Hospitality or Hostility? The Detention of Irregular Arrivals and Asylum-seekers in Canada as explained by the Hostile Environment Framework

by

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Dedication Page

This thesis is dedicated to all the vulnerable people who started journeys they thought would end in safety and acceptance and in fact ended in discrimination, incarceration, or untimely death. The names of some of these people are

Alan Kurdi

Dharmik Jagdishkumar Patel

Jagdish Baldevbhai Patel

Kirushna Kumar Kanagaratnam

Nesan (surname unknown) who died aboard the MV Sun Sea in 2010

Vaishaliben Jagdishkumar Patel

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Abstract

Between April 2019 and March 2020, Canada detained 8,825 immigrants. In the words of a refugee detained after fleeing the Taliban, "I chose Canada because I thought it was welcoming to refugees. I thought Canada was better than this.…".[i] This is indeed the popular belief: Canada is widely viewed as a migration haven. In the context of rising anti-immigrant policies in the Global North, Canada has emerged as an outlier in the treatment of immigrants, and of refugees, consistently resettling the highest number of all receiving states. However, the detention of irregular migrants and asylum-seekers hints at a very different reality, one in which Canada institutes policies that are averse to unwanted migrants. Employing a theory-building process tracing method, this thesis proposes a *hostile environment framework* to comprehend why Canada simultaneously maintains a positive image in migration matters, whilst constructing a highly controlled and punitive immigration regime. The securitization, externalization and crimmigration frameworks are limited in explaining distinct areas of Canada's wider initiatives to resettle the best and alienate the rest. This research expands on the theoretical and empirical studies of immigration detention to show that Canada employs deterrence measures outside of its borders, criminalizes border crossings, and wages protracted punishments against irregular arrivals and asylum-seekers.

List of Abbreviations Used

AS NSRP	Asylum-Seeker Influx – National Strategic Response Plan
BRRA	Balanced Refugee Reform Act
CBSA	Canadian Border Services Agency
DCO	Designated Countries of Origin
DFN	Designated Foreign National
FBI	Federal Bureau of Investigation
IR	International Relations
IRB	Immigration Refugee Board
IRCC	Immigration, Refugees and Citizenship Canada
IRPA	Immigration and Refugee Protection Act
RAD	Refugee Appeal Division
RCMP	Royal Canadian Mounted Police
RPD	Refugee Protection Division
U.K.	United Kingdom
U.S.A.	United States of America
UNHCR	United Nations High Commissioner for Refugees

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Chapter 1 Introduction

The puzzle at the heart of this research project is why Canada, as one of the world's "classical countries of immigration" detained 63,684 immigrants between 2012 and 2021 (Castles, 1998, p. 5), and increased the number of immigration detainees held every year in this period (CBSA, 2021; Human Rights Watch, 2021). These figures seem surprising as Canada enjoys a widespread reputation for being a global standard bearer in migration matters (Bakewell & Jolivet, 2015; Cameron & Labman, 2020), pledging to increase immigration year after year (IRCCa, 2022). Canada has managed a feat unlike that of any other country in the Global North and maintained popular support domestically for these yearly immigration increases by advertising the economic and social gains that result from incoming migration flows (Leuprecht, 2019). On top of this, Canada has recently retained its title as the top refugee resettlement destination in the world, having overtaken the U.S. for the first time in 2019 (Prime Minister of Canada Justin Trudeau, 2021). In the wake of recent global crises like the Syrian Civil War and the fall of Afghanistan to the Taliban, the Government of Canada consistently stepped up to fulfil the country's international commitments. In both cases Canada pledged to resettle 40,000 refugees from each affected country (Government of Canada, 2019; Government of Canada(a), 2022). This glowing reputation stands in stark contrast to the country's record for immigration detention. The average Canadian citizen may believe that Canada is hospitable, generous, and altruistic in matters of immigration (Dawson, 2014), but this image does not hold up to scrutiny when the actions of the government are further examined.

The use of detention against immigrants may be at odds with Canada's popular image, but it is in line with global responses to migration in which migrants have been used as

scapegoats for all manner of political issues across the Global North. Historically, countries of immigration like the U.S., U.K., Australia, and Canada have coped with large influxes of migrants. In the 19th and 20th centuries, myths of nation-building were reinforced by the integration of immigrants into these societies, and more pragmatically, incoming migrants filled necessary labour shortages (Castles, 1998; Malkki, 2012; Skran 1995). In the 21st century, these classical countries of immigration have widely adopted broader narratives of greedy economic migrants, bogus refugees, and uncontrollable waves of asylum-seekers to predicate stricter and stricter migration controls (Haddad, 2002; Haddad 2008; Gatrell, 2013). This trend has been especially prevalent after the so-called European migrant crisis in 2015 that was used by right wing governments and liberal governments alike as an excuse to crack down on unwanted migration (Hirschler, 2021; Goodfellow, 2019). This has led to the creation of a new class of "undesirable" migrants as states have sought ways to reap the economic benefits of skilled migration and exercise their territorial sovereignty to exclude those migrants that states assume hold the potential to drain their resources (Hollifield, 2004). These unwanted arrivals, commonly refugees, asylum-seekers, and irregular migrants, are increasingly subject to harsher treatment, including the use of detention. This is a topic worthy of attention as the global refugee population is currently the largest it has been since records began, while the total population of concern to the office of the UN High Commissioner for Refugees (UNHCR), the leading global agency concerned with protecting refugees, reached a height of 89.3 million at the end of 2021 (UNHCR, 2022). The UNHCR (2022) estimates that the number of people force to flee their homes due to conflict, violence, fear of persecution or human rights violations could reach 100.1 million by the end of 2022. There has also been a marked increase in protracted

refugee situations globally, meaning refugees are typically spending longer periods of time living in refugee camps or in a state of transience, without access to durable solutions (UNHCR, 2022). Ultimately this has meant that 83% of refugees are living in temporary places of refuge in low- and middle-income countries with little option of third country resettlement. (UNHCR, 2022). In fact in 2021, less than 500,000 refugees were resettled elsewhere (UNHCR, 2022) Therefore, not only are there more and more people in need of international protection, but countries of immigration in the Global North that could provide this protection are declining to do so. If Canada is to remain justified in claiming to be a global exemplar in refugee assistance it should lead the way in removing the restrictions placed on asylum-seekers and irregular arrivals and expanding the protection on offer to the worlds refugee population.

It is the aim of this project to propose a theoretical explanation as to why Canada, as the least likely candidate to adopt harsh measures towards irregular arrivals and asylum-seekers, detains thousands of these migrants every year. This research will focus specifically on irregular arrivals and prospective asylum-seekers as a migratory group that is subject to the use of detention. Irregular immigration is a term broadly used to describe the movement of people that happens outside of official state-sponsored or state-controlled schemes (UNHCR, 2018). In the Canadian case, the vast majority of migrants that arrive at Canada's borders outside of official state-sanctioned schemes then go on to make asylum claims, as shown in Figure 1.

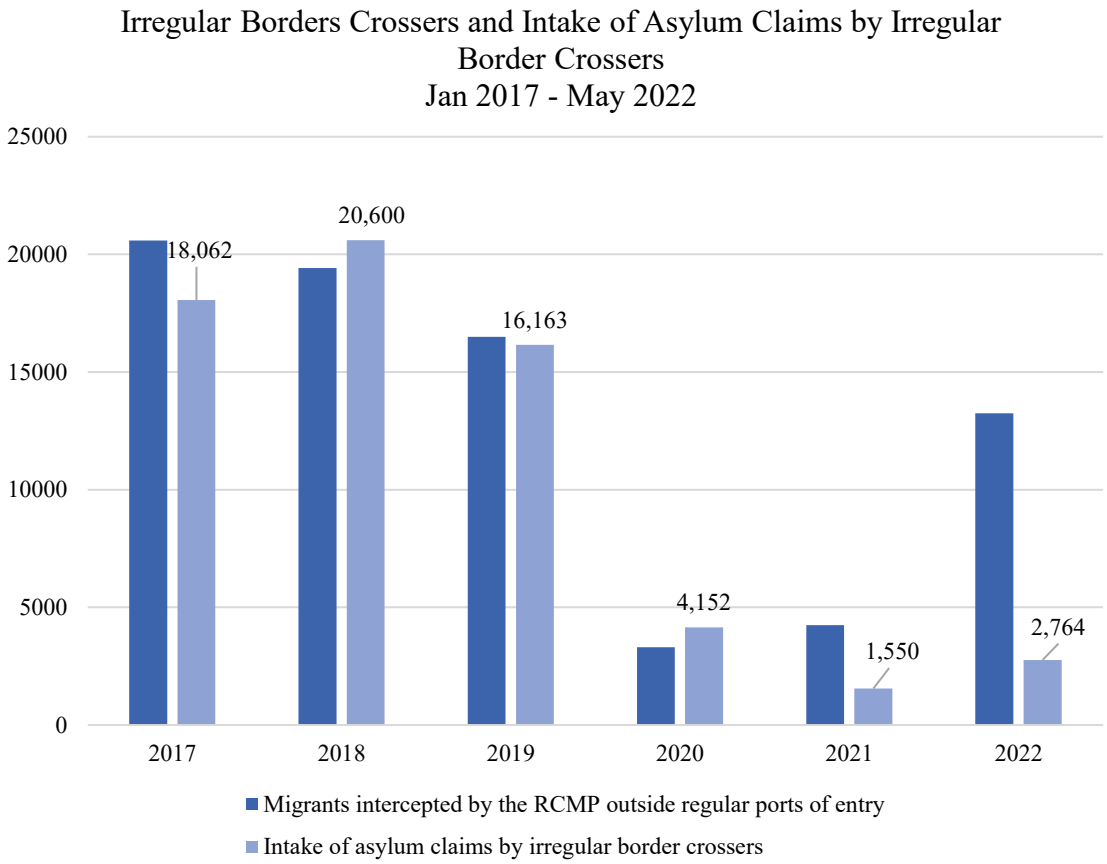

Figure 1 – Irregular border crossers and intake of asylum claims by irregular border crossers, Jan 2017 to May 2022.
Data sourced from IRCCb. (2022). *Asylum claims by year – 2022.* Retrieved June 29, 2022, from https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/asylum-claims/asylum-claims-2022.html; IRB. (2022). *Refugee Protection Claims Made by Irregular Border Crossers*. Retrieved June 28, 2022, from https://irb.gc.ca/en/statistics/Pages/irregular-border-crossers-countries.aspx
In the years 2018 and 2020, the number of asylum claims is higher than the number of irregular immigrants intercepted by the Royal Canadian Mounted Police (RCMP). This represents a backlog of cases passing through the asylum claimant system (IRB, 2022).

The hostile environment framework that this research proposes considers the Canadian border not just as a geographic boundary, but as a process that is performed by the government and border agencies as arbiters of political space, judging acceptable and unacceptable migration flows, and by migrants in their interactions with these bordering

processes (Van Houtum, 2010). This concept challenges the traditional policymaking framing of borders. The traditional framing of the geographic border as the site of the most visceral displays of the power states can wield over non-citizens is outdated in the wake of extra-territorial migration regimes and migrants' interactions with these regimes (Dryzek, 2001). As such, this framework will explain the changes that successive governments have made to the Canadian immigration regime between 2000 and 2022 as new iterations of border processes that have impacted the length and breadth of the journey a prospective immigrant takes, from the pre-departure and travelling stage, to the point of entry, and then to their reception inside Canada. The hostile environment is proposed by this thesis to explain how the Canadian government has sought to control each of these migration stages to preserve their image as an immigrant-receptive state, whilst enacting a differential and exclusive immigration policy. The elements of the proposed framework include the implementation of extra-territorial deterrence measures, the systems introduced to criminalize border crossings, and finally, the protracted punishments that are levied against irregular arrivals and asylum-seekers. These elements expand the understanding of the border as a geographic place in which the selective process of immigration admittance occurs; accordingly, the approach taken by this project proposes that the entire migration journey is dictated by the imperative to filter out unwanted migrants. Taken together, these three components also challenge Canada's reputation as a migration haven and lay bare the discrete ways in which Canada has enacted a preferential and punitive migration policy when it comes to irregular arrivals and asylum-seekers.

The hostile environment framework illuminates the methods through which the Canadian government enacts this preferential migration system in order to prioritize

seemingly productive and economically desirable forms of migration that are supported by the Canadian public. The three elements of the hostile environment framework demonstrate how successive Canadian governments have maintained the image of Canada as a positive global force on migration and refugee issues, whilst also instituting harsh border controls to protect the integrity of the Canadian border. The fact that the changes to Canada's immigration system have occurred across Liberal and Conservative premierships alludes to cross-party support for these bordering processes. Through state-sanctioned migration schemes, the Canadian government prioritizes economic migrants for immigration to Canada. This prioritization then feeds into the widely accepted public narrative that migration is essential and required to support an aging population and contribute to the economic prosperity of Canada. The resettlement of refugees also supports this idea. While Canada has become the outlier in the number of refugees it resettles, the process for third-party resettlement involves health and security checks before the refugee begins their journey to Canada and thus also represents the ability of the Canadian government to preferentially determine who may reside in Canada, whilst maintaining their international obligations to protect refugees.

The case put forth by the hostile environment framework, and this research more broadly, is that the detention of irregular migrants is part of a project to resettle the 'best' of economic migrants and refugees, from the standpoint of the Canadian state, and deter the rest. Irregular arrivals are presented as a "burden on Canada's immigration system" that welcome punitive treatment because they are seen to be "jumping the queue" in the words of Jason Kenney, former Minister for Immigration, Refugees and Citizenship (Gilbert, 2016, p. 205; Reynolds & Hyndman, 2021, p. 41). By constructing this hostile environment

framework, the Canadian governments maintains the integrity of its border by preferentially selecting migrants from beyond its borders and deterring the arrival of irregular migrants.

Through an investigation of Canadian immigration legislation, this study will explain the detention of irregular arrivals and asylum-seekers in Canada as part of a project to deter, criminalize, and punish unwanted migrants along the spatial and temporal length of their journey as proposed by the hostile environment framework. A content analysis of immigration legislation, immigration regulations, departmental amendments, and protocols that have been introduced since 2000 provides the evidence for these claims. The results will show that there have been important changes introduced by successive Canadian governments that have attempted to prevent irregular journeys from starting through the introduction of visa schemes and the signing of bilateral agreements. As a result of these developments, it will also be shown that the nature of the physical Canadian border has changed. The chief border agency, the Canada Border Services Agency (CBSA) has adapted their mandate and entered into agreements with the Royal Canadian Mounted Police (RCMP) that have contributed to the criminalization of border crossings outside of official ports of entry. Additionally, it will be shown that expansive powers have been granted to immigration enforcement bodies to detain irregular migrants and asylum-seekers for extended periods of time once they are inside Canada.

As will be discussed in the literature review, there are three distinct theories that can be adopted to explain the detention of irregular migrants and asylum-seekers in Canada. It is important to note that while this research is building on prior theoretical literatures, the overall research approach is inductive. The data gathered in this study will be used to

construct a theoretical framework, whilst being informed by three pre-existing theories. Securitization theory, as well as the crimmigration and externalization frameworks, all work to theorize distinct state mechanisms for enacting exclusion and control over irregular migrants. However, as stand-alone theories, none of these frameworks capture the full picture of how irregular arrivals and asylum-seekers are treated by the Canadian government. Nonetheless, by drawing on these three theoretical frameworks, it will be shown that the mechanisms of deterrence, exclusion, and punishment evident in the Canadian case can be applied in the migration context as established by securitization theory and the crimmigration and externalization frameworks. Drawing from three theoretical perspectives may represent a somewhat unconventional approach to a single case study. However, as will be discussed in the literature review and the methodology, this depth of theoretical engagement is certainly in line with the goals of this research project as part of a wider theory-building approach that adopts the process tracing method.

This thesis is organized as follows. In the subsequent chapter, the literature review, the empirical and theoretical literature related to the question of why Canada detains irregular arrivals will be discussed. It will be shown that the episodic nature of much of the existing empirical literature allows for the prospect and opportunity to advance on prior work by taking up an overarching framework of Canada's migration policy in the post-2000 period. The securitization, crimmigration, and externalization frameworks will also be discussed extensively, in order to establish grounds on which to build inter-theory engagements. The methodology section will then explain the research methods and data collection techniques adopted by this research. The validity of the use of a single case study to build a theoretical framework will be defended, alongside a discussion of the challenges of this approach. An

analysis of Canada's migration policy will then be taken up in Chapter 4. This chapter will begin with an account of the changes made to Canada's immigration legislation between 2000 and 2022 and will form the evidential basis from which the hostile environment framework will be developed. Chapter 5 discusses how the evidence that has been put forward can be explained and theorized by the three theoretical frameworks adopted by this study. Securitization theory and the crimmigration and externalization frameworks will be shown to help explain the mechanisms of Canadian immigration policy that were identified in Chapter 4. However, it will also be shown that by understanding the Canadian border as a process, or a series of bordering practices, none of these pre-existing theoretical frameworks account for the entirety of the migration journey, thus building the theoretical foundation on which to construct the hostile environment framework. This framework will be put forward in Chapter 6 as the culmination of this investigation. The hostile environment framework will be proposed to offer a theoretical explanation for the detention of irregular migrants and asylum-seekers. The three key elements of this framework, as noted above, are extraterritorial deterrence, criminalized border crossings, and protracted punishment. Each of these elements theorize how the changes made to Canadian immigration policy have adversely affected prospective irregular migrants and asylum-seekers. Finally, the conclusion will frame this thesis as an addition to the literature that seeks to challenge perceptions of Canada's positive migration record and expose how it adopts harmful practices towards irregular migrants and asylum-seekers. It will also be shown that this research seeks to contribute to the work of other scholars within critical refugee studies that interrogate contemporary migration policies (Dauvergne, 2008; Haddad, 2008; Nguyen & Phu, 2021; Silverman, 2014). By working across theoretical

limits, this thesis hopes to build a more cohesive view of how states in the Global North construct legal, political, and bureaucratic boundaries to unwanted migration flows.

Chapter 2 Literature Review

In popular understandings, Canada has a positive reputation when it comes to immigration affairs (Bakewell & Jolivet, 2015; Cameron & Labman, 2020). It has been the work of scholars across academic disciplines to rigorously test this commonly held belief. This thesis aims to complement the works of critical scholars that have sought to challenge and interrogate the historic immigration practices employed by the Canadian government, as well as expose the obvious inequalities and hidden contradictions that dictate who and how people enter Canada in the 21st Century. This literature review will aim to provide an overview of the state of field in two parts. Firstly, the empirical literature will be presented. It will be shown that scholarship concerned with contemporary Canadian migration policy is vast, but episodic, covering crucial moments in Canada's migration history in detail, but not drawing links between these moments. Following from this, an in-depth review of the theoretical frameworks employed in this study will be presented. The review of the securitization, crimmigration, and externalization frameworks will show that there is room to apply all these frameworks to migration issues, but that by combining their distinct elements, a more comprehensive hostile environment framework can be proposed to theorize the contemporary crack-down on irregular migration.

The literature that addresses Canadian migration policy is substantial; however, a considerable amount of recent literature is also occasional and episodic in approach at the expense of more extensive studies of Canadian immigration policy. Some scholars of Canadian immigration have focused on historical flashpoints in which Canada's migration regime has been tested, for example the MV Sun Sea incident that saw 492 Tamil migrants arrive on the coast of British Columbia in 2010 (Sadrehashemi, 2019; Atak & Simeon,

2018; Dawson, 2014), or in the wake of the 9/11 terrorist attacks that took place just over the border in the U.S. (Rygiel, 2012). There have also been studies that focus on one geographic area that challenges Canada's border control, like Roxham Road in Quebec, a rural road straddling the U.S.- Canada border that has been the site of thousands of irregular border crossings (Kirkey, 2020; Leauprecht, 2019). Alternatively, scholars have opted to critically interrogate a particular government immigration policy, for example the refugee resettlement scheme that employs private sponsors to support newly arrived refugees (Cameron & Labman, 2020). A recent work of note is *Refugee States* (Nguyen & Phu, 2021). This edited collection sheds a critical light on Canada's migration history, but also uses specific migration events as the framing of each chapter, for example, the 1914 Komagata Maru migrant-boat arrival, and again the MV Sun Sea incident (Nguyen & Phu, 2021). These two incidents have a lot of in common, most obviously that they both include migrants arriving to Canada by boat outside of state-sanctioned immigration schemes. However, there is also the common theme of exclusivity based on the political whim of the Canadian government at the time. There is a room to build a more nuanced, theoretically minded explanation for these historical continuities. Thus, while there are many voices in the field, due to the episodic nature of recent studies of Canadian migration, there is room for a broad overview of the successive changes to the Canadian migration system.

The issue of why Canada has sought to detain irregular arrivals is not a new question, but similarly to the studies of Canadian migration more broadly, previous studies have been prompted by notable irregular migration events, hence they have been narrow in focus and arguably reactionary. Sadrehashemi (2019) is one such study that focuses on MV Sun Sea case. Sadrehashemi (2019) argued for reform of the CBSA after an analysis

of their conduct towards these 492 asylum claimants. This piece reached the conclusion that, in this case, Canada's conduct was marked by politicisation and heightened security concerns, both of which are theoretical areas of focus for this project. However, this study seeks to analyze Canadian immigration policy more broadly and not engage with just one official body within Canada's migration regime, such as the CBSA (Sadrehashemi, 2019). This is necessary as the CBSA is just one element in a large network of actors that contribute to the creation and outcomes of immigration policy making. Rygiel (2012) also focuses on the MV Sun Sea case to criticise the highly securitized nature of Canadian border policy and the use of detention towards irregular arrivals. While Rygiel (2012) adopted the securitization literature as a theoretical framework, like this research study, they also provide a comparative analysis of the U.K., Australia, and Canada. The insights on the Canadian context were again based on the MV Sun Sea incident, just one historical flashpoint in the recent history of Canadian migration (Rygiel, 2012). Rygiel's (2012) conclusions were broad, addressing the use of detention as a technology to undermine refugee rights to movements across these different jurisdictions, as opposed to a deep analysis of the overall migration regime in each of the case studies (Rygiel, 2012). While international comparison is certainly enlightening, Canada's popular perception in terms of immigration matters necessitates a more in-depth analysis of the use of detention in this context. There is a need to uncover how Canada is able to construct a positive image as a migration haven, whilst simultaneously creating an immigration regime that is hostile to unwanted, irregular migrants. The single-case study approach will allow for a deep immersion into the facts of the case and aid the theory-building process that can capture the contours of Canadian immigration policy. Covering a wider time period than just one

historical migration incident, and including more than just one branch of the immigration Canadian immigration system, this research hopes to draw conclusions about the ability for Canadian immigration policy to manufacture a crisis of irregular migration, whilst using this crisis as impetus to construct an environment that treats irregular migrants in an inhumane way. A comparative study could miss these nuances that are potentially only observable in the Canadian case.

As has been established, there are indeed critical scholars who have challenged Canada's migration regime more broadly (Dawson, 2014; Nguyen & Phu, 2021). There are also formative studies on Canada's treatment of irregular arrivals (Rygiel, 2012; Sadrehashemi, 2019). However, the scope and methodology adopted by this study will hope to move beyond an episodic account of Canada's responses to irregular migration and consider how the Canadian government has constructed an environment that is hostile to irregular migration over the 2000-2022 period. The product of this research, the hostile environment framework, will not only draw on the empirical literature that exists to explain the detention of irregular migrants in Canada, but also the diverse theoretical literature concerned with this phenomenon.

There are three branches of theoretical literature that have developed in migration studies to explain why detention has been adopted in respect to irregular migration in Canada. The securitization literature outlines the social strategies that serve to produce different migratory subjects, such as 'bogus' asylum-seekers and 'deserving' refugees (Balzacq, 2019; Buzan, Wæver, & De Wilde, 1998; Reynolds & Hyndman, 2021). In a society that treats migration as a security issue, these categories are products of social discourses that label certain types of migrants according to the threat they are framed pose

to the broader society. The crimmigration and externalization literatures, on the other hand explain migration control strategies that often have substantial impacts on asylum-seekers' access to international protection. A key concern of the crimmigration framework is with how detention is used as a technology within the wider immigration-control structure and this approach provides a structural perspective on this question (Stumpf, 2006; Atak & Simeon, 2018; Bourbeau. 2019). In contrast to the securitization approach, the crimmigration literature is mainly concerned with the domestic, taking a vantage point from inside of borders, looking inward. The crimmigration framework has mainly been applied to the U.S. in the North American context but has seen increased attention within the European context. By taking up both these strands of the crimmigration framework, this study will identify methodological space for engagement across these two branches. The externalization framework refers to the extra-territorial processes that regulate access to a state's physical and legal space (Boswell, 2003; Gibney, 2005; Zaiotti, 2016). The externalization literature is concerned with where and how borders are performed. Immigration control processes and procedures increasingly take affect far beyond the geographic borders of a state and this framework illuminates how states enter into agreements with one another to control the flow of migrants beyond their borders. This theoretical literature review will discuss the cleavages within the respective literatures and outline how this research study hopes to address the gaps that exist within and between these theoretical approaches. Through a discussion of securitization, crimmigration, and externalization, it will be shown that there is room for greater inter-theory engagement in the area of migration, and particularly when analysing the dynamics of migration controls in Canada. The purpose of this research project is to incorporate distinct elements from

these three theoretical approaches to prove that the processes outlined by the crimmigration, externalization, and securitization literature taken together offer the theoretical underpinning for a hostile migration environment that can shed light on Canadian practices of penalizing irregular migration with detention.

Securitization theory emerged as an offshoot from International Relations (IR) constructivist discussions of intersubjective beliefs and the importance of ideational factors that construct the interests of actors in the international system and domestic setting (Finnemore & Sikkink, 2001; Wendt, 1992; Keohane, 1988). Securitization theory established the process by which an issue becomes a security issue requiring "politics of the extraordinary" (Balzacq, 2019, p. 99). In other words, securitization theory provides a framework for theorizing the process in which migration in general, and specifically irregular migration is treated as a threat to national security and thus can be met with extraordinary measures. The process of securitization contains three elements. Firstly, an entity is required to make the securitizing statement or assertion of the threat; for example, in this context a government or sovereign state is considered an entity (Reynolds & Hyndman, 2021). Secondly, the process of securitization entails a reference object, that is a place or people, that is under threat (Reynolds & Hyndman, 2021). Thirdly, the target of the securitization act is required, and this target is given the label "the audience" (Reynolds & Hyndman, 2021).

While securitization scholars mainly agree on the three constituent parts of the securitization process, debate has revolved around the definition of the entity, and the idea that non-governmental entities can perform the securitization speech act (Balzacq & Guzzini, 2015; Taureck, 2006). The definition of a speech act, whether an illocutionary or

perlocutionary act, and the political factors that shape the reference object were also typical debates between securitization scholars in the last decade (Balzacq & Guzzini, 2015; Taureck, 2006; Walters, 2008). Balzaq & Guzzini (2015) carved the contours of the field into debates around emphasis, definitional quarrels, and questions of scope. Additionally, questions of contextualisation and the constitutive elements of the theory have recently been discussed in the literature (Hirschler, 2021; Hernandez-Ramirez, 2019). These discussions have implications for the use of securitization as a theoretical framework, and especially for its application in the context of understanding the securitization of irregular migration.

Securitization, as a clear and defined set of practices, emerges as a theory well positioned to study empirical cases of issues being securitized. For the inquiry of irregular migration as a security topic, the theory of securitization enables the researcher to explore the critical security question of how security as a concept has been actively redefined. Engaging with the topic of migration also forces scholars working within this theoretical perspective to question the normative impact of the process of securitization, as securitization scholars often hold an unclear position on the normativity of securitization practices. This stems from early discussions within the Copenhagen School, and especially from Weaver's wavering stance. Weaver's (1998) early work was extremely critical of security framing an issue; "security should be seen as a negative, as a failure to deal with issues of normal politics" (p. 71). Due to this position, Waever also theorized a desecuritization strategy whereby issues are moved back into the sphere of ordinary politics; however desecuritization remains undertheorized in comparison to securitization (Taureck, 2006). In more recent work, Weaver (2004 in Taureck, 2006) attempted to

solidify a pragmatic stance over securitization asserting that "it is by labelling something a security issue that it becomes one" (p. 56). However, normative debates are important in the securitization of irregular migration considering the impacts on irregular migrants as a result of this framing on policy-formation.

As established by Hammerstad (2014), one of the justifications for the conception of migration as a security issue was the humanitarian intervention defence for the first Iraq War in 1990 that expanded the UN Security Council's remit to include tackling migration situations "as a matter of international peace and security" (p. 266). This was clearly a normative stance; migratory and refugee situations were seen to threaten international security and thus ought to be securitized. However, securitization scholars clearly prioritize securitization as a process, as opposed to securitization as a political practice that establishes normative positions. They assert that the process by which an issue is securitized remains an analytical distinction as opposed to a normative matter (Balzacq, 2019). By considering the use of detention in the Canadian case, these abstract discussions could gain empirical clarity alongside the crimmigration and externalization literature. While the normative aspect of securitization may not hold any ground in discussion of the process, the policy implications of the increased securitization of migration can be seen to have led to a convergence of the criminal and immigration legal fields (Stumpf, 2006). Detention, as an outcome of the processes of securitization and crimmigration, causes mental and physical harm to irregular migrants and asylum-seekers (Human Rights Watch, 2021). Additionally, the offshoring of migration practices, another outcome of the securitized nature of migration, has extended the process of asylum-seeking, causing further mental and physical struggles on the part of asylum-claimants and migrants (Human

Rights Watch, 2021). Placing the increasingly abstracted securitization literature against these two more empirically tangible theories, shows that there is a place for normative discussions within the theory of securitization.

Furthermore, there have been multiple assertions that securitization is not a causal theory, but in fact a "constitutive, non-casual theory" (Buzan & Hansen, 2009, p. 215). Balzacq and Guzzini (2015) usefully summarise the work of early securitization theorists who considered the inclusion of context as a fatal move away from the study of the act of securitization towards a causal theory of securitization. However, in an attempt of the Copenhagen school to "have it both ways" (Balzacq, 2019, p. 335), securitization scholars have been encouraged to "knit securitization with casual mechanisms" (Balzacq, 2015, p. 99). This approach would expand on the implications of the securitizing act and not just how it functions. Clearly space has been identified within the securitization literature for there to be cross-theoretical engagement. This research proposes that by taking up the securitization process, alongside the crimmigration and externalization perspectives, a broader analysis of hostility towards irregular migration can be realized.

More recently, there have been clear shifts within the field of securitization theory away from debates of definition, for example the nature of the speech act, whether perlocutionary or illocutionary, to more broadly conceptual discussions. As part of these discussions, Floyd (2019) has argued that taking a normative stance on the process of securitization limits the objectivity of the researcher. However, the inclusion of shifting normative landscapes, as exhibited by Hernandez-Ramirez (2019) and Hirschler (2021) can also allow for a greater understanding of the wider discourse and the pressures on the entity in the securitization process. Nonetheless, the theory of securitization still proves a robust

analytical tool with which to discuss Canadian policy responses to irregular migrants. This potential comes down to the internal cohesion of the theory itself, and the fact it forefronts the important role of considers constitutive forces in a domestic setting to shed light on internal political and ideational structures. This research hopes to apply the insights of securitization theory alongside other theoretical approaches to understand not only how different classes of migrants are constructed, but how this discursive construction is translated into legislation and policy.

The crimmigration framework emerged onto the academic stage far more recently than securitization theory; however, there has been rich debate on the foundations and applications of this emergent framework. The concept of crimmigration was first advanced in Stumpf's (2006) foundational piece *The Crimmigration Crisis.* Stumpf (2006) defined crimmigration as the "convergence of criminal and immigration law" in legal practice and on a normative basis to render the criminal justice system and immigration law as "merely nominally separate" (p. 377; p. 376). There are currently two distinct schools of thought that place varying degrees of emphasis on three major themes within the crimmigration literature. The North American school of crimmigration was the first to discuss detention as a product of the convergence between criminal and immigration law and placed great emphasis on the 9/11 terror attacks as the source of this legal convergence and the increased normalization of practices of arbitrary detention. The European school has attempted to expand the crimmigration theory by applying it outside of the North American context. The European school has also broadened the scope of where this convergence between criminal and immigration takes place, emphasizing that this takes place not just in the legal system but in public discourse and news coverage. The following discussion will illuminate

the contours of an emerging theoretical framework that has clear applicability to the detention of irregular arrivals in the Canadian context but has so far not been addressed conclusively within the crimmigration literature. It will also be shown that there are fruitful avenues for engagement with the securitization literature and externalization literature that will be explored in this broader research study.

North American legal scholars defined the crimmigration field from the outset with an almost exclusive focus on the American setting. Stumpf (2006) outlined the phenomena of crimmigration and argued that a specific framework to understand the convergence of these legal fields was necessary due to the seemingly divergent goals of criminal and immigration law. Criminal law broadly addresses societal or individual harm as a result of violence, fraud or evil motive (Stumpf, 2006). Immigration law, on the other hand, determines who may cross or reside inside borders (Stumpf, 2006), and lies in the distinct legal space of administrative law. Through examinations of US federal law and case law Stumpf (2006) conclusively shows how the two legal areas converged at their common denominator, the creation of categories of people that define the terms of societal inclusion and exclusion. The fact that both these areas of law seem to codify normative moral stances and draw their legitimacy directly from traditional conceptions of governmental sovereignty were also seen to be common threads tying the two legal areas closer together (Stumpf, 2010; García Hernández, 2013, García Hernández, 2014). Adopting a Westphalian nation-state view, states' powers are exercised in the protection of their monolithic communities; those who fell out of favour with this community because they were an outsider or were criminals could be judged and expelled (Barker, 2013; Skran & Daughtry, 2007).

Recent studies however have challenged the crimmigration literature to consider the exercise of state power outside of its physical boundaries. More fluid notions of state boundaries ought to push crimmigration theorists to consider the externalization of migration practices, and in particular the expansion of states' legal boundaries of inclusion and exclusion as well as practices associated with detaining migrants in remote offshore locations (Zaiotti, 2016; Hyndman & Mountz, 2008). The need to consider those on "the outside" of the criminal or immigration system, viscerally represented by asylum-seekers, was argued to be a methodological imperative (Hyndman & Mountz, 2008, p. 251; Dauvergne, 2008). Detention of irregular migrants and asylum-seekers, after all, can take place offshore, as is clear in the Australian case (Van Berlo, 2015; Hyndman & Mountz, 2008). While it could be argued that crimmigration, as an explanation for legal processes, is concerned with the domestic, there is a recurring reliance in state practice on "extra-territorial policies that are used to circumvent legal obligations in liberal democracies" (Zaiotti & Abdulhamid, 2021, p. 110). An integration of Canadian foreign policy, alongside federal law and case law would soften the border between the domestic and the international in the Canadian case. Nonetheless, federal law and case law are fundamental pieces of evidence to consider the legal processes that result in this crimmigration convergence.

Most of the North American crimmigration literature emphasizes the pivotal role of the terror threat in the formulation of this framework. Studies interested in the use of detention in immigration and criminal settings emphasize that the post 9/11 landscape was characterised by the pervasive perception of the threat of terror, leading to an intensified securitization of migration and policed borders (Demleitner, 2002; Demleitner, 2004;

Miller, 2005). In the authoritative crimmigration text, Stumpf (2006) asserts that the post-9/11 context caused greater convergence due to the increased use of detention in the immigration context, and the use of deportation in the criminal context. In a practical sense, immigration law provided greater maneuverability for the U.S. to deport terror suspects than criminal law, which had more codified boundaries against deportation of criminals as part of its broader emphasis on procedural protections. Immigration law appeared to have effectively opened-up exile as a punitive punishment in this context. García Hernández (2018) asserted that in fact the securitization of migration and a concern with foreign terrorists were not contemporaneous, or a result of post 9/11 thinking. The securitization of migration was in fact grounded in the earlier anti-drug hysteria that was conflated with anti-migration in the 1980s (García Hernández, 2018; García Hernández, 2013). With this consideration in mind, the focus on 9/11 in the North American crimmigration literature could be seen to overlook the fluidity of the deployment of security as a concept (Walters, 2008). At any one time there can exist multiple interpretations and deployments of security by policymakers. While there is no doubt that the 9/11 terror attacks heavily influenced the movement of people globally, to align this event with the introduction of arbitrary detention of irregular arrivals in Canada threatens to neglect the rich history of securitization and racialization scholarship that could expand the application of crimmigration to the pre-2001 context (Walters, 2008; Welch, 2004; Hernandez-Ramirez, 2019). Whilst the 2000 to 2022 timeframe of this research appears to follow the trend of centering on the 9/11 terror attacks in shifting state responses to the movement of people, this project's framing focuses on this period as a moment of critical change in Canada's immigration system. The turn of the 21st Century saw the passage of three pieces of sweeping federal legislation that each

reshaped key aspects of the broader immigration system, the Immigration and Refugee Protection Act (2001), the Balanced Refugee Reform Act (2010) and the Protecting Canada's Immigration System Act (2012). This 2000 to 2022 period also saw a substantial increase in the number of internationally displaced people, representing another critical change in the immigration policy-making landscape (UNHCR, 2020). Rather than centering the project on the reactions of Canadian policymakers to 9/11, this research project instead homes in on this context as a particularly significant period of transformation for global migration flows and Canada's immigration policy. The U.S. terror attacks of 2001 certainly feature in the European crimmigration literature as a cause of heightened security narratives, but other social concerns more apparent in the European context have also been taken into account.

Through the application of the crimmigration framework to alternative contexts, European academics have built on the core tenets of crimmigration theory, as laid out by Stumpf (2006). European academics have pointed to transnational crime and the sustainability of national welfare programmes (for example universal health programmes), alongside terror concerns as causes for greater criminal and immigration law convergence (Van der Woude, Barker, & Van der Leun, 2017; Bowling & Westenra, 2020). The application of the European crimmigration school to the Canadian case also relates to not just scope, but to inter-disciplinary engagement and methodological diversity. Brouwer, Van der Woude & Van der Leun (2017) for example, utilised a corpus linguistics (CL) approach in order to expand the analysis of actors in the crimmigration framework to include the public and the media. Through the inclusion of social practices, such as the use of language and discourse, research has shown a broader framing of crimmigration in crime

control and migration control (Brouwer, Van der Woude & Van der Leun, 2017; Aas, 2011; Van Berlo, 2015). Clearly there is space to discuss how the labelling and the use of language can contribute to a legitimization of the crimmigration process. While there is no shortage of literature regarding the role of labelling in the construction of migration discourses (see Reynolds & Hyndman, 2021, p.26) the specific use of detention as a means to deal with irregular arrivals could indeed be investigated through a securitization approach that informs greater convergence between criminal and immigration law in Canada.

Overall, the North American and European approaches to crimmigration would be useful in the Canadian context, yet there also is room for the scope, methodology and inter-theory engagement of the crimmigration framework to be challenged. An analysis of the Canadian immigration system using the crimmigration framework ought to consider wider contextual factors than simply the war on terror, as well as adopt a diversity of methodologies that account for discursive framing, as informed by the securitization literature. Ultimately, the crimmigration framework has a lot to offer scholars interrogating the use of detention towards irregular arrivals in the Canadian context, but research needs to be conducted in order to fill the theoretical and empirical gaps in the literature that have been discussed.

Lastly, the externalization literature has also emerged to provide a framework within which to understand emergent techniques of migration management. The processes and procedures put in place to limit migrants' access to physical and legal territory can be seen to contribute to the use of detention for irregular arrivals that have to negotiate far-reaching bureaucratic and physical borders. The theoretical literature covering issues of

externalization has suffered a little more fragmentation than the other theories this work draws on. This fragmentation within the externalization literature is due to the fact that the framework draws on various different theoretical branches outside of the political science discipline. This has the effect of scholars from different branches of academia discussing very similar measures to restrict the access of migrants to physical and legal territory but often having relatively isolated debates. There is also fragmentation within this field as externalization has been linked to and conflated with other migration concepts. Offshoring, extraterritoriality, and outsourcing are a few examples of related concepts (Zaiotti, 2016; Boswell, 2003; Gibney, 2005). This study will conceive externalization as the "processes and practices whereby actors complement policies to control migration across their territorial boundaries" (Lemberg-Pederson, 2019, p. 248). However, depending on which concepts or technologies are identified as part of externalization, scholars have drawn very different conclusions regarding the changing nature of borders. By understanding borders as a process that is performed by governments, border agencies, and migrants, it is possible to see that changes in border policies effectively stretch the traditional definition of a state's border. Externalization as a framework illuminates the impacts of considering a border as a process that is negotiated. Externalization also clarifies the formation of differential and controlled migration policies on those who are far from the geographic borders of a state. A distinct impact of this differential migratory control beyond a state's borders is the use of detention of irregular migrants that have seemingly circumvented the external border controls employed by a receiving state, labelling spontaneous arrivals as "queue jumpers" (Reynolds & Hyndman, 2021). In this regard, the externalization literature complements the crimmigration and securitization frameworks discussed above in building a robust

analysis of Canada's treatment of irregular arrivals. It forces researchers to look not just at or inside Canada's borders, but beyond them.

Earlier iterations of remote-control practices, or the closing of borders are presented by Zolberg (1999; 2004) and Dowty (1987) and more recently, Zaiotti (2016). Together these pieces provide an authoritative overview of the academic fields that have informed the externalization literature. Firstly, there is the spatial aspect of the externalization of migration, that is physically seeking to move borders outwards through increased bureaucracy at the point of departure (Zaiotti, 2016; Zaiotti, 2021). This is broadly drawn from political geography; the study of when and how a state can exercise power (Coutin, 2010). The most obvious example is the use of visa schemes that require prospective migrants to gain authorization to travel to a destination country before they have departed their country of origin (Zaiotti, 2016) A more dramatic example of the spatial aspect of externalization is the co-option of physical territories by states to keep migrants away from their sovereign territory. The Australian government's use of island territories to host immigration detention centers is an example of this (Gibney, 2005). The relational aspect of migration practices is also crucial to the externalization framework. The use of bilateral or multilateral agreements in the form of third country agreements is a clear example of this relational element of externalization (Zaiotti, 2016). Canada's Safe Third Country Agreement (2002) signed with the U.S. is an example of how states enter into agreements to prevent migrants from reaching their physical and legal space and thus pushing their border outward (Abrego, 2021). Interestingly, the relational element of externalization policies draws on policy-convergence literature, especially relating to spread of bilateral or multilateral migration agreements to manage migration more broadly (Holzinger & Knill,

2005). Policy-convergence mechanisms such as policy mimicking or emulation have been used to investigate this type of agreement which has been seen in the North American, Australasian, and European contexts (Zaiotti, 2016). These competing theoretical elements evident in the externalization of migration literature are very much focused on the drivers behind policy-choices, which is useful for the analysis of deliberate attempts from states to introduce policies that allow them to externalize migration management. Nonetheless, the persistence of competing approaches within the externalization literature is just one way to understand the degree of fragmentation within this field.

The externalization literature can also be characterized as fragmented due to the sheer number of concepts, technologies, and legislative strategies that have been linked to this framework. Techniques that are considered part of the externalization of migration management are as diverse as "scaremongering politics" such as changing visa requirements overnight (Gilbert, 2016, p. 204), "ideational remote control" practices such as public information campaigns in transit countries (Watkins, 2017, p.284), transfers of financial and technical assistance to neighboring states (Menjívar, 2014), and the use of visa procedures, the collection and processing of biometric information and other documentary controls over migrants (Stock, Üstübici, & Schultz, 2019; Triandafyllidou, 2014). Although these techniques can all be seen as part of the same project- the pushing out of borders and border controls- they are taken up through different levels of analysis, and by practitioners situated in very different disciplinary fields. For example, Gilbert's (2016) discussion of Canada's visa policy towards Mexican nationals working in Canada is certainly under the remit of the analysis of externalized migration controls. This study was produced by an environmental scientist focusing on the meso-level interaction between

a policy decision and the Mexican migrant workers whom it effected. Dauvergne (2008) also looks at temporary worker visa policies in the context of externalized migration controls, but as a legal scholar, she adopts a macro-level scope to understand the role of globalization as an international system that contributes to the externalization of migration. This is just one example of the interdisciplinary and broad nature of externalization inquiries that is reflective of the study of migration *writ large*. In this sense, it could be argued that the fragmented nature of the migration field leads to a certain level of fragmentation within migration subfields, one of those being the externalization of migration framework. Scholars can be looking at the same policy choices, in this case the use of visa policies towards temporary workers but be based in wholly different academic environments. However, an area of consensus among the competing migration frameworks is the idea that the nature of borders has changed.

The changing nature of borders is a debate that transcends the securitization and externalization frameworks. Critical scholars have debated the classic concept of a border as a physical boundary that has been grounded in the Westphalian understanding of a state (Menjívar, 2014; Watkins, 2017; Ceyhan & Tsoukala, 2002). Under the Westphalian state system, states and state governments enforce territorial integrity by maintaining ultimate control over who resides in their territory through the principle of state sovereignty. Contemporary forms of globalization challenged the notion of state sovereignty and ushered in unprecedented movements of people (Zolberg, 1999; Zolberg, 2004). In response, the way that borders are conceived in academic scholarship has changed. For migration scholars, the proliferation of border controls as discussed above has led to a debate on the nature of borders, with perspectives on this ranging from borders being

"omnipresent" or "vanishing" (Menjívar, 2014, p. 354; Maguire, 2016, p. 47). An area of consensus within this debate is the fact that border measures have been targeted to prevent or deter the movement of specific people from specific places, creating "uneven geographies of exclusion" (Watkins, 2017, p. 299; Gilbert, 2016; Dauvergne, 2008; Frelick, Kysel, & Podkul, 2016). States within the Global North have the financial capacity and political impetus to expand their reach inside the borders of another state to detect, deter, and regulate the movement of people in the name of national security. This violates the territorial integrity of transit states, usually those in the Global South, that are adversely impacted by migration procedures and processes directed at migrants within their borders. Lemberg-Pederson (2019) points to the history of colonialism and imperial relations as a historic example of these trends. Therefore, the idea that borders are static lines on a map does not hold up when you consider contemporary migration control practices, or historic international relations. When analyzing state migration practices that have impacts outside of their borders, such as those discussed by securitization and externalization frameworks, it is more convincing to follow Van Houtum's (2010) argument that a border should be understood as a process. This configuration of a border as a process that is performed by governments and border agencies as arbiters of political space, and by migrants in their interactions with the boundaries of these political spaces is more useful when considering how borders are stretched beyond a state's geographical boundaries. Therefore, while there are different conceptions of how borders have changed within competing theoretical frameworks, the most useful conceptualization of a border is as a performed and negotiated process.

As has been shown, there are three theoretical frameworks that shed light on the detention of irregular migrants in Canada. Taken together, the securitization, crimmigration and externalization frameworks provide a robust theoretical understanding of the mechanisms that are at work in the construction of a hostile migration environment. As will be discussed at greater length in the following section concerning methodology, when brought into dialog these theories can help contextualise the observable realities of Canada's highly controlled and discrepant immigration policy that has adverse impacts on irregular migrants. The externalization framework examines the processes that are occurring outside of Canada's borders. The requirements placed on migrants and foreign governments feed into the creation of conceptions of legitimate and illegitimate migrants, those who wait their turn in months-long visa processes, and those that do not. The perspective of securitization theory provides an insight into how migration has been constructed as a threat to national and social security. This is important when considering what is happening at Canada's borders; it provides as analytical lends of understanding how and why border crossers are treated with suspicion and met with the threat of lengthy detention. Finally, the crimmigration framework sheds light on the domestic; it focuses attention on what is happening within Canada's legal system that irregular migrants' access to legal recourse and judicial review is restricted. The research advanced in this thesis hopes to contribute to the knowledge of migration studies through effective cross-theory engagement that builds a broader picture of how modern states, like Canada, have restricted, securitized, and controlled every stage of the migration journey in the form of the hostile environment framework.

Chapter 3 Methodology

Canada presents itself on the international stage as a generous receiver of immigrants and refugees from all over the world. However, this image starts to fracture when considering the fact that Canada detains thousands of irregular arrivals and asylum-seekers every year. This contradiction between words and actions has dramatic consequences for the immigrants that attempt to travel to the Canadian border, and potentially cross it in irregular ways. This study aims to contribute to the critical literature that has exposed Canada's harmful practices towards irregular arrivals (Sadrehashemi, 2019; Rygiel, 2012; Dawson, 2014; Silverman, 2014). However, unlike previous studies, this research endeavours to understand the changes in Canada's migration legislation that have impacted every stage of the migration journey, not just the treatment of immigrants at the border, and not just the treatment levied against one group of migrants. The geographic and temporal reach of this research is necessary due to the fact that the policies that have been instituted by the Canadian government have impacts far from its borders, and far in advance of a migrants' arrival at the physical Canadian border. To comprehend why irregular migrants are detained in Canada, it is essential to understand how migration decisions are dictated by Canadian legislation from the outset of this migration journey.

Methodologically, the study adopts an integrative approach to answer the question of why Canada detains irregular arrivals, taking a somewhat different approach from other Canadian migration studies that focus on one case, or engage with one theoretical tradition. This study does not focus on one specific irregular migration event, such as the MV Sun Sea (Sadrehashemi, 2019; Rygiel, 2012). By taking a wider perspective, this study intends to see these events as part of a wider anti-irregular migration trend and analyze the type of

migration regime that has been constructed by successive changes to immigration legislation. It should also be noted that while this research understands the federal Canadian government to be the main actor in the study of immigration policymaking, it is not the sole actor. There are important international dimensions to the creation of immigration policymaking, as well as unique factors in the domestic Canadian setting that also inform this research. However, as a study concerned with the meso-level of political analysis, the macro and micro levels that no doubt inform certain aspects of these policy responses are beyond the purview of this research.

The aim of this thesis is to conduct a single-case study investigation on the treatment of irregular arrivals by Canada. Using qualitative methods, this study will use federal laws and amendments to trace changes within the Canadian immigration system that have created an environment that is hostile to irregular migration. As a result of this investigation, a hostile environment framework will be developed to identify key areas of change in the Canadian immigration system that have created a legally and physically hostile migration environment to those migrants who do not follow the formal migration pathways set out by the Canadian government. The etymology for this framework is drawn from the British context in which government officials introduced new migration policies for the explicit purpose of creating "a really hostile environment for illegal immigrants" (Travis, 2013; Goodfellow, 2019). The three key elements of this hostile environment framework are extra-territorial deterrence, criminalized border crossings, and protracted punishments. In order to justify the methodology of this study, first the use of a single-case study design will be discussed, followed by an overview of the research methods employed in this investigation. The process tracing method, as proposed by Beach & Pederson (2013)

will then be explained and justified as a reliable and valid approach for framing a single-case study research project and for data gathering. Following this, the use of the content analysis method will be justified as a systematic text analysis process in the data analysis section of this study. It will be shown that these research methods are appropriate in answering the question of why Canada detains irregular arrivals, and that they facilitate the use of multiple theoretical frameworks to explain this political phenomenon.

The Single-Case Study Approach

This research opts for a single case study design as it is the most valuable method for gaining a rich, detailed view of a certain phenomenon (Della Porta & Keating, 2008). This choice reflects the critical turn within social sciences. Post-colonial and feminist scholars have argued for methods that recognise the unique traits of certain political environments to avoid making inaccurate generalizations (Acharya, 2011; Tickner, 2003; Acharya & Buzan, 2007). Taking a deep dive into a critical case reflects the "specialization of the social sciences" that emerged in reaction to the type of social science that gained prominence in the 1960s that brought comparative studies to the fore in the context of acknowledging the "accelerated interdependence in the world" (Della Porta & Keating, 2008, p. 202; Lasswell, 1968, p.3). From a broader theoretical perspective, post-colonial scholars have led the turn towards the development of small to mid-range theories formulated from a deep understanding of a socio-cultural, geographic, or historic setting (Acharya, 2011; Tickner, 2003; Acharya & Buzan, 2007). This research is by no means challenging the dominant, western centric nature of the disciplines of political science and international relations as its focus is on Canada and Canadian immigration policy. However, the use of a single-case study reflects the call for paying greater deference to

regionalisms and regional diversity (Acharya, 2011). As a method, the single-case study approach requires sensitivity to social and cultural contexts. With a focus on Canada as a single-case study, this research hopes to provide a rich account of immigration within this specific region in the hopes of contributing to the advancement of knowledge in this area.

Another reason to adopt the single-case study approach is that it contributes to a process of theory building, and in this research in particular, the Canadian case will be formulated as a crucial case study and a least-likely case for constructing the hostile environment framework (Eckstein, 2000). Case studies are useful in the early stages of theory building, as the depth of investigation allows for the discovery of questions to guide theory building and candidate rules that might solve these theoretical puzzles (Eckstein, 2000). Naroll (1966) emphasized the importance of utilising a single-case study in the development of a theory, which tends to work best when the single-case study is presented as a crucial case. A crucial case is one in which the variables of interest are present in the case and are configured in a compelling manner (Naroll, 1966). Canada is presented as a crucial case in this study due to the fact there has been a period of significant change within the country's immigration policy in the post-2000 period. The 2000-2022 period this research covers is set to capture the major legislative changes in Canada in the 21st Century, initiated by the introduction of the 2001 Immigration and Refugee Protection Act. Following this the other major reforms to Canada's immigration system in the last two decades include the 2010 Balanced Refugee Reform Act (BRRA), followed swiftly by the 2012 Protecting Canada's Immigration System Act. These legislative changes have led to interesting developments in the treatment of migrants in Canada writ large, but especially in the treatment of irregular arrivals and asylum-seekers. Designating certain migrants as

irregular arrivals has effectively created a two-tier system of seeking asylum between those that arrive through established legal and state-sanctioned pathways and those that do not. These changes demand further scrutiny as they shed light on important global trends. Increasingly, nations in the Global North are politicising migration, scapegoating asylum-seekers using irregular routes, and employing arbitrary detention as part of migration control (Reynolds & Hyndman, 2021; Rygiel, 2012; Nyers, 2009). Canada satisfies the condition for a good single-case study to have "wider intellectual relevance" to political contexts outside of the defined case study (Halperin & Heath, 2020, p. 205).

Canada also makes an compelling and valid case study as a least-likely case for the deployment of detention towards irregular migrants. Eckstein (2000) describes a least-likely case as one that ought to prove a hypothesis or validate a theoretical explanation. As previously discussed, Canada is commonly understood to be a migration-haven. It is an outlier in the Global North for actively encouraging a rise in planned immigration levels year upon year especially in the permanent resident and family reunification categories (IRCCa, 2022 Bakewell & Jolivet, 2015). Canada also became the "world's top refugee resettlement country for the second year in a row" in 2021, which further contributed to the image of Canada as a welcoming and immigrant-receptive country (Prime Minister of Canada Justin Trudeau, 2021). However, the use of detention against irregular migrants points to a very different reality. Through an examination of the measures introduced by Canada's government this research intends to show that these changes have in fact constructed an immigration system that is hostile to irregular migration. Using Canada as a least likely case in the development of the hostile environment framework will make use of Levy's (2002) Sinatra inference "if this theory can make it here, it can make it anywhere"

(p. 144). While there are debates as to whether a single-case study can wholly confirm or disconfirm a theory, adopting the least-likely crucial case in a theory-building exercise is a useful framing to contribute to the existing theoretical knowledge of Canadian migration policy (Gerring, 2007; Eckstein, 2000).

The single-case study approach has also been adopted in this research as it allowed for the collection and engagement with a significant amount of detailed qualitative data. This is especially useful in theory-building that requires "an extensive soaking and probing of a case" to search for useful empirical fingerprints (Beach, 2016, p. 469). Data drawn from an in-depth qualitative case study can be used to unpack causal mechanisms evident in real life conditions, and not in simulated experimental conditions like those found in statistical, variable-oriented research (Eckstein, 2000). The observability of the data collected from case studies can be seen as presenting evidence as it is, rather than presenting evidence as it is expected to be (Eckstein, 2000). Using "account evidence", that is material content such as legislative documents, further supports the strength of the case study method by drawing evidence from rich, unchanging, and accessible data sources (Beach, 2016, p. 469). The processes of data collection and data analysis will be discussed in the following section, however, the use of account materials in the single-case study method has allowed for an extensive investigation of the immigration policies in the Canadian case.

Practically, the choice to focus on a single case study was informed by the limited time and resources available to complete this project. For example, the U.K. could have been used as a secondary case, alongside Australia, to establish a small-N study. These cases could have been useful for comparison as Canada: the U.K. and Australia all hold

similar levels of sovereignty over their immigration policy making decisions, as well as having comparable parliamentary government structures. Also, all three states are signatories to the 1951 *Convention Relating to the Status of Refugees*, and after the 2016 EU membership referendum and subsequent exit from the European Union, the U.K. is no longer bound by EU directives that informed their intake and treatment of migrants and asylum-seekers (Goodwin-Gill, 2001). This enhances the cross-comparability of the U.K alongside Canada and Australia. Nonetheless, the framing of this research as a crucial, least-likely case study has been shown to have not only internal validity, but also contribute to the knowledge of the use of detention of irregular migrants and asylum-seekers in Canada.

Data Collection and Data Analysis

This study has adopted a process tracing framework to build a theory in order to answer a core research question (Beach, 2016; Beach & Pederson, 2013). While there have been criticisms of process tracing as a research method, the recent wave of serious scrutiny of this approach has contributed to its rigour as a research method for single-case studies (Ulriksen & Dadalauri, 2016; Blatter & Haverland, 2012; Beach, 2016; Bennett, 2008; Schmitt & Beach, 2015). This scrutiny has informed the development of a clear set of guidelines for conducting process tracing in a single-case study design that have contributed to the internal validity of this method. A potential limitation of this method is that it is not designed for cross-case inference (Beach & Pederson, 2013). However, it is not the purpose of this thesis to make inferences about other national contexts; rather the process tracing method has been adopted to formulate a theoretical framework to help

explain the Canadian case. The framework itself could hold the potential to be tested against alternative cases, but this lies outside the intended purview of this research.

Process tracing as a research method aims to trace causal mechanisms that link causes with effects (Beach, 2016; Beach and Pederson, 2013; Bennett, 2008). While there are many competing definitions of causal mechanisms, this research will be adopting Beach's (2016) definition of a causal mechanism as "a theory of a system of interlocking parts that transmits causal forces between a cause (or set of causes) and an outcome" (p. 464). In order to understand the changes within the Canadian immigration system, this research will seek to identify entities of change; actors, organisations or structures that engage in activities that transmit the causal forces through a mechanism (Beach, 2016, p. 464). An example of this type of process tracing in the study of Canadian migration comes from Robinson (2017), who argues that the process tracing method is a lot more suited to interpretivist research that is at the heart of single-case study analyzes. This project belongs to an emergent movement within International Relations and Security Studies to adopt process tracing as a substitute or supplement to variable-oriented research and correlation analyzes (Robinson, 2017; Bennett, 2008; Schmitt & Beach, 2015). The process tracing method requires gathering extensive amounts of qualitative data to uncover the evidence and traces of mechanisms and is thus well suited to a single-case study (Beach, 2016).

The process tracing method allows for a single-case study approach to contribute to theoretical knowledge through the comprehensive collection of data. The theory-building process tracing method is a three-step process (Schmitt & Beach, 2015) that will form the outline of the central chapters of this thesis. Firstly, the evidence of the case is presented (Beach & Pederson, 2013). This evidence will come from a content analysis of

Canadian immigration legislation that will illuminate the changes that have been introduced in the Canadian immigration system in the post-2000 period. A discussion of this content analysis method that has been used for data analysis will follow below. The data collection was directed by the process tracing method. Beach (2016) describes the data collection method in process tracing as an "extensive soaking in the case" which starts by identifying existing account evidence, that being legal documents, government proposals and amendments, and searching them for empirical fingerprints of causal processes (p. 469). After the initial probing of central account material, in this case the 2001 IRPA, the 2010 BRRA, and the 2012 Protecting Canada's Immigration System Act, researchers adopt an ethnographic style of inductive research to trace the empirical tracks of relevant data to other relevant documents (Ulriksen & Dadalauri, 2016; Blatter & Haverland, 2012). The process tracing method does not prescribe a uniformity in the data that is examined, but rather encourages the collection of a wide selection of data that primarily provides the evidence to support the theoretical hypotheses while also following a deductive logic that other researchers can trace (Ulriksen & Dadalauri, 2016) This has led to the inclusion of data from government press releases and announcements in regards to Canadian immigration targets as well as the text from immigration laws themselves to build a diverse collection of data in the support of the hostile environment framework (IRCCa, 2022; IRCCb, 2022). The second stage of the process tracing method is to identify mechanisms. These mechanisms provide possible theoretical explanations for the processes found in the evidence. Mechanisms are identified through engagement with pre-existing theoretical literature (Beach & Pederson, 2013). In this discussion, the externalization, securitization, and crimmigration literatures will be drawn on to explain certain observable features in the

Canadian immigration system, namely the designation of the term "irregular arrival" to refer to migrants who arrive in Canada through non-state-sanctioned pathways, and Canada's use of detention in immigration matters. The final step of the theory-building process tracing method is to propose a theory of the central causes and effects by means of the observed mechanisms (Beach & Pederson, 2013). A hostile environment framework will be proposed to incorporate the mechanisms that explain Canada's hostility towards irregular arrivals. As previously stated, the hostile environment framework will theorize the central role of the use of detention against irregular migrants as well as the extra-territorial dimension of its deterrence strategies and the criminalization of border-crossings, to demonstrate the degree to which Canada has a highly controlled, preferential migration policy that is averse to irregular migration.

Throughout the course of the project, a content analysis method was used for the data analysis element of this research. Content analysis involves a "systematic analysis of textual information" such as official documents including government legislation, government reports and legal reports (Halperin & Heath, 2020, p. 318). The chief advantage of the content analysis approach is that it can reduce bias as it is an unobtrusive data collection method (Halperin & Heath, 2020). Unlike interviews where data can be tainted by the social relations between the researcher and interviewee, content analysis uses textual materials that are not social beings themselves. While there is certainly an element of interpretation in this approach, the interpretations made are open to scrutiny from other researchers due to the fact the entirety of the source documents are openly available. This approach will help to expose the meanings, motives, and purposes embedded within the texts being studied while being sensitive to the context in which these texts have been

produced (Weber, 1990). A content analysis approach was chosen over discourse analysis. The discourse analysis approach enables researchers to analyze how certain relations of dominance are structured and reproduced and how bias is mobilised through language (Hajer, 2002). The dynamics of power in relation to borders and the impact of this on state-migrant relationships has been extensively discussed in historical and political literature (Arendt, 2004; Haddad, 2002; Gatrell, 2013). As such, the linguistic construction of a relation of dominance between states and migrants over borders and border crossings is not the focus of this thesis. Rather, this research hopes to systematically analyze empirical messages communicated by the Government of Canada in an effort to track changes in their treatment of irregular migrants (Lasswell, 1968).

The first step in a content analysis is identifying the population of documents from which data will be drawn; this process has been informed by the investigative research approach of process tracing as discussed above (Weber, 1990; Halperin & Heath, 2020). The initial documents that were consulted were the 2001 IRPA, the 2010 BRRA and the 2012 Protecting Canada's Immigration System Act. Other legislation that was mentioned in these acts were then consulted. These include the 1994 Marine Transport Security Act with specific attention paid to the amendments made in 2008, and the 1994 Department of Citizenship and Immigration Act, with specific attention paid to the amendments made in 2013. The regulations that were implicated by these legislative changes were also examined. For a full list of the documents consulted in the data gathering section of this research, see the full bibliography. Secondly, the subjects, themes and events of interest were defined to guide analysis (Halperin & Heath, 2020; Krippendorff, 2004; Krippendorff & Bock, 2008). The subjects of interest to this study were irregular arrivals, designated

foreign nationals, detention, and the related legislative changes within the Canadian immigration system. These categories of interest guided step three, the selection of segments of the text that contained evidential material of interest to this specific study (Halperin & Heath, 2020; Krippendorff, 2004; Krippendorff & Bock, 2008). The selection of relevant segments of the texts were found by conducting a word search in each of the relevant documents of the following terms: "designated foreign national", "foreign national", "irregular arrival", "detain", and "detention". This highlighted relevant chapters of the texts chosen for analysis. Step four of content analysis involved creating a coding protocol that followed from the categorization of source material outlined in step two (Halperin & Heath, 2020; Krippendorff, 2004; Krippendorff & Bock, 2008). The coding protocol was designed to capture the actors affected by legislative changes, the nature of the changes in legislation and the explicit intended purpose of the legislation where this was written into the text of the documents (see Table 1). The subcodes of this coding protocol (see Table 1) were created after an initial consultation of the evidence material with all sub-categories deduced from the relevant passages of the document material. The passages were then coded with the use of the NVivo software (Release 1.6.1 for Windows). This software was used as a tool to effectively organise large amounts of qualitative data, as it allowed passages of text to be coded and sorted according to code, sub-code, and document. Once the texts were coded, the passages were analyzed to attach meaning to the data that had been gathered (Krippendorff, 2004; Krippendorff & Bock, 2008). The results make up Chapter 4 of this thesis titled "Canada's Migration Policy".

Any supplementary data that has been gathered for this thesis has been sorted and presented using Microsoft Excel (Version 2205 Build 15225.20204 Click-to-Run). This

supplementary data has been used to illuminate pertinent trends within the treatment of irregular migrants in Canada. Where graphs are presented with data, the source of this data

Actors	Canadian Citizen
	Foreign Government
	Government Official
	Migrant
	Minister of Immigration, Refugees and Citizenship of Canada
	Minister of Public Safety
	Private Organisation
	Subversive Groups (Terrorist groups, criminal organisations, human smugglers)
Nature of Legislation	Government Official Expansive
	Government Official Restrictive
	Migrant Expansive
	Migrant Restrictive
	Minister Expansive
	Minister Restrictive
	Penalty Expansion
	Penalty Restriction
Stated Purpose of Legislation (where given)	Compassionate Grounds
	Data Gathering
	Deterrence (Migration, Criminal Activity)
	Fraud (Preventing, Exposing)
	Humanitarian Grounds
	Policy Enforcement
	Protecting the Safety of Canadians
	Protecting the Security of Canadians
	Public Interest
	Public policy Considerations
	The Physical and Mental Health Wellbeing of Detainees

Table 1- Coding protocol used for the analysis of document materials.

is presented alongside the graph.

Evaluation

As anticipated, there were challenges to overcome with this selection of research methods to ensure valid and compelling research outcomes. Chief among these challenges was the language variation found across document material when referring to irregular migrants. For example, the 2010 Balanced Refugee Reform Act referred to “foreign

nationals" when describing migrants who crossed borders before making asylum-claims (Bill C-31, 2000, p. 1). Passages referring to foreign nationals were pertinent to the analysis of the treatment of irregular arrivals in Canada but would not have been discovered had the search categories only included "irregular arrivals". The same can be said for the use of "designated foreign nationals" in the 2012 Protecting Canada's Immigration System Act (Bill C-31, 2012, p. 2). The term designated foreign nationals refers to:

> "a foreign national …who is part of the group whose arrival is the subject of the designation becomes a designated foreign national unless, on arrival, they hold the visa or other document required under the regulations, and, on examination, the officer is satisfied that they are not inadmissible" (Bill C-31, 2012, p. 4-5).

The Designated Foreign National (DFN) label is used against irregular arrivals so this passage is of concern to this study; however, once again it would not have been picked up if the only search category was "irregular arrival". To ensure that the search categories picked up all relevant passages both "foreign national" and "designated foreign national" were used as search terms. Aside from this, the whole document was also scanned after the relevant search terms were found to ensure that relevant passages were not missed out. As will be discussed in the methods evaluation, this did not lead to the most time-efficient researching. However, it did lead to the most extensive gathering of qualitative data from the source documents and so contributed to the reliability and validity of the research. The data was not cherry picked but collected in a systematic and reproducible way.

The research methods used in this study were appropriate for answering the research question but were not the most efficient methods given the limited resources available for this project. As stated, the single-case study methodology required an

extensive amount of data to be collected and analyzed to provide a base for theory-building. The inductive approach to gathering source documents, as outlined by the process tracing method, supported the collection of vast amounts of qualitative data to analyze. A challenge of this was to code the data in a time efficient manner. The NVivo software certainly contributed to the smooth running of this process and the methodical collection of qualitative data. However, as previously mentioned, due to the variation in terms used to refer to migrants who crossed the Canadian border outside of state sanctioned schemes, the search processes did not always yield complete results. When conducting document searches for the terms "designated foreign national", "foreign national", "irregular arrival", "detain" and "detention", there was the possibility for some relevant passages to not be uncovered. For this reason, the documents were also scanned through in their entirety after coding. This process was time consuming, but it contributed to achieving the aim of this theory-building study that was to collect as much relevant qualitative data as possible to comprehend the changes in Canadian immigration relevant to irregular arrivals. The additional data collected through this stage added to the comprehensive nature of this research. Due to the vast amount of qualitative data collected by this study, the hostile environment framework can be seen as a conclusive result of this study.

Chapter 4 Canada's Migration Policy

Canada's migration policy has undergone significant changes in the period from 2000 to 2022. A content analysis of major legislation changes, legislative amendments, departmental protocol, and official reports has illuminated the key changes that have taken place during this period. The aim of this following chapter is to present the results of this content analysis by exhibiting the key findings within these documents as they pertain to firstly, the initial starting point and the journey a migrant takes to Canada, then, the treatment of a migrant once they reach the physical Canadian border, and finally, their treatment once they are inside the Canadian border. The results will be presented in this way to understand the changes that have been instituted along each step of a migrant's journey. This temporal presentation of data will facilitate the overall aim of this study to provide an overarching analysis of Canadian migration policy through the hostile environment framework that hopes to explain the detention of irregular migrants. The data will be shown through textual presentations of pertinent measures uncovered throughout the content analysis of Canadian immigration policy documents. Graphs will also be used to show trends within the Canadian migration system. Overall, this section will show that irregular migrants face a more difficult journey, harsher treatment upon reception, and highly punitive measures when inside Canada. From the outset of their journey, migrants are competing for fewer places within a disappearing admissions category in Canada's asylum system. Before departure, migrants must complete more rigorous security checks that require access to resources that those in precarious situations, such as migrants seeking asylum, may not have. Bilateral agreements signed with the U.S. target asylum-seekers and make the Canadian border more difficult to reach. If migrants reach the border, the CBSA

and the RCMP have been granted the power to arrest and detain border crossers, with or without a warrant, for administrative convenience or with "reasonable grounds to suspect inadmissibility" (IRPA, 2001, p. 49-50). Changes made to the powers of Canadian border enforcement agencies have created a two-tiered immigration system in which irregular border crossers face far longer wait times for asylum-claims and can be detained from the point of crossing until they receive a decision on their claim. Once a migrant is inside the Canadian immigration system, and the physical boundaries of Canada, they are still vulnerable to the risk of extended detention and removal orders at any stage of the immigration process. Access to legal recourse and judicial oversight throughout the immigration process is limited but is especially restricted for irregular migrants who crossed into Canada outside of designated ports of entry and outside of a state-sanctioned schemes.

Pre-Departure and the Migration Journey

It is first necessary to outline the explicit goals of the Canadian government in regard to migration, as well as the various "admissions categories" that were created to meet these goals (Evra & Prokopenko, 2021, p. 16). The aims of the current Canadian migration system are threefold; "to contribute to the Canadian economy, to reunite families, and to protect refugees" (Evra & Prokopenko, 2021, p. 18). These goals are informed by the 2001 IRPA that has provided the strategic direction and goals for the Government of Canada for the last two decades. In order to meet these goals, the different pathways to Canadian immigration are split into four broad categories; 'Economic immigrants', 'Immigrants sponsored by family', 'Refugees', and 'Other immigrants' that fit into none of the other categories. Figure 2, taken from the *Longitudinal Immigration*

Database (IMDB) Technical Report (2021) outlines all the immigration schemes that are currently available to prospective migrants. These admissions categories represent the state-sanctioned schemes that are available to migrants hoping to enter Canada and the categories that irregular migrants are sorted into post-arrival for statistics purposes. To access the economic, family reunification and refugee categories, prospective migrants must seek visas that correspond to their intended pathway of immigration. The applications for these visas must be completed from outside of Canada (Evra & Prokopenko, 2021). However, these visas only provide provisional approval of access to Canada as they are formally approved by border agents following an examination at an official port of entry (Evra & Prokopenko, 2021). Irregular migrants fall into the 'Other immigrant not included elsewhere' category as they do not make use of the other state-sanctioned immigration pathways.

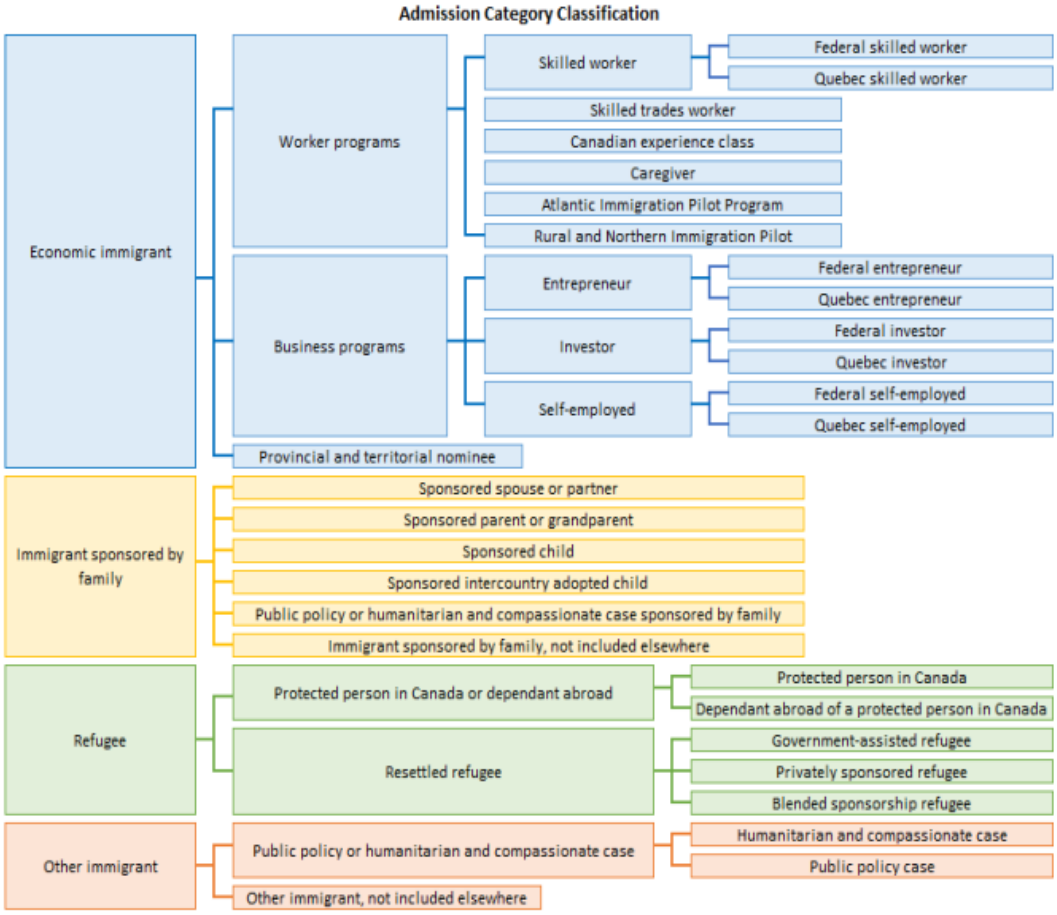

Figure 2– Admission Category Classification.
Sourced from Evra, R. & Prokopenko, E. (2021). (rep.). Longitudinal Immigration Database (IMDB) Technical Report, 2020. Statistics Canada. Retrieved July 1, 2022, from https://www150.statcan.gc.ca/n1/en/catalogue/11-633-X2021008

Interestingly, the number of pathways available to economic migrants outnumber the number of pathways available to asylum-seekers 14 to 8. Not only are there more pathways open to economic migrants, and to immigrants sponsored by family, but the Canadian government has historically opted to accept more migrants from these categories as well. In the period from 2000 to 2016, economic migrants routinely represented nearly two thirds of the total number of immigrants arriving in Canada (Statistics Canada, 2017; see Figure 3). In comparison, between 2000 and 2015, the average percentage of migrants

that arrived as resettled refugees or as protected persons was 12% of all migrants accepted into Canada (Statistics Canada, 2017; see Figure 3). 2016 was an anomaly in this trend as the newly elected Liberal government in Canada expanded the resettled refugee scheme to include 40,000 refugees fleeing the war in Syria (Government of Canada, 2019; see Figure 3). Between 2000 and 2016, the percentage of 'Other immigrants' accepted into Canada reached a height of just 2.3% of all migrants accepted into Canada and was as low as 0.1% of all migrants who entered Canada in the year 2001 (Statistics Canada, 2017; see Figure 3).

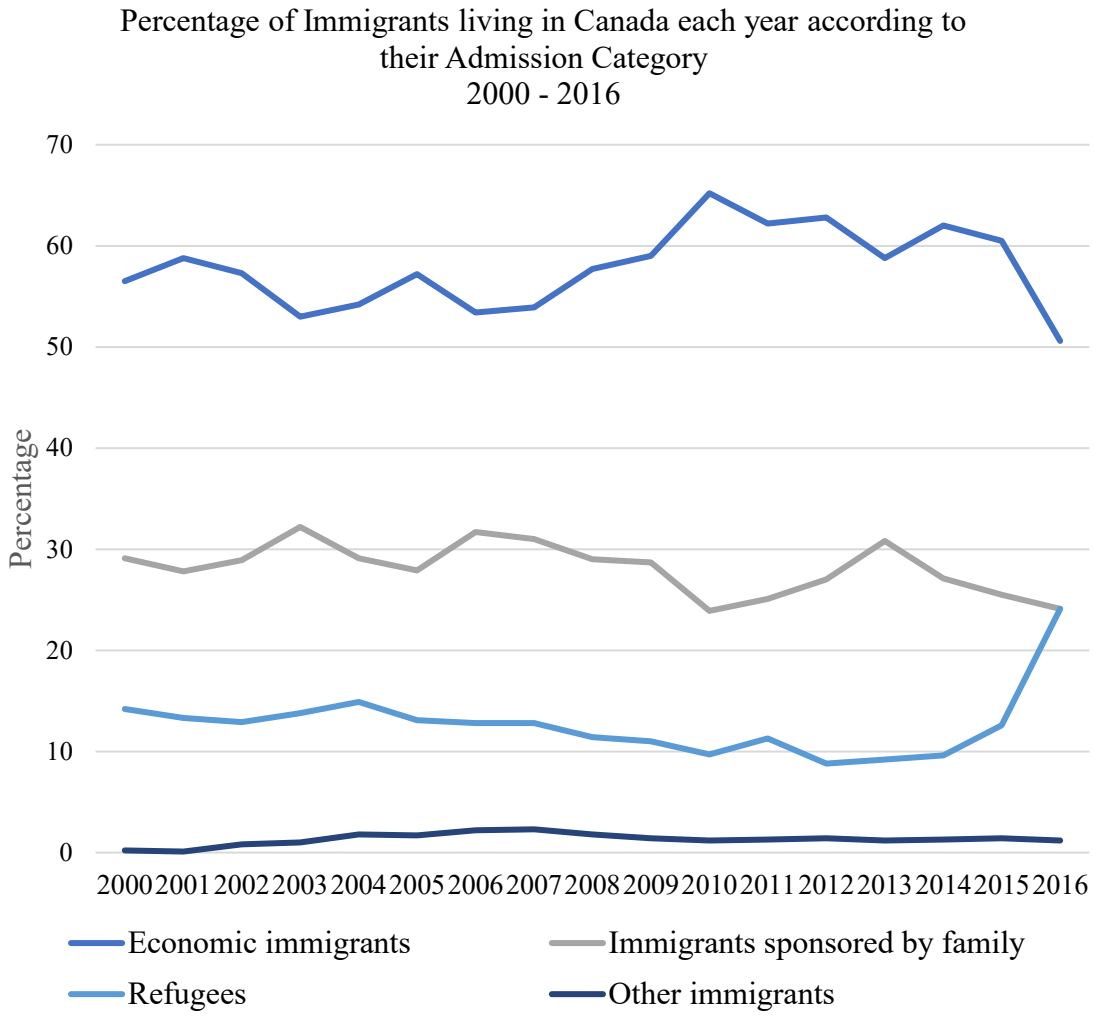

Figure 3-Graph showing the percentage of Immigrants accepted into Canada each year according to their admission category, 2000 – 2016.
Data sourced from Statistics Canada. (2017). *Distribution (in percentage) of immigrants in Canada, by admission category and year of immigration, 2016.* Retrieved June 12, 2022, from https://www.statcan.gc.ca/en/dai/btd/othervisuals/other007
Data has not yet been published by the IRCC or Statistics Canada that covers 2017-2021.

The trend of 'Economic immigrants' far outweighing other forms of migration is set to continue for the immediate future (See Figure 4). The Canadian government has set out a plan to reduce the number of migrants, in absolute terms, accepted through 'Refugee' and 'Other Immigration' pathways according to target admission rates released by Immigration, Refugees and Citizenship Canada (IRCCa, 2022; See Figure 4). The

Immigration Levels Plan has set the target of welcoming 431,645 new immigrants to Canada in 2022, not including permanent residents (IRCCa, 2022). The target set for 2024 is 451,000 immigrants excluding permanent residents (IRCCa, 2022). This represents an increase of 19,355 places in state-sanctioned immigration schemes for prospective migrants (IRCCa, 2022). This increase in places is heavily weighted towards the 'Economic immigrants' and 'Immigrants sponsored by family' categories. In 2022, the IRCC's target for economic immigration is 241,850 (IRCCa, 2022). By 2024, their target is 267,750, an increase of 25,900 places for prospective economic immigrants (IRCCa, 2022). Family reunifications have also been targeted for an increase of 8,000 places between 2022-2024 (IRCCa, 2022). The target admission for family reunifications in 2022 was 105,000 compared to the target of 113,000 in 2024 (IRCCa, 2022). On the other hand, the target for admission for 'Refugees' in 2022 is 76,545, and just 62,500 in 2024 with the projected change reducing the number of places for refugees applying for third country resettlement from abroad by 14,045 (IRCCa, 2022). Similarly, the target for 'Other immigrants' is 8,250 in 2022 and just 7,750 in 2024 representing a capacity reduction of 500 places (IRCCa, 2022). It is worth noting that the RCMP has made 13,347 interceptions outside of official ports of entry between January and May of 2022, which is far higher than the target acceptance of 8,250 'Other immigrants' for the whole of 2022. (IRCCb, 2022; IRCCa, 2022). RCMP interceptions will be discussed at greater length later in this chapter.

Figure 4 shows that these admissions targets keep the respective percentages of 'Refugees' admissions and 'Other immigrants' admissions relatively steady in relation to immigrant intake on the whole. However, the real time cut in the number of refugees

targeted for entry into Canada between 2022 and 2024 represents a reduction in the number of spaces available through these state-sanctioned asylum-seeking schemes. From the outset of the migration journey, real limitations have been put on the access prospective asylum-seekers have to state-sanctioned immigration schemes. The access that asylum-seekers have to the Canadian immigration system has been, and will continue to be, restricted by the targets set by the IRCC and the Government of Canada. This seems to run

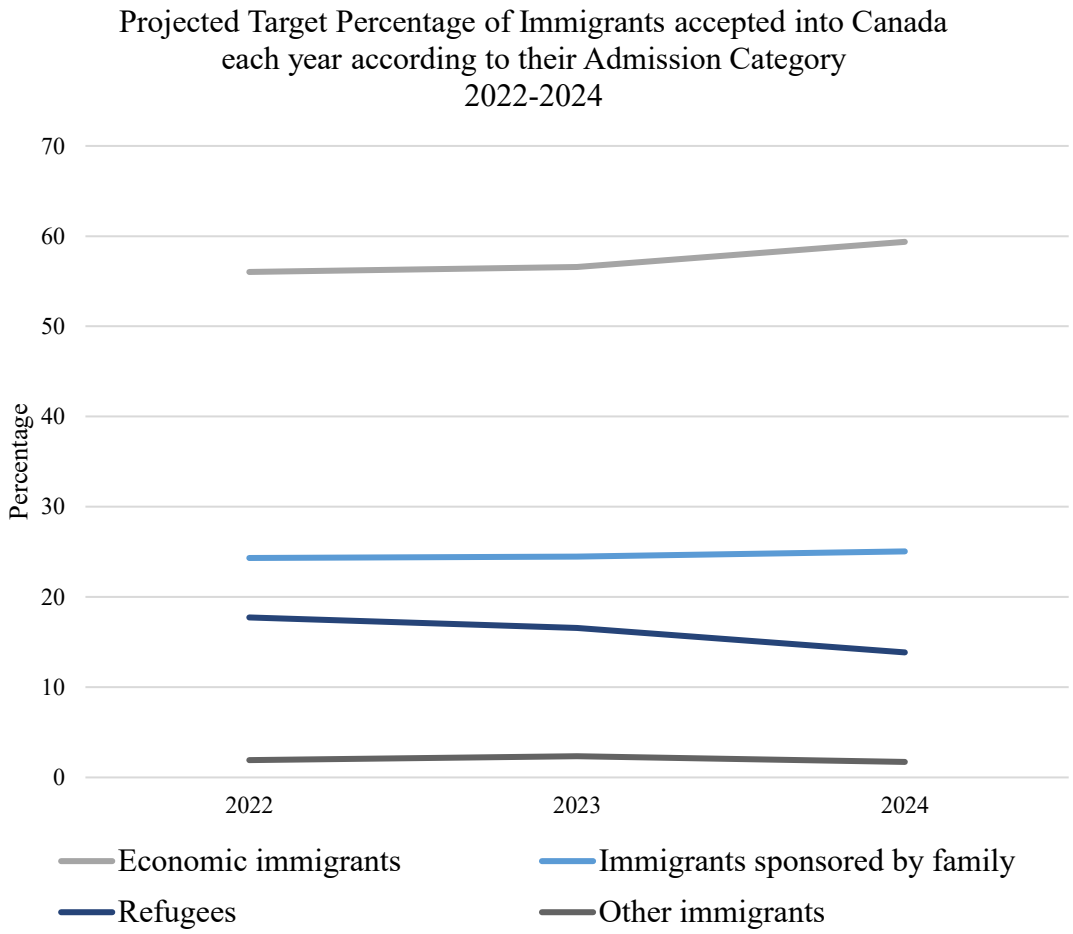

Figure 4- Graph showing the projected target percentage of immigrants accepted into Canada each year according to their admission category, 2022-2024.
Data sourced from IRCCa. (2022). *Notice – Supplementary Information for the 2022-2024 Immigration Levels Plan.* Retrieved 4 July 2022, from https://www.canada.ca/en/immigration-refugees-citizenship/news/notices/supplementary-immigration-levels-2022-2024.html

counter to at least one of the aims of the Canadian immigration system. By cutting the number of spaces available in state sanctioned asylum schemes, the IRCC has effectively pledged to "protect" fewer refugees year on year (Evra & Prokopenko, 2021, p. 18).

In the event that a migrant is in the position to apply for asylum in Canada before reaching the physical border, recent developments in Canadian immigration legislation have made this more difficult. Alongside the extra-territorial visa applications, Canada has increased the collection and processing of biometric data taking place outside of its borders. The 1994 Department of Citizenship and Immigration Act was updated in 2013 to grant the Minister of Immigration, Refugees and Citizenship powers to

> enter into an agreement with any foreign government for the provision of services in relation to the collection, use and disclosure of biometric information and for the provision of immigration application services and other related services on that government's behalf for purposes related to the administration and enforcement of their immigration laws (Department of Citizenship and Immigration Act, 1994, p. 2).

This amendment provides the Minister of Immigration, Refugees and Citizenship the power to enter into agreements with foreign governments and international organizations for the purposes of collecting immigration-related data. In reality, this has meant that migrants hoping to immigrate to Canada now have to apply online and attend an appointment in the sending country to provide sensitive data to public and private contractors (Crépeau & Nakache, 2006). These measures adversely impact irregular migrants, the majority of whom go on to seek asylum in Canada. Those who are stateless or in a situation of precarity may not have the knowledge of these processes or the resources

with which to comply with these regulations (Crépeau & Nakache, 2006). These measures require consistent access to the internet to create an asylum claim and a biometric appointment. They also require access to a field office of the Canadian government to attend a biometric appointment (Crépeau & Nakache, 2006). The significance of the collection of biometric data in particular will be discussed in the following chapter. However, the introduction of offshore data collection processes has placed another barrier in the migrant journey one that does not account for the realities of those who intend to seek asylum in Canada, thus pushing them into taking irregular journeys.

Canada has also singed bilateral agreements that aid in the sharing of immigration data to prevent irregular travel to the Canadian border via the U.S. The 2001 Smart Border Agreement made many changes to the existing Canadian border regime that facilitated the sharing of data between the U.S. and Canada (U.S. Department of State, 2002). Firstly, the U.S. and Canada agreed to develop common standards for the collection of biometric identifiers. This includes common technology for fingerprint collection and iris scanning (U.S. Department of State, 2002). This biometric data was also authorised to be shared with the RCMP and the Federal Bureau of Investigation (FBI), the two chief federal law enforcement agencies in the Canada and the U.S. respectively (U.S. Department of State, 2002). This data sharing agreement was developed to explicitly target asylum-seekers and "identify potential security and criminality threats" that came from those seeking asylum in either Canada or the U.S. (U.S. Department of State, 2002).

Canada and the U.S. also signed the Safe Third Country Agreement in 2002 (IRCCa, 2020). This agreement required refugee claimants "to request refugee protection in the first safe country they arrive in" (IRCCa, 2020). As of 2022, the only safe third

country to receive that designation under the IRPA (2001) was the U.S. In effect, this means that any would be asylum-seeker that travelled through the U.S. could be denied the ability to make an asylum claim at Canadian ports of entry. There are exceptions made for asylum-seekers that have family within Canada, or family members that have previously entered the Canadian immigration system, thereby respecting the aim of the Canadian government to "reunite families" (IRCCa, 2020; Evra & Prokopenko, 2021, p. 18). However, these agreements have an adverse effect on migration journeys making it more difficult, and indeed dangerous, for prospective asylum-seekers to reach Canada's physical borders or designated official ports of entry.

Other changes made to the Canadian immigration system that impact migrants before arriving in Canada include alterations made to the role of Minister of Immigration, Refugees and Citizenship. Under recent legislation, the Minister of Immigration, Refugees and Citizenship was granted more powers to preferentially manage incoming asylum-claims from certain parts of the world. In the 2010 BRRA the Minister of Immigration, Refugees and Citizenship was given the ability to name certain countries Designated Countries of Origin (DCO). DCOs are countries "that do not normally produce refugees and respect human rights and offer state protection" (IRCC, 2019). Under the DCO scheme, asylum-claims received from these countries were to be "processed faster" to "make sure that people in need get protection fast, while those with unfounded claims are sent home quickly" (IRCC, 2019). The explicit purpose behind this measure was to "deter abuse of the refugee system" (IRCC, 2019). The 2012 Protecting Canada's Immigration System Act expanded on the powers granted to the Minister for Immigration, Refugees and Citizenship and removed any need for the Minister to seek the advice of an expert

committee when making decisions about DCOs. Rather, the Minister could determine a country was a DCO by the number, and success rate, of previous asylum claims from nationals of that country or ruling on the basis that the country of origin has an independent judiciary, respect for basic rights and freedoms, and civil society organizations (Protecting Canada's Immigration System Act, 2012). Due to the lack of external input into this decision, the Minister has almost sole control of DCO designations and thus making this process more vulnerable to influence from political interests (Reynold & Hyndman, 2021). In 2019, all countries were removed from the DCO list, which effectively suspended the DCO policy (IRB, 2019). The DCO policy was suspended as it "did not fulfil its objective of discouraging misuse of the asylum system" according to the IRB (2019). However, the policy was also challenged by Canada's Federal Court for violating the *Canadian Charter of Rights and Freedoms* (1982) (BSCC, 2015). Nonetheless, the power to designate countries as safe remains a legal possibility, as the legislation has not been changed. From the perspective of a prospective asylum-seeker in Canada, their fate is not only reliant on the diminishing places available in state-sanctioned schemes for seeking asylum, but the success of their claim has also been made vulnerable to political considerations by placing more power in the hands of the Minister for Immigration, Refugees and Citizenship.

From an analysis of changes to Canadian migration legislation and protocol, it is clear the pre-departure and travelling stage of the migrant journey has been made more difficult, especially for prospective asylum-seekers. The avenues in which migrants can seek asylum through state-sanctioned schemes are disappearing as Canada aims to receive fewer and fewer refugees from 2022 to 2024. Canada has also entered bilateral agreements to prevent land border crossings from the U.S. and even engaged in "push backs" of

prospective asylum-seekers into the U.S (Harris, 2020). Additionally, more powers have been granted to the Minister of Immigration, Refugees and Citizenship to alter the course of a refugee claim to prevent abuse of the Canadian immigration system by seemingly undeserving asylum-seekers. The ever-increasing numbers of irregular migrants crossing Canada's borders can, in part, be put down to the introduction of these measures. Pre-departure data gathering, and international data sharing have done little to deter irregular migrants, and by reducing spaces for refugees and asylum-seekers, they are increasingly forced to take irregular journeys. The pre-departure and travelling stages of the migration journey have not been the only stages adversely effected by changes to the Canadian immigration system. The Canadian government has also made successive changes to legislation and protocol that determines how migrants are treated at official and unofficial points of entry.

The Point of Entry

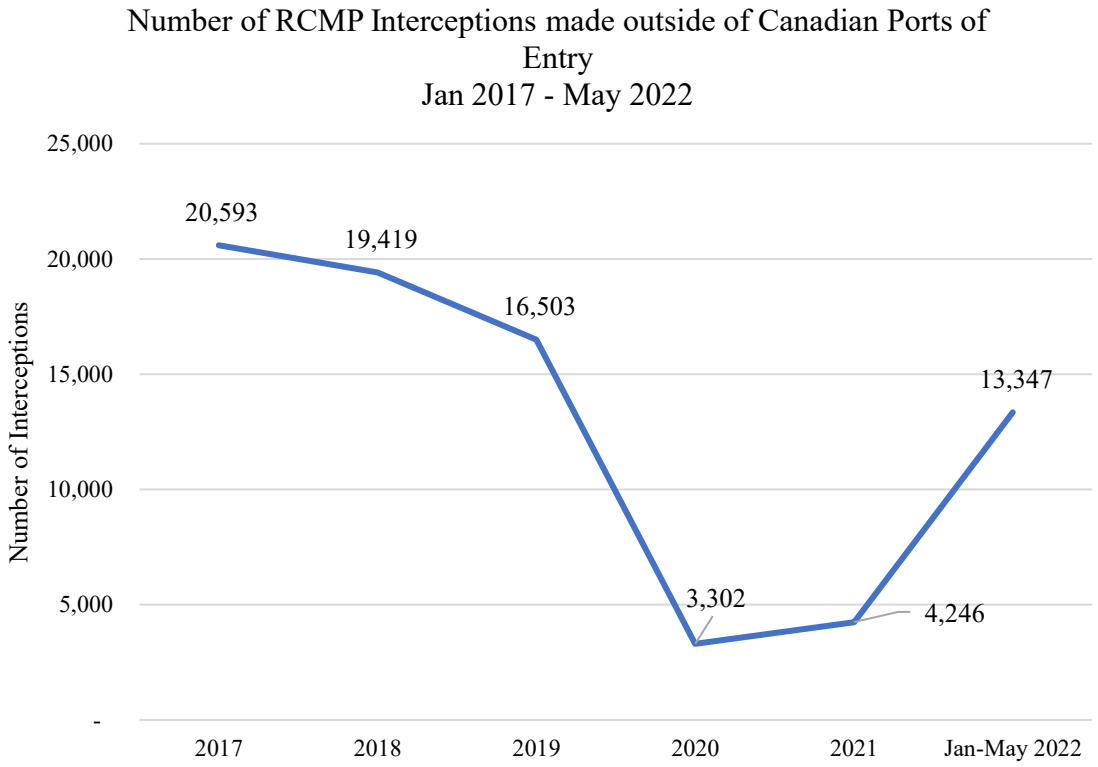

Figure 5- Graph showing the number of RCMP interceptions made outside of Canadian ports of entry between Jan 2017 and May 2022.
Data sourced from IRCCb. (2022). *Asylum claims by year – 2022*. Retrieved June 29, 2022, from https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/asylum-claims/asylum-claims-2022.html
Published data of RCMP interceptions begins in 2017 as the RCMP has only been collecting data on interceptions along the U.S. Canada border since 2016 (Leuprecht, 2019).

Despite measures put in place by the Canadian government to prevent migrants from spontaneously arriving at its borders, 77,410 irregular arrivals have arrived outside of official ports of entry between January 2017 and May 2022 (IRCCb, 2022; See Figure 5). There was a steep drop off in the number of irregular arrivals crossing the Canadian border in 2020 due to the global travel restrictions put in place to respond to the outbreak of the

Covid-19 pandemic. However, due to the loosening of these travel restrictions, the number of irregular migrants has steadily increased in the years 2021 and 2022. 13,347 irregular migrants have been intercepted at the Canadian border between January and May of 2022 (IRCCb, 2022; See Figure 5). If the number of RCMP interceptions continues at the same rate for the rest of the year, Canada could see 32,033 irregular migrants attempting to cross its border in 2022. This represents an increase of over 10,000 irregular border crossings from the previous peak in 2017 (IRCCb, 2022). This irregular migration has continued despite the legislative changes made by the Canadian government that impacted the pre-departure and journey of prospective irregular arrivals and asylum-seekers, as discussed above. At the point of border crossing, changes have also been made to the agents and agencies that administer the physical Canadian border and the nature of how they respond to irregular migration.

A crucial change made to the Canadian border regime between 2000 and 2022 was the granting of more powers to immigration officers to detain border crossers. The IRPA (2001) granted an expansion of powers regarding who may be detained, and where they may be detained. Before the introduction of the IRPA (2001), the power to detain border crossers was limited to foreign nationals at official ports of entry on the grounds of uncertain identity (Crépeau, & Nakache, 2006). According to the IRPA (2001), immigration officers now have the powers to detain foreign nationals and permanent residents. The grounds for arrest and detention of border crossers have also been expanded. Permanent residents and foreign nationals can be arrested and detained on "reasonable grounds to believe [the border crosser] is inadmissible", "if the officer is not satisfied with the identity" of the border crosser, or if the officer considers detention "necessary" for the

examination of the border crosser or their documents to be completed (IRPA, 2001, p. 50). While these measures apply to all border crossers, they are of special concern to irregular migrants and asylum-seekers who may have been forced to leave their home country without the necessary documentation in an emergency situation, or as their identity may indeed be the reason they were forced to seek refuge elsewhere (Crépeau, & Nakache, 2006). The expansion of the powers to arrest all border crossers establishes the idea that crossing the Canadian border in an irregular or suspicious way is a criminal act. This contributes to the criminalization of border crossings caused by the application of punitive policies associated with criminality being applied to those who cross the Canadian border.

Moreover, according to changes brought in by the IRPA (2001), foreign nationals can be arrested at any stage of the immigration determination process without a warrant. This represents an encroachment of legal rights guaranteed by the *Canadian Charter of Rights and Freedoms* (1982). The ability to arrest foreign nationals without a warrant stands to conflict with Article 7 of the Charter that guarantees "everyone has the right to life, liberty and security of the person and the right not to be deprived thereof" (Canadian Charter of Rights and Freedoms, 1982). The landmark Supreme Court Case *Singh v. Canada* (1985) established a theory of reciprocity when it comes to obligations and rights in regard to foreign nationals and asylum-seekers: this case recognized that if asylum-seekers were to be subject to the full force of Canadian law, then they are logically entitled to benefit from Canadian standards of human security and respect (Singh v. Canada, 1985; Crépeau, & Nakache, 2006). Due to the changes introduced by the IRPA (2001), border officials have been granted greater powers to arrest and detain foreign nationals, without a warrant, at any stage of the immigration determination process, at the expense of the legal

rights and freedoms afforded to irregular migrants and asylum-seekers. This change follows a worrying trend of expanding the powers of government officials, while simultaneously restricting the rights of irregular border crossers who are afforded fewer procedural rights than those charged with criminal offences under the Canadian justice system. The internal changes made to the CBSA mandate reinforces the idea that irregular border crossings have been criminalized, while simultaneously rendering such measure beyond the safeguard and legal procedures found in the criminal justice system.

The CBSA has made internal changes to their mandate and operations specifically to deal with irregular migrants. According to the Canada Border Services Agency Act (2005) the official mandate of the CBSA is to provide "integrated border services that support national security and public safety priorities and facilitate the free flow of persons and goods" (p. 2). However, there has been a shift in their emphasis away from customs control to the control of irregular migration and the detention of migrants, as dictated by their internal regulations. The IRB reflected this in a description of the CBSA's mandate stating that they were responsible for "carrying out enforcement functions related to immigration and refugee matters. These include detention, removals, investigations, and intelligence and immigration control functions overseas" (IRB, 2021). The CBSA has also set removal targets for its agents in an effort to "improve its performance" on removals and detention of migrants (CBSA, 2020). They praised themselves for the removal of 11,444 migrants from Canada in 2019-2020 and claimed this was the highest number "achieved" in the previous 5 years (CBSA, 2020). Not only have the CBSA created an internal target structure for the detention and removal of migrants, but they have prioritised the type of migrants targeted for detention and removal. The CBSA places "highest priority" to cases

that involve national security, organized crime, crimes against humanity and criminals (CBSA, 2020). After this, priority is shifted to "failed refugee claimants who arrived between ports of entry" (CBSA, 2020). The internal changes to the target structure and the internal prioritisation of certain types of migrants show the CBSA body is less than concerned with their aim of "treating migrants with compassion", and more concerned with detaining and removing irregular arrivals who are presented alongside criminals as targets for this treatment (IRCCb, 2020).

Another change instituted within the CBSA since 2000, has been the arming of CBSA officers. The 2006 Arming Initiative carried out weapons training with CBSA officers. This included instruction on "how to respond to high-risk situations" and firearms training (CBSA, 2019). Further amendments to the Arming Initiative have capped the number of CBSA officers with active firearms on their person while on duty to 15% (CBSA, 2019). However, the 10-year summary report on the effect of this Arming Initiative concluded that since the introduction of firearms and firearms training, the CBSA has played "a more significant and active role in the enforcement community" (CBSA, 2019). The arming of CBSA border guards represents another change in the point of entry stage of the migrant journey between 2000-2022. This shift corresponds with other changes that appear to criminalize irregular border crossings. In 2022, all official agents meeting irregular arrivals as they cross the border into Canada are armed or have firearms training as the CBSA has entered a partnership with the RCMP, as discussed below.

Recent changes to the Canadian immigration regime impact who is enforcing these new rules that have come into force in response to irregular migration. To deal with the "influx" of irregular border crossers, the Canadian Government established the Asylum-

seeker Influx – National Strategic Response Plan (AS NSRP) in 2020 (IRCCb, 2020). As part of this three-stage action plan, the CBSA entered into an agreement with the RCMP that expanded border enforcement to crossing points outside of official ports of entry (IRCCb, 2020). The first step of the AS NSRP employs the RCMP to intercept border crossers and hold them in RCMP custody to determine "any criminal history" (IRCCb, 2020). From here, border crossers are either kept in RCMP custody, transferred to the local police jurisdiction, or transferred to CBSA facilities (IRCCb, 2020). The CBSA then conducts a detailed screening of the irregular border crosser to determine their admissibility into Canada (IRCCb, 2020). The third stage of the AS NSRP is for those who have claimed asylum to be assessed for eligibility by the CBSA and the IRCC (IRCCb, 2020). This process can take years and will be taken up in further detail in the following section discussing the changes made to the Canadian immigration system that effect the domestic processing of irregular arrivals. While these measures have been presented as a method to deal with a relative rise in the number of irregular migrants crossing the Canadian border, they can be seen to violate international law. According to Article 31 of the *Convention Related to the Status of Refugees* (1951), a state can only be sure its international protection obligations are met if an individual's refugee claim is assessed before they are affected by an "exercise of state jurisdiction (for example, in regard to penalization for "illegal" entry)" (Goodwin-Gill, 2001, p. 2). The introduction of the AS NSRP potentially infringes on the rights of irregular migrants and asylum-seekers who are subject to police record checks and police custody before their claims to asylum can be heard. More than restricting their rights, the widespread powers to arrest and detain irregular border crossers seem to be aimed at criminalizing irregular migrants at the point of border crossing.

The greater power vested in border agencies to deal with influxes of irregular migrants have shown an effort by the Canadian government to criminalize irregular border crossings. Border agents have been granted expansive powers to arrest and detain permanent residents and foreign nationals with or without a warrant upon crossing the physical Canadian border. The internal changes within the CBSA show that irregular arrivals have been explicitly targeted for the exercise of these greater powers to punish migrants who are presented as abusing the Canadian immigration system. Additionally, the AS NSRP partnership represents a focus on criminalizing irregular border crossings by granting the RCMP powers to intercept and detain irregular border crossers. As will be shown in the following section, the changes made to the Canadian immigration system at the point of entry have stark implications for the treatment of irregular migrants inside Canada.

Inside Canada

Inside Canada, irregular migrants experience restrictions on their movement and their rights to legal recourse within the immigration system that deters, but also effectively criminalizes, and punishes irregular migration. The changes made to Canadian immigration legislation and protocols have meant that migrants receive very different treatment depending on how they entered the country. A pertinent example of this differential treatment is the Designated Foreign National (DFN) category of arrivals. Even though immigrants can receive this designation in any stage of their migration journey, the most adverse effects of this label are levied against migrants once inside Canada's physical boundaries, and within the scope of Canada's immigration system. These restrictive measures include extended periods of detention, limited access to detention reviews, and

limited recourse in the form of judicial reviews. The evidence presented below will show that irregular migrant's access to justice has been restricted leading to extended periods of detention.

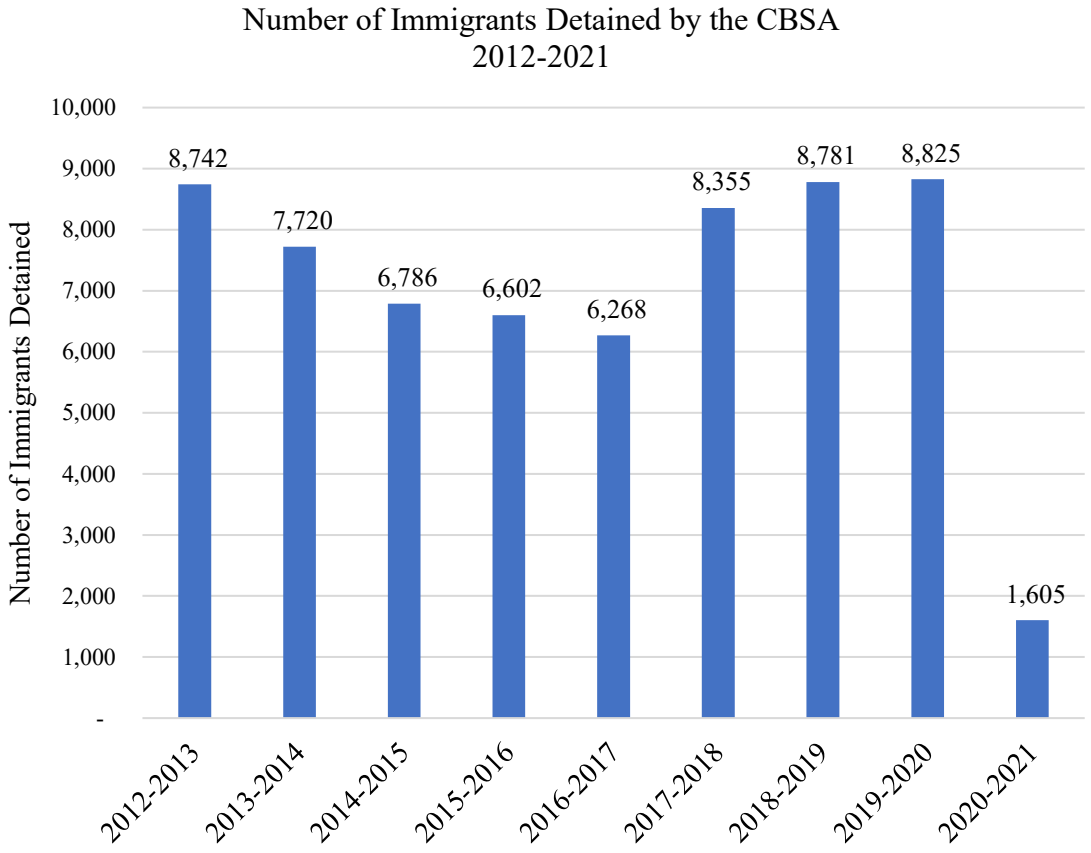

Figure 6- Graph showing the number of immigrants detained by the CBSA in the period 2012-2021.
Data sourced from CBSA. (2021). *Annual Detention, Fiscal Year 2020-2021*. Retrieved July 3, 2022, from https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2020-2021-eng.html
Published data of CBSA detentions is only available from 2012 onwards as the CBSA did not publish annual reports of detentions before 2012 (CBSA, 2021).

First, it is important to establish how many immigrants have been detained by the CBSA once they have entered Canada. In the period 2012-2021, the CBSA's published figures show that a total of 63,684 immigrants were detained by this agency (CBSA, 2021; See Figure 6). As shown by Figure 6, there was a steep increase in immigrant detentions

between 2016 and 2020. This is reflective of the increased number of interceptions made by the RCMP shown in Figure 5. While the number of RCMP interceptions peaked in 2017, the number of immigrants detained by the CBSA peaked in the year 2019-2020 (See Figure 5; See Figure 6). This discrepancy can be explained by the long wait times for decisions on immigration claims in this period caused by the increase in irregular border crossings, with the backlog in asylum cases meaning immigrants detained at the border spent longer cumulative time in detention (IRB, 2020). This discrepancy can also be explained by the fact that immigrants can be arrested and detained at any stage of the immigration determination process, as stipulated by the IRPA (2001). Figure 6 also shows that there was a sharp drop in the number of immigrants detained in the year 2020-2021, owing to the sharp decrease in RCMP interceptions due to global Covid-19-related travel restrictions (See Figure 6; See Figure 5). Despite the number of immigrants taken into detention in the year 2020-2021 being the lowest number of detainees in the 2012-2021 period, these detentions represent a worrying trend. The number of immigrants detained as a percentage of the total number of foreign nationals admitted to Canada has been steadily increasing since 2017 (CBSA, 2021; See Figure 7.) This trend can in part be explained by the changes to the Canadian immigration system that is designed to treat irregular migrants in a punitive way and restrict their access to justice. This punitive treatment is levied against irregular arrivals and asylum-seekers as soon as they have crossed the Canadian border.

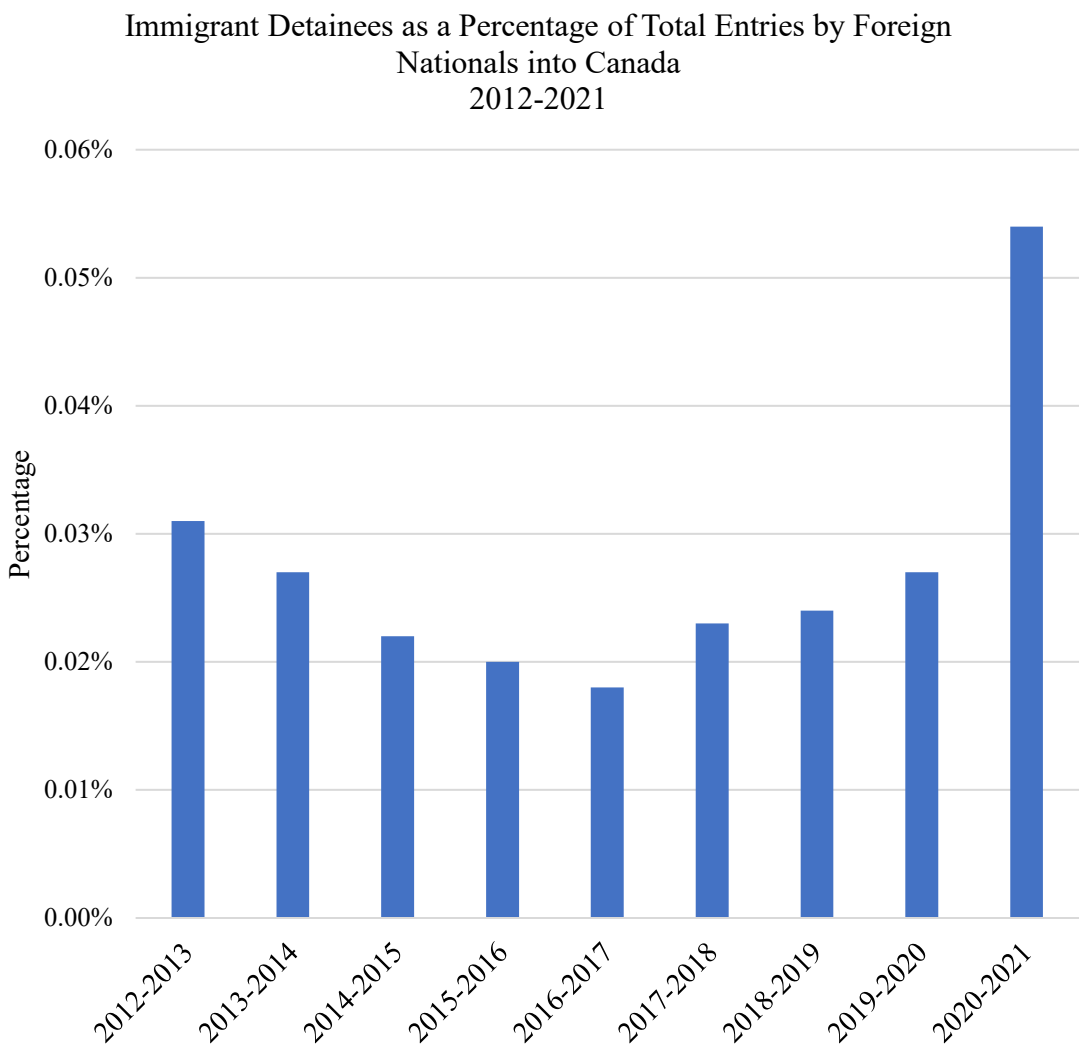

Figure 7- Graph showing immigrant detainees as a percentage of total entries by foreign nationals into Canada from 2012-2021.
Data sourced from CBSA. (2021). *Annual Detention, Fiscal Year 2020-2021*. Retrieved July 3, 2022, from https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2020-2021-eng.html
Published data of CBSA detentions is only available from 2012 onwards as the CBSA did not publish annual reports of detentions before 2012 (CBSA, 2021).

The introduction of the AS NSRP solidified a two-tier system of seeking asylum for irregular border crossers who seek refuge in Canada. This two-tiered system is illustrated by the Government of Canada in Figure 8. The first lane, 'immigration applicants' refers to the state-sanctioned admission categories as presented in Figure 2.

Interestingly, the 'Other immigrants' category is not represented in the first lane of admissions that is handled by the IRCC. Rather, asylum claims that are made at the border by irregular arrivals are presenting in another immigration lane, to be dealt with by the Immigration and Refugee Board (IRB). The illustrations for these two pathways clearly present the asylum-seekers lane as a law-and-order pathway, further building on the framing of irregular migration as a criminal matter, first to be dealt with by the RCMP and the CBSA, then the IRB. The powers granted to government officials to detain irregular migrants for the length of the immigration determination process mean that irregular border crossers who seek asylum in Canada and follow this second immigration tier, can spend years in detention. The last published wait time for an initial decision on admissibility for irregular border crossers was 20 months, for claims made in October of 2020 (IRB, 2020). By point of contrast, a refugee resettled from abroad can wait for as little as 3 months for a decision on their refugee claim (IRCCc, 2022)[ii]. This 20-month wait time covers just the second stage of the second tier of asylum-claimants. The IRB warned in 2020 that wait times for refugee claims to be heard could reach 36 months (IRB, 2020). According to these estimates, an irregular border crosser could end up in detention for more than 4 and a half years. The extended detention of irregular border crossers who seek asylum upon entering Canada appears to contradict the CBSA guidelines that state they only use detention as "a last resort" (Public Safety Canada, 2020). In fact, it seems that detention is a key tool in the strategy to cope with irregular migrants and asylum-seekers crossing the Canadian border outside of official ports of entry. Migrants that arrive at Canada's borders in this way are punished with extended periods of detention. The introduction of the AS NSRP is not the only change made to the domestic handling of irregular arrivals who seek

asylum at the Canadian border. The DFN label carries even longer restrictions for irregular arrivals.

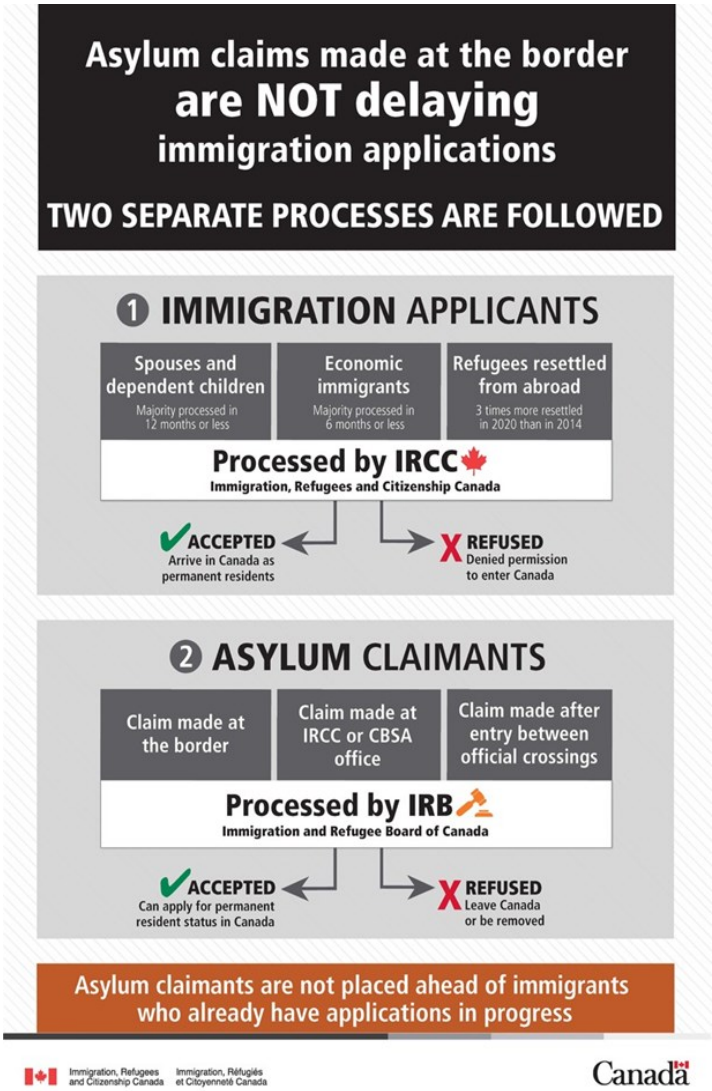

Figure 8- Graphic produced by the IRCC on behalf of the Government of Canada titled "Asylum and Immigration: Separate Processes".
Sourced from IRCC. (2018). *Asylum and Immigration: Separate Processes.* Retrieved June 28, 2022, from https://www.canada.ca/en/immigration-refugees-citizenship/campaigns/irregular-border-crossings-asylum/myth.html

The power to impose the DFN label on irregular arrivals was vested in the Minister for Public Safety and Emergency Preparedness under the IRPA (2001). According to the

IRPA (2001), people who arrive in Canada as an irregular arrival can receive this designation if the Minister believes that identity and admissibility checks cannot be conducted in "a timely manner", or if there are "reasonable grounds" to suspect an association with a criminal organization or terrorist group (p. 22-23). While these definitions are seemingly vague, the implications of receiving the DFN designation are significant for an irregular arrival. DFNs are subject to continued detention until a final determination is made on their case which, as shown above, can take years, if their initial claim is found to be inadmissible and they appeal this decision (Protecting Canada's Immigration System Act, 2012). The only possibility of release from detention comes from the Minister of Public Safety, or from an Immigration Division order requesting their release on compassionate grounds (IRPA, 2001). Seeing as DFNs are not allowed to request humanitarian or compassionate assistance until 5 years after their final immigration claim decision, the possibility of a release through these methods is unlikely (IRPA, 2001).

DFNs also have limited access to detention review procedures. The IRPA (2001) dictates that permanent residents and foreign nationals must have their reason for detention reviewed within "48 hours of being taken into detention" (p. 51). Following this initial review, a secondary review must be carried out within a week after the initial review, and once every 30 days after the secondary review until the detainee is released from immigration detention (IRPA, 2001, p. 52). On the other hand, the reason for the detention of a DFN is required to be reviewed within 14 days of the DFN being detained, and after that, only once every six months that the irregular arrival is held in detention (IRPA, 2001, p. 52). Therefore, if a permanent resident was held in immigration related detention for two years, the reason for their detention would be reviewed 26 times, as opposed to a DFN

that would have their detention reviewed just 4 times over a 2-year period. DFNs are subject to very different review procedures than other immigrants held in immigration detention, due to the fact they crossed the border in an irregular way, outside of state-sanctioned schemes and official ports of entry. This is not the only way in which irregular arrivals are restricted with regard to their access to procedural protections when it comes to the legal process of seeking asylum once they are inside Canada.

The IRPA (2001) allows failed refugee claimants access to judicial review, but the purview of this review is limited to a review of the legal process, not a review of the decision that was granted in the case, hence further restricting migrants' rights to justice in the Canadian immigration system (Section 72.1). To have access to judicial review, a migrant must first seek leave of the Court, meaning they must seek permission to have their case heard in the Court (IRPA, 2001). The permission to seek leave must be filed within 15 days of the migrant receiving notice that the appeal they had made against a failed asylum-claim had been denied (IRPA, 2001). It should be noted that there exists no such restriction on the RAD or RPD to give decisions in refugee claims. If this permission is denied, the review goes no further, and a removal order is put in place (IRPA, 2001). If a Federal Court judge does hear the case, the review is concerned with the manner in which the decision was made by the IRB and its agents, not on the decision itself (IRPA, 2001; Crépeau, & Nakache, 2006). A successful review returns the asylum claim to the RAD to review their process for decision making. This is a concern since the IRB and its tributaries are "not bound by any legal or technical rules of evidence", which could have detrimental effects on the asylum cases that are brought before them (IRPA, 2001, Section 173(c)). The evidence presented in these cases does not need to stand to the same standard as the

evidence used in criminal or civil cases, leaving the asylum-process vulnerable to flawed decision making based on untested, unsubstantiated, or untrue evidence. Although it is not unusual for legal systems to employ different evidentiary standards, the reality that the adjudication claims can quite often be a matter of life and death should raise concerns regarding this evidence. There is little in the way of legislative guidance on how immigration officials should handle cases that have been pushed back by the Federal Court. The limited access that asylum-claimants and DFNs have to a legal review of their cases represents another way in which the Government of Canada has changed the internal asylum process in a manner that adversely affects irregular arrivals.

Finally, in the case that a DFN lodges a successful asylum claim with the IRB, their access to more established immigration status is denied for 5 years. Once again, the IRPA (2001) introduced legislation that made it harder for irregular arrivals to gain access to extended protection in Canadian society. DFNs are not eligible to apply for permanent resident status for five years after a final determination is made on their refugee claim (IRPA, 2001). This does not just apply to applications for permanent residency, but also for temporary work permits, temporary resident permits, or any other forms of status to remain and work in Canada (IRPA, 2001). The impact of this is once again denying irregular migrants access to Canadian society on the basis of how they entered the country. The idea that irregular migrants are punished both temporally and spatially will be put forth in the hostile environment framework. However, it is important to note that the punishments for DFNs come in two forms. Firstly, extended detention and the denial of access to physical Canadian territory until their asylum claim is finalised, and secondly by

far extending the time that DFNs can apply to more established forms of immigration status.

Irregular migrants have been targeted under these changes to Canada's immigration legislation and procedures. Extended periods of detention, with limited access to review, appeal and legal recourse are just some of the measures that dictate how an irregular arrival is treated once they cross the Canadian border and enter the Canadian immigration system. If an irregular arrival's asylum-claim is unsuccessful they face a 5-year period in which they cannot access the rights and securities that come with more established visa programs. These measures were introduced to "maintain the security of Canadian society" (IRPA, 2001, p. 3). However, it can be seen from Figure 9 that the overwhelming reason given for the detention of irregular migrants were not explicitly security concerns, but speculations as to whether the immigrant in question is unlikely to appear at immigration hearings (CBSA, 2021). In the period 2012-2021, 1 immigrant was detained due to being considered

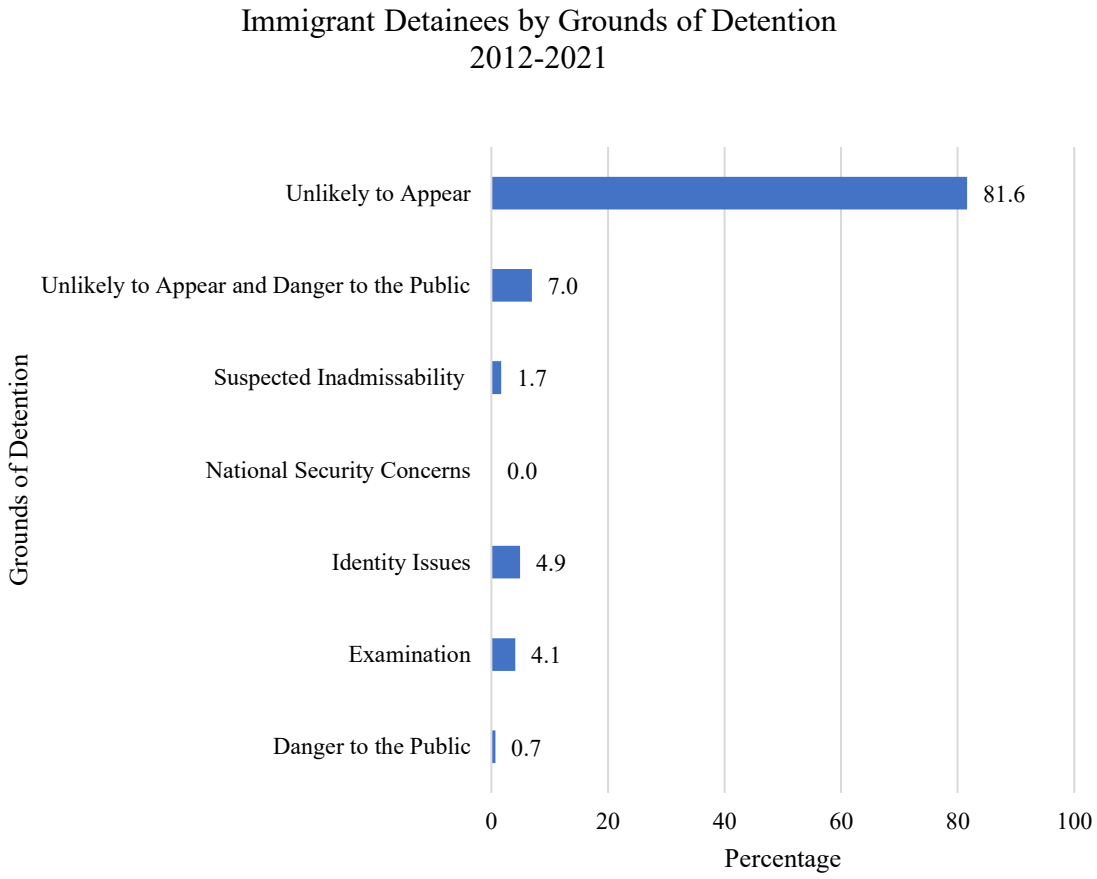

Figure 9- Graph showing immigrant detainees by grounds of detention in the period 2012-2021.
Data sourced from CBSA. (2021). *Annual Detention, Fiscal Year 2020-2021*. Retrieved July 3, 2022, from https://www.cbsa-asfc.gc.ca/security-securite/detent/stat-2020-2021-eng.html
Published data of CBSA detentions is only available from 2012 onwards as the CBSA did not publish annual reports of detentions before 2012 (CBSA, 2021).

a risk to national security. Why, then, has the Canadian government opted to detain thousands of irregular migrants in the period 2000-2022? From the evidence presented in the above chapter, it can be plausibly argues that the Canadian government has introduced changes to its immigration system to deter, criminalize, and punish irregular migration. Before a migrant even makes a choice to claim asylum in Canada, the government has reduced the number of places available to asylum-seekers through state-sanctioned

schemes. They have instituted technical barriers to the migration journey that are particularly challenging for asylum-seekers including the collection of biometric data that is shared with other governments and international agencies. Irregular migrants can also be refused access to the asylum system in Canada if they travelled through the U.S. under the Safe-Third Country Agreement (2002). If an irregular arrival does make it to the physical Canadian border, they are met by armed border enforcers who have the power to arrest and detain them, without a warrant, for unlimited periods of time. Once the irregular arrival is inside the Canadian border and has made a claim for asylum, they face years of detention with little chance for detention review or access to their rights to judicial review. Even if irregular migrants make a successful claim for asylum in Canada, they are barred from access to more established visas for a period of five years. The entire migration journey has been impacted by recent changes that the Canadian government has made to its immigration regime. The following chapter will discuss the theoretical mechanisms that help to explain these changes in further detail.

Chapter 5 Canada's Migration Policy and Proposed Theoretical Mechanisms

The changes made to Canada's migration policy have been significant in the period from 2000 to 2022. The evidence presented in the previous chapter has shown how each stage of the migration journey has been impacted by legislative changes that have constructed the irregular arrival category, and instituted changes to deter, as well as effectively criminalize, and punish irregular migrants. The shifts in legislation that have been presented represent traces of mechanisms of change within the Canadian government. These mechanisms show how a hostile migration environment has been formed. A fuller understanding of why these measures have been put into place can be provided by existing theories that are concerned with migration policies and their effects on irregular migration. The discussion of which elements of the securitization, crimmigration, and externalization frameworks are evident in the Canadian case, will once again follow the migration journey from pre-departure and travel, to arrival at the Canadian border and what happens after migrants cross into Canada. This temporal and spatial discussion reflects not only the pattern in which the evidence was presented, but also serves to highlight the distinct contributions of each of the theories to understanding separate parts of the migration journey. The externalization literature sheds light on the "processes and practices whereby actors complement policies to control migration across their territorial boundaries" (Lemberg-Pederson, 2019, p. 248). In the Canadian case, the implementation of visa programmes and the collection of biometric data contributes to the regulation of movement across borders from the outset of the migration journey. This creates the notion of irregularity, in a practical and linguistic sense. The insights of securitization theory contribute to understanding how different migratory subjects are constructed, one that is

crucial to considering the idea of regularity and irregularity in migration. Securitization theory also sheds light on why the Canadian border has been securitized. The use of the RCMP and armed CBSA officers can be contextualised when considering migration as a security issue. Complementing these insights, the crimmigration framework helps to explain the changes to the migration system that impact the domestic treatment of irregular migrants. The structural changes to immigration law have meant that irregular arrivals face barriers in their access to legal recourse and judicial review. The fact that access to case reviews and judicial reviews is determined by the mode of entering the country is explained by the crimmigration framework, as new categories of inclusion and exclusion have been created by the convergence of criminal and immigration law. Through cross-engagement with these theories, it will also be shown that understanding the border as a process that is constructed by governments, and challenged and negotiated by migrants, sheds light on how these irregular migration controls take place along the length of the migration journey. The insights provided by the theorization of borders as processes will contribute to the formulation of the hostile environment framework in the subsequent chapter.

Externalization as an emergent process of migration management helps to explain the major changes the Canadian government has made to its immigration policies that have impacts on migrants far from Canada's physical borders. Primarily, this refers to the implementation of extra-territorial visa applications for access to state-sanctioned migration schemes, as shown above in Figure 2. As previously noted, access to state-sanctioned admissions categories is granted through a visa application process that takes place outside of Canada (Evra & Prokopenko, 2021). The denial of access to Canadian territory without a pre-authorized visa is a visceral example of the externalization of

migration practices. As part of the visa application process, migrants are also required to provide their biometric data to Canadian immigration officials before their departure to Canada. The sensitive personal data can be collected by private contractors of the Canadian government, or government partners. In the case that a person's identity may be the reason they are hoping to seek asylum in Canada, the collection of this data could be very problematic (Crépeau & Nakache, 2006). On top of this, the provisional acceptance of this visa from abroad leaves migrants in a state of precarity due to the conditional nature of the visa authorization (Gilbert, 2016). These practices are particularly challenging for asylum-seekers and refugees who are often already in precarious situations with limited access to the necessary resources with which to apply for these visas, for example internet access and the availability of identity documentation. The spatial aspect of the externalization literature explains the impact of these visa processes that construct paper walls around migrants to keep them in their place of origin and far from Canada's borders (Triandafyllidou, 2014).

The externalization literature also theorizes the importance of the reduction in spaces through these state-sanctioned pathways. As was shown in Chapter 4, the number of refugees Canada plans to accept through the state-sanctioned refugee scheme in 2024 is 14,045 fewer than their target intake of refugees in 2022. This reduction in spaces is a clear example of how states employ systems to selectively control migration beyond their borders that are not always immediately apparent to migrants (FitzGerald, 2020; Stock, Üstübici, & Schultz, 2019). While migrants are heavily encouraged to apply for state-sponsored migration schemes, the reduction in places available through these schemes proves counter-intuitive, or even misleading from the perspective of prospective

immigrants. By publicising the state-sanctioned schemes open to refugees hoping to seek asylum in Canada, the Canadian government effectively establishes a regular route for prospective migrants. However, the Canadian government has simultaneously established barriers to this process by reducing the number of places available for certain migrants as part of these schemes and requiring extensive data collection at the point of application. From the outset of the migration journey, the regular immigration routes are constructed to prevent migrants stepping foot on Canadian territory without pre-authorisation. These measures seem to have a particular focus on prospective asylum-seekers who are also prevented from accessing Canadian territory and thus triggering protection obligations outlined by international law (Frelick, Kysel & Podkul, 2016). The impact of the creation of these regular routes are three-fold. Firstly, they implicitly create an irregular route for migration. Practically, migrants who travel to Canada outside of these state-sanctioned schemes are not using the state-sanctioned, regular pathways and so can be deemed irregular. This allows for huge swathes of migrants to be deemed irregular arrivals thus precipitating the different treatment they receive once they reach the Canadian border and enter the Canadian immigration system. Secondly, these regular migratory routes project a vision of fairness. Those who have submitted applications are complying with government stipulations and waiting their turn, and those who circumvent these measures and visa requirements are "jumping the queue" (Reynolds & Hyndman, 2021; Esses, Medianu, & Lawson, 2013). And thirdly, the barriers placed along these regular routes are seemingly directed specifically at refugees and prospective asylum-seekers. Visa and data collection requirements are particularly difficult barriers for refugees and asylum-seekers to overcome and the vanishing state-sanctioned places for asylum-seekers push migrants into

using the irregular, non-state-sanctioned routes, thus manufacturing surges of irregular migration at the Canadian border. Canadian immigration policy changes stretch beyond the state's physical borders and into the pre-departure and travel stages of the migration journey. The externalization framework illuminates these extra-territorial impacts as it challenges the notion that the physical border is the only place in which states exercise their state sovereignty and power to exclude unwanted populations.

A rich area of inter-theory engagement between the securitization theory and the externalization framework can be found in the linguistic techniques used to establish different types of migrants that justifies their discrepant treatment. The creation of regular routes to seek asylum in Canada, by inverse, creates irregular routes to the Canadian border. As was shown above, by reducing the number of spaces available through these regular, state-sanctioned routes, the Canadian government has precipitated a surge of irregular migrants who have little choice but to circumvent these schemes if they hope to seek asylum in Canada. According to the securitization literature, the labelling of these different movements of people constructs distinct migratory classes or "different refugee subjects" that then translates into legislation (Lemberg-Pederson, 2019; Hollifield, 2004; Xu, 2021, p. 661). In this way Canada has created a form of "organised hypocrisy" that advertises Canada as place that accepts asylum-seekers (who satisfy the lengthy pre-requisites of the visa and biometric schemes), while simultaneously pushing migrants into irregular migratory routes (Krasner in Hollifield, 2004, p. 887). These irregular migratory routes are then presented as a threat to Canada's border security. Interestingly, in the Canadian case, security is not just related to the physical integrity of the border and preventing unwanted border crossings, but irregular migrants are presented as a "burden on Canada's

immigration system" according to former Minister for Immigration, Refugees and Citizenship Jason Kenney (Gilbert, 2016, p. 205). Irregular migrants put further pressure on an already stretched immigration service by "jumping the queue" (Reynolds & Hyndman, 2021; Esses, Medianu & Lawson, 2013). The idea of queue jumpers, as has been previously established, is a misnomer as there are two distinct pathways for asylum-seekers that seek refuge at the Canadian border, and those that apply to be resettled through a state-sanctioned scheme. The notion of queue jumpers nonetheless provided the impetus for former Minister Kenney to stress the need to "delineate mala fides from bona fides" (Kenney in Gilbert, 2016, p. 205). The irregular arrival label is thus an important element of explaining the use of detention against irregular arrivals. Migrants who arrive spontaneously are presented as opportunistic queue-jumpers that can be punished as a means of protecting Canada's immigration system from being abused. Another important explanatory factor to be considered is the question of why Canada detains irregular arrivals is the securitization of the border.

Alongside the visa schemes and data collection processes, bilateral agreements have also contributed to the externalization and securitization of Canadian migration management. Securitization theory, as has been discussed, is not just concerned with the process of how an issue is treated with the "politics of the extraordinary" (Balzacq, 2019, p. 99). More recent interpretations of securitization theory have sought to study empirical cases of securitization and provide an explanation for mechanisms that are evident as a result of an issue being securitized (Floyd, 2019; Hernandez-Ramirez, 2019; Hirschler, 2021). Therefore, the consideration here is not whether migration in Canada has been securitized. This is an important question that has been problematised by many other

scholars (Esses, Medianu & Lawson, 2013; Francis, 2021; Gaucher, 2020; Wallace, 2018; Xu, 2021). Rather, the question is whether the theory of securitization can help explain the changes in Canada's immigration regime. The 2002 Third Party Agreement signed between the U.S. and Canada is another expression of the securitization of migration as migrants deemed to threaten the Canadian immigration system are kept away from the physical border. The externalization framework is also pertinent in this case as this bilateral agreement has shown the influence of the Canadian government on the movement of people far outside of its borders.

As was shown in the previous chapter, the Safe Third Country Agreement (2002) was signed with the aim of preventing migrants "asylum shopping" between seemingly safe countries (Paquet & Schertzer, 2020, p. 10). The Safe Third Country Agreement (2002) allows Canadian border agents to turn back any migrants who travelled through the U.S. to seek asylum in Canada as it was deemed the U.S. could provide the international refugee protection guaranteed by the 1951 *Convention Relating to the Status of Refugees.* Alongside the 2001 Smart Border Agreement, that allows immigration related biometric data to be shared across jurisdictions, this measure effectively pushes the Canadian border outwards. The U.S. border can act as a buffer to prevent, or at least deter, potential asylum-seekers arriving at Canada's borders by foot and secure the Canadian immigration system. This agreement is reminiscent of the 1908 *Continuous Journey Regulation* that prohibited the landing of immigrants who could not take one continuous journey from their country of origin to Canada (Government of Canada(b), 2022). This earlier regulation subtly introduced a racialized immigration quota that prevented migration from Asia (Government of Canada(b), 2022). Similarly, the Safe Third Country Agreement (2002)

seems to target prospective migrants from a specific region, namely Mexico, Latin America, and South America. This policy will continue to have an adverse effect on global refugee populations as in 2018, Venezuelans were the largest national group of asylum-seekers worldwide (UNHCR, 2018). The 2002 Safe Third Country Agreement was certainly not signed in response to this particular forced migration event, but it represents an acute challenge to forced migrants and asylum-seekers from this geographic area. By adopting a framework of securitization to Canadian migration policy in the period 2000-2022, the implications of changes that successive governments have introduced to keep migrants away from Canada's physical borders become clear. By focusing on externalization techniques such as implementing visa programmes, collecting biometric data, and entering into bilateral agreements with neighbouring countries, the theory of securitization can indeed be "knit" to other mid-range theories (Balzacq, 2019, p. 99). These externalization methods have helped construct a highly controlled border process that reaches well outside Canada's physical boundaries to prevent and deter irregular migration. The securitization of migration provides a wider theoretical explanation for why these policies have been implemented, and why irregular migrants are detained for extended periods in Canada.

The securitization of migration also provides a theoretical explanation for the increased police presence, and police powers at the Canadian border. As mentioned in the previous chapter, there have been notable changes to Canadian border enforcement in the post-2000 period. The CBSA entered into an agreement with the RCMP that authorised the police to arrest and detain irregular migrants that were found to cross the Canadian border outside of official ports of entry. Additionally, as noted above, CBSA officers have been

given firearms and firearms training under the 2006 Arming Initiative (CBSA, 2019). These measures certainly reflect the idea that there has been a "failure to deal with issues in normal politics" (Waever, 1998, p. 71). The arrival of spontaneous migrants at Canada's borders has expanded from an immigration issue, dealt with by specialised government actors like the IRCC and the CBSA, to a policing and security issue. The use of federal police forces to detect and detain irregular arrivals is evidence that the Canadian government has opted to treat irregular arrivals with extraordinary political and enforcement measures that appear to criminalize irregular immigration. The extended detention of these migrants thus gains further clarity by applying the theory of securitization in this case. By considering irregular border crossers as security threats, the Government of Canada is justified in further policing its physical border and arming its border agents. This is aside from the fact that, as shown above, some measures introduced by the Government of Canada have encouraged irregular border crossings. Nonetheless, widening the analytical frame to consider the securitization of migration allows for a more comprehensive understanding of why the physical border is now policed and armed. The policy implications of the securitization of the Canadian border, namely the extended detention of irregular migrants have important normative consequences. The international laws that govern refugee protection explicitly challenge the use of this policy stating that a state can only be sure if their international obligations are met "only if an individual's claim to refugee status is examined before he or she is affected by an exercise of State jurisdiction" (Goodwin-Gill, 2001, p. 17). Why detention in particular is used in immigration matters, in contention with international refugee protocols, can be further analyzed by drawing on the crimmigration framework. The convergence of the criminal

and immigration fields can explain why these deviations from immigration policies are met with criminal punishments that are contrary to international laws that govern refugee protection.

As has been shown in the previous chapter, government officials have been given greater powers to arrest and detain irregular migrants, with or without a warrant, at any stage of the immigration process. The crimmigration framework understands the widespread use of detention in immigration matters as a consequence of the convergence in criminal and immigration legal fields within Canada. These fields have distinct qualities but can be seen to overlap in some conceptual and practical areas. Criminal law addresses harm to individuals and society from violence or evil motive whereas immigration law is concerned with who may cross a border and reside inside a state jurisdiction (Stumpf, 2006). These legal areas seem distinct, but conceptually, both criminal and immigration law gatekeep access to society membership (Stumpf, 2006). As a result of this conceptual overlap, the strategies used to isolate unwanted members of society are increasingly the same: social exclusion in the form of detention. On an individual level, extended periods in detention have extremely damaging health and social impacts for immigrants (Human Rights Watch, 2021). However, this policy convergence also has harmful implications for Canadian legal and societal standards. Incorporating elements of the crimmigration framework with the theory of securitization can shed light on how irregular migration in Canada has come to be seen as an issue akin to criminal behaviour that requires the imposition of de facto punishment inside the Canadian border.

As previously mentioned, the North American crimmigration literature points towards the 9/11 terror attacks in the U.S. as a key precursor to the convergence of the

criminal and immigration fields across Western societies (Demleitner, 2002; Demleitner, 2004; Miller, 2005). In the Canadian case, it is essential to widen the scope of consideration for what drives a convergence of criminal and immigration law due to important case law interventions that have attempted to reign in the use of the terror threat as a precursor for harmful treatment towards migrants. The *Suresh v. Canada* (2002) decision made by the Supreme Court set a precedent that, while recognising the legitimate state interest to combat terrorism, Immigration, Refugees and Citizenship Canada ought to consider principles of fundamental justice more prominently in the treatment of immigrants (Crépeau & Nakache, 2006). In *Suresh v. Canada* (2002), the Supreme Court challenged the deportation of a landed immigrant from Sri Lanka who had formerly been a member of the Liberation Tigers of Tamil Eelam, an organization linked to terror activities that took place in the Sri Lankan civil war. The Supreme Court confirmed the absolute prohibition of torture and the principle of nonrefoulement with this decision "even where national security interests are at stake" (Suresh v. Canada, 2002). In other words, the right of a refugee not to be returned to their country of origin, and their right to be free from torture, as guaranteed by the *Canadian Charter of Rights and Freedoms* (1982) could not be subverted in the interests of national security. Therefore, the more recent changes to the Canadian immigration system can not wholly be explained by rising national security anxieties as a result of the 9/11 terror attacks. Rather, the reasons for the use of detention against irregular migrants in Canada ought to consider wider conceptions of national and societal security.

The use of detention against irregular migrants can be explained by the idea that unplanned migration threatens the integrity of the Canadian immigration system, not just

Canadian national security broadly defined. This is in line with the discussion of securitized migration in Canada. Irregular migrants are presented as a threat to the security of the Canadian border as they place an unprecedented strain on the Canadian immigration system that plays a crucial role in filtering out threats from border crossers. The evidence presented in the previous chapter confirms this interpretation. As shown in Figure 8, the percentage of immigrant detainees housed in detention facilities between 2012-2022 that were considered threats to national security was 0.0% (CBSA, 2021; See Figure 8). There has been just one recorded case of a security certificate being issued towards an immigrant in the period 2012-2022, meaning that the detention of a migrant was justified on the grounds of national security considerations (CBSA, 2021). The overwhelming reason for detaining migrants is to ensure they turn up for legal proceedings, representing 81.6% of justifications for immigrant detention (CBSA, 2021). Once irregular migrants cross the border, they are detained in the interest of ensuring that the immigration system is not overwhelmed and can effectively filter out unwanted border crossers. However, the extended detention of thousands of irregular migrants can be seen to put excessive strain on the Canadian immigration system to maintain the facilities in which to house these detainees. Additionally, they are legally obliged to maintain the legally prescribed detention reviews of all immigrant detainees (IRPA, 2001) which is a further strain on resources. The pressure on Canadian immigration agents could also help explain the restrictions that irregular migrants face in access to detention reviews. As discussed above, irregular migrants are entitled to a detention review once every six months as opposed to once every month for permanent residents and other foreign nationals (IRPA, 2001). It seems that once again the policy changes instituted by the Canadian government have

manufactured the issues of mass-irregular arrivals, either by design or neglect. The theory of securitization, taken alongside the crimmigration framework help contextualize the observable realities of the Canadian immigration system. The idea that the immigration system is constantly at risk of being abused is central to the use of detention against irregular arrivals who are presented as queue-jumpers who ought to be punished.

The crimmigration framework also expands on securitized understandings of migration to suggest how Canadian migration policy has encoded particular moral stances against irregular migrants. This is reflective of the practical and linguistic creation of irregularity that occurs at the outset of the migration journey. The use of detention in immigration matters codifies a certain moral position against immigrants whose imprisonment can be conflated with causing societal harm in the same way as convicted criminals. Exercising state power to "morally condemn" migrants that do not, or cannot, make use of state-sanctioned asylum schemes has been discussed in the U.S. context (Stumpf, 2006, p. 397). This moral position can be seen as another way the Canadian government can deter irregular arrivals and justify their punishment within Canada. The framing of the issue of irregular migration as an abuse of the generous Canadian immigration system is also in line with the need to punish and exclude those who threaten Canadian society. By wedding together different schools of thought within the Canadian context, the crimmigration framework can certainly add clarity to the observable realities of the Canadian immigration system.

To assess the impacts of changes made to Canadian immigration legislation, one must look across the length of the migration journey. In doing so, it is apparent that policy changes targeted at one stage of the migration journey in fact precipitate issues at a different

stage of the migration journey. A crucial aspect of considering the length of the migration journey is the conception of the border as a process, and not just as a static physical space. As has been shown by the evidence and the theoretical discussion of mechanisms in the above chapters, Canadian immigration policy is no longer just concerned with the border when attempting to deter and punish irregular migration. This study has hoped to show that state power is being used to expand border controls and thus the conception of where a border is performed. In the Canadian case, migration controls are exercised across borders and within its own jurisdiction, a phenomenon that was first identified in the European context (Zaiotti & Abdulhamid, 2021). The use of detention against irregular migrants is an example of the culmination of the failure of externalized border controls, but also of the success of internalized migration practices. The latter effectively keeping irregular migrants suspended in a liminal legal space where they have limited access to claim their rights afforded by the *Canadian Charter of Rights and Freedoms* (1982), and constrained access to the international protection afforded to them by the 1951 *Convention Related to the Status of Refugees.* The hostile environment framework will build on the theoretical mechanisms that have been discussed in this chapter. The framing of the Canadian border as a process will be utilised to present a broader framework for understanding the use of detention against irregular arrivals (Van Houtum, 2010). As has so far been shown, hostile measures are enacted along the migration journey by the Canadian government to deter, as well as effectively criminalize, and punish irregular migration. A framework that incorporates this cross-temporality and cross-boundary scope is necessary to fully answer why irregular migrants are detained for extended periods of time in clear violation of their human rights.

Chapter 6 Canada's Migration Policy as Explained by the Hostile Environment Framework

The contradiction of 21st century migration politics is the idea that "classical countries of immigration" (Castles, 1998, p. 5) have increasingly adopted policies that are averse to asylum-seekers, and irregular migrants. Nations of the Global North have instituted comprehensive visa schemes and data collection arrangements in an effort to expand state control over migration journeys. These measures have been explicitly and implicitly introduced to prevent would-be asylum-seekers from reaching their territories and triggering the access to international protection these migrants are granted under the 1951 *Convention Related to the Status of Refugees.* Migrants who attempt to circumvent these extra-territorial systems of migration control are met with criminal punishment such as extended periods spent in detention, contributing to an "economy of illegality" surrounding border crossings (Nyers, 2009). Previous attempts to theorize these changes include the theory of securitization, the externalization approach, and the crimmigration framework. While all these approaches seek to have broad applications in a global context, the hostile environment framework draws on Canada exclusively as a least-likely case to introduce these measures. As previously established, Canada has a reputation for being a place of refuge for immigrants (Pijnenburg, 2020; Atak & Simeon, 2018). This reputation comes from official pronouncements that aim to increase yearly migration, and strong public support for immigration driven by the wide held public belief that migration contributes to overall economic gain in Canada (Bakewell & Jolivet, 2015; Cameron & Labman, 2020). However, this positive reputation has been challenged by the analysis of recent changes to immigration legislation developed above. These changes represent a co-ordinated policy response to irregular migration that has attempted to deter, as well as

arguably, criminalize and punish, those that arrive at Canada's borders outside of state-sanctioned schemes. The changes instituted by successive Canadian governments have been shown to impact the length of the migration journey. Therefore, a theoretical framework that covers the effects of Canadian policies towards irregular immigrants across the length and space of the migration journey is necessary.

In this vein, the hostile environment framework will proceed in three parts. Firstly, the imposition of visa schemes, data gathering processes and bilateral agreements will be seen as part of a project of extra-territorial deterrence. This stage of the hostile environment framework was informed by the externalization literature. Secondly, the expansion of powers given to police and border officials to arrest and detain irregular migrants will be seen as part of the criminalized border crossings stage of the hostile environment framework. The internal changes to the CBSA will be shown to contribute to the exceptional policing at the physical Canadian border that is excessively punitive towards irregular migrants. This stage of analysis is informed by inter-theoretical engagement between the crimmigration and securitization approaches. The third element of the hostile environment framework is protracted punishment. The de facto punishments that are levelled against irregular migrants inside Canada will be seen as part of an effort to gatekeep full membership to Canadian society as a punitive measure against those who supposedly abuse the Canadian immigration system. Extended periods in detention, lack of access to legal recourse, and denial of access to permanent resident schemes are examples of this protracted punishment that has been theoretically informed by the securitization theory and the crimmigration framework. For each of the proposed elements of the hostile environment framework, the corresponding evidence and theories will be

discussed along with a justification of the need to consider each stage as part of the creation of a spatial and temporal hostile environment towards irregular migration.

Extra-territorial Deterrence

Changes to the Canadian immigration system that impact migration beyond Canada's borders have been justified by policymakers in successive Canadian governments as necessary to "protect the integrity of the Canadian immigration system" (Kenney in Reynolds & Hyndman, 2021, p. 41; Gaucher, 2020). To these ends, the implementation of visa schemes, the collection of biometric data and the signing of bilateral agreements can all be seen as part of the same project: extra-territorial deterrence. Migrants, especially those that hope to seek or claim asylum in Canada are prevented from entering Canadian territory. The spatial and temporal elements of these deterrent measures are important to consider when thinking about their effects on individual migrants and their journeys to Canada.

The extra-territorial deterrence element of the hostile environment framework is performed in three ways. Initially, using visa schemes and authorised entry pathways, the Canadian government effectively sorts a mixed migration stream into distinct groups of migrants before they arrive at the Canadian border. This was shown in the discussion of the admissions categories created by the Canadian government that sorts potential and landed migrants into four categories; economic immigrants, immigrants sponsored by family, refugees, and other immigrants (Evra & Prokopenko, 2021; See Figure 2). While the implementation of visa schemes is broadly viewed as a well-established technique used to control migration from abroad, the categorization of these schemes is interesting in the Canadian case (Zaiotti, 2016; Zaiotti & Abdulhamid, 2021; FitzGerald, 2020). The nature

of these categories is potentially misleading as it has been found that migrants often move for a confluence of reasons, as opposed to just pursuing economic opportunities, or reuniting with family for example (Brettell & Hollifield, 2014; Hollifield, 2004; Castles, 2003). However, by strictly defining the entry pathways available to certain types of migrants, the Canadian government pushes immigrants to self-prescribe to be a member of one of these migratory groups. These categorizations allow the Canadian government to codify complicated migration flows and then select migrants preferentially from afar. These categories also contribute to the construction of irregular migration. These groups outline the accepted pathways to immigration in Canada, with anything outside of that being labelled as irregular.

The preferential selection of migrants is another key element of the extra-territorial deterrence project. The Canadian government uses their admission categories to pre-select economic migrants over other types of migrants. The collection and processing of biometric data also filters out potential unwanted migrants before they reach the Canadian border. This selectivity within the Canadian immigration system is made clear by the official immigration goals as laid out by the IRPA (2001) that first and foremost prioritises immigration that "contribute[s] to the Canadian economy", ahead of the goals to reunite families and protect refugees (Evra & Prokopenko, 2021, p. 18). This selectivity reflects and is cemented by historic IRCC immigration targets. As was shown in Figure 3, the Canadian government has displayed a strong preference for economic migrants in the period 2000 to 2016. Economic migrants regularly made up two thirds of the total incoming immigrants (Statistics Canada, 2017; See Figure 3). This pattern is set to continue in the immediate future with IRCC aiming to welcome 267,750 economic immigrants in 2024,

compared to 183,250 immigrants it plans to welcome through the family reunification, refugees and other immigrants categories combined (IRCCa, 2022; See Figure 4). This system ensures that the 'best immigrants' have open access to apply to immigrate to Canada whilst also preventing the irregular movement of people from their point of origin. However, many migrants make irregular journeys despite this extra-territorial selection activity.

The final element of the extra-territorial deterrence stage of the hostile environment framework includes the strategies used by the Canadian government to prevent these irregular arrivals from reaching the Canadian border. Many of the tactics discussed in the externalization framework could be applicable under this extra-territorial deterrence stage as they refer to the processes and practices that contribute to the control of migration across territorial boundaries (Lemberg-Pederson, 2019). However, when looking at the Canadian case, bilateral agreements are the primary mechanisms used to deter and control irregular migration far from Canada's borders. The 2001 Smart Border Agreement effectively pushed out the Canadian border to all ports of entry in the U.S. The sharing of immigration and biometric data, and data collection technology, reinforced this pushing out of the Canadian border by expanding the Canadian government's surveillance capacities to cover the U.S. border. The Safe Third Country Agreement (2002) permitted the turning back of unwanted asylum-claimants at the Canadian border to otherwise seek asylum in the U.S. instead. These mechanisms are aimed at deterring and preventing irregular migrants and asylum-seekers from arriving at the Canadian border. The fact that all these measures impact the movement of people outside of Canada's borders shows the need for a theory that can capture all the temporal and spatial elements of the migration journey.

The extra-territorial deterrence stage can thus be seen as the concerted effort to prevent unwanted migrants from reaching the Canadian border. The visa application and biometric collection process suspends migrants in their country of origin until a determination has been made in their case. These determinations are heavily skewed to contribute to the Canadian economy, seemingly at the expense of offering protection to refugees and other immigrants. If a migrant was to opt to pursue an irregular journey to Canada, outside of state-sanctioned schemes, they would face further extra-territorial deterrence measures that try to prevent their travel to the Canadian border or cause their asylum-claim to be refused if they do manage to reach the Canadian border through the U.S. The hostile environment framework first and foremost illuminates the extra-territorial deterrence measures the Canadian government has put in place to select the best immigrants and deter the rest.

Criminalized Border Crossings

The secondary stage of the hostile environment framework explains the increased power granted to border officials and federal law enforcement agencies to arrest and detain irregular arrivals as part of a project to criminalize border crossings. Crossing a border is not an illegal act, but the internal changes to the CBSA, and their partnership with the RCMP, have reinforced the conceptions of irregular border crossers as akin to criminals. These measures can therefore be seen as an expression of the hostile environment framework that constructs the idea of irregularity and criminalizes those migrants seen to be irregular at the point of entry into Canada.

The criminalized border crossing element of the hostile environment framework can be expressed by three clear changes within the Canadian border regime. Firstly, it is

crucial to consider who is responsible for monitoring and dealing with border crossings. As was previously highlighted, the introduction of the AS NSRP protocol has expanded the role of the RCMP in dealing with irregular border crossings. The primary federal police force entered into an agreement with the CBSA, the body responsible for regulating the flow of travellers and trade across the border. The CBSA retained its position as a regulation force at official ports of entry, but its powers to arrest and detain border crossers were expanded along the length of the Canadian border through this agreement with the RCMP. The crimmigration framework sheds light on the importance of this crossover. It can be seen that the fields of criminal law and immigration law have indeed converged as the enforcement bodies for each legal area have overlapping roles at the border. Who is performing the function of gatekeeping the Canadian border is important to the criminalized border crossing element of the hostile environment framework as it contributes to the idea that influxes of migration flows are of a concern to public safety, and hence are to be met by law enforcement officers, not just immigration officials.

Another aspect of the criminalized border crossing process is how this gatekeeping function is being performed. There are many ways in which this gatekeeping of the border could be enforced, but the methods that have been used at the Canadian border are reminiscent of criminal punishments, particularly arrests and detention. The IRPA (2001) granted more powers to the CBSA to arrest and detain migrants at any stage of the immigration determination process with or without a warrant. This expansion of powers has come at the expense of migrant's rights to "life, liberty, and the security of the person" (Canadian Charter of Rights and Freedoms, 1982). The lack of a warrant represents a particular challenge to migrants' rights as it removes the need for specific, prior

authorisation for individual cases of arrest and detention. In fact, it can be seen that border officials have been granted the power to indiscriminately arrest and detain border crossers. This further contributes to the theorization of the act of crossing the border has been increasingly criminalized. Border enforcement measures mimic criminal punishment methods at the Canadian border.

Another aspect of the criminalization of border crossings is the question of who is being targeted with these measures, that is, who are the supposed criminals. While the changes to the arrest and detention powers of border enforcement agencies can be applied to permanent residents and foreign nationals according to the IRPA (2001), internal CBSA protocols target irregular arrivals for detention and removal (CBSA, 2020). The CBSA affords top priority to the detention and removal of convicted criminals and national security threats, but soon after that, failed refugee claimants who arrived between ports of entry are targeted for detention and removal (CBSA, 2020). In the CBSA's internal guidance, there is no mention of whether these failed asylum-seekers who arrived between ports of entry were to be targeted before or after they had the opportunity to appeal the initial decision of their case. According to the BRRA (2010) claimants are permitted appeal their initial asylum decision with the Refugee Appeal Division (RAD). By placing irregular migrants alongside criminals as a targeted group for the exercise of the CBSA expanded powers of detention, irregular migration can arguably be seen to be treated as akin to criminal behaviour.

The criminalized border crossings element can thus be seen as a crucial element of the hostile environment framework. Expanding powers to police the length of the Canadian physical border can be understood as part of the effort to deter, criminalize, and punish

migration. Those who do not make use of state-sanctioned migration schemes or official ports of entry are targeted for punitive treatment. The spatial element of the physical Canadian border as being a site for this policing is crucial as this would indeed be the scene of the crime that precipitates the treatment that irregular migrants are subject to inside Canada, within the punitive immigration system.

Protracted Punishment

The final element of the hostile environment framework is the protracted punishment levelled against irregular migrants and asylum-seekers inside Canada. Under a system of prolonged punishment irregular immigrants and asylum-seekers are subject to many iterations of punitive treatment. One key aspect of this punitive treatment is the possibility of extended periods of detention. Another aspect of this punitive treatment is the denial of access to persistent detention reviews and rigorous judicial review. And lastly, the denial of access to more established immigration pathways extends this punitive treatment into the lives of immigrants long after they first entered Canada. These measures keep irregular migrants and asylum-seekers in an extended state of precarity long after their release from detention. These extended periods of detention, uncertainty, and precarity can be seen as the final way in which the Canadian government has constructed a hostile environment framework that aims to deter, criminalize, and punish irregular migration.

As mentioned, extended detention is just one element of the punitive, protracted punishment that is levelled against irregular migrants and asylum-seekers inside Canada. Asylum-seekers and irregular migrants can be detained for years after their initial border crossing due to powers granted under the IRPA (2001) and the persistent backlog in asylum cases within the IRB (2020). The conditions for this detention can be unknown at the time

of arrest due to the lack of need for a warrant and the length of the detention can also be uncertain at the point of arrest. This not only means that immigrant detainees are kept in a state of uncertainty throughout their detention process, but it also works to limit the access that migrants have to the territorial and legal space that other migrants in Canada have access to. This treatment can be defined as punitive due to the acknowledged adverse mental and physical health impacts that can arise as a result of being detained for unknown and extended periods of time (Human Rights Watch, 2021).

Irregular border crossers and asylum-seekers are also targeted for punitive treatment through the Designated Foreign Nationals protocol. The DFN label works to standardise punitive treatment towards these unwanted migrants including the denial of access to detention review. As the above discussion has noted, the detention of permanent residents and foreign nationals is reviewed on a monthly basis after the secondary detention review is carried out. By contrast, the detention of DFNs is only subject to review once every six months after a secondary review. Additionally, access to rigorous oversight in the form of judicial review is limited for irregular migrants and asylum-seekers. As discussed above, if the final determination of an asylum case processed at the border is appealed, the judge in this case does not weigh in on the actual decision made in this case. The judicial review is only concerned with the manner in which the decision in the case was made (IRPA, 2001). The IRB is the only body that can make decisions on asylum claims made at the border. There have been questions raised in the above discussion regarding the rigor of the IRB adjudication process, including the quality of evidence used in these asylum cases. The codes and procedures that dictate the IRB processes could arguably be seen as granting fewer protections to asylum claimants going through

immigration hearings as suspected criminals when going through criminal legal proceedings. This is a clear example of how irregular migrants and asylum-seekers who arrive at Canadas borders outside of state-sanctioned schemes are subject to harmful and potentially punitive treatment once they are inside Canada.

This punitive treatment follows irregular arrivals and asylum claimants long after they cross the border into Canada. As was previously discussed, irregular migrants who receive the DFN status are not eligible to apply for more established visa schemes, such as the permanent resident program, until five years after a final determination is made on their asylum claim (IRPA, 2001). The impact of this measure works to further gatekeep the access that irregular migrants have to Canadian society. These measures are reminiscent of the conditional release principles applied to convicted criminals after their discharge from detention (CSC, 2018). As part of their release agreement, convicted criminals have to abide by a set of conditions prescribed at their release or face the risk of being sent back to a detention facility (CSC, 2018). This temporal element of continued control over an individuals' membership and relationship with the wider community is evident in both the criminal and the immigration cases. The convergence of criminal and immigration law has contributed to the protracted punishment element of the hostile environment framework. The methods used against irregular migrants, asylum-seekers, and DFNs extend the temporal and spatial application of punitive measures to long after the irregular border crossing took place.

The protracted punishment element of the hostile environment framework is a crucial factor when considering the extent of the space and time covered by Canadian immigration legislation. Irregular migrants and asylum-seekers who are seen to circumvent

the extra-territorial deterrence measures, are subject to criminalized border crossings and punitive treatment because of their irregularity. This punitive treatment inside the border, including extended periods of detention, lack of access to rigorous judicial review and detention review, and time-restricted access to more established visa schemes significantly deepen the penalties for the crime of crossing the border irregularly. The hostile environment framework allows for these measures to be seen as part of a wider project on the part of the Canadian government to present irregular border crossings as criminal acts that ought to be deterred and punished.

The hostile environment framework proposes an answer to the question of why Canada detains irregular arrivals. In this three-stage approach, the detention of irregular migrant is seen as a tool used by the Canadian government to deter, seemingly criminalize, and punish irregular migration. The construction of irregularity- which happens along the whole length of the migrant journey- is used to justify cruel treatment targeted at unwanted migrants, whilst retaining the popular image of Canada as a positive global outlier in the matter of immigration. This framework proposes that the changes made to Canadian immigration legislation between 2000 and 2022 have created a hostile environment for irregular migrants and asylum-seekers, akin to the British case from which the etymology of this framework takes route (Goodfellow, 2019; Travis, 2013). In the name of upholding the integrity of the Canadian immigration system, the Canadian government has enacted policies that suspend migrants in a state of precarity, starves them of safe routes within which to reach Canada, and ultimately denies them their freedom in the form of detention. The conception of borders as processes, as opposed to physical territorial boundaries is a crucial element of the hostile environment framework. The bordering-as-a-process

approach has illustrated the reaches of state power over the movement of people that stretches from the country of origin of prospective migrants, into the lives that migrants attempt to build when inside Canada's borders (Van Houtum, 2010). Future research could adopt the hostile environment framework in other cases to identify the shared methods and mechanisms that states adopt, contributing to the global trend of hostility towards irregular migration. Additional research could also investigate the linkages between this framework and the work of scholars that emphasize the "uneven geographies of exclusion" that expands the understanding of unwanted migrants beyond their migratory category, to include the race, ethnicity or country of origin of undesirable groups (Damien-Smith, 2022; Watkins, 2017).

Chapter 7 Conclusion

The Government of Canada has detained 64,684 immigrants over the last decade, which this project argues is best understood as part of the construction of an environment that is hostile to irregular migration. Through a series of changes in immigration legislation, successive Canadian governments have instituted a program of transformation that has deterred, outwardly criminalized, and punished irregular migrants who arrive at Canada's borders outside of state-sanctioned schemes in the hopes of seeking asylum. These changes have served to maintain Canada's popular image as a country that is receptive to migration, whilst simultaneously prioritising economic migrants and working to prevent irregular migration. Irregular migrants are detained in part to maintain this precarious balance of preserving the integrity of the Canadian border, garnering popular support for migration, and fulfilling Canada's international protection responsibilities towards refugees.

Canada's hostile environment has been shown to cover the geographic and temporal stretch of the migration journey, from country of origin to Canada's physical borders, to inside Canadian immigrant communities. This environment has been constructed mainly through three important changes. Firstly, Canada has sought to control the movement of people outside of Canada by sorting and preferentially selecting certain migrants for state-sanctioned immigration schemes. This appears to attempt to deter unwanted migration, while also pushing asylum-seekers into taking irregular routes in order to make an asylum-claim in Canada. The Canadian government has granted greater powers to the federal police and border enforcement agencies to arrest and detain migrants who are intercepted at the Canadian border outside of official points of entry. This effectively constructs the image of irregular border crossers as criminals. Further powers have been granted to

government agencies that are responsible for dealing with asylum-claimants and irregular arrivals that subject these migrants to extended periods of detention and other protracted forms of punishment.

Aside from the presentation and analysis of these empirical facts, this research has demonstrated the potential for effective cross-theoretical engagement within the field of migration studies. The securitization, crimmigration, and externalization frameworks have been adopted to capture and interpret the empirical evidence found in the Canadian case. It has been shown that tying the overarching securitization theory to mid-range theories such as the crimmigration and externalization frameworks, can expand the overall scope of these theories. This engagement has shown how these theories can produce a more nuanced analysis of immigration policy that covers each stage of the migration journey. By framing this research according to the migration journey the concepts derived from these theories can be applied more fluidly as opposed to in an episodic or serialized sense. This has shown that certain elements of these theoretical frameworks build on and feed into one another across the time and space of the migration journey.

Conceptually, this research has also sought to defend the need to consider borders as processes that are performed by governments, government agencies, and private actors as arbiters of political space, and by migrants in their interactions with these processes, as opposed to geographic boundaries (Van Houtum, 2010). Migrants, by undertaking their migrant journey outside of state-sanctioned schemes, continually challenge the paper, diplomatic, and legal boundaries that have been erected by the Canadian government. Framing this research in the form of the migrant journey has illuminated how irregular migrants react to the restrictive processes that have been put in force between 2000 and

2022. Once again, the conception of borders as processes has allowed for a fuller picture to be drawn of how irregular migrants are constructed, controlled, and punished by the Canadian government, but equally how they challenge these controls. This is not a process that happens in one place or at one time; rather the concept of an irregular migrant is derived from the process of defining the categories of inclusion and exclusion that states continually go through. While this used to take place at the physical border of a nation-state, modern states have harnessed technologies of control to perform these functions extra-territorially and internally.

This research has limitations in terms of its insights and its scope. With more time and resources, this project could have included historic examples of Canadian immigration policies to place these recent changes to Canadian immigration legislation within a broader history of preferential migration control, a position that has been put forward by Hernandez-Ramirez (2019). Additionally, through the use of interviews and other qualitative research approaches, the findings of this research could have been expanded to include not just how decisions ought to be made in the case of the treatment of irregular arrivals, but how they are actually made. With access to policymakers, practitioners, and asylum-claimants themselves, the realities of the hostile environment framework could have been presented in a far more expansive form. However, the research findings presented in this project do align with the observations of the largest empirical study of immigrant detention in Canada, conducted by Human Rights Watch (2021).

As previously mentioned, future research making use of the hostile environment framework could take on a comparative approach to identify other cases that affirm or contradict the three elements of hostility that were found to be present in the Canadian case.

Alternatively, further investigation into Canadian immigration policies could link this hostile environment framework to Damien-Smith's (2022) research, which found the Canadian government slashed refugee visa acceptance rates from regions that produce the most refugees. Nonetheless, this research has hoped to add to the critical project of scrutinizing Canada's immigration record. Even as the global standard bearer for immigration and refugee protection, Canada has been shown to enact troubling and harmful policies toward the world's most vulnerable people. It is clear that more needs to be done to ensure that all states fulfil their obligations to provide international protection to refugees in accordance with international law.

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Appendix

[i] Interview except extracted from Human Rights Watch Report ""I Didn't Feel Like a Human in There": Immigration Detention in Canada and its Impact on Mental Health" - https://www.hrw.org/report/2021/06/17/i-didnt-feel-human-there/immigration-detention-canada-and-its-impact-mental

[ii] This is the processing time given for a Refugee applying under the Government Assisted Refugee Program from Albania. This was the shortest time span the researcher found when using the "Check Processing Times" tool. This data was sourced from IRCC. (2022). Check Processing Times. Retrieved July 3, 2022, from https://www.canada.ca/en/immigration-refugees-citizenship/services/application/check-processing-times.html