 1 at 1.

continue to wage a violent turf war over border trafficking access routes and border crossing areas, also referred to as plazas.³⁵⁴ The drug cartels and the resulting violence was causing chaos and widespread panic throughout Mexico, causing other states and organizations to push the Mexican Government to address this issue.

The “war against drugs” was spearheaded by newly appointed (at the time) President of Mexico Felipe Calderón in 2006.³⁵⁵ President Calderón ordered over 45,000 soldiers and federal police to the towns and cities of Mexico where drug cartels were the most active and crime rates were the highest. The troops were sent to defend nine states in Mexico. 10,000 troops were deployed to Ciudad Juárez alone as it had been known as “Mexico’s murder capital”³⁵⁶ considering the violence that the drug cartels had brought to that city. The violence reached cities including Michoacán, Guerrero Torreón, Monterrey, Cuernavaca, and what has been considered the “Golden Triangle”³⁵⁷ of Sinaloa, Durango, and Chihuahua, causing troops to be spread throughout dominant portions of Mexico in an aggressive tactic to combat the drug cartels’ power.³⁵⁸ The troops were ordered to conduct raids, seize and eradicate drug crops, gather intelligence, and interrogate suspects.³⁵⁹ However, the raids on the drug cartels quickly turned into heated turf wars often resulting in street gun battles between gang members from the cartels and soldiers or police.³⁶⁰ In 2007, there were more than 2,500 drug related deaths and that number increased to more than 4,000 drug related deaths by the end of 2008.³⁶¹

³⁵⁴ *Ibid* at para 2.

³⁵⁵ Ariadna Estévez, “The Endriago Subject and the Dislocation of State Attribution in Human Rights Discourse: The Case of Mexican Asylum Claims in Canada” (2015) 36:6 *Third World Quarterly* 1160 at 1162.

³⁵⁶ Adam David Morton, “The War on Drugs in Mexico: A Failed State?” (2012) 33:9 *Third World Quarterly* 1631 at 1632.

³⁵⁷ Hanson, *supra* note 353 at 1.

³⁵⁸ Morton, *supra* note 356 at 1632.

³⁵⁹ Hanson, *supra* note 353 at 1.

³⁶⁰ *Ibid*.

³⁶¹ *Ibid*.

By the end of the early 2000s, the “war on drugs” led to the arrest of Benjamin Arellano Felix and Osiel Cárdenas, the top leaders of the Tijuana and Gulf Cartels.³⁶² The insurgency and loss of leadership led to a divide with the emergence of autonomous criminal organizations. The gangs that were formed included the Teodoro García organization, the Zetas, La Familia Michoacana, and the Beltrán Leyba organization.³⁶³ These splinter cells were the target of the dominant groups from which they derived. 2009 and 2010 saw yet another increase in the violence.³⁶⁴ Other drug cartels seemed to emerge from the conflict as well, further dividing the cartels and splinter cell gangs. They included the New Generation-Jalisco Cartel and the La Resistencia organization, which broke off from the Sinaloa Cartel, and the Knights Templar gang which broke off from the La Familia Michoacana.³⁶⁵ By this time, Ciudad Juárez Mexico was being described as a “warzone”³⁶⁶, where over 60,000 people had been killed since 2006.³⁶⁷ Every three hours, someone was slain in Juárez, prompting further concern for an urgent resolution to the drug-fueled conflict in Mexico.³⁶⁸ These figures were exacerbated by the fact that “in 2009, the U.S. National Drug Intelligence Center estimated that Mexican and Colombian drug trafficking organizations generated somewhere in the range of \$17 billion to \$38 billion annually in gross wholesale proceeds from drug sales in the U.S.”³⁶⁹ With each faction competing for a cut of the billions of U.S.D. from the drug trade, the illegal market continued to become more violent to monopolize the drug trade.³⁷⁰

³⁶² David Shirk and Joel Wallman, “Understanding Mexico’s Drug Violence” (2015) 59:8 *Journal of Conflict Resolution* 1348 at 1357.

³⁶³ *Ibid* at 1357 – 1358.

³⁶⁴ *Ibid* at 1358.

³⁶⁵ *Ibid*.

³⁶⁶ Howard Campbell, *Drug War Zone: Frontline Dispatches from the Streets of El Paso and Juárez* (Austin, TX: University of Texas Press, 2010) at 4.

³⁶⁷ Kan, *supra* note 350 at 1.

³⁶⁸ *Ibid*.

³⁶⁹ Kellner, *supra* note 349 at 30.

³⁷⁰ Kan, *supra* note 350 at 16.

By 2011, the violence among rival gangs and cartels was reaching a head. However, the Sinaloa Cartel appeared to be relatively undisturbed by the splinter cells and ruptures from within. The Sinaloa leaders, Joaquín Guzmán and Ismael Zambada were still running their organization and escaping the law.³⁷¹ The success of the Sinaloa Cartel was not considered to be because their leaders were still active and not arrested. Instead, their success was perceived to be because the organization was protected by corrupt government authorities granting immunity, more so than the protection offered to the other rival cartels.³⁷² The term “violent entrepreneurs” was coined to refer to the individual drug runners, members of cartels and gang members who participated in the competition for drug territory in the heated “Drug War” and have engaged in violent tactics to do so.³⁷³

By 2012, six years after the war on drugs’ militarized defense first took place, some parts of Mexico had turned into what has been described as a “Drug Warzone.”³⁷⁴ “Shootouts, people trapped in crossfire, decapitations and car bombings involving government authorities and rival gangs were rife, while kidnappings, extortion, forced disappearances and executions involving civilians became daily occurrences.”³⁷⁵ The militarized security effort to takedown the cartels was said in a briefing paper to the Washington Office on Latin America to have “succeeded in generating a temporary sense of improved citizen security through purges of corrupt officers, the creation of new forces, and a visible reliance on the military that resulted in short-term tactical

³⁷¹ Shirk, *supra* note 362 at 1358.

³⁷² *Ibid.*

³⁷³ Kan, *supra* note 350 at 13.

³⁷⁴ Campbell, *supra* note 366 at 4.

³⁷⁵ Estévez, *supra* note 355 at 1163.

victories.”³⁷⁶ However, it also states that “ultimately, these efforts have faltered in the face of basic laws of drug supply and demand.”³⁷⁷ This hypercompetitive, billion dollar market coupled with the lack of substantial imposition of order from an arbiter, has resulted in vicious pursuit of Mexican territory and control over the drug trade in Mexico.³⁷⁸ It has been argued that under these condition, “cartels in hypercompetitive illegal markets can actually be more violent than terrorist or insurgent groups, meaning that high-intensity crime can result in a greater rate of death and misery than some low-intensity conflicts.”³⁷⁹ To illustrate this further, there have been more crime-related deaths in Mexico due to the war on drugs than that of national armed conflicts such as the insurgency groups of the Irish Republican Army and Loyalist groups during their decades-long conflicts in Northern Ireland which resulted in the deaths of over 3,500 people,³⁸⁰ as well as the 1978 armed conflict between Turkey and the Kurdish PKK insurgency demanding separation from Turkey and an independent Kurdistan.³⁸¹ This conflict is still ongoing and by 2012 had claimed the lives of over 12,000 people.³⁸² Nevertheless, Mexico’s drug activity has culminated in a larger number of deaths than both of these armed conflicts. By the end of 2012, the official death toll of the Mexican “Drug War” was at least 60,000 casualties (not including those who were missing).³⁸³

By late 2013, the death toll in Mexico’s war on drugs continued to mount. The Mexican Government has been criticized for its use of the army. Armed conflict had resulted in the death of soldiers, gang members and civilians alike. Though by this time,

³⁷⁶ The United States of America. Washing office on Latin America, Maureen Meyer, Director of Mexico and Migrant Rights, “Briefing Paper 13” (November 2007) at para 4.

³⁷⁷ *Ibid.*

³⁷⁸ Kan, *supra* note 350 at 16.

³⁷⁹ *Ibid.*

³⁸⁰ *Ibid* at 16 – 17.

³⁸¹ *Ibid* at 17.

³⁸² *Ibid.*

³⁸³ *Ibid.*

the conflicts between the Sinaloa Cartel and other rival organizations seemed to slow down, the government-led militarized crackdown did not.³⁸⁴ Mexico has defended its militarized tactics, and tried to address the ongoing violence in rural areas such as Guerrero and Michoacán.³⁸⁵ Current Mexican President Enrique Peña Nieto authorized armed military personnel to the state of Michoacán. The rising levels of crime in other regions sparked local self-defence force paramilitary groups to form in a similar manner to the ELZN rebellion.

To date, the “Drug War” is still ongoing in Mexico. The resulting corruption of local police forces, the cartel’s targeting of influential government actors, the extensive violence, murders, extortions and forced disappearances are the leading cause of Mexican displacement and have been for over a decade. Thousands of refugee applications are received from Mexican refugee applicants seeking refuge in Canada per year, making Mexico one of the leading countries for refugee production.³⁸⁶

2.3. Canada’s Response to Mexican Refugees

2.3.1. The Visa Requirement

The political and civil turmoil in Mexico has been well documented. However, even though Canada has stressed its humanitarian agenda to accept all refugee applicants who are escaping conflict for further consideration, Mexican refugee applicants in the 1990’s and early 2000’s were not met with a positive attitude. Refugee applications from Mexico to Canada were among the highest from any nation.³⁸⁷ The Canadian media began to characterize their applications for refuge and their presence in Canada as the

³⁸⁴ Shirk, *supra* note 362 at 1358.

³⁸⁵ *Ibid.*

³⁸⁶ Citizenship and Immigration Canada, *supra* note 30 at para 5.

³⁸⁷ Immigration, Refugees and Citizenship Canada, *supra* note 123 at 029.

“Mexican Refugee Crisis.”³⁸⁸ “Since 2005, Mexico surpassed all other countries in asylum claims in Canada.”³⁸⁹ Many refugee applicants cited nation-wide crime, government corruption, an increased amount of gang and drug activity, as well as increased discrimination against minority groups as the basis of their refugee claims.³⁹⁰ In the summer of 2007, 300 Mexican nationals crossed the U.S–Canadian border into Windsor, Ontario seeking refugee status.³⁹¹ The local and national media reacted, running stories on and reports of the new entrants seeking refuge in Windsor.³⁹² The overall view was that “they are overwhelming local services”³⁹³ and as a result of their presence, “there is definitely a strain on all resources.”³⁹⁴ The media encouraged the public to believe that the entrance of the Mexican refugees blindsided Canada’s refugee determination and welfare systems, expressing that the volume of refugees Canada received from the 300 Mexican refugee applicants caused a major backlog. Former Ontario Premier, Dalton McGuinty, stated that “the sudden influx of refugees is not just a problem for Windsor, it’s a problem for the entire country.”³⁹⁵ The former Mayor of Windsor, Eddie Francis, also made public comments on the impact of the 300 Mexican refugee applicants in the city. Francis stated that “city services are being pushed to the limit because of the situation”³⁹⁶ and that “housing and social assistance for the refugees is costing the city hundreds of thousands of dollars.”³⁹⁷

³⁸⁸ Citizenship and Immigration Canada, *supra* note 30 at para 5.

³⁸⁹ Gilbert, *supra* note 24 at 828.

³⁹⁰ *Ibid* at 829.

³⁹¹ Jennifer Hyndman & Alison Mountz, “Refuge or Refusal” in Allan Pred & Derek Gregory, eds, *Violent Geographies: Fear, Terror, and Political Violence* (New York: Routledge, 2007) at 78.

³⁹² *Ibid* at 79.

³⁹³ The Canadian Press, “Refugee Influx Straining Ontario City Services” *CTV News* (3 October 2007), online: CTV News <<https://www.ctvnews.ca/refugee-influx-straining-ont-city-s-services-1.258681>> at para 3.

³⁹⁴ *Ibid* at para 5.

³⁹⁵ *Ibid* at para 11.

³⁹⁶ *Ibid* at para 12 – 13.

³⁹⁷ *Ibid*.

The number of applications were said to be beyond the level Canada's refugee system could handle. The IRB had reported high levels of backlog, due to processing "baseless" claims from applicants not actually in fear of persecution.³⁹⁸ Canadian officials, including the CBSA and the IRB supposedly scrambled under the international obligation to provide refuge to all 300 arrivals in the wake of the Windsor's rising unemployment rates (one of the highest in all of Canada during that year).³⁹⁹ At this time, Canada was required to provide social assistance, potential housing, health care and work permits to all refugee applicants under international law.⁴⁰⁰ As a result, the media across Canada started portraying Mexican refugees as a strain on the system, a burden on the country, and as a "crisis" threatening the local and national social and economic order.⁴⁰¹ With headlines sprawled across local and nation-wide media such as "Mexican refugee requests skyrocket; middle class wants to escape drug cartels, corrupt authorities,"⁴⁰² "refugee overload: mayor appeals to Ottawa for help as city faces social services crunch,"⁴⁰³ "refugees pose "potential crisis""⁴⁰⁴ and "'no more room at the inn": city afraid refugees may displace needy residents,"⁴⁰⁵ the presence of Mexican refugees caused "chaos" in Windsor and across Canada.⁴⁰⁶ Mexican refugees were plastered across the country as the face of "illegals" who make manifestly unfounded refugee claims to

³⁹⁸ *Ibid.*

³⁹⁹ Gilbert, *supra* note 24 at 828.

⁴⁰⁰ *Ibid.*

⁴⁰¹ *Ibid* at 830.

⁴⁰² Nicholas Keung, "Mexican Refugee Requests Skyrocket; Middle Class Wants to Escape Drug Cartels, Corrupt Authorities" *Toronto Star* (5 August 2007) online: The Toronto Star <https://www.thestar.com/news/2007/08/05/mexican_refugee_requests_skyrocket.html>.

⁴⁰³ Doug Schmidt and Dave Battagello, "Refugee Overload: Mayor Appeals to Ottawa for Help as City Faces Social Services Crunch" *Windsor Star* (20 September 2007), online: Canadian Immigration Reform Blog <<http://canadianimmigrationreform.blogspot.ca/2007/09/mexican-immigrants-strain-windsors.html>>.

⁴⁰⁴ Doug Schmidt and Dave Battagello, "Refugees Pose "Potential Crisis"" *Windsor Star* (19 September 2007), online: American Renaissance <https://www.amren.com/news/2007/09/refugees_pose_p/>.

⁴⁰⁵ Don Lajoie, "'No More Room at the Inn": City Afraid Refugees May Displace Needy Residents" *Windsor Star* (2 October 2007), online: The Windsor Star.

⁴⁰⁶ Gilbert, *supra* note 24 at 828.

abuse the system for ulterior motives.⁴⁰⁷ Considering that crime and corruption were the main grounds under which the Mexican refugee applicants had based their claims, the opinion of locals suggested that the Mexicans who fled Mexico may themselves be affiliated with the crime and corruption they were escaping.⁴⁰⁸

Although many of the Mexican refugee applicants were granted refugee status, meaning their claims of persecution were accepted as legitimate, the Canadian Government imposed a visa requirement on Mexican refugee applicants. Not long after, on July 13, 2009, prior to the implementation of the DCO policy, the Canadian Government established a visa requirement on all Mexican nationals attempting to travel to Canada.⁴⁰⁹ This meant that any nationals from Mexico attempting to travel to Canada must first apply for a Temporary Resident Visa and satisfy the requirements to receive one. The requirements included that “their visit to Canada is temporary, they will not overstay their approved time in Canada, they have enough money to cover their stay in Canada, they are in good health, they do not have a criminal record, and are not a security risk to Canadians.”⁴¹⁰ This was done to convey that “flooding” the border, or unannounced or unauthorized border crossings will not guarantee access to Canada (a common misconception widely believed by many Canadians and substantiated by actors of the Canadian Government during the Mexican “crisis” in Windsor).⁴¹¹ It was also done to maintain societal order and deter a similar “attack” on local economies.⁴¹² In a news

⁴⁰⁷ *Ibid* at 831.

⁴⁰⁸ *Ibid*.

⁴⁰⁹ Citizenship and Immigration Canada, “Archived. News Release: Canada Imposes a Visa on Mexico” *Government of Canada* (13 July 2009), online: Government of Canada <<https://www.canada.ca/en/news/archive/2009/07/canada-imposes-visa-mexico.html?=&wbdisable=true#wb-cont>> at para 1.

⁴¹⁰ *Ibid* at para 8.

⁴¹¹ Liette Gilbert, “North American Anti-Immigration Rhetorics: Continental Circulation and Global Resonance of Discursive Integration” in Intiaz Hussain, eds, *The Impacts of NAFTA on North America: Challenges Outside the Box* (Basingstoke, UK: Palgrave Macmillan, 2010) at 64 – 65.

⁴¹² Gilbert, *supra* note 24 at 831.

release issued to explain former Minister Jason Kenney's decision to implement the Mexican visa requirement it stated:

Refugee claims from Mexico have almost tripled since 2005, making it the number one source country for claims. In 2008, more than 9,400 claims filed in Canada came from Mexican nationals, representing 25 per cent of all claims received. Of the Mexican claims reviewed and finalized in 2008 by the Immigration and Refugee Board, an independent administrative tribunal, only 11 per cent were accepted. In addition to creating significant delays and spiraling new costs in our refugee program, the sheer volume of these claims is undermining our ability to help people fleeing real persecution. All too often, people who really need Canada's protection find themselves in a long line, waiting for months and sometimes years to have their claims heard. This is unacceptable. The visa requirement I am announcing will give us a greater ability to manage the flow of people into Canada and verify bona fides. By taking this important step towards reducing the burden on our refugee system, we will be better equipped to process genuine refugee claims faster. The visa process will allow us to assess who is coming to Canada as a legitimate visitor and who might be trying to use the refugee system to jump the immigration queue. It is not fair for those who have been waiting patiently to come to Canada, sometimes for years, when others succeed in bypassing our immigration system.⁴¹³

CSS emphasizes the importance of institutional terminology. By characterizing the presence and reality of Mexican refugee applications in Windsor as a "crisis", the Government of Canada strategically labelled Mexican refugee applicants as a "threat". Again, the Minister's use of the term "real" in regards to persecution constructs the picture that Mexican refugee applicants do not face genuine persecution despite the impunity of the paramilitary groups, the nation-wide war on drugs, the rampant domestic violence and the justice system that is ineffective. The Minister's speech blames Mexican applicants specifically for straining the refugee system in Canada, rather than putting the blame on the system itself. The Canadian border being crossed unannounced set the stage for a "spectacle of the border" which ultimately rendered the presence of Mexican refugee applicants as synonymous with the state's loss of control.⁴¹⁴ The common narrative on the issue came from government officials, the local media and Canadian society mainly from Windsor. They expressed that Windsor would not have experienced

⁴¹³ Citizenship and Immigration Canada, *supra* note 409 at para 2 – 5.

⁴¹⁴ Nicholas De Genova, *Working the Boundaries: Race, Space, and "Illegality" in Mexican Chicago* (Durham, NC: Duke University Press, 2005) at 242.

the strain on services if not for the group of Mexican refugee applicants crossing unannounced. Likewise, had they applied for refugee status prior to entering unannounced, the refugee determination system could have vetted and prevented many from placing that strain on Municipal, Provincial and Federal services. This incident supplied the justification for the increased control of the border⁴¹⁵ to keep the “illegal” Mexicans out of Canada through the visa and eventually the DCO policy. The Windsor incident allowed the government to intensify its control of and restrictions on border enforcement to prevent another “spectacle of the border” which may threaten the human security of more Canadian communities in the future and call into question the effectiveness of the government’s national security strategy. By framing the issue in a blame-based manner, the Minister effectively eclipses the personal narratives of the Mexican refugee applicants. Instead, the plight of the refugee and the reason for their “sudden influx” disappears behind the national outrage at their presence.⁴¹⁶ It becomes no longer relevant to the Canadian public to understand the Mexican refugee applicants’ reason for seeking refuge.

The Canadian state has represented refugee applicants as “threats” to the economy, national security, and the integrity of the refugee system, and has demonized their existence in Canada by portraying refugees as sick, criminal and encouraging the view that their entrance into society should be viewed as a risk.⁴¹⁷ Once again the Minister’s speech, Windsor’s mayor and the media express matters of human or social security for Canadians rather than human security for refugees. These Government actors have constructed Mexican refugee applicants as direct and imminent “threats” to

⁴¹⁵ *Ibid.*

⁴¹⁶ Diop, *supra* note 38 at 73 – 74.

⁴¹⁷ Benjamin Muller, “Globalization, Security, Paradox: Towards a Refugee Biopolitics” (2004) 22:1 *Refuge* 49 at 52.

Canadian society and Canada as a whole. According to these Government actors, 300 Mexican refugee applicants pose such a significant “threat” to Canadian social security that their very presence makes Canada susceptible to social breakdown.⁴¹⁸ This is a strategy that imposes the post-9/11 orthodox theory of security, where security is achieved by excluding the international others at the border. It induces a certain level of fear into the public, where their territory needs to be protected by exclusion.⁴¹⁹ It is important to distinguish the type of security that is supposedly being threatened in this instance because it is purposely constructed in a way to conflate issues of national security with issues of human security. Issues of the border and screening people are considered a national security concern, prompting the need for the public consultations and the resulting speech acts to address solutions to the “threat”. However, as has been expressed thus far, Mexican refugee applicants have been constructed as a “threat” to the human social security of Canadians and Canadian society in the speech acts of the government. Doing so tricks the Canadian public into believing Mexican applicants pose a “threat” to national security because of their supposed “threat” to human security and vice versa.

The extra time-consuming and costly step of getting a visa for Mexican refugee applicants was yet another measure to ensure that fewer Mexican refugee applicants would pursue Canadian refuge and only a select few would be granted status. In his speech, the Minister recognized that Mexican refugee applicants already only had an 11% acceptance rate. A system committed to its humanitarian image is not upholding its humanitarian agenda by proclaiming that Mexican refugee applicants are not legitimate

⁴¹⁸ The Canadian Press, *supra* note 393.

⁴¹⁹ Muller, *supra* note 138 at 69.

and influencing Canadian society to reflect that sentiment as well. Instead, Canadian national and social security has profoundly outweighed and overshadowed Canada's obligation to ensure the human security of all refugee applicants, especially those escaping "war" and violence like Mexican refugee applicants. In light of their designation on the DCO policy list, which considers countries "safe" and democratic, Mexican refugee applicants are and have been constructed as the illegal, criminal, illegitimate, "bogus" and fraudulent others.⁴²⁰

After extensive interviews with Canadian immigration officials, Cynthia Hardy explains that a large part of the government's agenda is to emphasize the importance of its control over refugee applicants' assessment, selection, acceptance and integration.⁴²¹ In response to questions about how the Canadian Government constructs refugees, a senior Canadian immigration officer (all interviewees were anonymous) specified that the government purposely intended to restrict the entry of certain refugees by stating: "[Otherwise] how could you explain the fact that between 1969 and 1980, we put visa requirements on three dozen countries, many of which were trouble spots, places in turmoil? It clearly wasn't a policy to encourage people to come to Canada and claim refugee status."⁴²² Considering Canada's history of power, domination and control, the visa requirement imposed on Mexican refugee applicants was not a security measure, it was instead an attempt to lessen the presence of Mexican's in Canada. When the DCO policy came into force, the visa requirement was still imposed, exposing Mexican refugee applicants to both constraints.

⁴²⁰ Gilbert, *supra* note 24 at 829.

⁴²¹ Cynthia Hardy, "Refugee Determination: Power and Resistance in Systems of Foucauldian Power" (2003) 35:4 A&S 462 at 471.

⁴²² *Ibid* at 471 – 472.

2.4. Mexican Refugee Applicants & The DCO Policy

2.4.1. Lifting the Visa Requirement

Prime Minister Justin Trudeau's Liberal Government has since abolished the visa requirement for Mexican travelers to Canada, citing an attempt to solidify trade and other economy-boosting motives, none of which included the humanitarian interests of Mexicans fleeing violence of persecution or removing Mexico from the DCO list.⁴²³ In former Liberal Minister, John McCallum's official notes on lifting the visa requirement, it states that the implementation of the visa requirement on Mexico was largely due to the sharp increase in refugee claims by Mexican applicants.⁴²⁴ Lifting the visa requirement officially took place on December 1, 2016, with the Government of Canada citing it as a top priority "to re-establish and strengthen our relationship with one of our most important partners, Mexico."⁴²⁵ The former Minister's notes specifically state that lifting the visa requirement will encourage Mexican business travellers and tourists to visit Canada "resulting in economic benefits to Canada."⁴²⁶ Additional benefits to Canada also include creating the "momentum to expand trade, investment and tourism."⁴²⁷ Once again, the Government of Canada expresses that it is okay for Mexicans to be in Canada so long as they are productive and contribute to the Canadian economy. However, the Canadian Government should not equate human beings with trade, labour and commodities. It is counterproductive to the relationship between these states for Canada to keep Mexico on the DCO policy list, turn away potential refugees, and not attempt to assist Mexico in strengthening its human rights by declaring Mexico a "safe" country.

⁴²³ Government of Canada, "Canada to Lift Mexican Visa Requirement" *Justin Trudeau, Prime Minister of Canada*, (28 June 2016) online: Government of Canada <<https://pm.gc.ca/eng/news/2016/06/28/canada-lift-mexican-visa-requirements>> at para 3.

⁴²⁴ Immigration, Refugees and Citizenship Canada. Access to Information and Privacy, Request No. A-2016-31646 at 000002.

⁴²⁵ Government of Canada, *supra* note 423 at para 1.

⁴²⁶ Immigration, Refugees and Citizenship Canada, *supra* note 424 at 000004.

⁴²⁷ *Ibid* at 000008.

Regardless of Trudeau’s attempts to reconcile relations with the Mexican Government, the rhetoric of the “illegal” Mexican refugees, who apply legally and often for legitimate reasons, still remains and is perpetuated in their continued designation on the DCO list.

2.4.2. Connecting Labour to National Belonging

The connection between labour and national belonging exposes even deeper contradictions in the language of the official stance and the DCO policy in practice. The DCO policy includes an additional procedural restriction on applicants. DCO claimants are ineligible to apply for work permits. According to the Government of Canada Website, “DCO claimants will be ineligible to apply for a work permit until their claim is approved by the IRB or their claim has been in the system for more than 180 days and no decision has been made.”⁴²⁸ This restriction for DCO claimants was articulated as necessary because “large numbers of unfounded asylum claims are a financial burden on Canadian taxpayers. Canada’s social assistance programs and other generous benefits are a draw for many.”⁴²⁹ Restricting access to work permits is based on the idea that DCO applicants are fraudulent and opportunistic at the expense and detriment of Canadian society. It is purposely meant to “further reduce the attraction of coming to Canada to make an unfounded claim.”⁴³⁰ The Government of Canada website states that “restricting access to work permits will deny DCO claimants access to Canada’s labour market as well as the benefits associated with employment in Canada (such as the Goods and Services tax credit, the Working Income Tax Benefit and employment insurance – none of which can be accessed by claimants who do not have a work permit).”⁴³¹

⁴²⁸ Government of Canada, *supra* note 28 at para 10.

⁴²⁹ *Ibid* at para 9.

⁴³⁰ *Ibid* at para 10.

⁴³¹ *Ibid* at para 11.

Apart from reaffirming the rhetoric of “fraud” and “bogus” refugees from DCOs, the restricted access to work permits pushes In-Land Mexican refugee applicants further along the margins of precariousness. Citizenship and national belonging are linked to one’s ability to work in the labour force, contribute to the economy and reap the benefits of one’s state tax system.⁴³² Although there are many constructions and definitions of national-belonging, nation and citizenship, in Canada newcomers can be included into the nationhood of Canada without having Canadian citizenship. This includes landed immigrants, permanent residents and newly accepted refugees. By being officially accepted into Canada’s borders (being granted refugee status, immigration status, permanent residency etc.), they are then integrated into Canadian society. Labour restrictions are relaxed and newcomers are able to work and benefit from the state. Mexican refugee applicants are purposely excluded from being productive because of their DCO label. Due to their designation on the DCO policy, Mexican refugee applicants are not able to work and thus are further excluded from the nation of Canada. Considering that being labelled a DCO country has overshadowed much of the refugee experience for Mexican refugee applicants, they are again excluded from national belonging by not being able to work in Canada.

Orthodox security studies explain that an important aspect of security discourses is defining nationhood and national belonging. The nuances of citizenship and nationhood encompass the “symbolic and emotional aspects of full membership, and it is about the questions of who belongs to the sovereign body, of who benefits from equal

⁴³² Magnus Dahlstedt and Viktor Vesterberg, “Citizens in the Making: The Inclusion of Racialized Subjects in Labour Market Projects in Sweden” (2016) 40:2 *Scandinavian Political Studies* 228 at 238.

political rights and, simply of who belongs to ‘us’.”⁴³³ National belonging defines access to “basic goods as security, public order and a promising labour market.”⁴³⁴ Orthodox security studies argue that the regulation of immigrants, migrants and refugees into a territorial community is crucial not only because of the impact it would have on the labour market, but the welfare state and the material interests included in facilitating and restricting newcomer movement⁴³⁵ into Canada. Therefore, the DCO policy limiting refugee applicants from working would likely be justified by the security discourses and rhetoric of orthodox security studies.

If orthodox security is intrinsically linked to the relationship between exclusionary security discourses and national belonging, Mexican refugee applicants by virtue of their designation on the DCO policy list, are therefore disqualified from belonging to the nation. By turning to CSS to critically analyze national belonging, we can see that regulating refugees through the DCO policy and limiting labour further excludes Mexican claimants from Canada. The limit to accessing the labour market by the DCO policy exposes even more contradictions of the official stance. Mexican productivity is restricted to the contracts of migrant labour in limited markets. Much of the work given to Mexican migrants is part-time and dependent on the idea that their presence in Canada is finite and solely for the purposes of contributing to our economy. In terms of Mexican migrants, again their presence in Canada is welcomed. Mexican migrants contribute to the nation, however they are simultaneously excluded from nationhood and national belonging. Mexican migrants are still citizens of Mexico and only temporary Canadian visitors for the purposes of work. Mexican refugee applicants,

⁴³³ Marc Helbling, *Practising Citizenship and Heterogeneous Nationhood: Naturalisation in Swiss Municipalities* (Amsterdam, NL: Amsterdam University Press, 2008) at 28.

⁴³⁴ *Ibid* at 32.

⁴³⁵ Linklater, *supra* note 58 at 123, 128 – 129.

on the other hand, are excluded and cannot demonstrate how productive they can be. Even if Mexican refugee applicants wanted to prove that they could be a productive member of Canadian society, and dispel the label of opportunistic burden on Canada, they would not be able to do so because of the DCO policy. Being excluded from the labour market thus enforces the rhetoric of the “illegal” Mexican that is undesirable and opportunistic, posing a “threat” to Canada’s social services and social security. Mexican refugee applicants are thus stuck in a mutually conflicting dilemma. In effect, the DCO policy negatively labels Mexican refugee applicants while simultaneously restricting applicants from even attempting to disprove the negative labels.

2.4.3. DCO Mexican Refugee Applicants

Border controls such as the DCO policy that categorize refugee applicants on the basis of their nation of origin also separate applicants based on race, class, socio-economic status, health, and their basis of persecution among other labels and groupings.⁴³⁶ In order to enforce border controls, policy agendas are established. Within these policy agendas, groups of refugees become the objects of the policy. Depending on the issue at hand, such as an influx of applications or “bogus” applications, the policy agenda will label the object of the policy. The label is set within the agenda’s framework.⁴³⁷ The labelling process characterizes and designates those who are branded by the label, which is directly constituted by the power relations of the decisions, judgments and distinctions of those delivering the label. In other words, the labelling process is as significant as the label itself.⁴³⁸ The DCO policy deploys its labelling process as a tool to marginalize and exclude, turning the meaning of “refugee” into a

⁴³⁶ Roger Zetter, “Labelling Refugees: Forming and Transforming a Bureaucratic Identity” (1991) 4:1 *Journal of Refugee Studies* 39 at 44.

⁴³⁷ *Ibid.*

⁴³⁸ *Ibid.*

highly politicized identity.⁴³⁹ The labels applied through security discourses has changed the perception of refugee protection from a basic humanitarian, Convention right, into a “highly privileged prize”⁴⁴⁰ which only a select few deserve.⁴⁴¹ In regards to Mexican refugee applicants, many are treated as neither entitled to nor deserving of the “prize” of the label of “refugee.”⁴⁴² The DCO policy has created a bureaucratic and societal divide between what is perceived as the legitimate and the illegitimate, the legal and the illegal, and the fraudulent and the credible refugee applicant.⁴⁴³ It also defines national belonging and access to the labour market, further constituting refugee applicants as the undesirable, unproductive and opportunistic burdens on social services. The DCO label, especially for Mexican refugee applicants, has not defined the extent of their inclusion into Canada, but has defined and justified their exclusion. Those lucky enough to win the prize of refugee status, who are not excluded by the DCO policy (non-DCO applicants), have fewer procedural and discursive restrictions, allowing them to access the nation state, national belonging and benefits more readily. As selective as the refugee system is, the label of “refugee” is an even less attainable “prize” for DCO applicants. The DCO policy has marginalized Mexican refugee applicants as they are persecuted in Mexico and further discriminated against by Canada.

2.5. Mexico as a Fragile State

Considering the condition of Mexico leading up to its designation on the DCO policy list, I believe this was done to lessen the presence of Mexican refugees in Canada as stated previously. Mexico’s designation was also a strategy to avoid declaring Mexico

⁴³⁹ *Ibid* at 45.

⁴⁴⁰ *Ibid* at 55.

⁴⁴¹ Roger Zetter, "More Labels, Fewer Refugees: Remaking the Refugee Label in an Era of Globalization," (2007) 20 *Journal of Refugee Studies* 172 at 184.

⁴⁴² Zetter, *supra* note 436 at 55.

⁴⁴³ Muller, *supra* note 417 at 53.

a fragile state. Instead, the Canadian Government took the opposite approach and declared Mexico a “safe” country to prioritize its own economic interests, ensure the future of NAFTA and that other labour and trade agreements do not fall apart. What Canada has designated as a “safe” country has been recognized as a fragile state by the official FSI. The Fund for Peace (FFP), an NGO, uses the FSI to rank 178 countries based on national conflicts which affect that nation’s fragility. Based on quantitative, qualitative and expert validation, the FSI is a critical and comprehensive review of individual countries and their inner turmoil. It is based on political, social and economic issues. In the FSI for 2017, Mexico received one of the most alarming ratings. It was given a high elevated warning, ranking 88 (lowest and most critical on the FSI) out of 178 (highest and most stable on the FSI).⁴⁴⁴ Anything lower than 88 is considered a failed state.⁴⁴⁵ Mexico was tied with Ethiopia as “most-worsened” country since 2016.⁴⁴⁶ The reasons for its fragile state status are due to the problems listed above, which also constitutes Mexico as a refugee producing country. The FSI cites the Mexican “Drug War”, the poor state of its judicial system, its lack of social services, poverty, government corruption and many other factors which lead to Mexico’s fragility as a nation.⁴⁴⁷ As a result of this, and Canada’s willingness to continue to employ the designation of “safe” country for Mexican refugee applicants, Canada has effectively been able to use its orthodox security orientation to advance its own national security agenda.

All of these factors taken together have created a very real fear for Mexican citizens caught in the crossfire of the Mexican “Drug War” (sometimes literally). Each factor taken separately could more than reasonably render Mexico a refugee producing

⁴⁴⁴ J.J. Messner and Nate Haken, *Fragile State Index* (Washington, DC: The Fund for Peace, 2017) at 6.

⁴⁴⁵ *Ibid.*

⁴⁴⁶ *Ibid* at 9.

⁴⁴⁷ *Ibid* at 12.

country. Together, these factors have created a hotbed of violence, conflict, death and displacement that continues to turn out large numbers of Mexican refugee applicants. The fragility of Mexico as a nation, incapable of ensuring the national or human security of its citizenry has been made increasingly apparent in the literature. The death, destruction and utter internal chaos solidifies the argument that Mexico should not only be taken off the DCO policy list, but it is a fragile country in need of intervention. Mexico is considered by some to be an unsafe “warzone”⁴⁴⁸ and I believe its designation on the DCO policy list discredits the substantial fear of persecution and death that Mexican refugee applicants face upon their denial and deportation. Canada holds its own national security to a higher standard, while simultaneously holding Mexican refugee applicants’ human security to an unreasonably low standard. Canada should heed Veronica Castro’s warning that deportation back to Mexico was, and continues to be, a matter of life or death.

The situation in Mexico has thus far been shown to be contrary to the definition of a “safe” country. However, in order to bolster my analysis, I will analyze the official data and wording of the RPD’s official case decisions on rendering refugee status to Mexican applicants. In the following chapter, I test the Minister’s quantitative and qualitative designation criteria against the material facts of Mexican refugee claims made to evaluate the justification behind Mexico’s continued designation on the DCO policy list.

⁴⁴⁸ Campbell, supra note 366.

3. Chapter 3: The DCO Policy’s Impact on Mexican Refugee Applicants

3.1. A Case Study: Quantitative Data

3.1.1. Mexico

The official stance has emphasized the fact that Mexico has met and surpassed both the quantitative and qualitative criteria for designation on the DCO policy list, thus justifying Mexico as a DCO. In this chapter, I test the quantitative and qualitative official data I have received against the claims of the official stance. In doing so it will be easier to understand whether the data supports the claims of the official stance and whether Mexico’s designation as a DCO is justifiable. To pursue my inquiry, I placed a number of ATIP requests to both the IRCC and the IRB for transparency documentation on Mexican refugee applicants and the DCO policy to analyze the criteria for designation with the quantitative data of the Canadian refugee determination system to see if Mexico has met or surpassed the quantitative threshold for designation. The quantitative data I received is represented in Table 1 below.

Table 1: Total Number and Percentages of RPD Finalized Claims for Mexico Between January 1, 2012 to December 31, 2017. ⁴⁴⁹										
	Accepted		Denied (Refusal)		Abandoned		Withdrawn & Other		Finalized Claims	Combined Denied, Abandoned and Withdrawn & Other Rate
Mexico	#	%	#	%	#	%	#	%	#	%
2010	651	11%	3479	51%	332	6%	1417	24%	5879	81%
2011	1027	17%	4194	61%	280	5%	606	10%	6107	76%
2012	570	19%	2069	68%	113	4%	298	10%	3050	82%
2013	182	18%	647	63%	64	6%	132	13%	1025	82%
2014	94	28%	177	53%	10	3%	56	16%	337	72%
2015	47	27%	94	54%	7	4%	26	15%	174	73%
2016	29	21%	59	43%	7	5%	42	31%	137	79%
2017	111	25%	221	50%	48	11%	60	14%	440	75%

Source: IRB RPD ATIP Request A-2017-02520/RA.
 *Data Also Cross-Referenced with Data Provided By: IRB RPD ATIP Request A-2016-03580 & IRB RPD ATIP Request A-2016-01448.
 ** Data for All of 2017 Provided By: Immigration and Refugee Board of Canada, “Refugee Protection Claims (New System) by Country of Alleged Persecution -2017” (20 February 2018) online: Government of Canada <<http://www.irb-cisr.gc.ca/Eng/RefClaDem/stats/Pages/RPDStat2017.aspx>>.
 *** Percentages in the “Combined Denied, Abandoned and Withdrawn & Other Rate” Column Are My Own Calculations Based on the Data and Sources Cited Above.
 (Denied % + Abandoned % + Withdrawn & Other % = “Combined Denied, Abandoned and Withdrawn & Other Rate”)

⁴⁴⁹ Immigration and Refugee Board of Canada. Access to Information and Privacy, Request No. A-2017-02520/RA. (Table 1)

The ‘Accepted’, ‘Denied’, ‘Abandoned’ and ‘Withdrawn & Other’ columns in Table 1 each represent a portion of finalized claims for the given year. The total number of accepted, denied, abandoned and withdrawn & other claims are represented by both the numerical amount of claims determined (shown under the ‘#’ column), and the rate of claims determined (shown under the ‘%’ column). The ‘Accepted’, ‘Denied’, ‘Abandoned’ and ‘Withdrawn & Other’ columns are the main ways in which a claim can be finalized by the RPD. The combined numerical amount of these determinations equals the numerical amount in the ‘Finalized Claims’ column. The number represented in the ‘Finalized Claims’ column are the total number of claims that have been finalized in a given year. Since 2013 is the year Mexico was officially designated on the DCO policy list, I have shaded the 2013 row and figures in purple to highlight the significance of that year and Mexican refugee claims pre-designation, the year of designation and post-designation. As stated previously, Deputy Minister Yeates advised that the quantitative criteria for designation includes a combined refusal (also considered denied claims), withdrawn and abandonment rate of 75% or higher or a combined withdrawn and abandonment rate of 60% or higher.⁴⁵⁰ As a result, in the final column of Table 1, the ‘Combined Denied, Abandoned and Withdrawn & Other Rate’ column, I have added the rates of denied claims, abandoned claims and withdrawn & other claims to represent the total ‘Combined Denied, Abandoned and Withdrawn & Other Rate’ for a given year.

The following section will outline the claims of the official stance and compare those claims with the data provided in Table 1. My analysis of the data provided in Table 1 is my interpretation of the raw data, and not a statistical analysis. I did not conduct

⁴⁵⁰ Please refer to the explanation of the quantitative designation criteria and figures previously provided on page 28 – 31.

inferential statistical tests of the data to measure its statistical significance. Instead, this is my descriptive analysis of the data in Table 1.

Since the quantitative criterion is used to by the Minister to officially designate a country on the DCO policy list, as well as to imply the fraudulence of claims made, I will compare the claims of the official stance to the quantitative data on Mexican refugee claims represented in Table 1. There are many interesting things that seem to confirm the claims of the official stance, but also call the claims of the official stance into question. To begin, the first claim of the official stance to test against the data is whether Mexico met or surpassed the quantitative designation criteria threshold of a combined denied, withdrawn and abandonment rate of 75% or higher.⁴⁵¹ As shown in Table 1, in the years leading up to designation, Mexico met the 75% quantitative criteria threshold for designation. From 2010 to 2012, Mexico had a combined denied, withdrawn and abandonment rate of 81%, 76%, 82%.⁴⁵² At first glance, these numbers show that Mexico met and surpassed the quantitative designation criteria threshold in the years leading up to designation. As a result, the data in Table 1 supports the official stance's position to designate Mexico on the DCO policy list.

However, these rates do not show the effectiveness of the DCO policy. The 'Denied', 'Abandoned' and 'Withdrawn & Other' categories are held by the former Ministers as indicators of fraudulent claims.⁴⁵³ Denied, abandoned and withdrawn & other determinations are considered negative decisions as they do not render refugee

⁴⁵¹ The official stance also recognizes a combined withdrawn and abandonment rate of 60% or higher as a quantitative designation criterion. I will not refer to this rate because Mexico fell far below the 60% rate only showing a maximum combined withdrawn and abandonment rate of 36% in the years before and after designation. (Abandoned % + Withdrawn & Other % = Combined Withdrawn and Abandonment Rate). This criterion was not used to trigger Mexico for further review for the DCO policy. I will only be referring to a combined denied, abandoned and withdrawn & other rate of 75% or higher because this was the quantitative trigger for Mexico to be designated on the DCO policy list.

⁴⁵² Immigration and Refugee Board of Canada, supra note 449.

⁴⁵³ Citizenship and Immigration Canada, supra note 30 at para 3 – 4.

status for the claimant in Canada.⁴⁵⁴ According to the official stance, a combined denied, withdrawn and abandonment rate of 75% or higher is an indication of “bogus” and “fraudulent” claims.⁴⁵⁵ The DCO policy aimed to reduce these supposedly high levels of denied, abandoned and withdrawn & other claims by deterring DCO refugee applicants, who make “bogus” claims and therefore receive a negative decision, from making claims at all. Since Mexico met the quantitative designation criteria and was subsequently designated on the DCO policy list, “fraudulent” Mexican refugee applicants should be deterred by the DCO policy from making “bogus” claims that are usually finalized as denied, abandoned or withdrawn & other, therefore reducing the combined denied, abandoned and withdraw & other rate in the years following its designation.

After Mexico was designated, there was a small decrease in the combined denied, abandoned and withdrawn & other rate. In 2014, a full year after designation and onward, the combined denied, abandoned and withdrawn & other rate was 72%, 73%, 79% and 75%⁴⁵⁶ falling just below the designation criteria in 2014 and 2015 by 3% and 2%. Since the DCO policy aimed to reduce negative decisions, had the DCO policy been successful in deterring “bogus” or “fraudulent” Mexican refugee applicants from applying, one might expect the combined rate would have dipped much further than just 2% to 3% lower than the 75% designation criteria threshold.⁴⁵⁷ Considering the fact that the DCO policy was enforced to reduce the clogging of the system posed by refugee claims that are

⁴⁵⁴ Immigration, Refugees and Citizenship Canada, supra note 123 at 011 & 022.

⁴⁵⁵ Government of Canada, supra note 28.

⁴⁵⁶ Immigration and Refugee Board of Canada, supra note 449.

⁴⁵⁷ Please note that Mexico’s combined denied, abandoned and withdrawn & other rate has fallen below the designation criteria threshold of 75% or higher, but this does not mean Mexico will be taken off of the DCO policy list. As of yet, no country has been taken off of the DCO policy list, and there are no specific criteria or measures available to determine whether a country could be taken off of the DCO policy list. As a result, Mexico falling below the 75% designation criteria does not effect its place on the DCO policy list. This will be discussed in section ‘3.2. Quantitative Data Analysis’ of this chapter on page 102-105.

denied, abandoned and withdrawn & other,⁴⁵⁸ it would be reasonable to assume that in the years following Mexico's designation, the combined denied, withdrawn and abandonment rate would decrease as a result of their place on the DCO policy. Instead, the combined denied, abandoned and withdrawn & other rate for Mexico has remained quite stagnant and consistently "high" as to meet the 75% or higher criteria because the official stance has demonized the presence of Mexican refugee applicants. As a result of the "threat" posed by Mexican refugee applicants is reproduced in refugee discourses, they are susceptible to the negative claims decisions that do not result in refugee status even after their designation on a purposely restrictive policy list.

Next, Table 1 also reflects that there was a large decrease in the total number of finalized claims for Mexico after its designation. In order to demonstrate this, I will compare the data for 2012, one year prior to designation, with the data for 2013 the year of Mexico's designation. Likewise, I will also compare the data for 2013 with the data for 2014, one year after Mexico's designation.⁴⁵⁹ According to Table 1, there was a total of 3050 finalized claim in 2012, as opposed to 2013 where 1025 claims were finalized. In the year of designation, there was a difference of 2025 fewer claims finalized from Mexico than one year prior to designation. This represents a 66% decrease in finalized claims from 2012 to 2013.⁴⁶⁰ Likewise, in 2014, there was a total of 337 finalized claims from Mexico, signifying yet another decrease in finalized claims from Mexico. By comparing the data from 2014 to the data from 2013, where there were 1025 claims

⁴⁵⁸ Citizenship and Immigration Canada, supra note 30 at para 3 – 4.

⁴⁵⁹ Although 2013 is the year of designation, Mexico was not designated until February 15, 2013 meaning that non-DCO Mexican refugee claims could have been made between January 1, 2013 to February 14, 2013. As a result, I will be referring to 2014 as a better representation of Mexican refugee claims made after designation on the DCO policy list.

⁴⁶⁰ To calculate the decrease from 2012 to 2013: $3050 - 1025 = 2025$. $2025 \div 3050 = 0.663$. $0.663 \times 100 = 66.3\%$ (66%)

finalized, there were 688 fewer claims finalized than the year prior. This represents an overall decrease of 67% in the number of finalized claims from Mexico.⁴⁶¹

Again, this data may support the official stance's position that the DCO policy will deter "bogus" Mexican refugee applicants from applying, which would account for a 66% and 67% decrease in the number of claims finalized.⁴⁶² There was a clear decrease in the number of finalized claims from Mexico prior to designation, in comparison to the number of finalized claims in the year of designation and in the year following designation. However, the reasoning of the official stance to account for this decrease is flawed. As Audrey Macklin argues, once a policy has been introduced for the purpose of decreasing the number of applications made by a specific group, it is to be expected that the number of applications made and finalized will decrease as a result.⁴⁶³ This is a self-fulfilling prophecy.⁴⁶⁴ Once the system suffers more procedural restrictions, combined with the discourse of labelling applicants and the impact of label on the applicants, the number of claims being made and finalized will consequently decrease.⁴⁶⁵ The DCO policy specifically targeted DCO countries and DCO applicants to ensure that fewer claims were made and finalized.

Another factor to account for the decrease in finalized claims was that at the time of Mexico's designation on the DCO policy list, Mexican applicants were also subject to a visa requirement which was also intended to deter Mexicans from making claims for refugee status in Canada.⁴⁶⁶ As stated previously, the visa requirement on its own was a

⁴⁶¹ To calculate the decrease from 2013 to 2014: $1025 - 337 = 688$. $688 \div 1025 = 0.671$. $0.671 \times 100 = 67.1\%$ (67%)

⁴⁶² Citizenship and Immigration Canada, supra note 30 at para 5.

⁴⁶³ Macklin, supra note 158 at 102 – 103.

⁴⁶⁴ *Ibid* at 103.

⁴⁶⁵ *Ibid*.

⁴⁶⁶ Gilbert, supra note 411.

long and expensive venture to pursue.⁴⁶⁷ The visa requirement coupled with the DCO policy, were mechanisms designed to decrease the number of applications made by potential Mexican refugee applicants, and therefore also decrease the number of claims finalized for Mexican refugee applicants. Whether the reason for the decrease in finalized claims was due to the combination of the DCO policy and the visa requirement imposed on Mexican refugee applicants, or just the introduction of the DCO policy itself, the overall decrease in finalized claims was to be expected once the DCO policy came into effect, because the very purpose of the DCO policy was to reduce claims made and therefore finalized by Mexican refugee applicants. Had the total number of finalized claims from Mexico not decreased after its designation, then the DCO policy would have been an ineffective policy which would leave the actors of the official stance vulnerable to criticism.⁴⁶⁸ As a result, the decrease in finalized claims cannot be attributed solely to the perceived fraudulence of Mexican refugee applicants. Instead, it is as a result of the DCO policy, aimed to deter all Mexican refugee applicants from making claims for refugee status in Canada, that it is reasonable to expect fewer claims to be made and therefore finalized.⁴⁶⁹

I also take issue with the claim made by the former Minister that the DCO policy is effective in decreasing the number of “bogus” refugee applicants, thereby allowing more genuine refugees to apply. Former Minister Kenney stated that the DCO policy will unplug the system from “fraudulent” refugee applicants, making it faster and more accessible “for the bona fide refugees to whom we want to grant protection and certainty

⁴⁶⁷ Please refer to the earlier discussion of the visa requirement on pages 73 – 80, specifically pages 78 – 79.

⁴⁶⁸ The official stance has portrayed the “threat” Mexican refugee applicants pose to Canada as a “threat” to the human and social security of Canadian society, and the DCO policy was the proposed solution to this “threat”. As a result, had the DCO policy been ineffective in decreasing finalized claims from Mexico, the actors of the official stance would be criticized for not neutralizing the “threat” it claims Mexican refugee applicants pose. Please refer to the earlier discussion of this “threat” in regards to the DCO policy on pages 43 – 46 and pages 78 – 79 in regards to the visa requirement.

⁴⁶⁹ Macklin, *supra* note 158 at 103.

as soon as possible.”⁴⁷⁰ The official stance argues the DCO policy deters “fraudulent” refugee applicants from making claims “to stop them from clogging up the system,”⁴⁷¹ and uses the decrease in finalized claims as proof that the DCO policy has in fact deterred “bogus” applicants.⁴⁷² As seen within Table 1 and my discussion in the previous paragraph, I acknowledge that there were decreases in the total number of finalized claims from 2013 onward. However, there are notable discrepancies between the claims of the official stance, that the DCO policy is an accurate vetting system to deter “bogus” refugee applicants which allows more genuine refugees to apply, and the acceptance and denial rates of those years (represented in the % columns).

First, the official stance fails to accurately address the discrepancies between Mexico’s pre-designation and post-designation denial rates. Take for example, the data for 2014 in comparison to the data for 2012, one full year prior to and one full year after designation. Again, in 2012 there were a total of 3050 finalized claims. According to the official stance, the majority of those 3050 claims were considered “bogus”, 82% of which were given a negative decision, thus prompting Mexico’s designation on the DCO policy list to deter “bogus” Mexican refugee applicants from clogging up the system. Again, in 2014 there were a total of 337 finalized claims from Mexico. Based on the official stance, this decrease in the total number of finalized claims (from figures in the thousands to figures in the hundreds) was because the DCO policy successfully deterred “bogus” Mexican refugee applicants from applying for refugee status after the DCO policy came into effect. Essentially, the official stance emphasizes that the DCO policy is effective in vetting the “fraudulent” Mexican refugee applicants and because they were “bogus” they

⁴⁷⁰ Citizenship and Immigration Canada, *supra* note 30 at para 5.

⁴⁷¹ *Ibid* at para 3 – 4.

⁴⁷² Immigration, Refugees and Citizenship Canada, *supra* note 123 at 018 – 019.

had been successfully deterred by the DCO policy which explains why there was a decrease in Mexican refugee claims finalized after Mexico was designated on the DCO policy list.⁴⁷³ Therefore, according to the official stance, those 337 finalized claims in 2014 would be considered more genuine and more likely to be in true need of refuge because of the DCO policy, as opposed to the 3050 finalized claims in 2012 which were more likely to be “bogus” because they were made before the implementation of the DCO policy.⁴⁷⁴

In 2012, the denial rate was 68%, the highest documented denial rate for Mexican refugee applicants between 2010 to 2017. In 2014, however, the denial rate for Mexican refugee applicants was 53%.⁴⁷⁵ Although the denial rate for Mexican refugee applicants decreased by 15% after its designation, 53% of all Mexican refugee claims were finalized as denied claims and therefore not given refugee status. This means that more than half of all Mexican refugee claims made after the DCO policy came into force were being denied and considered not in legitimate need of refuge. The denial rate for Mexico has been at 50% or higher in post-designation years with the exception of 2016.⁴⁷⁶ Again, high denial rates are a factor used by the official stance as evidence that Mexican refugee applicants are “bogus”. Nevertheless, if more than half of all finalized claims from Mexico are still being denied after the DCO policy came into effect, then either the DCO policy is ineffective at deterring “bogus” applicants, potentially genuine refugee applicants are being deterred from applying, or those who still manage to apply are being denied by virtue of being labelled a DCO applicant from Mexico. If the Mexican refugee applicants were actually “bogus” and the DCO policy was effective in deterring them from

⁴⁷³ *Ibid* at 019.

⁴⁷⁴ *Ibid*.

⁴⁷⁵ Immigration and Refugee Board of Canada, *supra* note 449.

⁴⁷⁶ The rates for 2016 will be addressed in an upcoming paragraph.

applying, in the years following its designation, it would be reasonable to expect a significant decrease in the denial rate of Mexican refugee applicants considering the DCO policy would have dissuaded the “bogus” applicants from applying.

On that account, the acceptance rates for Mexico are also troubling. According to Table 1, there was indeed an increase in the acceptance rate from Mexico after its designation on the DCO policy list. For example, the initial year of designation in 2013, Mexico had an acceptance rate of 18%. This rate increased by 10% one full year after designation to an acceptance rate of 28% in 2014, which was the highest acceptance rate for Mexico pre-designation and post-designation.⁴⁷⁷ 2010 was the lowest recorded acceptance rate for Mexico at only 11%. Mexico’s lowest acceptance rate of 11% in 2010 increased by 17% to its highest rate of 28% in 2014. According to Table 1, there was an increase from acceptance rates prior to Mexico’s designation and acceptance rates after Mexico’s designation on the DCO policy list. Again, according to the official stance the DCO policy is effective in deterring the “bogus” refugee applicants, and in doing so the DCO policy makes room for those who are truly in need of refuge to apply and be granted refugee status. This means that claims made and finalized after Mexico’s designation are more likely to be considered genuine refugees, and thus according to the official stance, in the years following Mexico’s designation, it would be reasonable to assume that there would be an increase in the acceptance rate. Yet, the increase in acceptance rates for Mexican refugee claims at a maximum of 28%, is not very high. This shows that less than one third of all DCO applications were actually successful in receiving refugee status and considered legitimate refugees in Canada. In 2014, the same year of the highest recorded acceptance rate, the other 72% of finalized claims were

⁴⁷⁷ Immigration and Refugee Board of Canada, supra note 449.

given a negative decision that would not lead to refugee status in Canada. As a result of the claims made by the official stance in order to support and justify the implementation of the DCO policy and Mexico's designation on the DCO policy list, post-designation refugee claims should have rendered a higher acceptance rate because the DCO policy would have vetted and deterred the "bogus" refugee claims receiving negative decisions, but that was not observed within the data in Table 1.

Another discrepancy between the claims of the official stance that the DCO policy deters "bogus" refugee applicants, thereby allowing more genuine refugees to apply and be granted refugee status, and the quantitative data in Table 1 is observed in the number of accepted refugee claims (shown under the '#' column). Although the acceptance rates increased after Mexico was designated on the DCO policy list, the amount of Mexican refugee applicants actually accepted as refugees were significantly lower than the amount of accepted Mexican refugee applicants prior to designation. Prior to designation, from 2010 to 2012 there were 651, 1027 and 570 Mexican refugee applicants accepted as legitimate refugees in Canada. From the year of designation and onward, from 2013 to 2017, there were 182, 94, 29 and 111 Mexican refugee applicants who were actually granted refugee status in Canada.⁴⁷⁸ Comparing the amounts of accepted Mexican refugee applicants pre-designation and post-designation, there was a drastic decrease in the amount of accepted Mexican refugees after its designation on the DCO policy list.

For example, I compared the highest recorded amount of accepted Mexican refugees, which was 1027 in 2011, with the lowest recorded amount, which was 29 in 2016. There were 998 more people accepted in 2011 before Mexico's designation than in 2016 after its designation, representing a 97% decrease in the amount of Mexican refugee

⁴⁷⁸ *Ibid.*

claimants accepted into Canada.⁴⁷⁹ I also compared the amount of Mexican refugee applicants accepted as refugees one year pre-designation and one year post-designation. In 2012, there were 570 Mexican refugees accepted. In 2014, only 94 Mexican refugee applicants were accepted. One full year pre-designation had 476 more Mexican refugee applicants accepted as legitimate, as opposed to one full year post-designation. This represents a decrease of 84%.⁴⁸⁰ This decrease in the actual amount of physical Mexican refugee bodies in Canada is disturbing. Hundreds and even thousands of Mexican refugee applicants were being accepted as genuine refugees prior to Mexico's designation on the DCO policy list. After Mexico's designation, those numbers dwindled significantly to approximately one hundred, but usually less than one hundred.⁴⁸¹ As a result, Mexico's increased acceptance rate was correlated with the lowest recorded amount of Mexican bodies entering Canada as legitimate refugees. Again, it is troubling that the official stance contends that the DCO policy only deters "bogus" and "fraudulent" Mexican refugee applicants when there is a significant decrease in the amount of Mexican refugee applicants accepted after Mexico's designation in comparison to the amount accepted before its designation. The drastic decrease in the amount of Mexican bodies entering Canada after Mexico's designation signifies that the DCO policy could be deterring large amounts of potentially legitimate refugee applicants from applying for refugee status in Canada. In addition to this, I believe the reduced amount of Mexican refugee applicants who are still able to apply are plagued by their label, resulting in the lowest recorded amounts of Mexican refugees in Canada after its designation. Mexican refugee applicants

⁴⁷⁹ To calculate the decrease from 2011 to 2016: $1027 - 29 = 998$. $998 \div 1027 = 0.971$. $0.971 \times 100 = 97.1\%$ (97%)

⁴⁸⁰ To calculate the decrease from 2012 to 2014: $570 - 94 = 476$. $476 \div 570 = 0.835$. $0.835 \times 100 = 83.5\%$ (84%)

⁴⁸¹ Immigration and Refugee Board of Canada, *supra* note 449.

are considered to be “bogus” and “fraudulent” even after the DCO policy decreased the overall amount of claims finalized made by Mexican refugee applicants.

These contradictory patterns within the quantitative data for Mexico are observed prior to, and after its designation on the DCO policy list, with the exception of 2016. In 2016 the denial rate was 43%, the lowest recorded denial rate for Mexico. Mexico’s 2016 denial rate fell 25% lower than the highest recorded denial rate of 68% in 2012.⁴⁸² Lowering the denial rate for Mexican refugee applicants could be considered a positive aspect of the DCO policy, if it was correlated with an increase in the acceptance rate for Mexican refugee applicants. However, even with the lowest denial rate, 2016 also experienced the lowest recorded acceptance rate since the introduction of the DCO policy at 21%. In addition to this, 2016 Mexico also experienced the highest recorded withdrawn & other rate at 30%.⁴⁸³ The combined denied, abandoned and withdrawn & other rate was 79% for 2016, meaning that 79% of claims were still given a negative decision. If the DCO policy was actually successful in deterring the supposed “bogus” refugee claims, thus claims made after DCO policy came into force were less likely to be “bogus”, there would have been a higher increase in the rate of accepted refugee claims and a significant decrease in the rate of denials. There would also be a decreased withdrawn & other rate as well as combined denied, abandoned and withdrawn & other rate. As it stands, the data in Table 1 contradicts the official stance’s position that the DCO policy deters “bogus” applicants which is why fewer Mexican refugee applicants have had their claims finalized. If the claims of the official stance were correct then those applying in the years after Mexico was designated on the DCO policy list would be more

⁴⁸² *Ibid.*

⁴⁸³ *Ibid.*

likely to be successful in being accepted as legitimate refugees since the DCO policy supposedly deterred the “bogus” applicants from applying. What the data in Table 1 shows is that approximately fewer than 30% of all DCO Mexican refugee claims are accepted as legitimate refugees, approximately 50% of all DCO Mexican refugee claims are denied and thus “bogus”, approximately 70% of DCO Mexican refugee claims are given a negative decision and the DCO policy is not as successful in deterring these “bogus” refugee applicants from applying as the official stance claims it to be.

3.2. Quantitative Data Analysis

Although I have refuted the official stance, what I have presented in my analysis of Table 1 seems to reflect that these numbers and rates show that “bogus” Mexican refugee applicants are still applying in some way. Thus far, I have made four main arguments. The combined denied, abandoned and withdrawn & other rates for Mexico have remained consistent prior to, and after designation although the DCO policy was intended to decrease these negative determinations. There was an overall decrease in the number of finalized claims, but the reasoning of the official stance was flawed as the main purpose of the DCO policy was intended to reduce the overall number of claims made by Mexican refugee applicants and therefore finalized. I refute the claims that the DCO policy will unclog the system to make way for bona fide refugee applicants to apply and be granted refugee status. First, half of all DCO Mexican refugee claims are still denied. Second, the acceptance rate slightly increased, but it was correlated with the lowest number of Mexican bodies entering Canada. Finally, the data shows contradictory patterns such as 2016 which experienced the lowest denial rate, but also the lowest acceptance rate and highest withdrawn & other rate for Mexico.

What I have argued thus far does refute the official stance, but it may also support a secondary argument, that Mexican refugee applicants are still “bogus” and that the DCO policy still allows “bogus” refugee applicants to penetrate the refugee system. However, I would like to propose an alternative explanation for the number and rates represented in Table 1, separate from arguing against the official stance. I believe that the numbers and rates have not fluctuated significantly not because the DCO policy is ineffective, not because the Mexican applicants are “bogus”, but because DCO applicants are plagued by their DCO label. Prior to being placed on the DCO policy list, Mexican refugee applicants were branded by the assumption that they were opportunistic queue-jumpers.⁴⁸⁴ Mexican refugee applicants were already met with the assumption that the persecution they faced was not “real”, visa requirements were necessary and they were not genuine refugees.⁴⁸⁵ Mexican refugee applicants were labelled as “fraudulent” because of their nation of origin and the presumptions of the actors of the official stance on Mexicans. The large volume of refugee applications made by Mexicans prompted the addition of Mexico on the DCO policy list where, again, they had yet another label attached to their claim. Mexican refugee applicants, assumed to be “fraudulent” because of their ‘Mexican-ness’ before the DCO policy, are now believed to be “fraudulent” because of their DCO status after the DCO policy. The IRB and all agents of the official stance have either replaced or combined their associations of “bogus” and “fraudulence” in relation to Mexican refugee applicants, with their associations of “bogus” and “fraudulence” in relation to DCO applicants. Both assumptions still negatively impact Mexican refugee applicants. The DCO policy acts as a label or “badge” signalling to the

⁴⁸⁴ Diop, *supra* note 38 at 74.

⁴⁸⁵ Citizenship and Immigration Canada, *supra* note 30 at para 3 – 5.

IRB the government's pre-emptive prejudgement as to the merit of the case.⁴⁸⁶ Previously, those prejudgements were signalled by the applicants' nation of origin being from "Mexico" (in this instance being from "Mexico" acts as the label). By designating Mexico on the DCO policy list, the Government and agents of the official stance codified their presumptions of fraudulence into law, the IRPA. So now, even though the DCO policy has claimed to deter "bogus" Mexican refugee applicants, a high rate of denials and a low amount of acceptances can still be justified by the presumptions of Mexican fraudulence created by their DCO label. It then becomes reasonable to assume that the DCO label signals decision-makers at the RPD to presume the fraudulence of the claim even before the merit of the case has been heard.⁴⁸⁷ This accounts for the insignificant shift in acceptance and denial rates after the implementation of the DCO policy. As a result, I believe genuine refugee applicants are still being deterred from applying and those who do apply are too often denied because of their labels and the presumption of fraudulence associated with these labels.

It was important to include the quantitative data to test the numbers against the criteria for designation and the claims of the official stance. Though the data in Table 1 may seem to support the official stance and affirm the orthodox security belief that restrictive policies are necessary and working to ensure security, the data does not provide sufficient support for the arguments of the official stance. Considering the amount of institutional and discursive barriers in place to halt the movement of Mexican refugee applicants to Canada, the data represented in Table 1 above should not come as a surprise. Yet, the discretionary decision-making afforded to the Minister in setting the

⁴⁸⁶ Macklin, *supra* note 158 at 103.

⁴⁸⁷ This is just an assumption; I will not be testing the decision-making or discretionary powers of IRB board members.

quantitative criteria for designation is troubling. To date, there has not been any public debate or any public consultations to justify the percentages that form the threshold for quantitative designation on the DCO policy list.⁴⁸⁸ This includes no debate or discussion of the percentage of rejected cases, nor the transparency of the judiciary that constitutes a “safe” country that does not normally produce refugees.⁴⁸⁹ The Minister has the authority to determine the threshold, and designate any country on the list without consulting the public or explaining how the threshold percentage was determined.⁴⁹⁰ Likewise, there have been no oversight mechanisms developed to re-evaluate or remove a country from the DCO policy list. As Macklin states, “the possible review or delisting of [a DCO] appears not to have occurred to the drafters. The mechanisms for designating a country as safe are unaccompanied by any process for revising the decision in light of new evidence.”⁴⁹¹ In other words, even if Mexico’s quantitative data no longer meets or surpasses the quantitative designation criteria, there are no measures in place to discuss taking Mexico or any country off of the DCO policy list once that country has been designated. With Mexican refugee applicants previously making claims for refuge at such a high proportion and the contradictory data in Table 1 on the impact of the DCO policy on Mexican refugee claims, it is difficult to fathom how Mexico’s designation on the DCO policy list can continue to be justified.

3.3. Case Study: Qualitative Data

Nevertheless, behind every one of the claims, whether accepted or denied, are stories of perceived persecution. Behind all of the denied claims were Mexican refugee

⁴⁸⁸ Stephanie J. Silverman, “In the Wake of Irregular Arrivals: Changes to the Canadian Immigration Detention System” (2014) 30:1 *Refuge* 27 at 29.

⁴⁸⁹ *Ibid.*

⁴⁹⁰ Macklin, *supra* note 158 at 124.

⁴⁹¹ *Ibid.*

applicants who could not convince the RPD board member that they were experiencing sufficient fear for their life. The next portion of my case study highlights the cases I selected from the Federal Court website and Canadian Legal Information Institute (CanLII). I have accumulated a few cases brought to the RAD from denied Mexican applicants to demonstrate that the DCO policy might be a vetting system employed to deny otherwise worthy Mexican refugee applicants on the basis of their nation of origin. Since there are qualitative designation criteria, I found it necessary to detail the facts of a select number of claims to understand why Mexican refugee applicants might be denied, and what the RPD considers a person not in need of refuge. The content and reasons for denial reflect the reality of the majority of applications for refugee status made by Mexican refugee applicants.

Any empirical research that evaluates the decision-making process of the Canadian refugee determination system will face methodological issues. These issues include that under the IRPA, refugee hearings at the RPD of the IRB are closed to the public,⁴⁹² and only a few RPD decisions are published for the public.⁴⁹³ In addition to this, in November of 2017 I had placed an ATIP request to the IRB for “every decision and reason for the decision for Mexican refugee claimants whose claims were made primarily on the basis of particular social group and victims of criminality and nexus to the grounds.”⁴⁹⁴ I had initially requested the timeline for cases to be from January 1, 2013 to present. Unfortunately, I was contacted by the IRB ATIP Directorate and was told that my request for cases and documentation was too large and that it would take over 400 days to process my request. Considering the deadline I had to meet for completion of my

⁴⁹² *Immigration and Refugee Protection Act*, supra note 126 at s 166 (c).

⁴⁹³ Sean Rehaag, “The Role of Counsel in Canada’s Refugee Determination System: An Empirical Assessment” (2011) 49 *Osgoode Hall Law Journal* 71 at 82 – 83.

⁴⁹⁴ Immigration and Refugee Board of Canada. Access to Information and Privacy, Request No. A-2017-02522/RA.

degree, I adjusted my request to cases finalized from January 1, 2016 to August 31, 2017. In February of 2018, I received another letter from the IRB ATIP Directorate that my adjusted request will not be released until the summer of 2018. In response to this I contacted the IRB ATIP Directorate to request a partial release of documentation for any cases that had been completed for my request thus far, but was later informed that this would not be possible because the cases and documentation had to go through quality control prior to the release of the documentation. According to the IRB ATIP Directorate, quality control is the process by which the cases have personal and private information redacted prior to their release in order to protect the identity of the claimant. I have yet to receive the documentation, and as a result, I had to modify my sample selection and size to accommodate information that is already public and easily accessible.

I contacted the IRB to inquire about RPD cases, obtaining case hearings and decisions, as well as obtaining other information that could assist with my qualitative case study, but I had encountered some issues corresponding with the IRB. I placed a number of phone calls to the IRB's contact phone line in regards to conducting an accurate and representative case study. I was able to ask IRB agents about acquiring documentation and general questions about the refugee claims process. I did not speak to IRB board members, but I spoke to IRB agents who work in the contact phone line department which is generally used as a resource for immigration and refugee claimants. IRB agents typically speak to immigration and refugee claimants in regards to the claims process and how to proceed with their applications. Some agents were more knowledgeable and helpful than others, and provided detailed information to help me in my pursuit of documentation. However, the majority of my phone calls were

unsuccessful or I was directed to the IRB or IRCC websites to find the answers to my questions and viewing the documentation that was already available online. There is little information about specific cases on the IRB or IRCC websites. I was ultimately unable to obtain full cases or case decisions from RPD hearings.

These problems, both individually and collectively, made it difficult to find a representative sample of decisions to evaluate. I sought to overcome these obstacles by selecting cases brought to the RAD, where more decisions are made publicly available, and the decisions of the RPD were located within the reasoning of the RAD. Reviewing RAD case decisions was also advantageous to understand why Mexican applicants are denied at the RPD, as access to the RAD is only available for post-claim action for denied applicants. However, because DCO applicants only became entitled to access the RAD in 2015, not many cases have been heard for Mexican refugee applicants. This too lowers the case sample size for analysis.⁴⁹⁵ All cases in the following section are denied Mexican refugee applicants seeking a determination from the RAD in regards to the RPD's denial. I reviewed all RAD cases on the CanLII database and Federal Court website with the following requirements: Mexico being the claimant's country of origin, the initial RPD case was made after Mexico's designation on the DCO policy list of February 2013 onward and the basis of the claim (specified in the next paragraph). Approximately twenty cases were from Mexican refugee applicants made after February 2013, but of those twenty cases, only four were based on the specific grounds I selected. Therefore, my case study sample consists of those four cases.

All cases I assess were made based on the enumerated grounds of political opinion, specifically political activism, and corruption and criminality. The cases I

⁴⁹⁵ Vouri, *supra* note 211 at 134.

outline below encompass the reality of the “war on drugs” that Mexico is experiencing in some capacity. I selected these grounds for my case study sample because they are representative of the largest proportion of claims made by Mexican refugee applicants.⁴⁹⁶ Claims made based on corruption and criminality, such as those made by victims of organized crime, drug cartels and gangs are still recognized as valid reasons for refugee claims to be made, but they are considered no nexus grounds.⁴⁹⁷ Enumerated grounds are specifically listed within the Convention as reasons for a refugee claim to be made, whereas no nexus grounds are not.⁴⁹⁸ Therefore “corruption” or “criminality” are not specifically listed in the Convention as a reason for a refugee applicant to base their refugee claim, but instead applicants making a claim based on “corruption” or “criminality” fall under the no nexus ground, which is still considered a valid ground on which to base a refugee claim. These reasons are just not specifically listed within the Convention. Though my sample is still quite small, the content and reason for denial do reflect the reality of the majority of applications for refugee status made by Mexican refugee applicants. The next subsection outlines the sample I selected for review.

3.3.1. Case #1

In X (Re), 2015 CanLII 109705 (CA IRB), (name of the claimant is redacted) the appellant is a citizen of Mexico. From 2007 onward, he alleged that he had been threatened by the criminal organization and drug cartel, the Zetas. He lived with a roommate.⁴⁹⁹ His roommate worked for a company where he had access to information

⁴⁹⁶ Immigration and Refugee Board of Canada. Access to Information and Privacy, Request No. A-2017-02526/RA.

⁴⁹⁷ James C. Hathaway, and Michelle Foster, “The Causal Connection (“Nexus”) to a Convention: Ground Discussion Paper No. 3 Advanced Refugee Law Workshop International Association of Refugee Law Judges” (2003) 15 Int’l J. Refugee L 461.

⁴⁹⁸ Hathaway, *supra* note 120 at 186 – 187.

⁴⁹⁹ X (Re), 2015 CanLII 109705 (Immigration and Refugee Board of Canada), <<http://canlii.ca/t/hnvvw>> at para 3.

indicating that the police, politicians and army officials are involved in the Zetas.⁵⁰⁰ The appellant's roommate left his job as a result of threats he was receiving from the Zetas and fled to the U.S.. Shortly thereafter the Zetas tagged his apartment with graffiti and entered the appellant's house demanding his roommate's whereabouts. Since he had no knowledge of where his roommate went, he now became their target.⁵⁰¹ He received death threats and his family, especially his parents, were receiving extortion demands from gang members. The appellant fled to Canada in 2007.

Upon his arrival to Canada, the appellant failed to immediately indicate that he wished to make a claim when he was detained by immigration authorities. He stated that his "level of stress and fear to be returned to his home country played an important part in [his] answers to the immigration officer."⁵⁰² He was also told by an immigration and refugee lawyer that "Mexican claims are usually rejected"⁵⁰³ and it would be better to get settled and find other means for permanency. He was married soon after and filed for spousal sponsorship through immigration. His application failed as a result of his divorce in 2012.⁵⁰⁴ He faced deportation and made his claim to the RPD. The appellant did provide evidence of the Zetas' reign of terror in his hometown and throughout Mexico. Furthermore, his roommate was deported from the U.S. in 2014, and upon his return to Mexico, he was kidnapped by the Zetas and murdered.⁵⁰⁵ The appellant also provided testimony from his roommate's mother and from his family members that, although years

⁵⁰⁰ *Ibid* at para 4.

⁵⁰¹ *Ibid*.

⁵⁰² *Ibid* at para 17.

⁵⁰³ *Ibid* at para 16.

⁵⁰⁴ *Ibid* at para 48.

⁵⁰⁵ *Ibid* at para 49.

had passed, they are still receiving extortion demands for and death threats against the appellant.⁵⁰⁶ As a result, he feared he would be killed upon his return to Mexico.

The RPD dismissed his claim stating that he did not meet the criteria for a Convention refugee. Upon their evaluation of the evidence, the RAD cited the inconsistencies in his testimony regarding the delay with his claim and the testimony given to the immigration officer. The RAD did recognize the validity of the testimony from his roommate's mother and his family members, but they were given very little weight, and his alleged fear was referred to as subjective rather than well-founded.⁵⁰⁷ The RAD determined that the appellant had "failed to establish that he is being targeted in Mexico. The panel further found there is no credible evidence relevant to this claim, that the Appellant is generally lacking in credibility and this lack of credibility extends to other relevant parts of his testimony."⁵⁰⁸ He was denied refugee status.

3.3.2. Case #2

Likewise, in X (Re), 2016 CanLII 101809 (CA IRB), (name of the claimant is redacted), the appellant is a citizen of Mexico who owned and operated his own business. In 2014, the appellant was approached by a notorious criminal who was also a member of the Zetas.⁵⁰⁹ This person had asked the appellant to work for him in a construction project (the name and nature of the project is redacted).⁵¹⁰ When the appellant refused, he was brutally beaten and threatened to be killed. The Zetas gave him a ten-day ultimatum for the work to begin, otherwise they would kill him. He was told not to tell anyone about the

⁵⁰⁶ *Ibid.*

⁵⁰⁷ *Ibid* at para 54.

⁵⁰⁸ *Ibid* at para 55.

⁵⁰⁹ X (Re), 2016 CanLII 101809 (Immigration and Refugee Board of Canada), <<http://canlii.ca/t/h2n73>> at para 6.

⁵¹⁰ *Ibid.*

project. The appellant was treated in Mexico immediately for the injuries he sustained.⁵¹¹ He and his roommate continued to receive death threats over the phone. The applicant previously filed for a student visa to Canada, which he received in May of 2014, and he arrived in June of that year.⁵¹² Since his student visa was approved, he had left Mexico to take language courses in Canada hoping he had temporarily escaped the threats long enough for tensions to dissolve. One year later, his roommate was still receiving threats and his Mexican residence was also tagged with Zetas' graffiti.⁵¹³ He feared for his safety even out of the country, so he filed for refugee status in Canada.

Though rare, the Minister intervened in the case to indicate that there was confusion over his dates of arrival. The Minister also addressed the alleged omission that the appellant had previously received a visa from the U.S..⁵¹⁴ However, it was determined that the visa, located clearly in the back of his passport, could not render the entire case inadmissible, and he had only gone to the U.S. to go shopping after already being settled in Canada.⁵¹⁵ Regardless, the RPD rendered a negative decision in this case.

This is what is most troubling. The RPD stated that the appellant's entire testimony was credible. They even confirmed their belief in his fear of the Zetas. However, they stated that if the Zetas wanted to find the appellant, they would have by now, and as a result, they suggested an Internal Flight Alternative (IFA), where he could find another city in which to live upon his return to Mexico, such as Mexico City. Essentially, the RPD said that because the Zetas have not located him, they are not

⁵¹¹ *Ibid* at para 7.

⁵¹² *Ibid* at para 11.

⁵¹³ *Ibid* at para 12.

⁵¹⁴ *Ibid* at para 15.

⁵¹⁵ *Ibid* at para 24.

interested in finding him. However, locating him means he will be killed. In ruling in this case the RAD stated:

What is more, the RAD is of the opinion that the RPD's reasoning that led to a finding of non-credibility with respect to the events after XXXX XXXX, 2014, is based on somewhat unsupported assumptions. The RPD did not believe them because the Zetas have sophisticated means and if they were interested in the appellant, they would have already found him. On one hand, the RPD failed to analyze the telephone call indicating that the appellant was known to be in the central part of the country, but on the other hand, the RPD's reasoning could be interpreted to mean the opposite: they have sophisticated means and so they could find him eventually. The fact that one year passed does not mean that they would not find him at a later date.⁵¹⁶

Considering the fact that the RPD is of the opinion that this group has every means at its disposal to locate the appellant and that it did not find the telephone call in XXXX 2014 to lack credibility, the RAD is of the opinion that it is insufficient to base a non-credibility finding on the fact that one year had passed and they had not yet found him. The RPD erred. That being said, the subsequent conclusion concerning the IFA is also erroneous because it does not take into account the incident on XXXX XXXX, 2014.⁵¹⁷

In this case, the RAD referred the matter back to the RPD for a re-determination.

These cases highlight the inconsistencies within the RPD's decision-making. It seems that, in both cases, the appellants had a well-founded fear of persecution, considering their lives had been threatened. However, the RPD's decisions seem to emphasize that one may have to die in order to demonstrate that fear was well-founded.

3.3.3. Case #3

Similar circumstances were reported in the case of X (Re), 2016 CanLII 103897 (CA IRB). The appellant filed for refugee status in Canada after he was stabbed in the chest by a member of the notorious gang "La Nueva Familia."⁵¹⁸ The appellant was in a local bar in 2009, dancing with a woman when he was stabbed.⁵¹⁹ Knowing the gang's reputation, the appellant left his hometown for another city (the name of which was redacted) after treating his injuries. The day after the stabbing, the attacker along with other men who were suspected to be members of the same gang, went to the home of the

⁵¹⁶ *Ibid* at para 48.

⁵¹⁷ *Ibid* at para 49.

⁵¹⁸ X (Re), 2016 CanLII 103897 (Immigration and Refugee Board of Canada), <<http://canlii.ca/t/h3hx>> at para 4.

⁵¹⁹ *Ibid*.

appellant's parents looking for him "to hurt him."⁵²⁰ The facts state that the gang members "apparently did not find him, as the appellant was supposedly already in XXXX, where he stayed for twenty days. The attacker allegedly went to XXXX to locate the appellant, who apparently then moved to XXXX and lived there for a month. He allegedly left that region when he learned that the attacker was looking for him there as well."⁵²¹ The appellant returned to one of the previous towns (city names were redacted) where he purchased an airline ticket. The appellant subsequently left Mexico and went into hiding for fear of being found.⁵²² He pursued his claim for refugee status at a U.S. – Canada border crossing in December of 2013.⁵²³

According to the RPD "The appellant spent nearly four and a half years in Canada illegally and therefore waited all that time before claiming refugee protection. The RPD did not find that behaviour consistent with that of someone who fears for his life at the hands of the "Nueva Familia" cartel."⁵²⁴ The RPD also claimed that the appellant did not prove there was substantial prospective risk.⁵²⁵ This claim is based on the fact that since the incidences of the gang trying to locate him, he has yet to hear from the gang or the woman he danced with when he was stabbed. Although he claimed the police work closely with the gangs which is the reason he did not report the incident, this was another reason why the RPD found that the appellant did not establish that his attacker would still be interested in finding him.⁵²⁶

The RPD, as well as the RAD, established that his going into hiding was premature and his application for refugee status years later was frivolous. The RAD

⁵²⁰ *Ibid* at para 5.

⁵²¹ *Ibid* at para 6.

⁵²² *Ibid*.

⁵²³ *Ibid*.

⁵²⁴ *Ibid* at para 9.

⁵²⁵ *Ibid* at para 10.

⁵²⁶ *Ibid*.

determined that the appellant's behaviour is inconsistent with his alleged fear. The decision states that "in other words, if he was truly at risk from a leader of a dangerous Mexican cartel, he would not have waited four years and would have taken concrete steps to find a solution so that he would not be deported to his country. He would have claimed refugee protection before December 2013."⁵²⁷ His appeal was denied and the RPD decision was sustained, resulting in the claimant's subsequent deportation back to Mexico.

What becomes increasingly worrying with the details of each case is that the standard to establish "fear" is unreasonably high. Though the appellant failed to establish why going into hiding was the better option than filing for refugee status immediately, he was physically assaulted and pursued by the gang for months in Mexico. He stated on his Basis of Claim (BOC) form that he was afraid that the gang would find him in Canada, thus delaying his application for status. He believed that coming out of hiding to pursue refugee status would leave him vulnerable to being located by members of the cartel. Though living in Canada illegally is not a point I will support here, I think this says more about his subjective fear. However, the RPD was supported by the RAD which characterized the incident as "an impromptu, chance incident that occurred in 2009 and had no past foundation and no consequences after 2009, according to the evidence on the record. It was a spontaneous incident in which the appellant danced with a woman previously seen with a member of the "La Nueva Familia" cartel."⁵²⁸ This "impromptu," "spontaneous" and chance incident has still resulted in a man being stabbed, sustaining physical injuries, the harassment of his family and persistent threats from a very powerful and prominent Mexican gang.

⁵²⁷ *Ibid* at para 39.

⁵²⁸ *Ibid* at para 22.

3.3.4. Case #4

X (Re), 2016 CanLII 102058 (CA IRB), is yet another case that demonstrates that the RPD is denying potentially legitimate refugees. The appellant had been living in Ciudad Juárez, Mexico where he studied economics from 2006 to 2012.⁵²⁹ To reiterate, Ciudad Juárez had been named “Mexico’s murder capital.”⁵³⁰ The appellant’s cousin died in 2010 from being struck by a stray bullet in a gang and crime-ridden neighborhood.⁵³¹ This had motivated the appellant to participate in protests against the increasing violence in the region, the lack of police participation to solve the crime and the domestic abuse in the area including the widespread murders of local women in the region.⁵³² The appellant also organized two or three of the marches specifically to protest against violence and bring awareness to his cousin’s death.⁵³³

As a result of his protests and participation in marches, the appellant received numerous threats. Other demonstrators also reported receiving threats. The appellant received threatening emails and text messages.⁵³⁴ His vehicle was stolen twice. The first time was from a shopping centre and the other was in front of his house. “The appellant received a constant stream of emails, whether he was in Ciudad Juarez; in San Luis Potosi, where he had temporarily moved; or in Matamoros, where he also lived for a while.”⁵³⁵ As a result of the threats, the appellant left his home in May of 2014.⁵³⁶ He had returned to Mexico later that year to retrieve belongings and assess if the threats had died

⁵²⁹ X (Re), 2016 CanLII 102058 (Immigration and Refugee Board of Canada), <<http://canlii.ca/t/h2s2p>> at para 5.

⁵³⁰ Morton, supra note 356 at 1632.

⁵³¹ X (Re), supra note 529 at para 6.

⁵³² *Ibid* at para 5.

⁵³³ *Ibid* at para 7.

⁵³⁴ *Ibid* at para 8.

⁵³⁵ *Ibid* at para 9.

⁵³⁶ *Ibid* at para 10.

down. The appellant left Mexico for good in February 2015 and applied for refugee protection in March 2015.⁵³⁷

The RPD determined the appellant was not in need of protection due to his return to Mexico and the time before leaving for good.⁵³⁸ The RPD also cites IFAs for the appellant including the State of Yucatan, in Merida or Progreso.⁵³⁹ The appellant appealed the decision stating that the RPD imposed “too heavy a burden”⁵⁴⁰ on the appellant by failing to consider the fact that he had been targeted because he is a student activist. He claimed that the RPD erred in its decision by “assessing only part of the evidence, and not all of it”⁵⁴¹ especially concerning the thorough documentation of threats that the appellant provided the RPD due to his political stance and orientation.⁵⁴²

In the appellant’s claim to the RAD he states that:

The RPD erred with respect to the IFA. The Mexican state is not able to protect its nationals on a country-wide basis, and the appellant is an activist who is protesting against the violence directed at students and against the murders that have been committed. The case law has established that large urban centres cannot be assumed to constitute IFAs simply by virtue of their population size. The appellant does not have to live in hiding. The agents of harm have the means to find the appellant anywhere in the country. The RPD erred in its IFA assessment.⁵⁴³

However, the RAD affirmed the decision of the RPD and said the appellant did not establish a well-founded fear of persecution. In this case, the RAD stated he could receive threatening emails and phone calls anywhere. The RAD pushed “that the appellant could go live in the Yucatan Peninsula in Merida or Progreso and live there safely. The RAD finds that the appellant failed to show that the feared individuals would have any motivation to find him in those places.”⁵⁴⁴ One key aspect of the case that was

⁵³⁷ *Ibid* at para 12.

⁵³⁸ *Ibid* at para 13.

⁵³⁹ *Ibid* at para 14.

⁵⁴⁰ *Ibid* at para 17.

⁵⁴¹ *Ibid*.

⁵⁴² *Ibid*.

⁵⁴³ *Ibid* at para 22 – 23.

⁵⁴⁴ *Ibid* at para 49.

not addressed by the RPD or the RAD was that Mexican student protestors have been known to forcibly disappear. In September of 2014, 43 Mexican student protestors disappeared without a trace, and the corrupt Mexican Government and local police have been blamed for covering up their deaths. “According to Mexico’s former attorney general, local police illegally detained the students and then turned them over to the local drug gang Guerreros Unidos, which then allegedly killed them and incinerated their remains.”⁵⁴⁵ The disappearances have been highly publicized and have prompted criticism of the corruption of the Mexican Government. Protesting puts Mexican citizens at even higher risk for going against the gangs and drug cartels. It also shows that there is very little recourse for injustice, the far reaching impunity of the gangs and drug cartels and aligning one’s self politically may lead to their demise.⁵⁴⁶ Nevertheless, the RAD concluded by stating that the appellant is not a Convention refugee or a person in need of protection.

3.4. Qualitative Data Analysis

There are noted inconsistencies with the decisions rendered in these cases and the perception of Mexico by the official stance. The most significant inconsistency is that the Canadian Government has issued a nation-wide travel advisory for Canadian’s travelling to Mexico. The Government of Canada website states that anyone travelling to Mexico should “exercise a high degree of caution.”⁵⁴⁷ The Canadian Government warns that the advisory is due to “high levels of criminal activity, as well as demonstrations, protests

⁵⁴⁵ Mark Stevenson, “Mexicans Rally on Anniversary of 43 Students’ Disappearance” *Associated Press* (27 September 2015), online: The Chicago Herald

<[http://www.lexisnexis.com.proxy.library.carleton.ca/hottopics/lnacademic/?shr=t&csi=163823&sr=HLEAD\(%22Mexicans+rally+on+anniversary+of+43+students%27+disappearance%22\)+and+date+is+2015](http://www.lexisnexis.com.proxy.library.carleton.ca/hottopics/lnacademic/?shr=t&csi=163823&sr=HLEAD(%22Mexicans+rally+on+anniversary+of+43+students%27+disappearance%22)+and+date+is+2015)> (LexisNexis) at para 9.

⁵⁴⁶ *Ibid* at para 8.

⁵⁴⁷ Travel and Tourism Canada, “Travel Advisory: Mexico” *The Government of Canada* (22 November 2017), online: The Government of Canada <<https://travel.gc.ca/destinations/mexico>>.

and occasional illegal roadblocks throughout the country.”⁵⁴⁸ The website then lists seven northern and two western Mexican cities to avoid all nonessential travel to due to high levels of violence mainly associated with organized crime.⁵⁴⁹ These cities include: Chihuahua, Coahuila, Durango, Nuevo León, Sinaloa, Sonora, Tamaulipas, Guerrero and Michoacán.⁵⁵⁰ As of March 7, 2018, the website lists additional states to “exercise a high degree of caution” in, which include Quintana Roo, home to the city of Playa Del Carmen and Cancun, and Baja California Sur, home to the city of Los Cabos.⁵⁵¹ What is troubling is that these two states are high traffic tourist areas with resorts, hotels, restaurants and other attractions that bring travellers, including Canadians, to Mexico. The Government of Canada travel advisory website lists the safety and security threats Canadian travelers could face while in Mexico. The reasons listed are crime, organized crime, theft, assault, women’s safety issues, spiked food and drinks, kidnappings, scams, demonstrations, poor road safety, hailing and using street taxis and public transportation.⁵⁵² The website states that there has been a significant increase in violence related to organized crime in 2017, and the resort areas where tourists stay have been the targets of crime. It states that “Mexico has one of the highest kidnapping rates in the world... Criminal groups, including drug cartels, are very active in Mexico. Clashes between cartels or gangs over territory, drugs and smuggling routes are common resulting in a high level of violence.”⁵⁵³ The update to the advisory comes after the U.S. Embassy in Playa Del Carmen closed due to an explosion from devices planted on a popular tourist

⁵⁴⁸ *Ibid.*

⁵⁴⁹ *Ibid.*

⁵⁵⁰ *Ibid.*

⁵⁵¹ *Ibid* at para 10.

⁵⁵² *Ibid.*

⁵⁵³ *Ibid* at para 23.

ferry, injuring 20 tourists.⁵⁵⁴ Additional undetonated explosive devices were found on other tourist ferries.⁵⁵⁵ It is clear from the travel advisory warning its own citizens to avoid travelling to Mexico that Canada does in fact recognize that Mexico is a nation plagued with violence. However, one must ask who is the state protecting with these advisories? The recognition of danger is for the priority of safety for Canadians, not Mexican citizens who may experience this danger on a daily basis.

The travel advisory is significant because in these cases a noted similarity is the RPD's mention of the IFA in Mexico. They suggest that Mexican refugee applicants can uproot their homes and move to Mexico City or any other city in which there is a lower level of crime or corruption. However, the suggestion of IFA's are highly problematic considering the cartels have the power to infiltrate numerous cities and access to government resources to possibly find the individuals who are being threatened. As the RPD stated, if the gangs wanted to find you, they would.⁵⁵⁶ The Government of Canada's acknowledgement of the dangers in Mexico is reflected in Canada's advice to its own citizens, warning Canadian citizens to limit their travels. The advisory shows recognition of the dangers Mexican citizens face as well. The advisory states that tourists are not the main targets for crime and organized crime, however they are still susceptible to becoming a victim of the crime in the area. Instead, it states that Mexican citizens and government officials are the common "targets of violent crimes including kidnapping, extortion and homicide."⁵⁵⁷ However, as has been seen throughout the discourses of safety, when determining the safety of Mexican refugee applicants, the acknowledgement of the true dangers in these cities are not reflected in Canada's actions in regards to

⁵⁵⁴ *Ibid* at para 1.

⁵⁵⁵ *Ibid*.

⁵⁵⁶ X (Re), supra note 509 at para 49.

⁵⁵⁷ Travel and Tourism Canada, supra note 547 at para 10.

Mexican refugee claimants, and their denial of conceivably legitimate refugees. Ensuring the safety and human security of Mexican citizens is less important than the safety and social security of Canadian society.

As seen within the facts of each of these cases, refugee status for Mexican DCO applicants is quite difficult to obtain. Decisions made at both the RPD and RAD were harsh, standards to satisfy the criteria of refugee status were strict and many were unsuccessful in overturning or re-determining RPD decisions by the RAD. Extortion, threats of death, being stabbed and having family members or friends killed by Mexican gangs were not enough for applicants to prove they experience real fear of persecution. I believe this is as a result of the DCO policy and the presumptions of fraudulence associated with the DCO label. Arguably, had the refugees not been subject to the DCO policy, their cases may have been more successful at the RPD and RAD, and it may have been easier to satisfy the criteria of a genuine refugee. Considering the climate of Mexico and the content of each claim presented, I believe that Mexican refugee applicants are subject to overly harsh standards to succeed in a refugee claim. Border enforcement and resulting policies such as the DCO policy create a hierarchy of applicants ranking from DCO applicants to non-DCO applicants where, in a system already designed to control movement and limit access to Canada, labels such as DCO decrease one's access to fair consideration for refuge.⁵⁵⁸ The DCO policy allows RPD board members to presume the fraudulence of the claim presented because the label is given to countries that allegedly produce "bogus" claims. Considering that RPD board members are given a considerable amount of discretion in determining the status of a claim, it is likely the presumptions of fraudulence, opportunistic and "bogus" Mexican refugee applicants, subject to the label

⁵⁵⁸ Zetter, *supra* note 441 at 185.

of the DCO policy, may have impacted the decisions rendered. I believe the applicants in each case presented had reason to believe they were facing real persecution. I do not believe IFAs are viable alternatives to accepting refugee claim as legitimate. Likewise, maintaining the assumption that “if the gangs wanted to find you, they would”⁵⁵⁹ is highly problematic, suggesting Mexican refugee applicants may have to be seriously harmed in order to prove their persecution and to be considered legitimate refugees. Instead, this shows yet again the human security of Mexican refugee applicants are not a matter of concern for the Canadian Government and the DCO policy is being used to allow their human security to become less and less of a priority.

As I have outlined thus far, the statist construction of safety and security is based on exclusion. The only way to consider Canada safe from “threats” and “abuse” is to limit Mexican refugee applicants’ access to this country. To put it simply, for Canada and the official stance, “security” equals fewer Mexican refugees. As the details of these cases support, being denied refuge in Canada is a consequence of the DCO policy that a Mexican applicant may pay for with their life. Extortion, gang violence, government corruption and domestic violence are all not good enough threats to a Mexican refugee applicant’s life to ensure their refuge in Canada, but instead it is more than enough to justify a “safe” designation. The Canadian Government, through its reliance on realist-defined security orthodoxy, has constructed and justified the illegality and fraudulence of Mexican refugee applicants. Likewise, the DCO policy is yet another provision to ensure that the presence of Mexicans in Canada is via their contribution to Canada’s economy. I have shown that, although Mexico met the quantitative criteria for designation, the rate of

⁵⁵⁹ X (Re), supra note 509 at para 49.

rejection did not decrease as it would have had the claims been “fraudulent” and “bogus” as the official stance proclaims them to be.

Likewise, I have shown that Mexico does not meet the qualitative designation criteria to fit a “safe” country as per section 109 (b) of the IRPA. Mexican citizens may not in fact have access to an independent judicial system, basic democratic rights and freedoms are often not recognized in practice and mechanisms for redress are not widely available if those rights or freedoms are infringed.⁵⁶⁰ Civil society organizations exist both formally and informally,⁵⁶¹ but aligning one’s self with such organizations may make them a target of the corruption and criminality in Mexico (for example the protestors who disappeared).⁵⁶² Though Mexico is not completely void of access to an independent judicial system, basic democratic rights and mechanisms for redress, and civil society organizations, it is clear, through these cases, that access to these designation criteria is limited or corrupt. As a result, it becomes increasingly difficult to understand how Mexico continues to be labelled a “safe” country under the DCO policy, which justifies the mass deterrence and continued denial of possibly legitimate refugees.

Instead, Mexico can be described as a modern-day “warzone”⁵⁶³ and the number of refugee applications reflects that reality. All the cases I have analyzed lead me to conclude that the DCO policy is unjustly used to label Mexican refugee applicants and reaffirm Canada’s exclusionary security discourses and practices. Canada has used the DCO policy to hide behind the “safe” designation of a fragile state. The conflicts in Mexico have undoubtedly created an objective fear of persecution for Mexican refugee applicants, however by way of their DCO label and the presumption of fraud created by

⁵⁶⁰ *Immigration and Refugee Protection Act*, supra note 126 at s 109.1 (1)(b)(i) – (ii).

⁵⁶¹ *Ibid* at s 109.1 (1)(b) (iii).

⁵⁶² Stevenson, supra note 545.

⁵⁶³ Campbell, supra note 366.

Canada's security discourses, this objective fear is continually portrayed as merely subjective and upon the claimant's denial, insubstantial.

Rather than uphold its international humanitarian obligations to ensure the protection of human security for Mexican refugee applicants seeking refuge, Canada has used the DCO policy as a smoke screen for the protection of Canada's national security. This, I believe, covers up the financial, economic and political variables that allow Canada to profit from Mexico. Ultimately, the DCO policy is a corrupt security measure to unjustifiably limit and exclude Mexicans from Canadian society. Canada refuses to recognize the true insecurity, both human and national, of Mexico in order to avoid its humanitarian obligations to provide refuge for all refugee applicants who demonstrate a well-founded fear of persecution. This obligation should be upheld regardless of bilateral agreements, economic benefits and any other factors that may overshadow the experiences of otherwise legitimate DCO refugee applicants fleeing their nation of origin to seek refuge in Canada.

Conclusion

During his campaign for the U.S. Presidency, Donald Trump made disparaging comments about Mexico, Mexican citizens, refugees and immigrants. During a campaign speech on June 16, 2015, he stated “when Mexico sends its people, they’re not sending their best... They’re sending people that have lots of problems, and they’re bringing those problems to us. They’re bringing drugs. They’re bringing crime. They’re rapists. And some, I assume, are good people.”⁵⁶⁴ Along with these claims, President Trump made a promise to build a border wall along the Mexico-U.S. border and make Mexico pay for it.⁵⁶⁵ It was an attempt to further limit the Mexican presence in the U.S.. Such harsh claims from the President of the U.S. pushed Mexican refugee applicants further along the path of precarious status. However, unlike Prime Minister Justin Trudeau’s quick Twitter retort to President Trump’s similarly discriminatory Executive Order 13769, Prime Minister Trudeau has yet to comment on or challenge the claims made against Mexico and Mexicans by President Trump. Prime Minister Trudeau did not lay out a welcome mat nor extend a #WelcomeToCanada tweet to Mexican refugee applicants affected by the words of the President, as he had before. Instead, Canada’s silence in response to the President’s words has been deafening. In fact, Canada seems to support Trump’s claims indirectly through its DCO policy and the accompanying discursive rhetoric of safety and security.

The real issue at hand is reshaping the ways in which Canadians and the international community think of “humanitarianism” and being critical of the Canadian Government’s stance on security. One definition of humanitarianism “is a morality of

⁵⁶⁴ Scribner, *supra* note 35 at 265.

⁵⁶⁵ *Ibid.*

kindness, benevolence, and sympathy extended to all human beings.”⁵⁶⁶ If the institutional labelling and denial of potentially legitimate Mexican refugee applicant who have demonstrated a substantial fear of persecution is done in the name of this view of humanitarianism it must then be time to re-evaluate our perception of Mexico and the discourses that have made Canadian society believe it is a “safe” country. Canada’s humanitarian values should reflect its very definition and extend a morality of kindness to protect the human beings of the world.

The Future of Human Insecurity: Emancipation

In order to effectively re-evaluate Canada’s misconceptions of Mexico as a “safe” country and Mexican refugee applicants posing a “threat” to the human and national security of Canada, I have turned to CSS. CSS advocates for what theorists refer to as the emancipation of people and communities. It is defined by CSS as the “freeing of people (as individuals and groups) from those physical and human constraints which stop them from carrying out what they would freely choose to do.”⁵⁶⁷ In other words, CSS calls for the reflexive evaluation of modern security strategies that can ultimately move towards the free movement of human beings. Though the final goal of emancipation would be for freedom from the statist created border and border policies so people can choose to live and move wherever they wish, CSS theorists recognize that this is a utopian idea.⁵⁶⁸ Unfettered access to different nations around the world is highly unlikely and will certainly result in backlash from states that disagree with CSS theorists and believe that access to their nation should be regulated in some way.⁵⁶⁹ Although the concept of

⁵⁶⁶ *The Oxford English Dictionary*, 2d ed, *sub verbo* “Humanitarianism”.

⁵⁶⁷ Hayward Alker, “Emancipation in the Critical Securities Project” in Ken Booth, eds, *Critical Security Studies and World Politics* (Boulder, CO: Lynne Rienner Publishers Inc., 2005) at 191.

⁵⁶⁸ *Ibid* at 191 – 192.

⁵⁶⁹ *Ibid* at 192.

emancipation has been and continues to be highly contested, Canadian society and the international community can take realistic steps to move towards the freer movement of people, dismantling the restraints that currently control access to refuge for some groups in a discriminatory manner.

Orthodox security studies have perpetuated the idea that there is an ever-present threat of war, which is one of the constraints that have prevented the proposal for a viable strategy for emancipation.⁵⁷⁰ Poverty, political oppression, access to education, mass displacement and other political and social issues stand as additional barriers to the movement of people and access to refuge.⁵⁷¹ CSS contends that researchers should continue to rethink the constructs of current security measures. It has become clear that Canadian society has not been able to reimagine the concept of security beyond the current embrace of the orthodox idea of security because it would require a revision “of our dominant understanding of security... and our dominant understanding of what it would mean to articulate an alternative to this dominant understanding of security.”⁵⁷² Rethinking security must address questions in regards to whose security is being assumed and under what conditions. If the agency of refugee applicants is only perceived within the security binary of a “given and/or denied”⁵⁷³, then the human aspect of human security, human rights and humanitarianism is lost.⁵⁷⁴ In other words, refugee applicants should be viewed outside of the official stance’s perception, labels and definitions. Society must separate itself from only considering refugee applicants as legitimate when they are accepted as refugees, and considering denied refugee applicants as “bogus” and

⁵⁷⁰ *Ibid* at 190.

⁵⁷¹ *Ibid* at 191.

⁵⁷² Walker, *supra* note 97 at 68.

⁵⁷³ Vicki Squire, “Post/Humanitarian Border Politics Between Mexico and the US: People, Places, Things” in Martin Geiger, Parvati Raghuram and William Walters, eds, *Mobility and Politics* (Basingstoke, UK: Palgrave Macmillan, 2015) at 27.

⁵⁷⁴ *Ibid* at 26.

illegitimate. Instead, they are all people seeking refuge and they should all be given the same fair and equal access and consideration as a result.

CSS takes issue with a state's ability to pick and choose whom it will protect and whom it will not, whom it will accept as a refugee and whom it will deny. Instead, CSS urges a humane analysis of humanitarianism and border politics, demanding an alternative account of security with the goal of the freer movement of people.⁵⁷⁵ As stated previously, Booth argues that the appropriate gauge for security should actually be the individual rather than the nation.⁵⁷⁶ He advocates that individual human security is more fundamental than states' security "because individuals are the ultimate units of the great society of all mankind."⁵⁷⁷ By focusing on human security, or a human analysis of humanitarianism and border politics, CSS theorists have been able to link emancipation to repression-reducing projects aimed at sociopolitical change.⁵⁷⁸ In other words, by focusing on emancipation, the future of security in Canada and the international community can move away from the security binary of a "given and/or denied,"⁵⁷⁹ giving all refugees a fair and equal opportunity to obtain refuge and can progress towards upholding the human aspect of human security, human rights and humanitarianism.

Emancipation and security are not opposites, but rather they are two sides of the same coin. It is emancipation that produces true human security rather than power, order, sovereignty or control.⁵⁸⁰ Projects for emancipation cannot be viewed as an end to the current system of security, but instead, every stage of the project sets a new precedent for

⁵⁷⁵ Walker, *supra* note 97 at 69.

⁵⁷⁶ Booth, *supra* note 63.

⁵⁷⁷ Alker, *supra* note 567 at 191.

⁵⁷⁸ *Ibid* at 190.

⁵⁷⁹ Squire, *supra* note 573.

⁵⁸⁰ Booth, *supra* note 63 at 191.

continued emancipation.⁵⁸¹ As a result, I wish to call on both tactical and strategic applications of emancipation⁵⁸² in regards to the DCO policy and the freer movement Mexican refugee applicants, and then in terms of all refugee applicants and the free movement of all people.

To envision the freer movement of people to avoid the current treatment of Mexican refugee applicants in the future, Canadian society must separate from the orthodoxy of security politics. In order to do so, I believe Canada can engage with some of the arguments put forth by Joseph Carens's theory of Open Borders politics to move towards the freer movement of people. The Open Borders argument advocates for the free movement of individuals with minimal restrictions on border patrol.⁵⁸³ In his seminal article entitled "Aliens and Citizens: The Case for Open Borders", Carens challenges the long-standing, historically constructed idea of borders, especially securitized borders, by proposing the recognition of open borders. Carens acknowledges and challenges that the predominant view is that:

The power to admit or exclude aliens is inherent in sovereignty and essential for any political community. Every state has the legal and moral right to exercise that power in pursuit of its own national interest, even if that means denying entry to peaceful, needy foreigners. States may choose to be generous in admitting immigrants, but they are under no obligation to do so.⁵⁸⁴

The proposal of Open Borders is an attempt to counter this view by arguing that borders should be free and open to cross, and that people should be free to "leave their country of origin and settle in another, subject only to the sorts of constraints that bind current citizens in their new country."⁵⁸⁵ The main argument behind the case for Open Borders is that this political idea allows persons, and not their nation of origin, to control

⁵⁸¹ Paul Williams, "Critical Security Studies" in Alex J. Bellamy, eds, *International Society and its Critics* (New York, NY: Oxford University Press, 2005) at 139.

⁵⁸² Booth, *supra* note 63 at 182.

⁵⁸³ Joseph Carens, "Aliens and Citizens: The Case for Open Borders" (1987) 49:2 *The Review of Politics* 251 at 252.

⁵⁸⁴ *Ibid* at 251.

⁵⁸⁵ *Ibid*.

where they live. Although the popular sentiment used to justify the continued existence of borders reflects the idea that the state has the right to control who is allowed within its own country, Open Borders challenges those deeply engrained ideals. Open Borders politics contends that society must reflect on the way it views borders, whether the borders of their own state or the borders of other states, and evaluate if they are truly necessary.⁵⁸⁶ In fact, Carens states that “prohibiting people from entering a territory because they did not happen to be born there or otherwise gain the credentials of citizenship is no part of any state's legitimate mandate. The state has no right to restrict immigration.”⁵⁸⁷ In other words, the movement of people from other nations of origin to seek refuge or citizenship in Canada (or other countries) has not been forbidden. Even though states have deemed this movement of people to be burdensome and negative, it is not illegal. The Open Borders argument exposes the unjustifiable excuses that have been used historically to justify keeping refugees out of a country.⁵⁸⁸

Although the free movement of people may not be achievable immediately, Carens argues that it should be a goal in the near future as Western democracies have a positive obligation towards those membership-less refugees,⁵⁸⁹ DCOs or otherwise. Deconstructing these barriers to movement may also challenge the embedded orthodox ideals of security held by the state. The main arguments of Open Borders politics mirrors the central tenets of CSS, as they both aim to challenge the dominant beliefs that support the state's security agenda and border policies. Once Canadian society can separate itself from the statist beliefs that support the use of the DCO policy and the enforcement of securitized borders, it then can influence the Canadian Government to move towards

⁵⁸⁶ *Ibid.*

⁵⁸⁷ *Ibid* at 254.

⁵⁸⁸ *Ibid* at 267.

⁵⁸⁹ *Ibid.*

emancipation by supporting at least some of the arguments of Open Borders politics.

Open Borders still demonstrates respect for the geographical limits of established nations.⁵⁹⁰ Carens argues that if borders still exist within modern society, at the very least, its access (and acceptance) should be equal to all those who apply.⁵⁹¹ In regards to the current refugee status determination system, this would mean that all refugees should be considered equally and labels such as whether a refugee applicant is from a DCO or not should not hinder an applicant's ability to be granted refuge in another nation. These aspects of Open Border politics may assist in the CSS goal of emancipation for Canada. I do not think that borders should be abolished. Considering the fact that Canada's social welfare programs are vital parts of Canadian life, I think it will be close to impossible to convince Canadian society that access to the nation can be open and free to all including those with criminal records and other red flags. Although I do believe some vetting system should remain to ensure that refugee applicants with criminal records or terrorist affiliations are not granted access to the nation for ulterior motives apart from fleeing persecution, the DCO policy poses an unreasonable restriction imposed upon potentially legitimate refugee applicants to limit the presence of certain groups in Canada based on misconceptions. I believe that adhering to some aspects of Open Borders politics to eliminate any unreasonable restrictions to accessibility of the nation for refuge will help the current system evolve towards emancipation and a fair refugee determination system.

This argument is very important for challenging the orthodox security construct of the IRB's use of the DCO policy and how it impacts Canada's international border politics. Although the Open Borders argument acknowledges that there may be some

⁵⁹⁰ *Ibid.*

⁵⁹¹ *Ibid.*

truth to the common rhetoric that has been used to justify excluding international “others” from Canada, Carens has provided a viable alternative to the border issue. If states can still have established borders, but allow fairly unrestricted access to their state, it may prove to the world that certain Western countries are not as desired as previously assumed.⁵⁹² What is meant by fairly unrestricted access to the state in regards to Canada is that there is still respect for the IRB. The IRB will still assess who may be legitimate risks to the national security of the country, for example vetting individuals with known terrorist affiliations who may wish to be granted access to Canada for ulterior motives. However, as stated previously, border enforcement and resulting policies such as the DCO policy create a hierarchy of applicants ranking from DCO applicants to non-DCO applicants where, in a system already designed to control movement and limit access to Canada, labels such as DCO decrease one’s access to fair consideration for refuge. As a result, allowing fairly unrestricted access to Canada would mean that all refugee applicants are given a fair and equal opportunity to apply for refugee status and are not hindered by labels such as DCO, the discourses of security that accompany the label and the negative impact it has on all claimants from the DCO. Likewise, it may prove to the world that those who are from the Third World or any other part of the international community are not as economically, culturally, and politically threatening as our orthodox security past has led society to believe. If both Canada, through the IRB, and the international community respects the spatial limits of each countries’ borders, but work to recognize the legitimacy of the Open Borders movement by lessening the restriction on movement between borders, this could become a viable option for people to recognize each other as equals and working toward human emancipation.

⁵⁹² *Ibid* at 268.

My Plan for Emancipation

The appeals from the opposition to dismantle the DCO policy has fall on deaf ears. The current Liberal Minister Ahmed Hussen has been asked about the DCO policy implemented by the Conservative Government and carrying into the Trudeau's Liberal administration, but he has yet to definitively comment on it. In fact, in early 2017, the Liberal Government put its campaign promise to overhaul the refugee system and disassemble the DCO policy on hold.⁵⁹³ It claimed that an overhaul during a time when increased numbers of claimants are seeking refuge in Canada may make Canada's refugee system susceptible to a breakdown.⁵⁹⁴ Yet, the Minister still did not establish any timeline to restructure the DCO policy, or to meet his initial goal of dismantling it.⁵⁹⁵ This response seems to be a "copout" excuse to justify the continued use of a defective policy that labels Mexican refugee applicants to their detriment, while the previous Conservative administration takes most of the blame.⁵⁹⁶ The Canadian Government, both past and present, is responsible for the continued use of the DCO policy and its impact on Mexican refugee applicants.

In the age of the official stance still enforcing security in the orthodox tradition, I have asked myself how Canada can rectify its discourses of security that have constructed Mexican refugee applicants as "threats" and yet still strive for the goal of CSS emancipation? The first, and most obvious step in the CSS emancipation project is to address the DCO policy. Minister Hussen must make good on his promise to dismantle the DCO policy before it continues its brutal legacy and sends genuine refugee applicants

⁵⁹³ The Toronto Sun; "Liberal Refugee Policy Overhaul On Hold Despite Campaign Promise" *The Canadian Press* (15 May 2017), online: Toronto Sun <<http://www.torontosun.com/2017/05/15/liberal-refugee-policy-overhaul-on-hold-despite-campaign-promise>>.

⁵⁹⁴ *Ibid.*

⁵⁹⁵ Immigration and Refugee Board of Canada. Access to Information and Privacy, Request No. A-2017-02524/RA.

⁵⁹⁶ This is considering the fact that the Conservative Government implemented the DCO policy.

like Grise, Veronia and Lucia back to Mexico, deported to their deaths. The next step in the pursuit of emancipation would be to engage with the arguments of Open Borders to challenge and rethink how the official stance and Canadian society collectively define security and borders. Respecting the state's established borders, but allowing fair and equal access to the state may lead to a more effective refugee determination system where the national and human security of Canada, as well as the human security of refugee applicants, will be protected and upheld. In English, "borders" are defined as a boundary or line separating two countries, administrative divisions or other areas.⁵⁹⁷ Borders have come to define countries and separate those from the outside from those within. Spanish is the official language of Mexico. "Border" in Spanish is "frontera" or "frontier" in English, which may be defined as "an outer limit in a field of endeavor, especially one in which the opportunities for research and development have not been exploited."⁵⁹⁸ This is how borders and border policies should be viewed in the pursuit of emancipation. Canada should lessen its reliance on the orthodox view of borders and discourses of security to advance a more reflexive view of the world, or new frontiers that have yet to be explored for potential refugees. In doing so, Canada and Canadian society can restructure the discourses of safety that negatively construct potential refugees within the current system.

The fact that the IRB's security institutions and the DCO policy have been normalized needs to be challenged, and getting rid of the DCO policy should be the first step. CSS has been vital in my attempt to acknowledge and confront the Government of Canada's orthodox security agenda and its impact on Mexican refugee applicants. CSS is integral to analyzing the authority of security institutions like the IRB, and recognizing

⁵⁹⁷ *The Oxford English Dictionary*, 2d ed, *sub verbo* "Border".

⁵⁹⁸ *The Oxford English Dictionary*, 2d ed, *sub verbo* "Frontier".

that Canadian society must aim for emancipation to discontinue its orthodox history. The DCO policy's restrictive and discursive powers are a product of Canadian society's acceptance of the security orthodoxy. Engaging with CSS may help Canadian society develop its security discourses so that those who undoubtedly need refuge may receive refuge without the influence of economic, financial, political variables or deep-seated misconceptions of "threats".

Concluding Remarks

The DCO policy has proven to be highly problematic at its very core. By designating Mexico as a "safe" country, the DCO policy has discursively constructed Mexican refugee applicants as "bogus," fraudulent "threats". The DCO label also simultaneously excludes Mexican refugees from Canadian national belonging and overshadows the very real persecution Mexican applicants seek refuge from. Throughout the course of my research and the production of this thesis, I have employed the core principles of CSS to dissect the DCO policy. The orthodox tradition of security that Canada still adheres to has constructed a subjective perception of refugees as "risks", discursively connecting DCO applicants, specifically those from Mexico, to be labelled as "bogus". It is clear that Canada's orthodox security discourses still influence the modern operation of security institutions such as the IRB. The long-standing notion that the state is both the "source of and solution to the pervasive insecurities of modern life and the continuing relevance or increasing irrelevance of the state as the solution if not as source"⁵⁹⁹ still dominates the central discursive articulations of security. To state it controversially, the IRB and the DCO policy would not exist if not for the continued influence and support of the orthodox security agenda. Canada still imposes its security

⁵⁹⁹ Walker, *supra* note 97 at 68.

will, both nationally and internationally. This is done out of the state's desire to only allow Mexican's into Canada who can contribute to Canada's economy. Foreign migrant workers are temporary and their acceptance in Canada is based on their deportability. As a result of their short-term residence, they pose little or no risk to Canada's social security. One may conclude that the orthodox security agenda of the Canadian Government has resulted in the deformation of humanitarianism, which the IRB claims to operate under. Throughout my research it has become clear that the orthodox security agenda has allowed for the unfair and unjust discretion that the RPD has used to justify its decisions, and ultimately deny and demonize the presence of Mexican refugee applicants.

In the construction of this thesis, it has also become clear that both quantitatively and qualitatively, the DCO policy is a device to deter otherwise feasibly legitimate Mexican refugees, while also demonizing their presence in Canada. Throughout this thesis, I have attempted to demonstrate that central arguments used by the official stance to justify Mexico's designation on the DCO policy list and the discourses that accompany their label as a DCO applicant, have been unsupported and contradictory. There is a noted lack of access to justice in Mexico. With the increasingly high level of crime connected to the Mexican "Drug War", the high level of refugee applicants that the IRB received from Mexican refugee applicants was justifiable considering the climate of the country. Mexico is also represented on the FSI as a fragile state which indicates the Mexican "Drug War", the poor state of its judicial system, its lack of social services, poverty, government corruption and many other factors which lead to Mexico's fragility as a

nation.⁶⁰⁰ I have demonstrated that Mexico is far from a “safe” country and it is unreasonable for the Canadian Government to label it as such.

I have also attempted to cast doubt upon the “threat” imposed by Mexican refugee applicants which has been constructed by the official stance to support its position that Mexican refugee applicants are “fraudulent” and “bogus”. Although the DCO policy did reduce refugee applications from Mexico at first glance, through my quantitative analysis I have demonstrated that the reasoning used by the official stance to justify this decrease is inconsistent with the data provided. More than half of all finalized claims from Mexico are denied, and only one third of all finalized claims made from Mexican refugee applicants are accepted as refugees. These numbers do not reflect the efficiency of the DCO policy. Rather, they demonstrate that there are discrepancies in the common rhetoric of fraudulence constructed by the official stance in regards to Mexican applicants. Through the qualitative data, I hoped to show that the discourses that construct Mexican refugee applicants as “bogus” “threats” are deeply internalized in the refugee determination system. The insecurities of human rights in Mexico are contrary to the Minister’s qualitative designation criteria of an independent judicial system, and basic democratic rights and freedoms are recognized and mechanisms for redress are available if those rights or freedoms are infringed. As seen within each of the cases, potentially legitimate refugees impacted by the rampant violence of the Mexican “Drug War” and other insecurities of human rights in Mexico, not only had their RPD claims denied, but also had unreasonably high standards imposed on their appeals to substantiate their fear of persecution in Mexico. Their status as DCO Mexican refugee applicants eclipsed their personal experiences and narratives as Mexicans who have suffered persecution in

⁶⁰⁰ Messner, *supra* note 444 at 12.

Mexico. If this thesis has proven nothing else, I hope to have provided enough evidence to call into question the common rhetoric of the government and the official stance that has justified the implementation of the DCO policy and the unjustifiable impact it has had on potentially legitimate refugee applicants.

Finally, I have attempted to create a strategic plan for the future of Canadian society in the name of CSS. The first step is to recognize that the DCO policy has to be eliminated. Additionally, to improve border politics and the equal treatment of all international refugees, the Canadian Government should rethink border politics by engaging with some of the main arguments of Joseph Caren's Open Borders politics. In doing so, Canadian society can still enforce its borders, while also making small steps towards lessening the exclusivity of residing in Canada, while also progressing towards emancipation and the freer movement of those in need.

I hope the presentation of my research through this thesis has done Grise, Veronica and Lucia justice in the continued pursuit of refuge for Mexican refugee applicants. Mexican refugee applicants should be given the opportunities for refuge that other refugee applicants are given. I want to emphasize that to date there have been more crime-related deaths in Mexico due to the war on drugs than that of decades-long national armed conflicts in Northern Ireland and Turkey combined.⁶⁰¹ Mexico hit a record level of homicides in 2017 with 29,168 victims reported,⁶⁰² and approximately only 2% of all reported crimes are solved in Mexico.⁶⁰³ The casualties of the Mexican "Drug War" continue to mount and many Mexican citizens have been looking for a place of refuge. Many Mexican refugee applicants' experiences would normally demonstrate a well-

⁶⁰¹ Kan, *supra* note 350 at 16 – 17. (I am referring to the casualties of the conflict in Turkey from 1978 to 2012).

⁶⁰² Eli Meixler, "With Over 29,000 Homicides, 2017 was Mexico's Most Violent Year on Record" *Time World* (22 January 2018) online: Time <<http://time.com/5111972/mexico-murder-rate-record-2017/>>.

⁶⁰³ *Ibid.*

founded fear of persecution. However, with the DCO policy in place, and the official stance reifying orthodox security discourses, many Mexican refugee applicants have been unsuccessful. The DCO policy has unjustly limited access to freedom and human security to advance the official stance's agenda to limit the presence of Mexican refugees in Canada. The DCO policy, and surrounding security discourses, have proven to be directly contrary to Canada's humanitarian reputation. "Security" cannot be the excuse used by the Government of Canada to justify its policies that negate its international obligation to provide refuge to those fleeing persecution. Canada cannot let otherwise legitimate refugee applicants such as Grise, Veronica, Lucia and the claimants in my case study, have their fear of persecution and experiences overshadowed by the DCO policy list and their claims for refuge unjustifiably denied.

In the future, I hope my research will prompt the development of further research using alternative methodologies such as ethnographies, to continue to evaluate the DCO policy, the impact it has had on Mexican refugee applicants, and the future of emancipation. By conducting this research and presenting this thesis, I hope to one day see the DCO policy dismantled and the Canadian refugee determination system become more inclusive. I also aspire to someday see a world where "security" means the freer movement of people and that the need for established, geographical and securitized borders that render citizens of the world unequal, may one day become obsolete.

LEGISLATION

Anti- Terrorism Act, S.C. 2001, c. 41.

The Canadian Charter of Rights and Freedoms, RS Q c C-12.

Geneva Convention and Protocol Relating to the Status of Refugees, 31 January 1967, UNHCR 1951.

Immigration and Refugee Protection Act, SC 2001, c 27.

JURISPRUDENCE

Canada (Attorney General) v. Ward, [1993] 2 S.C.R. 689.

G.S. and C.S. v The Minister of Citizenship and Immigration, [2015] FC 892.

X (Re), 2015 CanLII 109705 (Immigration and Refugee Board of Canada), <<http://canlii.ca/t/hnvvw>>.

X (Re), 2016 CanLII 101809 (Immigration and Refugee Board of Canada), <<http://canlii.ca/t/h2n73>>.

X (Re), 2016 CanLII 102058 (Immigration and Refugee Board of Canada), <<http://canlii.ca/t/h2s2p>>.

X (Re), 2016 CanLII 103897 (Immigration and Refugee Board of Canada), <<http://canlii.ca/t/h3hxl>>.

GOVERNMENT DOCUMENTS

Canada. Citizenship and Immigration Canada, Hon. Neil Yeates, Deputy Minister of Citizenship and Immigration, “Memorandum to the Minister: Designating Countries of Origin” F-8484 SECRET (November 2012) <<http://meurrensonimmigration.com/wp-content/uploads/F-8484.pdf>>.

Immigration and Refugee Board of Canada. Access to Information and Privacy, Request No. A-2016-01448.

Immigration and Refugee Board of Canada. Access to Information and Privacy, Request No. A-2016-03580.

Immigration and Refugee Board of Canada. Access to Information and Privacy, Request No. A-2017-02520/RA.

Immigration and Refugee Board of Canada. Access to Information and Privacy, Request No. A-2017-02522/RA.

Immigration and Refugee Board of Canada. Access to Information and Privacy, Request No. A-2017-02524/RA.

Immigration and Refugee Board of Canada. Access to Information and Privacy, Request No. A-2017-02526/RA.

Immigration, Refugees and Citizenship Canada. Access to Information and Privacy, Request No. A-2015-34080.

Immigration, Refugees and Citizenship Canada. Access to Information and Privacy, Request No. A-2016-31646.

Ontario, Library of Parliament, “Bill C-31: An Act to amend the Immigration and Refugee Protection Act, the Balanced Refugee Reform Act, the Marine Transportation Security Act and the Department of Citizenship and Immigration Act” by Julie Bechard and Sandra Elgersma in *Legislative Summaries*, No 41-1-C31-E (2012).

The United States of America. Washing office on Latin America, Maureen Meyer, Director of Mexico and Migrant Rights, “Briefing Paper 13” (November 2007).

SECONDARY SOURCE MATERIAL: MONOGRAPHS

Alker, Hayward. “Emancipation in the Critical Securities Project” in Ken Booth, eds, *Critical Security Studies and World Politics* (Boulder, CO: Lynne Rienner Publishers Inc., 2005).

Amnesty International. *Amnesty International Report 2000: Annual Report Summaries 2000* (London, UK: Amnesty International Press, 2000).

Bonditti, Philippe. “Act Different, Think *Dispositif*” in Mark Salter and Can Mutlu, eds, *Research Methods in Critical Security Studies, An Introduction* (New York, NY: Routledge, 2013).

Bonditti, Philippe et al. “Genealogy” in Claudia Aradau, Jef Huysmans, Andrew Neal and Nadine Voelkner eds, *Critical Security Methods: A Framework for Analysis* (New York, NY: Routledge, 2015).

Booth, Ken. “Critical Explorations” in Ken Booth, eds, *Critical Security Studies and World Politics* (Boulder, CO: Lynne Rienner Publishers Inc., 2005).

Booth, Ken. “Part 3: Emancipation” in in Ken Booth, eds, *Critical Security Studies and World Politics* (Boulder, CO: Lynne Rienner Publishers Inc., 2005).

- Booth, Ken. "Security and Self: Reflections of a Fallen Realist" in Keith Krause and Michael C. Williams eds, *Critical Security Studies: Concepts and Cases* (Minneapolis, MN: University of Minnesota Press, 1997).
- Buzan, Barry. *People, States and Fear: An Agenda for International Security Studies in the Post-Cold War Era*, 2 ed. (London, UK: Harvest Wheatsheaf, 1991).
- Campbell, Howard. *Drug War Zone: Frontline Dispatches from the Streets of El Paso and Juárez* (Austin, TX: University of Texas Press, 2010).
- Cheeseman, Graeme. "Military Force(s) and In/security" in Ken Booth, eds, *Critical Security Studies and World Politics* (Boulder, CO: Lynne Rienner Publishers Inc., 2005).
- Cobb, Roger W. and Marc Howard Ross, "Denying Agenda Access: Strategic Considerations" in Roger W. Cobb and Marc Howard Ross eds, *Avoidance, Attack, and Redefinition: Cultural Strategies of Agenda Denial* (Lawrence, KS: University Press of Kansas, 1997).
- Dalby, Simon. "Contesting an Essential Concept: Reading the Dilemmas in Contemporary Security Discourse" in in Keith Krause and Michael C. Williams eds, *Critical Security Studies: Concepts and Cases* (Minneapolis, MN: University of Minnesota Press, 1997).
- De Genova, Nicholas. *Working the Boundaries: Race, Space, and "Illegality" in Mexican Chicago* (Durham, NC: Duke University Press, 2005).
- Dobrowolsky, Alexandra. Sandra Rollings-Magnusson and Marc G. Doucet, "Security, Insecurity and Human Rights" in Sandra Rollings-Magnusson eds, *Anti-Terrorism: Security and Insecurity After 9/11* (Halifax, NS: Fernwood Publishing, 2009).
- Ezrow, Natasha M. and Erica Frantz, *Failed States and Institutional Decay: Understanding Instability and Poverty in the Developing World* (New York, NY: Bloomsbury Academic Publishing Plc, 2013).
- Falk, Richard. "(Re)Imagining the Governance of Globalization" in Alex J. Bellamy, eds, *International Society and its Critics* (New York, NY: Oxford University Press, 2005).
- Fawcett, Louise. "Regional Institutions" in Paul D. Williams eds, *Security Studies: An Introduction* (New York, NY: Routledge, 2008).
- Foucault, Michel. "The Order of Discourse" Translated by Robert Young in *Untying the Text: A Post-Structuralist Reader* (Boston, Mass: Routledge & Kegan Paul, 1981).

- Foucault, Michel. *Power/Knowledge: Selected Interviews and Other Readings 1972 – 1977* Translated by Colin Gordon, Leo Marshall, John Mepham and Kate Soper (New York, NY: Pantheon Books, 1980).
- Ghani, Ashraf and Clare Lockhart, *Fixing Failed States: A Framework for Rebuilding a Fractured World*, (New York, NY: Oxford University Press, 2008).
- Gilbert, Liette. “North American Anti-Immigration Rhetorics: Continental Circulation and Global Resonance of Discursive Integration” in Imtiaz Hussain, eds, *The Impacts of NAFTA on North America: Challenges Outside the Box* (Basingstoke, UK: Palgrave Macmillan, 2010).
- Hathaway, James C. *The Law of Refugee Status* (Toronto, ON: Butterworths Canada Ltd., 1991).
- Heath, Jonathan. “Economic Sovereignty in Mexico” in Joyce Hoebing, Sidney Weintraub and M. Delal Baer eds., *NAFTA and Sovereignty Trade-offs for Canada, Mexico, and the United States* (Washington, DC: The Centre for Strategic & International Studies, 1996).
- Helbling, Marc. *Practising Citizenship and Heterogeneous Nationhood: Naturalisation in Swiss Municipalities* (Amsterdam, NL: Amsterdam University Press, 2008).
- Hook, Derek. *Foucault, Psychology and the Analytics of Power* (UK: Palgrave Macmillan, 2007).
- Hyndman, Jennifer & Alison Mountz. “Refuge or Refusal” in Allan Pred & Derek Gregory, eds, *Violent Geographies: Fear, Terror, and Political Violence* (New York, NY: Routledge, 2007).
- Johnson, Heather L. *Borders, Asylum and Global Non-Citizenship: The Other Side of the Fence* (Cambridge, UK: Cambridge University Press, 2014).
- Jones, Richard Wyn. *Security, Strategy, and Critical Theory: Critical Security Studies* (Boulder, CO: Lynne Rienner Publishers Inc., 1999).
- Kan, Paul Rexton. *Cartels at War: Mexico’s Drug-Fueled Violence and the Threat to U.S. National Security* (Washington, DC: Potomac Books, 2012).
- Linklater, Andrew. “Political Community and Human Security” in Ken Booth, eds, *Critical Security Studies and World Politics* (Boulder, CO: Lynne Rienner Publishers Inc., 2005).
- Macklin, Audrey. “A Safe Country to Emulate? Canada and the European Refugee” in Jane McAdam et al. eds, *The Global Research of European Refugee Law* (New York: Cambridge University Press, 2013).

- Matas, David and Ilana Simon. *Closing the Doors: The Failure of Refugee Protection* (Toronto, ON: Summerhill Press, 1989).
- McDonald, Matt. "Constructivism" in Paul D. Williams eds, *Security Studies: An Introduction* (New York, NY: Routledge, 2008).
- Messner, J.J. and Nate Haken, *Fragile States Index* (Washington, DC: The Fund for Peace, 2017).
- Pettman, Jan Jindy. "Questions of Identity: Australia and Asia" in Ken Booth, eds, *Critical Security Studies and World Politics* (Boulder, CO: Lynne Rienner Publishers Inc., 2005).
- R. von Sternberg, Mark. *The Grounds of Refugee Protection in the Context of International Human Rights and Humanitarian Law: Canadian and United States Case Law Compared* (New York, NY: Martinus Mijhoff Publishers, 2002).
- Roach, Kent. *The 9/11 Effect: Comparative Counter-Terrorism* (New York, NY: Cambridge University Press, 2011).
- Salter, Mark B. "Research Design: Introduction" in Mark Salter and Can Mutlu, eds, *Research Methods in Critical Security Studies, An Introduction* (New York, NY: Routledge, 2013).
- Stoffman, Daniel. *Who Gets In: What's Wrong With Canada's Immigration Program – and How to Fix It* (Toronto, ON: Macfarlane, Walter & Ross, 2002).
- Studer, Isabel. "A Joint Research Agenda" in Alex Bugailiskis and Andres Rozental eds, *Canada Among Nations 2011 – 2012: Canada and Mexico's Unfinished Agenda* (Montreal, QC: McGill-Queen's University Press, 2012).
- Squire, Vicki. "Post/Humanitarian Border Politics Between Mexico and the US: People, Places, Things" in Martin Geiger, Parvati Raghuram and William Walters, eds, *Mobility and Politics* (Basingstoke, UK: Palgrave Macmillan, 2015).
- Vouri, Juha A. "Speech Act Theory" in in Mark Salter and Can Mutlu, eds, *Research Methods in Critical Security Studies, An Introduction* (New York, NY: Routledge, 2013).
- Waldman, Lorne and Jacqueline Swaisland. *Canada's Refugee Determination Procedure: A Guide for the Post Bill C-31 Era* (Markham, ON: LexisNexis Canada, 2013).
- Waldman, Lorne. *Canadian Immigration & Refugee Law Practice 2009* (Markham, ON: LexisNexis Canada, 2008).

- Waldman, Lorne and Jacqueline Swaisland. *Inadmissible to Canada – The Legal Barriers to Canadian Immigration*, (Markham, ON: LexisNexis Canada, 2012).
- Walker, R. B. J. “The Subject of Security” in Keith Krause and Michael C. Williams eds, *Critical Security Studies: Concepts and Cases* (Minneapolis, MN: University of Minnesota Press, 1997).
- Whitaker, Reg. *Double Standard: The Secret History of Canadian Immigration* (Toronto, ON: Lester & Orpen Dennys Publishers, 1987).
- Wilkinson, Lori. “Are Human Rights Jeopardized in Twenty-First-Century Canada?: An Examination of Immigration Policies Post-9/11” in Sandra Rollings-Magnusson eds, *Anti-Terrorism: Security and Insecurity After 9/11* (Halifax, NS: Fernwood Publishing, 2009).
- Williams, Paul. “Critical Security Studies” in Alex J. Bellamy, eds, *International Society and its Critics* (New York, NY: Oxford University Press, 2005).

SECONDARY SOURCE MATERIAL: SCHOLARLY ARTICLES

- Arbel, Efrat. “Bordering the Constitution, Constituting the Border” (2016) 53 Osgoode Hall Law Journal 824.
- Atak, Idil Graham Hudson and Delphine Nakache, “The Securitisation of Canada’s Refugee System: Reviewing the Unintended Consequences of the 2012 Reform” (2018) 37:1 Refugee Survey Quarterly 1.
- Basok, Tanya. “Migration of Mexican Seasonal Farm Workers to Canada and Obstacles to Productive Investment” (2000) 34:1 International Migration Review 79.
- Bhambra, Gurminder K. “Citizens and Others: The Constitution of Citizenship Through Exclusion” (2015) 40:2 Alternative: Global Local Political 1.
- Carens, Joseph. “Aliens and Citizens: The Case for Open Borders” (1987) 49:2 The Review of Politics 251.
- Carment, David and Yiagadeesen Samy. “Policy Paper: Canada, Fragile States and the New Deal: Looking Beyond 2015” (2014) Canadian Defence & Foreign Affairs Institute 1.
- Carpenter, Ami C. “Changing Lenses: Conflict Analysis and Mexico’s “Drug War”” (2013) 55:3 LAPS 139.
- Chute, Tanya. “Globalization, Security and Exclusion” (2005) 3 CRS Working Paper Series 2.

- Collier, George A. and Jane F. Collier. "The Zapatista Rebellion in the Context of Globalization" (2005) 32:4 *J. Peasant Studies* 450.
- Da, Wei Wei. "Mexicans in Canada: Contexts of Departure and Arrival" (2002) *Latin American Research Group* 1.
- Dahlstedt, Magnus. and Viktor Vesterber. "Citizens in the Making: The Inclusion of Racialized Subjects in Labour Market Projects in Sweden" (2016) 40:2 *Scandinavian Political Studies* 228.
- De Genova, Nicholas. "The Legal Production of Mexican/Migrant "Illegality"" (2004) 2 *Latino Studies* 160.
- Diop, Petra Molnar. "The "Bogus" Refugee: Roma Asylum Claimants and Discourses of Fraud in Canada's Bill C-31" (2014) 30:1 *Refuge* 67.
- Estévez, Ariadna. "The Endriago Subject and the Dislocation of State Attribution in Human Rights Discourse: The Case of Mexican Asylum Claims in Canada" (2015) 36:6 *Third World Quarterly* 1160.
- George, Usha. "Mexican Migration to Canada: Case Study Report" (2008) 6:3 *Journal of Immigration & Refugee Studies* 463.
- Gilbert, Liette. "The Discursive Production of a Mexican Refugee in Canadian Media and Policy" (2013) 39:5 *JEMS* 827.
- Hama, Hawre Hasan. "State Security, Societal Security, and Human Security" (2017) 21:1 *JJIR* 1.
- Hanson, Stephanie. "Backgrounder: Mexico's Drug War" (2008) 1 *Council on Foreign Relations* 1.
- Hardy, Cynthia. "Refugee Determination: Power and Resistance in Systems of Foucauldian Power" (2003) 35:4 *A&S* 462.
- Hathaway, James C. and Michelle Foster. "The Causal Connection ("Nexus") to a Convention: Ground Discussion Paper No. 3 Advanced Refugee Law Workshop International Association of Refugee Law Judges" (2003) 15 *Int'l J. Refugee L* 461.
- Jones, Richard Wyn. "'Message in a Bottle'? Theory and Praxis in Critical Security Studies" (1995) 16:3 *Contemporary Security Politics* 299.
- Kellner, Tomas and Francesco Pipitone. "Inside Mexico's Drug War" (2010) 27:1 *World Policy Journal* 29.

- Morton, Adam David. "The War on Drugs in Mexico: A Failed State?" (2012) 33:9 *Third World Quarterly* 1631.
- Muller, Benjamin. "Borders, Risk, Exclusions" (2009) 3:1 *Studies in Social Justice* 67.
- Muller, Benjamin. "Globalization, Security, Paradox: Towards a Refugee Biopolitics" (2004) 22:1 *Refuge* 49.
- Rawlins, Aimee. "Backgrounder: Mexico's Drug War" (2011) 1 *Council on Foreign Relations* 1.
- Razack, Sherene. "'From the 'Clean Snows of Petawawa': The Violence of Canadian Peacekeepers in Somalia" (2000) 15:1 *Cultural Anthropology* 127.
- Rehaag, Sean, Julianna Beaudoin, and Jennifer Danch. "No Refuge: Hungarian Romani Refugee Claimants in Canada." (2013) 11:3 *Osgoode Hall Law School Law Journal* 2.
- Rehaag, Sean. "The Role of Counsel in Canada's Refugee Determination System: An Empirical Assessment" (2011) 49 *Osgoode Hall Law Journal* 71.
- Rotman, Maia, and Kristin Marshall. "Unsafe and on the Margins: Canada's Response to Mexico's Mistreatment of Sexual Minorities and People Living with HIV" (2016) 1 *University of Toronto IHRP* 1.
- Samuel, T. John, Rodolfo Guterrez and Gabriela Vazquez. "International Migration Between Canada and Mexico: Retrospect and Prospects" (1995) 22:1 *Canadian Studies in Population* 49.
- Scribner, Todd. "You are Not Welcome Here Anymore: Restoring Support for Refugee Resettlement in the Age of Trump" (2017) 5:2 *Journal on Migration and Human Security* 263 (ProQuest).
- Shirk, David and Joel Wallman. "Understanding Mexico's Drug Violence" (2015) 59:8 *Journal of Conflict Resolution* 1348.
- Silverman, Stephanie J. "In the Wake of Irregular Arrivals: Changes to the Canadian Immigration Detention System" (2014) 30:1 *Refuge* 27.
- Stahler-Sholk, Richard. "Massacre in Chiapas" (1998) 25:4 *Latin American Perspectives* 63.
- Stefanova, Marina. "The 'Safe' Need Not Apply: The Effects of the Canadian and EU 'Safe Country of Origin' Mechanisms on Roma Asylum Claims." (2014) 49:121 *Texas International Law Journal* 122.

Thobani, Sunera. "Closing Ranks: Racism and Sexism in Canada's Immigration Policy" (2000) 42:1 *Institute of Race Relations* 35.

Walsh, James. "Border Theatre and Security Spectacles: Surveillance, Mobility and Reality-Based Television" (2015) 11:2 *Social & Legal Studies* 201 (SAGE).

Whitaker, Reg. "Refugees: The Security Dimension" (1998) 2:3 *Citizenship Studies* 413.

Zetter, Roger. "Labelling Refugees: Forming and Transforming a Bureaucratic Identity" (1991) 4:1 *Journal of Refugee Studies* 39.

Zetter, Roger. "More Labels, Fewer Refugees: Remaking the Refugee Label in an Era of Globalization," (2007) 20 *Journal of Refugee Studies* 172.

SECONDARY SOURCE MATERIAL: GOVERNMENT WEBSITES

"ARCHIVED – Backgrounder – Designated Countries of Origin," *Immigration, Refugees and Citizenship Canada* (1 February 2013), online: Government of Canada, <<http://www.cic.gc.ca/english/department/media/backgrounders/2012/2012-11-30.asp>>.

"Bill C-31 (Historical) Protecting Canada's Immigration System Act" *OpenParliament*, online: OpenParliament <<https://openparliament.ca/bills/41-1/C-31/>>.

Canadian Council for International Co-operation, "Human Rights and "Fragile States" Policy: Discussion Papers Part 3" (January 2007), online: Canadian Council for International Co-operation <http://www.ccic.ca/_files/en/what_we_do/002_peace_2006-12_failed_states_part_3.pdf>.

Citizenship and Immigration Canada. "Archived. News Release: Canada Imposes a Visa on Mexico" *Government of Canada* (13 July 2009), online: Government of Canada <<https://www.canada.ca/en/news/archive/2009/07/canada-imposes-visa-mexico.html?=&wbdisable=true#wb-cont>>.

Citizenship and Immigration Canada. "Speaking Notes for Chris Alexander, Canada's Citizenship and Immigration Minister, at the Economic Club of Canada" *Government of Canada* (19 June 2015), online: The Government of Canada. <<https://www.canada.ca/en/news/archive/2015/06/speaking-notes-chris-alexander-canada-citizenship-immigration-minister-economic-club-canada.html>>.

Citizenship and Immigration Canada. "Speaking Notes for the Honourable Jason Kenney, P.C., M.P. Minister of Citizenship, Immigration and Multiculturalism. Ottawa, Ontario" *Government of Canada* (29 June 2012), online: The Government of Canada. <<http://www.cic.gc.ca/english/department/media/speeches/2012/2012-06-29.asp>>.

- Government of Canada. “About the Board: Mandate” *Immigration and Refugee Board of Canada* (2 December 2016), online: Government of Canada <<http://www.irb-cisr.gc.ca/Eng/BoaCom/Pages/index.aspx>>.
- Government of Canada. “Canada’s Approach to Advancing Human Rights” (13 June 2017), online: The Government of Canada <http://international.gc.ca/world-monde/issues_development-enjeux_developpement/human_rights-droits_homme/advancing_rights-promouvoir_droits.aspx?lang=eng>.
- Government of Canada. “Canada to Lift Mexican Visa Requirement” *Justin Trudeau, Prime Minister of Canada*, (28 June 2016), online: Government of Canada <<https://pm.gc.ca/eng/news/2016/06/28/canada-lift-mexican-visa-requirements>>
- Government of Canada. “Designated Countries of Origin Policy” *Immigration, Refugees and Citizenship Canada* (3 April 2017), online: The Government of Canada <<https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/claim-protection-inside-canada/apply/designated-countries-policy.html>>.
- Government of Canada. “Humanitarian and Compassionate Grounds” *Immigration, Refugees and Citizenship Canada* (13 September 2017), online: Government of Canada <<https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/claim-protection-inside-canada/after-apply-next-steps/refusal-options/humanitarian-compassionate-grounds.html>>.
- Government of Canada. “National Security and Defence” (4 May 2018), online: Government of Canada <<https://www.canada.ca/en/services/defence.html>>.
- Government of Canada. “Policy Making in the Immigration and Refugee Board of Canada” *Immigration and Refugee Board of Canada* (14 August 2015), online: Government of Canada <<http://www.irb-cisr.gc.ca/Eng/BoaCom/references/pol/Pages/index.aspx>>.
- Government of Canada. “Pre-Removal Risk Assessment – Refugee Claims in Canada” *Immigration and Refugee Board of Canada* (11 October 2017), online: Government of Canada <<https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/claim-protection-inside-canada/after-apply-next-steps/refusal-options/pre-removal-risk-assessment.html>>.
- Government of Canada. “Public Consultations – IRCC” *Immigration, Refugees and Citizenship Canada* (1 November 2017), online: Government of Canada <<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/transparency/consultations.html>>.

- Government of Canada. “Refugee Appeals by Country of Alleged Persecution-2017” *Immigration and Refugee Board of Canada* (20 February 2018), online: Immigration and Refugee Board of Canada <<http://www.irb-cisr.gc.ca/Eng/RefApp/stats/Pages/RADStat2017.aspx>>.
- Government of Canada. “Securing the Border” (24 April 2017), online: Government of Canada <<https://www.canada.ca/en/services/defence/securingborder.html>>.
- Government of Canada. “Security Screening” (13 May 2015), online: Government of Canada <<http://www.cbsa-asfc.gc.ca/security-securite/screen-verific-eng.html>>.
- Government of Canada. “Speaking Notes for Chris Alexander, Canada’s Citizenship and Immigration Minister at the News Conference Regarding Canada’s Asylum System.” (22 January 2014), online Government of Canada: <<https://www.canada.ca/en/news/archive/2014/03/speaking-notes-chris-alexander-canada-citizenship-immigration-minister-news-conference-regarding-canada-asylum-system.html>>.
- Government of Canada. “Temporary Workers” *Immigration, Refugees and Citizenship Canada* (19 December 2017), online: Government of Canada <<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/foreign-workers.html>>.
- Immigration and Refugee Board of Canada. “Mexico: Domestic Violence and Protection Available to its Victims” *Canada: Immigration and Refugee Board of Canada* (1 February 2000), online: UNHCR RefWorld <<http://www.refworld.org/docid/3ae6ad6a1c.html>>.
- Immigration and Refugee Board of Canada. “Refugee Protection Claims (New System) by Country of Alleged Persecution- 2017” *Immigration and Refugee Board of Canada* (11 November 2017), online: The Government of Canada. <<http://www.irb-cisr.gc.ca/Eng/RefClaDem/stats/Pages/RPDStat2017.aspx>>.
- Immigration and Refugee Board of Canada. “The Refugee System in Canada” *Immigration and Refugee Board of Canada* (16 June 2016), online: Government of Canada <<http://www.cic.gc.ca/english/refugees/canada.asp>>.
- The United Nations Refugee Agency. ““Resettlement,” *UNHCR The United Nations Refugee Agency* (8 June 2016), online: UNHCR <<http://www.unhcr.org/resettlement.html>>.
- Travel and Tourism Canada. “Travel Advisory: Mexico” *The Government of Canada* (22 November 2017), online: The Government of Canada <<https://travel.gc.ca/destinations/mexico>>.

SECONDARY SOURCE MATERIAL: NON-GOVERNMENTAL ORGANIZATION WEBSITES

Amnesty International. "Human Rights Agenda for Canada" *Amnesty International Canada* (18 December 2013), online: Amnesty International <<http://www.amnesty.ca/sites/amnesty/files/canadahreport18december13.pdf>>.

Amnesty International. "Mexico: Spiraling Human Rights Violations and Impunity" (2013), online: Amnesty International <<https://www.amnesty.org/download/Documents/12000/amr410192013en.pdf>>.

Amnesty International. "Time for Consistent Action - Amnesty International's Human Rights Agenda for Canada" *Amnesty International Canada* (2012), online: Amnesty International <<http://www.amnesty.ca/news/news-releases/time-for-consistent-action-amnesty-international's-human-rights-agenda-for-canada>>.

Canadian Council for Refugees, "Bill C-31 – Diminishing Refugee Protection: A Submission to the House of Commons' Standing Committee on Citizenship and Immigration" *The Canadian Council for Refugees* (April 2012), online CCRWeb: <<http://ccrweb.ca/sites/ccrweb.ca/files/ccrbriefc31.pdf>>.

"Fixing the Asylum System: For Starters, Ditch the DCO" *The Canadian Bar Association* (25 August 2016), online: The Canadian Bar Association <<https://www.cba.org/Our-Work/cbainfluence/Submissions/2016/August/Fixing-the-asylum-system>>.

SECONDARY SOURCE MATERIAL: NEWSPAPER ARTICLES

Keung, Nicholas. "Mexican Refugee Requests Skyrocket; Middle Class Wants to Escape Drug Cartels, Corrupt Authorities" *Toronto Star* (5 August 2007), online: The Toronto Star <https://www.thestar.com/news/2007/08/05/mexican_refugee_requests_skyrocket.html>.

Keung, Nicholas. "Mexican Woman Deported to Her Death" *Immigration Reporter* (23 October 2009), online: The Toronto Star <https://www.thestar.com/news/gta/2009/10/23/mexican_woman_deported_to_her_death.html>.

Lajoie, Don. "'No More Room at the Inn': City Afraid Refugees May Displace Needy Residents" *Windsor Star* (2 October 2007), online: The Windsor Star.

Ljunggren, David and Anna Mehler Paperny. "Justin Trudeau Tweets Message of Welcome to Refugees as Trump Travel Ban Sets In." *Reuters* (28 January 2017), online: Global News <<https://globalnews.ca/news/3212041/justin-trudeau-refugees-donald-trump-travel-ban/>>.

- Meixler, Eli. "With Over 29,000 Homicides, 2017 was Mexico's Most Violent Year on Record" *Time World* (22 January 2018). online: Time
<<http://time.com/5111972/mexico-murder-rate-record-2017/>>.
- "Refugees: Mexico's Good Fight" *ProQuest Historical Newspapers (1936 – Current): The Globe and Mail* (21 October 2008), online: The Globe and Mail
<<https://search-proquest-com.proxy.library.carleton.ca/docview/1412662662?pq-origsite=summon>> (ProQuest).
- Roma Community Centre. "Roma Refugees in Canada and Bill C-31: Brief Submitted to Canadian Government Standing Committee on Citizenship and Immigration." (29 April 2012), online The RCC:
<http://www.romatoronto.org/pdf/Roma_Community_Centre_brief_to_CIMM_re_Bill_C-31.pdf>.
- Ross, Oakland. "Fleeing the Drug War, but Finding Doors Closed in Canada" *Feature* (19 June 2011), online: The Toronto Star
<https://www.thestar.com/news/world/2011/06/19/fleeing_the_drug_war_but_finding_doors_closed_in_canada.html>.
- Schmidt, Doug and Dave Battagello. "Refugee Overload: Mayor Appeals to Ottawa for Help as City Faces Social Services Crunch" *Windsor Star* (20 September 2007), online: Canadian Immigration Reform Blog
<<http://canadianimmigrationreform.blogspot.ca/2007/09/mexican-immigrants-strain-windsors.html>>.
- Schmidt, Doug and Dave Battagello. "Refugees Pose "Potential Crisis"" *Windsor Star* (19 September 2007), online: American Renaissance
<https://www.amren.com/news/2007/09/refugees_pose_p/>.
- Sheppard, Mary. "Deported Mexican Refugee Claimant Dies After Beating: The Life and Death of Veronica Castro" *CBC News Canada* (24 April 2012), online: CBC News <<http://www.cbc.ca/news/canada/deported-mexican-refugee-claimant-dies-after-beating-1.1166530>>.
- Stevenson, Mark. "Mexicans Rally on Anniversary of 43 Students' Disappearance" *Associated Press* (27 September 2015), online: The Chicago Herald
<[http://www.lexisnexis.com.proxy.library.carleton.ca/hottopics/lnacademic/?shr=t&csi=163823&sr=HLEAD\(%22Mexicans+rally+on+anniversary+of+43+student+s%27+disappearance%22\)+and+date+is+2015](http://www.lexisnexis.com.proxy.library.carleton.ca/hottopics/lnacademic/?shr=t&csi=163823&sr=HLEAD(%22Mexicans+rally+on+anniversary+of+43+student+s%27+disappearance%22)+and+date+is+2015)> (LexisNexis).
- The Canadian Press. "Refugee Influx Straining Ontario City Services" *CTV News* (3 October 2007), online: CTV News
<<https://www.ctvnews.ca/refugee-influx-straining-ont-city-s-services-1.258681>>.

The Toronto Sun. "Liberal Refugee Policy Overhaul On Hold Despite Campaign Promise" *The Canadian Press* (15 May 2017), online: Toronto Sun <<http://www.torontosun.com/2017/05/15/liberal-refugee-policy-overhaul-on-hold-despite-campaign-promise>>.

Woo, Andrea. "Woman Who Died in CBSA Custody Feared Returning to Domestic Trouble in Mexico" *The Globe and Mail* (31 January 2014), online: The Globe and Mail <<https://www.theglobeandmail.com/news/british-columbia/woman-who-died-in-cbsa-custody-feared-returning-to-domestic-trouble-in-mexico/article16644691/>>.

SECONDARY SOURCE MATERIAL: DICTIONARY DEFINITIONS

The Oxford English Dictionary, 2d ed, *sub verbo* "Border".

The Oxford English Dictionary, 2d ed, *sub verbo* "Frontier".

The Oxford English Dictionary, 2d ed, *sub verbo* "Humanitarianism".

The Oxford English Dictionary, 2d ed, *sub verbo* "Queue-jumper".