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# Standing Committee on Citizenship and Immigration

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EVIDENCE

**Tuesday, February 22, 2005**

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**Chair**

**The Honourable Andrew Telegdi**

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## Standing Committee on Citizenship and Immigration

Tuesday, February 22, 2005

• (1110)

[English]

**The Chair (Hon. Andrew Telegdi (Kitchener—Waterloo, Lib.)):** I'll call this meeting to order. We're going to be starting off on the post-implementation of the safe third country agreement.

We're going to start off with Father Jack Costello. Maybe you would want to introduce all of your people.

• (1125)

[Translation]

**Ms. Mary Jo Leddy (Member, Director of Romero House of Refugees, Sanctuary Coalition of Southern Ontario):** Ladies and gentlemen, it is a great pleasure for me to be here with you today.

[English]

For the past 14 years I have lived with refugees. Almost all of them have come in through the United States. I know who they are and I know why they came that way.

The first resident of Romero House was a woman from Africa whose husband had been kidnapped, who sold their house, their limousine, everything to purchase the tickets and the visas to New York City. She came almost immediately to Buffalo and walked over the bridge with five small children and an overnight case. Later she would tell me that she prayed as she walked over the bridge, "I give my children into your good hands".

I am not sure who the safe third country agreement is keeping in, but I know who it is keeping out. It is keeping out people like this woman and her children. It is keeping out people like Cesar and Paula. It is keeping out hope.

Last summer we decided to paint the side of our neighbourhood centre on Bloor Street. It is a 20-foot-by-30-foot wall, and I left it to the residents to design the mural. They designed a painting of two hands reaching up from the earth and letting go of a small butterfly, which they called "Hope". I'll pass it around for you to see. The mural is now a testament, which is read by all the people in the neighbourhood. This is what refugees bring to Canada. They hope in this country, sometimes more than we who are born here do.

Yesterday, on the way to Ottawa, we went by a place called Port Hope. This is where my ancestors landed in the 1820s. They were fleeing from economic poverty and political persecution in Ireland. They were welcomed by a young man called Peter Robinson, who worked for the Government of Ontario. He gave them what they needed to start a small farm. He allowed them to build on hope. As we write the history of those times, we celebrate the decency of this

man and of his government. We remember that Peterborough was named after him—Peter's borough. It was Port Hope, the entry to hope.

However, there are much darker chapters in Canadian history. We have recorded the unreasonable fears that led the Government of Canada to block the way for Jewish refugees fleeing from Nazi Germany and led the Government of Canada to intern Japanese Canadians during that time. These are now recognized as shameful chapters in our history.

And now you and I are writing another chapter in Canadian history. The so-called safe third country agreement has been called the single most significant decision in refugee policy in the last twenty years. At the moment it may seem for some like a small footnote, yet it is far more than a footnote for thousands of refugees like Cesar and Paula, thousands of people that it is affecting and will affect.

As Jack Costello said, we have closed the door on desperate hope. The civil servants of Immigration Canada have slammed the door to our country in the quiet administrative way that allows politicians not to see the consequences of their decisions.

• (1130)

An NGO shelter in Buffalo now spends most of its time telling people not to go to the Canadian border, because they will be turned back, put in detention, and deported by the Americans. The hospitality centre on the Canadian side of the bridge closed yesterday. I talked to the Red Cross official at Pearson International Airport yesterday. In the past two weeks she has had five telephone calls. Already, traffickers are advertising how much it will cost and how people can get across the border illegally. Aware of the vicious cost of trafficking, some church people are already meeting about whether an underground railroad is the only ethical option left.

So you and I are now writing an important chapter in Canadian history, and it is not just about refugees; it is about us. I know that there is significant concern in this committee, as there was significant concern in the last immigration committee. I believe in your integrity, individually and as a group, and I believe you have the power to do something. You have the power to write this chapter.

It is not often that you and I are given the opportunity to make decisions that are matters of life or death for hundreds, thousands of people. It is not always that our decisions will be judged not just by present reaction but by future life and death consequence. I would suggest that moment is now and it's here. I believe you can begin to reclaim our country's integrity, beginning with one significant decision. You can take a clear look at that list of countries in the safe third country agreement, a list that provides exceptions to the rule of closing the border.

This list is now effectively our made-in-Canada Schindler's list. But various NGOs have tried to clarify how this list is made up, who makes it up, and what the criteria are. Why, for example, is the Sudan not on this list? Why is Colombia not on this list? Cesar and Paula will explain to you why Colombians must seek a justice here that they will never get in the United States.

You can demand that our new Schindler's list will be developed in an equitable and fair fashion that offers protection to refugees fleeing persecution. You can demand, for example, that Amnesty International have a decisive role in formulating this list. This is not justice, but it may be the beginning of justice, the beginning of reclaiming integrity. You can do this, and you and I are still writing this chapter in our history. I entrust these people to your good hands.

I now ask Cesar Perez to speak.

**Mr. Cesar Perez (Engineer (Refugee), Romero House of Refugees, Sanctuary Coalition of Southern Ontario):** Good morning, everyone.

First of all, I want to thank you for giving us this chance to talk to you directly about our experiences as refugees.

My name is Cesar Perez. I'm a civil engineer with more than ten years' experience back home, and I've been working here as well. I have had the chance to work on projects like the new opera house in downtown Toronto doing quality control for the concrete pour there, which is the foundation for the roof.

I came here with my wife Alexandra, but first we were in the States. We fled our country because we were targeted by paramilitary groups. After a simple incident, a work-related situation, which became a nightmare for us, we were threatened and had to leave our country, our family, our jobs—everything—behind.

We went to the States. We felt kind of sad, but safer for a short period of time. We didn't feel okay after that. My wife cried for months while we were there. We tried to get some help; we got none. We tried to talk to lawyers; they were too costly for us. We had no money, no help from the government. Just to talk to a lawyer would have cost us \$1,000 or \$2,000. These are American dollars I'm talking about.

We went to an organization in Manhattan. They were an NGO, they said. Even to them we had to pay a membership to get some representation. The help they gave us was to say that if we were about to be deported we should just call them and they would give us a lawyer. We started to feel the same fear we had back home. We said we had changed our country, but the conditions were the same.

We don't have to say anything about 9/11. It became worse; we were looked at like criminals. We learned about Canada and we

decided to go ahead. We crossed the border. We were welcomed. Immediately we felt the difference. The environment is altogether different; we can tell. We didn't know anyone here, not anyone. Down in the States we had some friends, some relatives, but we feel more at home here than down there.

We decided to come here. We've had help since the first day we stepped into this country. We feel really happy, because someone listened to us. We were listened to.

We are begging you to give us a hand. Many people with silent voices today can't cross the border because they are in the same condition as we were two or three years ago. We wouldn't be here if this safe third country agreement had been put in place in 2002 when we crossed the border, because we have no relatives. We wouldn't have qualified for this: our country is not listed as a dangerous country.

We want to say that you are the hope for people like us who need to come to a country like Canada to feel at home again, because our government in Colombia is not able to give us protection. They won't say that publicly, but that's the reality. I was told by a police officer off the record when I commented on our situation to him: "If you have the chance to leave, just do it, because you know what the situation is in this country: we can't guarantee you safety here. So if you have the chance, go ahead." That wouldn't be accepted publicly.

•(1135)

This is about it for what I wanted to tell you. It's a short piece of my story. Now I'll hand it over to Paula, who can tell another part of that experience.

Thank you very much.

**Ms. Paula Gomez (Lawyer in Colombia (Refugee), Romero House for Refugees, Sanctuary Coalition of Southern Ontario):** Good morning.

Thank you very much.

I want to tell you that I'm so happy to be here today to have the opportunity to speak to all of you and tell you about my experience.

I'm a lawyer in Colombia. My experience was with helping street kids and especially in community service. I had to leave my country because I was targeted by the police in my country. My first decision was to leave the country. I had a visa to go to the U.S. That was my quick decision. I then went to the U.S. It was very hard for me because I left my family, all my dreams, my job, and of course the children I used to help. They were very important to me. I was very sad about it.

After a few months I got involved in a movement to get the TPS, temporary protected status, that a senator from Nevada put on the table in Congress. I was living in New York and I got involved in this movement. We got a lot of publicity. We said Colombia needs this kind of protection because over there is a war in progress. We need the U.S. to help us in this way because asylum is not guaranteed to us. Our case in the U.S. is less than other cases. I don't know if it is because now the government from Colombia says our country is safer than before because of Plan Colombia, but that is not true. Now it is more dangerous because they have more weapons, and bad people have control of my country. This is very bad.

After that and after my baby was born, I was more afraid of what would happen if I was sent back to Colombia, and what would happen with my baby. I started to look for where a solution could be. I found on the Internet the solution of coming to Canada and asking for refugee status. All the things I read on the Internet showed me that this country wants to protect human rights, wants to help people, and I like that. I crossed the border just eight months ago. That's why I'm waiting for my hearing. When I crossed the border with my baby, I felt hope again. I felt like, okay, I made this decision. It was my decision. I'm very glad to be here. That was the beginning. This eight months has been the most important time in my life since I left Colombia. Now, I have the opportunity to be safe and have the opportunity to give to my baby the chance to grow up in a good way without fear of being sent back to my country. I don't know, maybe one day my baby will stay with his mother.... I am very afraid about that.

I have a lot of dreams here. I want to help people. I want to do the things I used to do in my country: help people and have a community job. I think I can do it here. Also, I know there are other people who need help in the U.S. who are without status or whose claim has been denied. That is why I'm here. I'm asking you to think about it, to think about people who want to be safe and who want Canada to adopt them.

● (1140)

I want Canada to adopt me. My country couldn't protect me, so I want Canada to protect me. I will do very big things for this country, as my country.

Thank you.

● (1145)

**The Chair:** Thank you very much.

We're going to go into questions and answers. The first round is going to be for seven minutes, and we'll go to five minutes after that.

Diane Ablonczy.

**Mrs. Diane Ablonczy (Calgary—Nose Hill, CPC):** Thank you, Mr. Chairman.

Thank you for your presentations, and for putting a very human face on the issue we're studying on the safe third country agreement. It certainly makes me, and I think all of us, so much more aware and so very thankful for the privilege of living in a safe country where our rights are respected and our freedoms are protected. We certainly hope that those kinds of values can be exported more to other countries so that people will be equally safe in their own countries.

Of course, what we've gleaned from your presentations is that you believe the system that we have now is not working the way it should. I think the committee would be very interested in knowing what reforms or changes you would like to see in the system.

**Mr. Jack Costello (Member, Sanctuary Coalition of Southern Ontario):** On the three points I mentioned, it may seem irresponsible of me to make a statement so dramatic, but we would like to see the suspension of the implementation of the safe third country agreement. We do not believe it is good for refugees and we do not believe it's good for Canada.

In regard to interdiction, we would like to see the government at least put into practice some kind of record-keeping for people who are refused the boarding of planes, some kind of system whereby they can be asked if they are seeking protection, and a record kept of the response. Obviously, we would like to see people who say they are seeking protection be able to meet with a Canadian representative, but if not, then certainly with the UNHCR representative. Publicly available records should also be kept on the practice of interdiction and on reviews of interdiction procedures, especially for the use of airline personnel and private companies, and a clear entry of the data, into your hands, for what goes on in interdiction.

Finally, regarding the private sponsorship program, I know a lot of people on the ground who have been doing private sponsorship, working with parishes and other churches, in the many years that I've been related to this work. I would say that they do not feel the criteria have changed for application, yet they feel that many people are refused and there are huge delays. Many of the delays are related to security, which does not have to account for itself in terms of particular reasons for each and every instance, as you know.

We have many people sponsored but not yet approved and not arriving. We used to have 7,000 arriving by way of private sponsorship. It is now structured between 3,400 and 4,000. We only managed 3,100 in the calendar year 2004. Those are CIC figures.

That's the beginning of a response to what we would like to do at those levels.

**Mrs. Diane Ablonczy:** Thank you.

**The Chair:** Are you done?

Mr. Mark, you have three minutes, if you want to finish.

**Mr. Inky Mark (Dauphin—Swan River—Marquette, CPC):** Thank you very much, Mr. Chairman.

Thank you for appearing before the committee. A number of us were here in 2002, when the report was completed. I was certainly one who did not support it, because at that time the government really didn't know what it was doing. It wasn't specific in its goals. Even though we live in a post-9/11 world, I think all the attention was given to criminals and terrorists and that was it. My fear again was that it would stem the flow of refugees.

The irony is that in Europe at that time it didn't work either, only because the refugees circumvented the system and still got into the country. In this case it appears that it has worked too well, because half of the applicants are actually from the American side. Back in 2001, there were something like 13,000. What are the numbers today in terms of refugee applicants?

● (1150)

**Mr. Jack Costello:** The number is closer to 15,000, but in public discourse we tend to move between 11,000 and 14,000 in order not to exaggerate the numbers. We're quite willing to hear people speak of 11,000 to 14,000 people who cross the border and who are now not being accepted, except for the exceptions. That's what we understand by the numbers.

**Mr. Inky Mark:** In 2001 they projected that between 5,000 and 6,000 claimants would be returned to the U.S. Has that proven out?

**Ms. Mary Jo Leddy:** One of the difficulties we all have is around the statistics. I just talked to the people at the border yesterday and at Pearson Airport, the NGOs, and they say they have a great difficulty getting any statistics from Immigration Canada. The same is true on the American side. They simply cannot find out how many people have been put into detention. What they do know is that they're put into detention and deported almost immediately.

I think one of the things this committee can do and must do is demand an accurate reporting of the facts. You cannot be effective decision-makers without them. What we do know is that at the Buffalo crossing there used to be 500 people a month waiting for orderly appointments. There are now 50, and there will be 30 and then 20. That's the dramatic reality, and the airport is effectively closed if you get five phone calls in two weeks. So you need to demand those figures from Immigration Canada.

**The Chair:** Madame Faillie.

[Translation]

**Ms. Meili Faillie (Vaudreuil-Soulanges, BQ):** I shall leave the floor to Mr. Clavet.

**Mr. Roger Clavet (Louis-Hébert, BQ):** I thank you all for your presentations and particularly Paula and Cesar. Those comments were very moving and genuine. We saw the two hands and the butterfly. Without being too poetical, I think that we could recognize the hands of Paula and Cesar. What does the butterfly mean?

[English]

What does it stand for? We don't know, but we have a good idea.

[Translation]

It is hope.

My question is for Mary Jo Leddy. The Bloc Québécois has been opposed to that agreement for several reasons. Like the UNHCR, we thought that it might increase the number of illegal entries in this country. Do you think that it has increased or that it might do so? As concerns the number of refugees that might try to enter illegally, do you actually see that what we fear is really happening? Is it really the case?

[English]

**Ms. Mary Jo Leddy:** Absolutely, and two years ago we flagged to the committee that there would be an increase in illegal entries into the country. You may know that Germany effectively tried to do the same thing with a safe third country agreement. The UNHCR reported that instead of keeping out 100,000 people, 100,000 entered illegally. It's simply desperation. When life becomes the ultimate last resort you will do whatever you need to do.

In talking to the NGOs at the border, they say these traffickers are already approaching people, not just in Buffalo but throughout the States, saying, "Look, pay us \$5,000 and we'll take you over."

I'm going to ask Cesar to speak directly to this, because to my shock, last night when I was relaying my reports on the phone calls to the border, he said, "But that was going on before, so imagine what's going on now." I do know that church people, knowing this is going on, knowing the risk to people.... We know what happened at the Mexico-U.S. border, and we know what church people did then, and they will do it now. If it's going to mean these crooks, these

jerks, these horrible people will be taking people across in boats and perhaps dumping them, we are going to plan an underground railway. It's what ethical people do when they have no other option.

Cesar, could you just say what you told me last night?

• (1155)

**Mr. Cesar Perez:** We have some friends. They used to live in South Carolina, in the States. They crossed the border at the same time we did. They told us that down in South Carolina there were some people who were asking for money, exactly \$2,000, to bring people over to Canada. They would guarantee a safe crossing through the border and a place to live—which I guess was a shelter, which you don't have to pay for—and some other things. So these six people, three couples, were about to do that, but they finally decided to go by themselves. It was already happening at that time, in 2002, so can you imagine what is going to happen now?

[Translation]

**Mr. Roger Clavet:** Mr. Costello, even if the system is not perfect, could you tell us how we could improve it in order to meet security needs, the legitimate need for Canada and Quebec to protect itself and at the same time, our obligation under international law to protect and defend refugees? How can we do both knowing that the system is far from being perfect?

[English]

**Mr. Jack Costello:** It's really important to accept first of all, as we all know, that any arrangements we will have at the public level, even as we have in our private relationships, friendships, and marriages, are always going to be imperfect. We're adult human beings who know that life is only crooked lines.

I would say, though, that I think the system we had was orderly. It was clear what the Canadian officials were to ask and on what basis admissibility was granted so people could enter the country for hearings. On the American side and the Canadian side all of the NGOs and many of the legislators say it's not a broken system—do not try to fix what's not broken.

It remains a problem. I would ask each of you, what do you understand to be the persuasive ground for this having been put in place anyway? There are those who believe that in a 30-point smart border program, this is the only one that was put in place to serve Canadian initiative and Canadian interests, as declared by the negotiators. It was done for reasons not intrinsic to problems with refugees but intrinsic to the need to maintain a certain dignity that at least something we wanted is in there as well.

If you actually take a look at the *Globe and Mail* today, you will see a very strong piece by Ron Haggart on security. Basically it says we have to raise questions about who we get evidence from. I think the whole question of security at our borders was never a significant, certainly not a major, problem before 9/11, and we all have to ask ourselves this: how much is the Canadian agenda in such matters being shaped by American needs—or, I prefer to say, Americans' perceptions of their needs?

One case on a security level is that we don't really need more security. The other is that the security guaranteed by what we have in place already is very good, and we really don't have to improve it much to have a competent system. We're not here to condemn the system. We're in fact paradoxically here to say that what preceded the safe third country agreement was really quite good, and it should be allowed to continue.

• (1200)

**The Chair:** Thank you.

**Ms. Mary Jo Leddy:** If I could just add something, I think what Father Costello was saying is that what was an orderly process is now going to become chaos. If anybody thinks there is money to be saved in this process.... There is so much going to be spent on trying to control traffickers and all the other things that are going to happen that it's not going to wash clean.

**The Chair:** Thank you very much.

We'll go on to Mr. Siksay.

**Mr. Bill Siksay (Burnaby—Douglas, NDP):** Thank you, Mr. Chair.

Thank you very much for your presentations this morning and for speaking so personally.

Ms. Leddy, I have to say too, thank you for your call to the members of the committee. It wasn't an easy thing for me to be reminded of my responsibilities as directly as you did it, but I appreciate that you did do it. Thank you very much for doing that.

When we had folks from the department here talking about refugee programs and the safe third country agreement, one of the things they pointed out was that refugee claims in Canada were at the level of 45,000 in 2001 and in 2004 they were down to 25,000. When I asked about it, I suggested that they were putting it forward as some kind of victory. They denied the suggestion, and I accept that. In the answer we were told that refugee claimants were down all around the world and that Canada was experiencing this, just as countries were all around the world.

It seems to me that there are probably just as many people in refugee camps needing this kind of assistance. Can you comment on this circumstance?

**Ms. Mary Jo Leddy:** I'll begin, and maybe Father Costello can connect with the international experience of the Jesuits.

On the question of statistics—and this committee needs them—the drop in refugee claimants may in fact be just a statistical issue. I noted that in that same period Immigration Canada went from classifying one claim as, say, a family to amplifying it to five people—the mother, father, and three children—so this spike in refugee claims may have been an accounting issue. You have to check that, but that's my perception.

At issue all the time are the statistics, and I know this, having talked to members of the department. The numbers of refugees have not gone down. The people who live in our houses know the desperation, especially in Africa. People are absolutely trapped in the Sudan, in Eritrea, which is on the edge of a bloodbath. The interdiction procedures of the Canadian government are stopping people there. There is going to be a terrible civil war in Eritrea. I'm

using this as an example. People have been knocking on the door of the Canadian embassy overseas, to get no response. So it's not that they're not there; they're just not here.

**Mr. Jack Costello:** I think the numbers are important. I've been to the country of Colombia three times, and there aren't a lot of refugees from Colombia, but there are a whole lot of internally displaced people. The estimates over the last few years go from 2.75 million to 3.25 million. If you get a set of numbers, I think it's important to get some sense of what's included. The UNHCR has chosen to go beyond the convention in its larger estimates to say that they include people who are migrants because of internal strife, personal claim for asylum, those who claim refugee status, internally displaced peoples, and also migrants who have a combination of political and survival, i.e., economic motives. When you have the full scope, you get a number that is somewhere closer to 20 million. In the *Globe and Mail* this morning, from the UNHCR, they were quoting 17 million.

I think it's fair to say, though, there have been some moves internationally to try to help nations deal with their civil turmoil, so there is a hope of keeping people within their own country and safe there. There's a lot of effort being done. But I would say, Mr. Siksay, that at this point that's not what's happening to us. There are simply fewer wanting to come. We all hope there will be a point when there will be fewer needing to come, but at this point we are working so hard to keep even those who want to come out that our own statistics cannot be a realistic measure.

• (1205)

**Mr. Bill Siksay:** Father Costello, in your presentation you mentioned the REAL ID Act in the States and the abuse of detainees in the U.S. Could you expand on those two to give us a clearer picture of what's happening there?

**Mr. Jack Costello:** Yes, I could. And if any of you are interested in that packet I had, some of it is written there.

This is a statement on the very day that the legislation came out. It is an effort to blend immigration, national ID, and drivers licences so that it will be easier to identify people who try to duplicate drivers licences, and perhaps move in an irregular way in the United States. And we know what they're thinking of—19 people who moved in a very irregular way in 2001. The aim is to establish and rapidly implement regulations for drivers licences and ID in order to serve security needs.

Here's what the American Immigration Lawyers Association said after examining the legislation, paragraph by paragraph:

“Terrorists, people who have persecuted others, people who have committed serious non-political crimes abroad, and people who pose a danger to the security of our country are already excluded from both asylum and withholding of removal. This proposal, therefore, does nothing to enhance our security. It simply denies asylum to people who cannot prove the central motive of their persecutor.”

In other words, they're asked, can you prove that if you are returned, you will be tortured? I ask you to consider that. Can you prove you will be tortured? No, but is there a history in the country, a history of a practice?

Basically, there is a charge from many legislators against this particular legislation, saying it's only a thinly veiled effort to cut down on the rights of those seeking asylum and those deemed to be irregular, sometimes called illegal.

**The Chair:** Thank you very much.

We'll go on to Mr. Anderson.

**Hon. David Anderson (Victoria, Lib.):** Thank you for coming here and giving your experiences of working with refugees and in fact as refugees. It's very helpful to the committee.

I would like to ask a couple of questions with respect to the American system, because so much of the discussion has related to putting people back into the American system, as opposed to letting them across the border into the Canadian system.

I recognize also what you said earlier, Father Costello, that we have plenty of sins of our own and we shouldn't comment too much on the sins of others, but it is absolutely necessary to consider that American legislation. If their system is as good as ours, clearly there could be no theoretical problem with having people adjudged in the States as opposed to adjudged in Canada. My question is in relation to the United States system. Why is it that you are so sweeping in your criticism of that entire American system? You did not, as I expected, list certain countries where, for international political reasons, the United States may be supporting a regime—Colombia may be an example, I don't know. You have been blanket to the effect that no claimant, from any country, would be likely to receive a quality adjudication of a refugee claim. I wonder if you could comment on why it is so fundamentally, totally flawed that it's not possible to deal with the problems of certain countries by an exemption list.

**Mr. Jack Costello:** I hope the record is going to show that I didn't make that sweeping a statement: that any claimant from any country is moving into a completely broken and even pernicious system. I don't hold that, and I hope I didn't represent that. I'm just saying that the system itself—and I have some documentation here, but at a time with greater scope I can note it—practises detention at a significant and irresponsible level, holding people for months and even years. So there is detention.

The system systematically requires that a person make a claim for refugee status within a calendar year. Those of us in the work know how difficult it is, sometimes, if you've arrived at an uncle's house: you just are breathing, just relaxing, trying to even get a sense of what the safety means. In Canada, we say, the "first calendar year" is not required. If you only come to make the application after a calendar year, you can still be granted a hearing. It's not so in the U. S.

If you come with a gender claim, it will not be entertained, because it's not written into the Geneva Convention 1951 or the 1967 protocol, which means domestic abuse.... It's not simply the issue of some people of a homosexual orientation coming because their own culture is homophobic and they are at risk; it is also women coming from a variety of countries with their children, who have been subjected to domestic abuse and who in that country cannot count on the authorities helping them in a situation where they are at risk.

I would include, as I said earlier, nationality profiling—Cubans, Haitians, people from Muslim countries, people with Arab names. There is also, with the Arab names and such, racial profiling. There is a lack of independence in the system of the INS from the foreign policy.

We all know one of our glory points in Canadian history was that in the eighties, when Central American refugees came to Canada, from El Salvador and Nicaragua in particular, we welcomed them, whereas American foreign policy refused to say that they were genuinely at political risk, because of the close relationship between their own government and the governments of El Salvador and Nicaragua in trying to "stop communism".

I would say the expedited removals to countries that torture, and the lack of an access to aid—for instance welfare, medical, legal aid to present your case—these, Mr. Anderson, are the systematic problems, but they don't assail every claimant.

The procedures in the United States actually allow for an appeal process, which ours don't, so in that case its system is better. I really want to make exceptions, but if these are endemic, systematic problems for many people in the United States, especially since 9/11 and the unaccountability of the security voices that put people into jail—they need not explain themselves, and that's true in Canada since Bill C-36, as well—this represents a difference between our two systems.

• (1210)

**Hon. David Anderson:** Thank you. You perhaps have not been entirely—

**Mr. Jack Costello:** As pointed as you wanted?

**Mr. David Anderson:** —negative in your comments about the American system, but you have been, I would say, fairly strongly so. And there may be exceptions where their system may be better than ours; I certainly expect that to be the case. But you have, I think, listed—both with respect to gender, with respect to detention, and in particular with respect to the political list—things that I assume from your comments cannot be fixed by either creating an exception class on the issue of gender, or creating an exception class with respect to specific countries, as we did during the problems of Central America some fifteen or twenty years ago.

**Ms. Mary Jo Leddy:** Mr. Anderson, I think the nub of your question is this: that American refugee policy is so closely tied to its foreign policy that it is moving further and further away—and I'm talking about American critics saying this—from even upholding the Geneva Convention. It fundamentally at the moment is operating on the principle that "the enemy of my enemy is my friend". So it will accept refugees from Cuba, but not Colombia, not El Salvador, not Guatemala.

When you do not have a stable framework of national law interfacing with international law, even if some refugees are protected—and you're quite right—you do not have the guarantee of rights as hoped for in the Geneva Convention and the convention against torture.

• (1215)

**The Chair:** Thank you very much.

I'll go now to Mr. Jaffer.

**Mr. Rahim Jaffer (Edmonton—Strathcona, CPC):** Thank you, Mr. Chairman.

Thanks to all of you, especially for bringing your personal stories. As was mentioned earlier, that makes it very powerful, along with hearing about some of the challenges this agreement has created.

I want to get further clarification, Father Costello, on the point you were making about how important it is to have that personal interaction, especially in-person interviews. I thought this was happening, but you suggested this may not be. Since this agreement has come into effect, are you aware that in fact these in-person interviews are occurring, or are they not?

**Mr. Jack Costello:** I would like to refer to Mary Jo Leddy's remark that people know what has been put in place. There's such a network among people in irregular situations or uncertain standing that they know, and they're simply not coming to the border. On the other hand, we don't know how many seeking protection have tried to get on airplanes.

My case on interdiction is precisely that you're prevented thus far from having a face-to-face meeting with a Canadian official who can ask, are you seeking protection? Many people are staying away from the border who would otherwise come, and the only people coming are those who meet the exceptions. They're staying away also because if they declare themselves, as Mary Jo has said, and the officials in the United States are alerted to their presence, then detention might result, or worse, deportation. So they stay away from the face-to-face meeting by personal choice out of fear. That is really part of what I mean by the decline of a fearless meeting face to face. So the numbers are declining because of the system. Of course, if Paulo were to come and say, "I have a sister in Toronto", she would walk across and meet the Canadian officials. It would look exactly the same. But there could be twenty Paulos who are not showing up. That's what I meant.

**Mr. Rahim Jaffer:** One of the things we were told throughout the process of studying this safe third country agreement is that it's in line with the values of our immigration system. The border agents would be adequately trained. The values of our system would be retained, and they would be mindful of the security aspects of this safe third country agreement.

We don't have any concrete numbers as to what exactly is happening, but it sounds to me that maybe that hasn't been happening, that sensitivity in implementing this agreement, especially with the border agents, is not necessarily following through the way it should. I don't know if you've heard anything about that specifically. If you could comment on that, it would be useful as well.

**Ms. Mary Jo Leddy:** I think I have some good news. In my conversations with the people at the border, they did say that although some really unpleasant things had happened in December when there was a rush to the border, in general the officers of Canada Immigration at the border have been treating those who have come with great decency and great care. That I think is good news, and we should be proud of that.

I think what Father Costello is getting at is that in airports all around the world, people are being turned back not by immigration officers, but by airline officials. Nobody is asking them face to face,

why are you fleeing? Why did you have to resort to this? Also, the other part is true. As the American NGOs have said, "We try to stop anybody going to the border who we don't think will be let in". So they're almost acting as the first line, because they're saying, "If you go and you're turned back, you'll be put in detention"—we know they are—"and you'll be deported".

● (1220)

**Mr. Rahim Jaffer:** My final question is on the potential increase in the trafficking of people. In studying this immigration issue, it seemed to me that Canada was starting to have a huge problem even before 9/11 when it came to trafficking, partly because our system is not able to process legitimate refugees or immigrants as effectively as it should. I think what I've heard you say today is that because of this safe third country agreement, that is going to be enhanced even more. My understanding is that we were supposed to try to tackle the problem of trafficking with the safe third country agreement. Aside from taking care of our security concerns, are we still going to be facing this issue of increased trafficking because of the problems that are inherent in our immigration system in dealing with legitimate refugees and immigrants?

I don't know if you want to comment on that. It's a bit complicated.

**Mr. Jack Costello:** I think I will briefly, because we're still in the area of conjecture. This was December 29, 2004. We're barely two months in, and there is no history of actual swelling, as far as I know, of trafficking and smuggling activity. But it is a real shock when we realize.... It's a real conjecture. It's grounded in experience that in Germany, as Mary Jo said, when they refused to allow some 100,000—that's the number that's out there—from coming across in an orderly way, they found that they were still getting the same number of 100,000 making inland claims. So the question obviously arose, how did they get into the country? They knew that was an increase.

It's very hard to smuggle and traffic across the Niagara River, for reasons that are dramatic, and we all know what they are. But what if people tried it? Would Canadians want to consider that a normal situation?

The one thing that I would say is that you use the word "sensitivity", and I think it's Canadian sensitivity. We have some work to do at the level of providing for protection representatives and providing for security representatives—Monsieur Clavet's question. I say this because the CBSA, the border security agency, is basically out there to care for security, and we don't have at this point a clear other person with, if you like, a professional or somewhat impartial, but relatively sympathetic, interest in caring for the protection interests of the person, if that's what is at stake. Getting the security business relating to that agency and the protection cares together is still a work in progress, because the CBSA is so new and some of them still say.... The president of the CBSA has said that they're still trying to convince their officers they're there not as screening police but as people open impartially to the claims of the person coming.

**The Chair:** Thank you very much.

Dr. Fry.

**Hon. Hedy Fry (Vancouver Centre, Lib.):** I don't have any questions because I think the witnesses were fairly clear and I think the points they made were ones that we had asked the department when they came, which had to do with the fact that we have our own agenda—sexual orientation issues—and that certain countries, as you say, the United States, do not necessarily allow in refugees that we have allowed in.

So I think this is something you make a good point on. We talked to the department about it when they presented to us, and I think it's something we should take back and discuss. How will we find a way around this problem while at the same time accepting that there needs to be some kind of joint border security issue, without endangering this sense that we have our own definitions of who we allow in?

I think this is something that is workable. I'm sure it's workable.

**The Chair:** Thank you.

Madame Faillie.

[*Translation*]

**Ms. Meili Faillie:** I wish to thank Mr. Costello and our other witnesses for being here today. There have been e-mail exchanges. The Bloc Québécois is deeply worried by the Third Country Agreement. We have produced a report explaining that we did not intend to support that project and we maintain our position.

During the holidays, our offices stayed open so that NGOs working with refugees could reach us as parliamentarians. This was to allow us to submit those problems to the Department and to our colleagues in this Committee.

God knows how many worried people called. There were many problems at the border. We know what happened during the holidays and that many people got very fast training, sometimes in one single day.

Of course, we may ask questions, but we have to go further. We must study the concrete impact of that agreement on interdiction practices in Canada. You told us, in your introduction, that Canada was closing its door to refugees. There is a lot of opposition within the population, from the e-mails, letters or calls we get from groups that are working to help immigrants to find their place in our society. Those people are helping immigrants settle in Canada or work directly with refugees.

We are very much aware of the fact that Americans would like immigration policies to follow foreign policies. In fact, this has pernicious effects: some countries that should probably be on the list of countries producing refugees are not on Canada's list, which is worrisome. You mentioned a few of them earlier.

As you know, Canada has lost a couple of cases, in 2004, before the United Nations Tribunal and the Committee Against Torture because of the way it deals with refugees' cases. In the coming year, the Standing Committee on Citizenship and Immigration will have many subjects to study.

You also said that Canada was closing its doors to immigration. You also referred to the Real ID Act; the Committee should receive information about it. As concerns interdiction practices in airports,

refugees and people who are fleeing from persecutions are travelling quite often with bogus documents. You mentioned the fact that people working for airlines are not concerned with immigration issues. It is very worrisome. But you seem to forget that Canada does not have a refugee appeal division. In the past, two commissioners were charged with studying refugees' claims. Even if only one of those two commissioners made a positive decision, the person was admitted as a refugee. Now, there is only one commissioner, and if he rejects a claim, the removal process starts immediately unless the claimant appeals that decision. If the claimant appeals on humanitarian grounds, the claim can be treated in Canada, but it does not cancel the removal order.

So this is a rather important issue. The absence of an appeal tribunal is an issue that has been referred to the Committee. I would like that Cesar, Paula or Mary Jo tell us about cases where people were refused entry because of this agreement.

● (1225)

Have you seen a difference in the number of people refused since the implementation of the agreement?

[*English*]

**The Chair:** We'll need a really quick response to a five-minute question.

**Mr. Jack Costello:** Basically, can you say anything about those who have been refused? Do you know the situation?

● (1230)

[*Translation*]

Could you explain a little more what you mean by "those who are refused"?

**Ms. Meili Faillie:** Since the implementation of the agreement, some people are automatically refused entry, but others can pass through the border and get an interview. Have you noticed an increase in the number of refusals or has the proportion been the same?

[*English*]

**Mr. Jack Costello:** At the border...we've always had people who were refused.

Has there been an increase, as far as any of us knows, of people who approach and are sent back?

**Ms. Mary Jo Leddy:** My understanding yesterday, from the people at the border, is they're asking refugees to first go to an American NGO that will advise them whether they will be accepted or rejected, given the guidelines. If they think they're going to be rejected, they tell them not to go, because then they'll be in detention and be deported. What those people are going to do now is live illegally in the U.S., which is another part of their major social problem.

Just by way of tying up a few things here, I would say we are concerned about terrorists—we all are. What I do know, from talking with people in various groups, is that a real terrorist is not going to come by the refugee route. There's too much scrutiny, at every level, around identity and process.

What we have had, more or less, until now, is an orderly way of discriminating between those who have a valid refugee claim and those who don't. When we shut down on that refugee process, we create this general chaos; we have augmented the power of these traffickers, and the whole illegal process. In the end, it is going to create much more opening for terrorists to enter both countries.

**The Chair:** Thank you very much.

We're going to have the last question from Mr. Temelkovski.

**Mr. Lui Temelkovski (Oak Ridges—Markham, Lib.):** Thank you very much, Mr. Chair.

When the department came in front of us some time ago, they told us the border employees would be trained adequately to deal with the agreement. In your view, in this limited time we've had, do you think they've received adequate training on the agreement? Do they understand the application of the agreement, and how it applies?

**Ms. Mary Jo Leddy:** I don't think training is the issue; the issue is the agreement. I think I've just said that as far as we can tell, they're treating people with decency and objectivity. I don't think that's the issue.

**Mr. Lui Temelkovski:** You just think we should do without the agreement altogether.

**Ms. Mary Jo Leddy:** We've set up this complex list of exceptions. I've mentioned the countries as one issue, but we have a group of people—I'm using the example of the Colombians, but lots more could be said—who can, with great difficulty, get out of their country. They can usually only first get to the U.S.; they know they will not be accepted there, because of American foreign policy, and so have no other option but Canada—and we have shut that door by this agreement. That's the problem.

**Mr. Lui Temelkovski:** These people from Colombia, or any other country not so friendly to the U.S.—don't they know that beforehand?

**Ms. Mary Jo Leddy:** I'm sorry...?

**Mr. Lui Temelkovski:** Wouldn't they know that beforehand, before they came into the States?

**Ms. Mary Jo Leddy:** If you look at the global patterns of travel, it is much easier to get into the U.S. than into Canada. It is very difficult to get a direct flight to Canada, very difficult. It's very difficult to get visas. There are far fewer embassies and Canadian officers than there are American officers. There are lots of American visa posts, and lots of personnel. It is much easier for people to first come to the U.S., and then to Canada, but not the reverse. It just simply.... If you look at the facts, it just doesn't work that way.

**Mr. Cesar Perez:** You just asked if we don't know that beforehand. We say no. If you have gone with your head, you just go wherever it is safe for you. We didn't have the chance to go through the American system and check whether they are welcoming or not. No, we just had the American visa. We were told, if you can, just flee the country. There we went. We didn't have time to study, because we didn't come as independent immigrants; we just were fleeing. When you flee, you go to the first place that is safe for you.

•(1235)

**Mr. Lui Temelkovski:** Thank you.

**The Chair:** I would like to thank you all for coming and making the presentation. Certainly you were very clear on the issue that we have to be very careful we haven't created a smuggler's network, as happened in Germany, because that's one thing nobody wants, and you were clear about the need to be sensitive to politics, particularly south of the U.S. border, and how they relate to who gets into our country and who doesn't.

Thank you very much.

**Ms. Mary Jo Leddy:** Mr. Chairman, I would just like to say that because of the importance of your work and the importance of keeping a face on it, any time any of you are in Toronto you are welcome to come to Romero House. You are welcome to a simple but tasty meal and welcome to talk with real people. We will not prime them; you can ask them anything you want. And you're welcome to see the mural.

**The Chair:** Thank you.

We're going to take a two-minute break while we get our next witness, James Bissett.

•(1237)

\_\_\_\_\_ (Pause) \_\_\_\_\_

•(1240)

**The Chair:** Okay, the committee will resume.

Mr. Bissett, welcome.

**Mr. James Bissett (As Individual):** Thank you very much, Mr. Chairman.

I have really three criticisms of the safe third country agreement with the United States. Before making those three points, however, I would like to say that I have been a critic of Canada's asylum system. I think we have a system that's bordering on the dysfunctional.

It's extremely expensive. In 1991, when we had some 40,000 asylum seekers, I estimate we probably spent roughly \$3 billion looking after them. That's about one-quarter of our defence budget, and it's out of line with a lot of other government priorities.

I also feel that the asylum system we're now operating under is really undermining our international effort to help real refugees. Let me give you an example. The United Nations High Commissioner for Refugees has about 20 to 23 million people under the commission's jurisdiction—people in need. It has a budget each year of about \$1 billion to look after these people. These are people in camps. I've been in the camps. They're in desperate conditions. They're not being sheltered properly. They're not all being fed well. They're not protected. Their camps are often raided by marauding bands. The problem is the United Nations High Commissioner for Refugees doesn't have the money to really look after these people.

In Canada, we spend about \$20 million to \$25 million a year as our contribution to the UNHCR to look after twenty-some million refugees. On the other hand, we're spending enormous amounts of money looking after people who come here claiming to be refugees.

They're not all refugees. Our acceptance rate is probably the highest in the world. The European countries approve about 10% of the asylum seekers who enter their countries. The United States' rate is much higher than that. But all of the European countries and the United States operate systems that are fully in accord with UNHCR's jurisdiction on refugees. None of them are violating the UN convention. The UNHCR, despite what we've heard today, fully approves of the American system.

Having made those remarks, why am I against the safe third country agreement? There are really three reasons.

One is the Americans took the Canadian negotiators for a ride during the negotiations. In the 1989 act, which I had a part to play in, we had decided that it should be the Canadian government that would decide unilaterally what countries were safe for refugees. Of course those would be countries that signed the UN convention, that were democratic, that followed the rule of law, and that had a reasonable system approved by the UN for dealing with asylum seekers.

The new Immigration and Refugee Act that was passed put a condition on this and said we could only enter into an agreement with another country to declare it safe if we had an agreement with them. No country is too keen to negotiate that kind of agreement. There's nothing in it for them. If people want to leave their country and apply for asylum in Canada, why should they object?

If you read the congressional transcript of the U.S. senators who were objecting to the agreement we're talking about today on the grounds of asking "why should we sign this agreement with Canada, there's nothing in it for us", the U.S. negotiators said don't worry, senators: over half of the asylum seekers going into Canada from the United States have relatives in Canada, and we're going to make sure that one of the exceptions for the safe third country agreement will be that anybody with a relative in Canada will be automatically accepted, so they can make their claim in Canada.

That is included in the agreement. That's my first objection to it. It means that anyone who comes to the land border and makes a refugee claim, if they have any degree of relative in Canada, will be automatically let in. So you have people who have aunts, uncles, nephews, nieces, brothers, sisters—even people who are here who are making a refugee claim. If your cousin is in Canada making a refugee claim, you will be admitted.

That undermines the whole concept of family reunion in the Immigration Act. If you're a Canadian citizen and want to sponsor your brother and sister, you can't. There's a very narrow range of people you can bring into Canada if you sponsor them. You can sponsor your spouse, your minor children, your aged parents, your grandparents, but you can't sponsor your brothers, your sisters, your uncles, your aunts, your nephews, your nieces.

That's what's going to happen along the border. People who don't want to wait, who don't want to go through criminal security or

health screening or security screening, will get into the United States and come to the border. They will be automatically admitted.

● (1245)

It makes a mockery of our family reunification provisions of the Immigration Act and it's discriminatory against Canadian citizens and landed immigrants here who wait for years, as you may know, to get their parents into the country, and certainly can't even apply for these other lists of relatives. So that's an exception I have, the first one.

The second one is more minor, and that is, if the United States is safe for refugees, what difference does it make if the person comes to the border, flies into one of our airports, or comes into Halifax by boat? Either the United States is safe for refugees or it's not. Why these exceptions? These are exceptions imposed upon us by the U.S. negotiators.

Finally, my third point, and this was not discussed with the U.S. negotiators: When our team got back and regulations were being drafted in the implementation of the agreement, our Department of Justice human rights lawyers added another exception into the agreement. It's been passed quietly by order in council. It says that anyone in the United States who has been charged or convicted of a criminal offence that might involve the death penalty is to be allowed in at the border when they appear at the land border. This is ridiculous. This is exporting Canadian values to the United States. What's going to happen if a terrorist attacks in Boston at a Red Sox game, blows up the stadium, and hops in their car and flees to the border under hot pursuit? If they get to the border in time, they'll be allowed in. You can imagine what that's going to do to Canada-U.S. relations along the border. It makes a complete mockery of our efforts to persuade the Americans that we're taking the war on terrorism seriously.

What was the justification given to this committee by the department? It was that this was in keeping with Canada's long-standing tradition of not removing people to countries where they might face the death penalty. This is nonsense. First of all, there is no long-standing tradition. In 1999, the Supreme Court, in a five to four decision, agreed that this man by the name of Charles Ng was to be removed to the United States despite the fact that he might face the death penalty. That was in 1999, so if it's a long-standing tradition, it hasn't been standing very long.

In addition to that, while there have been some Supreme Court decisions more recently that said they wouldn't extradite people back to the United States unless there was a guarantee that they wouldn't face the death penalty, in that particular case, as I recall, it was a Canadian citizen, so possibly the Supreme Court makes a distinction between extraditing Canadian citizens and non-citizens. At any rate, there is a significant difference between removing someone who is already in your country to face a possible death penalty and admitting anyone who appears at the border into your country to get our charter protection. I think it's a silly provision; it wasn't negotiated with the Americans because of course the Canadians would have been embarrassed to have included that during the negotiations. It was done quietly and secretly by the Department of Justice people.

Those are my three points. I would again say to the committee, we are out of step now with all of the other countries that receive asylum seekers. We're not alone on this; we ranked seventh last year in terms of the numbers received. All of the European countries have safe third country provisions, and a lot of others. The United States, by the way, doesn't have that, but almost all of the European countries have it. The principle of it is in the UN convention itself: if you're fleeing persecution, and you fear torture or death, the first country you get out to that is a convention signatory and that follows the rule of law and a democratic way of life is the country where you should make your claim.

As someone said this morning, it's very difficult to get into Canada directly from a flight. Very few come here. It was for those reasons, the acknowledgement of this, that Canada, since the end of the war, stood out as the lead country in dealing with refugee issues, because we went into the camps and we took out people and brought them here—Hungarians, Czechs, Chileans, Ugandans. Now we've fallen way behind that.

• (1250)

We're taking about 7,000 refugees from overseas. Why? It's because we're spending all our money on asylum seekers. Where are they coming from? Citizens of some 170 countries applied for asylum last year. We had over 1,000 American citizens who applied for asylum. We had 1,834 Costa Ricans apply for asylum.

We are the only country that accepts anybody from any part of the world to make a refugee claim. It clogs up the system. There's no pre-screening. There's very little detaining of people, and anybody who gets here is basically guaranteed that they won't be removed. We remove roughly 4,000 to 5,000 failed asylum seekers every year. The Auditor General has reported to Parliament that 36,000 failed asylum seekers had outstanding warrants for their arrest about two years ago. The department isn't interested in following up and doesn't have the resources to do that.

I'm not going to mention the possible security risk of these people, but the fact is that of the six people detained on immigration certificates, I think all of them were asylum seekers in Canada and failed. One has been released recently, as you know. Ahmed Ressay, who tried to blow up the Los Angeles airport, was an asylum seeker who came here and made a claim but didn't bother appearing for his hearing. Roughly 20% to 25% don't even bother appearing for their hearings.

We have a serious situation here. While I sympathize sincerely with the people we heard from this morning, who are dealing face-to-face with hardship and fear, Canada has to look at it in a much broader sense than an individual case. We have to look at our standing in helping to resolve international refugee problems. We're failing in that.

Thank you.

**The Chair:** Thank you very much.

Madam Ablonczy.

**Mrs. Diane Ablonczy:** Thank you, Mr. Bissett.

I see that you helped design the former points system and one of our former acts. We appreciate having your expertise here.

Of course, you are very critical of the safe third country agreement, for somewhat different reasons from those of our previous witness. I'd like to ask you the same question. What would you change? What would you like to see reformed in our system?

**Mr. James Bissett:** Two things. We should implement, as all of the European countries have, a safe country agreement, and it should be our sovereign right to decide what countries are safe and what ones are not. We shouldn't have to sit down and negotiate it with any country. Obviously, the United States is safe for refugees. They take more refugees than we do. They comply fully with the UNHCR. All of the European countries comply fully, and we're getting most of our asylum seekers from those countries. I would go back to the 1989 act and say that cabinet or government or this committee should decide what countries are safe, and we shouldn't allow those people to make refugee claims here. They should be sent back immediately.

My daughter, who was living in Cuba for a long time, married a Cuban. She was down visiting him last week. He's still there. It will take another year or two to get him out of there because he's not an asylum seeker. At the airport on Saturday night there were two people from the Dominican Republic on another flight and they were stopped by customs. They had Canadian passports. They spoke no English. They were obviously country people. Customs asked my daughter if she could translate some of their reasons for being here. They had no luggage. She explained to customs that they were refugees. They wanted to make a refugee claim. They're in Canada now. They'd have been put in a downtown hotel. They'd have been registered for welfare on Monday morning, and they would be told, look fellows, you have an appointment with the refugee board probably two years from now, so don't forget to show up for that; in the meantime, if you don't get work, we'll pay you welfare and we'll find you housing and we'll look after you. My daughter said she wished her husband had that kind of treatment.

You must all have constituents who are citizens of Canada who cannot get their relatives in. If you apply for your grandmother or your great-grandmother, as you may be able to do, you will never get them in now because there is such a backlog. You will have to pay for the application, but they're not submitting those applications abroad. They're dealing with spouses and minor children. This is the state we've gotten into.

In addition to that, we have a very serious security problem because we can't get rid of anybody who gets into the country. We can't remove them. The refugee groups complain that there's no appeal system, but the fact is there is an appeal system. The new act incorporated the pre-risk removal assessment into the act. Now you can make an appeal to that. We have cases. As you know, Mohammed Issa Mohammed, who is not a suspected terrorist but a convicted terrorist, has been in the country since 1986. He was ordered deported in 1987, and I had a part to play in that. When I came back from Russia in 1992 the first thing I asked was what had happened to Mohammed. He's still here. We'll never get rid of him.

Now we have six people in custody under immigration certificates. One has been released, and I suspect the others will soon be released, because you can't keep people in custody without charging them and you can't charge them because they've committed no offence. We are conditioned under the provisions of criminal law. You commit an offence, are then charged, and due process kicks in. If you do that with the terrorist after he's blown up himself and a hundred other people, there's nothing left to charge. We have to have a system to deal with terrorists that is quite different from the system we're all used to. We haven't been able to find one that's effective or acceptable yet, but we have to think about it. This is just another dimension.

The safe third country and the asylum system is an international problem, and it needs international leadership. We're not helping it. The one thing on which I agree with this group today is we are encouraging human smuggling. Human smuggling is on a massive scale. It now ranks third, after heroin and guns. The UN estimates that last year \$7 billion was earned by international smugglers, and we, Canada, have turned ourselves into a safe haven. We're the country of choice for smugglers. These two Dominican Republic boys paid someone to give them Canadian passports. That's all they need. They need to get on the aircraft. Once on the aircraft they're home free, and the smugglers can say they'll get them to Canada and can guarantee them at least two years here. If in the meantime the boys marry or get a job and get settled in or go into a church basement, no one will ever get rid of them, so they pay up their money and come.

We are going to be cited, I am sure, one of these days by the UN as a country that's playing into the hands of human smugglers. The smugglers are all international criminal organizations—the Russian mafia, the Chinese triads.

•(1255)

On top of all of that, we now have a very cynical system. We broadcast to the UN that we have the best asylum system in the world, and then we do everything possible to stop people from using it, as you heard from the groups today. We intercept at airports and do everything we can to stop it. I think we can have a much better system.

**The Chair:** Thank you very much. We'll have one round so we all get one round.

Mr. Clavet.

[*Translation*]

**Mr. Roger Clavet:** Thank you very much, Mr. Bissett. You have been first an ambassador and then an immigration expert. I was reading in my notes that in 1994 you even helped Chechnya refugees to flee from Grozny. So you are not just talking, you are also acting.

But I also hear the same man saying the refugee system does not work properly in Canada, that it is costly and is preventing the country to meet its international obligations. It is surprising to hear someone say that he is helping refugees when they are in Chechnya but that we should limit their entry in Canada. I see a contradiction.

What do you think should be done, without increasing the activities of traffickers and human traffic, to find a solution that would meet humanitarian needs as well as Canada's obligations?

**Mr. James Bissett:** Thank you. I speak some French, but not enough to hold a discussion.

[*English*]

I think we could do a great deal, but I think we have to put pressure on the UNHCR to take the lead.

We always recognized we were not a country of first asylum when we signed the UN convention. Because we didn't have—except for the United States—a land border where people can flow across and make claims, our primary role in helping to resolve refugee problems would be to take refugees from countries of first asylum, and we played that role very effectively. In Austria, when they were flooded by Hungarians in 1956-57, we went into the camps and relieved Austria of 40,000 Hungarian refugees. We did the same in Czechoslovakia. We played a role in Uganda, as you know. In Chile—we went into Chile, went into the jails, took people out, and brought them to Canada. These were people who couldn't get here to make asylum claims. So I think our role in the past was effective.

We should still have a system to deal with asylum seekers, but we shouldn't be dealing with asylum seekers who have been living in Germany for three years, or in Denmark, or in Sweden, or in the United States—but that's what we're doing. You recall that when the first Tamil boat arrived off the coast of Newfoundland, everybody was amazed these Tamils had made it all the way from Sri Lanka to Canada; then we found all of them had been living happily in Germany for many years. Then we had the Sikh boat off the coast of Nova Scotia—the same thing.

It was then we realized that if we weren't careful, we were going to be, as Germany was in 1992, flooded with asylum seekers. They had close to 500,000. They had a very generous system—not as generous as ours, but generous. The next year they changed their constitution to try to stop that flow. Again, despite what was said today, they've pretty well done that. They still have a lot of asylum seekers, but they don't have 500,000 a year.

All the European countries are concerned about it. Denmark is being flooded by asylum seekers; because it's a tiny little country, it realizes it's got to do something about it. In the 1980s it adopted our system, and it lasted about a year and a half. Then they realized they couldn't sustain it, because if they continued to take asylum seekers at that rate, they'd no longer be Denmark; they'd be another country.

So every country is trying to deal with this problem. We can play a role, but I don't think our yearly role is to take 20,000 or 30,000 or 40,000 people who are smuggled into the country claiming to be refugees, when most of them are not. They're economic refugees. If they were in dire straits, they would have applied for status in the country they arrived in.

Now we've got a wide-open system whereby, if you want your aunt or uncle into the country, come up to the United States border and apply. These two Dominican Republic boys—if their uncle, aunt, and all their nieces and nephews arrive tomorrow at the U.S. border, they will be allowed in. Now, there's something wrong with that system, and we've got to get a better system.

I am deeply sympathetic to refugees. I worked in Grozny when it was under shellfire, and went in and helped get people out of basements there, and I've been in refugee camps all my life. But we're not playing our role. We're, if anything, handicapping the international effort to resolve these problems. It makes us feel good when people come to the border and we let them in—and many of them are deserving—but many of them are not genuine refugees. They're fleeing chaos in Colombia, they're fleeing economic conditions in Mexico, and those people are being allowed in as genuine refugees. The board does its best to determine who is and who isn't, and although we have a very generous system, we refuse a lot of people, but we don't remove them. Occasionally we do, but usually it's the wrong kinds of people. We might refuse your grandmother, if she comes and visits you, and overstays her time, or makes a refugee claim that's frivolous. We might be able to remove her. But you can't remove the Mohammed Mohammads; you can't remove the suspected al Qaeda agents. They all come from countries where they face torture if they're returned; you can't return them, and we ought not to return them, but it does put us into a real bind.

We signed the UN convention on torture readily, but now I find, when I check, there's a nine-member commission to ensure the UN convention on torture is being enforced. Guess who's on the commission? Russia, China, Egypt.... Why aren't we sending some of these people back to Egypt? Because we know Egyptians torture people; yet on the commission set up to enforce the UN convention on torture, we have Egypt as a member—along with China and Russia.

• (1300)

**The Chair:** Thank you, Mr. Bissett.

Mr. Siksay.

**Mr. Bill Siksay:** Thank you, Mr. Chair.

Mr. Bissett, you use really strong language to describe the situation you think is going to occur now, with people arriving at the border and making a claim as a dodge around family reunification and the more appropriate method of getting in. You said they'll make a mockery of our system. Have you seen any evidence of this happening? I wonder why someone would opt for the vagaries, delays, and frustrations of the refugee system, when there's no guarantee you'd have status at the end of it. Surely that's a deterrent in itself.

• (1305)

**Mr. James Bissett:** Well, no, but there is pretty well a guarantee you won't be sent home. I don't have them with me, but I've noticed the more recent figures put out by the Canadian border service since the implementation of the agreement. I think a figure of a hundred-and-some has come in, but 90 of those 100, 150, 160, or whatever, over half, have relatives here.

If you read the congressional transcripts, you'll see that the U.S. negotiators said to the Senate, don't worry about this; all of these people who are applying at the Canadian border have relatives in Canada; we are going to make the Canadians make an exception for relatives, so don't worry; we're not going to be flooded or stuck with a lot of asylum seekers. I think that word is out already.

It's not fair if you're applying for your mother and you know you might have to wait three or four years to get her here and maybe not get her here at all, and then you find out someone has gotten his nephew or niece or uncle and aunt into the country because they came to the border. It's not fair, it's discriminatory, and I think we should correct that.

Either the United States is safe or it isn't safe, and we shouldn't have to negotiate with the Americans about it. It's our sovereign right to declare a country safe or not safe. When we sit down to find an agreement with American negotiators, they're tough, and they took us for a ride on the third country agreement.

**Mr. Bill Siksay:** Is there any system out there that's better in terms of dealing with smuggling and trafficking? Is there an example you can point to from your experience?

**Mr. James Bissett:** Well, I think one of the reasons there's been a gradual and fairly sharp decline in asylum seekers throughout the world is because of tightening up with airlines and tightening up with human smugglers. The United Nations and the European countries are full out to try to stop human smuggling.

You see, the problem is this. Say you get an asylum seeker who fails to get status after being here two years and then you try to remove them. The first question is, can you prove they are a citizen of Jamaica or Colombia? The countries concerned—and I know this from experience—are not willing to cooperate. It may take years to get a passport or even the acceptance that this person is one of their citizens. So again, there are practical difficulties in removing people.

In the immigration language everybody knows, if you don't remove a person within 48 hours after they're in your country, the chances are you can't get rid of them. It's extremely difficult and there's an unwritten rule, the Chicago rule, that you have to remove people 48 hours after they get in or you're in trouble. That's why in Denmark, Sweden, Germany, and almost all of the European countries, if you make a refugee claim and they think it's frivolous, they will send you back immediately. Your appeal will still be entertained but you're out of the country. If your appeal is then decided in your favour, they'll bring you back, but they don't let you stay around for your appeal because they know the longer you're in the country the harder it is to get rid of you.

**The Chair:** Dr. Fry.

**Hon. Hedy Fry:** Actually I think you have highlighted the real issue about this whole issue of citizenship and immigration. It's not easy. There are balances to everything. You've just given one example, and the people before you gave another one.

The point I am beginning to notice is that what we are being pressured to do is to react to everything on an emotional basis. It's sort of a knee-jerk, emotional reaction. We do this all the time without stopping to think about how we set very good, clear, objective criteria that are balanced, with the sense here and there of whether there is a humanitarian and compassionate ground needed for individual cases that require an individual look at their problems and assistance.

I must say that I think you have highlighted how easy it is, yet this is a department that tends to get beaten over the head because it doesn't make knee-jerk decisions. I'm glad you highlighted the problems and the intricacies of the whole thing.

I hear you on the death penalty. I think you make a very good point on that, but I don't know what we do about it. Obviously if someone just went ahead and did some mass murdering there and then came over the border and happened to have family here, they'd automatically get in. So I agree with you that there are some issues.

The other one that you talked about was the family and how, by bringing the family over the border even if they are not necessarily real refugees or asylum seekers, we jump the queue for all the people waiting for years and years to try to come in for family reunification. I accept that point, but I do have a concern. I think there need to be exceptions.

Maybe the ones you talked about aren't the best ones, but I do think that on issues such as.... Canada does have what we consider to be three really important areas where we move outside the UNHCR, sexual orientation being one. We do know that in some countries people are...I'm sorry, but the country across the border discriminates against people on the basis of their sexual orientation, so we need to think about that safe country attitude if we're bringing in people on that basis when they're in danger because of their sexual orientation in another country.

The second one that I really think we need to think about is gender discrimination. Again, it's outside of the UNHCR, but I think it's a very strong point in some countries. Take simple countries like India. It's supposed to be a country that does not deny human rights, yet in some ways, based on how Canada looks at human rights, the fact is that you have young kids of 10 who are supposed to be married to a 50-year-old. You also have honour killings in certain countries. So there is gender persecution and gender discrimination and even gender abuse in countries where it's okay to beat your wife senseless.

I think those are important exceptions to make, and I just think what we need to do is find a way of getting to that balance. As you pointed out, though, it's not easy. How do we deal with those pieces that I think the United States does not share with us in terms of safe country status?

● (1310)

**Mr. James Bissett:** In fact, that's a fairly easy one. In 1989 we passed a refugee act that had a strong provision for safe third country in it without the necessity of negotiating it. It was never enacted. The problem was that at that time—and I'm sure many of the people behind me will remember this—we were being flooded in Canada by El Salvadorians and Guatemalans who were in the United States but who were not being considered as refugees in many cases. Therefore, the problem was that if we declared the United States safe for all refugees, what were we to do about the El Salvadorians and the Guatemalans?

The solution to that would have been quite simple, and it would apply as well to your concern about gender and abuse. It would have been to say that the United States is safe except for people who apply on gender grounds or on grounds of wife abuse, and you can do that quite easily.

Part of the problem is that we in Canada have never really made a distinction in our minds between refugees and immigrants. That's partly as a result of our policy of not making a distinction. We were one of the foremost countries in taking refugees after the end of the Second World War, but we never had the term “refugee” in our legislation until 1976.

The Australians have broken that connection between immigration and refugees. They have a very tough system. If you make a refugee claim, they insist on it being dealt with outside of Australia. If you're considered to be a refugee then they say, fine, get in the queue, because each year we take 10,000 refugees from the camps and you should be in that queue, not the immigration queue. A lot of people feel that's too severe, but it is an attempt on their part to make this break. People who fear persecution, torture, and death are coming here not because they have relatives here or because this is a great place to be and we give welfare and better housing; they're coming here for protection. That's what we have to bear in mind.

**Hon. Hedy Fry:** You make some important points, but I know that many of us remember the *St. Louis* and the *Komagata Maru*, and we don't want to repeat those incidents. That puts us in a position where we want to make sure that, kind of like a physician, our ethic is to first do no harm. I think we all want to be in the position in Canada where we say “First, we won't do the harm we did with the *St. Louis* and the *Komagata Maru*”.

● (1315)

**Mr. James Bissett:** I agree with that, but I think we've got ourselves in the position now where we pretend we're doing good, but in fact we're doing great harm.

**The Chair:** Thank you very much.

With that we'll conclude the meeting.

Thank you.







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