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# Mexican refugees in Canada post-NAFTA and the effects of immigration and refugee policy reforms: 1994-2012

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*University of Iowa*

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MEXICAN REFUGEES IN CANADA POST-NAFTA AND THE EFFECTS OF  
IMMIGRATION AND REFUGEE POLICY REFORMS: 1994-2012

by

Emma Therese Hashman

A thesis submitted in partial fulfillment  
of the requirements for the Master of  
Arts degree in International Studies  
in the Graduate College of  
The University of Iowa

May 2013

Thesis Supervisor: Associate Professor Omar Valerio-Jiménez

Graduate College  
The University of Iowa  
Iowa City, Iowa

CERTIFICATE OF APPROVAL

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MASTER'S THESIS

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This is to certify that the Master's thesis of

Emma Therese Hashman

has been approved by the Examining Committee  
for the thesis requirement for the Master of Arts  
degree in International Studies at the May 2013 graduation.

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## ABSTRACT

Canada and Mexican relations have not been written about in much length past Canada's Temporary Foreign Worker Program (TFWP) recruiting Mexican laborers. In recent years, migration from Mexico to Canada has increased at an exponential rate. The most significant and notable increase has been in the number of refugee claims from Mexicans wanting to seek asylum in Canada. It is found that Canada is the number one destination for Mexican refugees, while Canada accepts their claims at an alarmingly low rate compared to claims from other nations, even in Latin America. I argue the reason Mexicans chose Canada to claim refugee status is Canada's long history of an open immigration policy and especially their economic and temporary labor agreements with Canada. These policies give the impression to Mexicans they are very much welcome in Canada. This is proved to be untrue when Canada changed their immigration and refugee policies in response, specifically, to the overwhelming number of Mexican refugee claims.

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## INTRODUCTION

On January 15, 2012 after being deported back to Mexico due to denial of refugee status in Canada, Verónica Castro at only 41 years old died from complications after being beaten and robbed.<sup>1</sup> Spending almost half of her life searching for a safe haven for both her and her son from potential violence, she was unsuccessful. Castro left behind a 16-year-old son living in the United States with his father. Her main fear in returning to Mexico was an abusive family and specifically her stepfather, all of whom she believed to be partially connected with the drug trade. In 2011, 83.2 percent of Mexican refugee claims in Canada were rejected, putting people like Castro at a disadvantage from the start.<sup>2</sup>

Currently, there has been little research on the subject of Mexican refugees in Canada, despite thousands of claimants each year. The mere fact that 83.2 percent of Mexican refugee claimants were denied in 2011 alone demonstrates a disparity between the standards and requirements for obtaining refugee status in Canada and the actual adjudication of claims by Mexicans. This causes concern and inquiry into the reasoning behind the lack of approval of claims from Mexicans specifically. The stories behind how Canada proceeded to change its visa policy in 2009 responding to the overwhelming number of refugee claims from Mexico are essential to understanding how and why Canada further revised its immigration policy in 2012, making it a quicker process from

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1 Mary Sheppard, "Deported Mexican Refugee Claimant Dies After Beating," *CBC News* (Toronto, Ontario), Apr. 24, 2012. Verónica Castro's refugee claim was based on domestic abuse and fear of returning home due to fear of violence from over a decade ago, which was proved to be to the satisfaction of the adjudicator in charge of her case. Her death was unrelated to her refugee claim fears, but highlights what many Mexicans have feared for years now. Castro was almost "forced disappeared" by drug cartels, which many claimants are recently being called "narco-refugees." This means refugees fleeing violence associate with the war on drug cartels, which began in 2006 under President Felipe Calderón.

2 Sean Rehaag, "2011 Refugee Claim Data and IRB Member Recognition Rates" (12 March 2012), online: <http://ccrweb.ca/en/2011-refugee-claim-data>.

the moment a refugee claim is made to the moment the government can deport those who failed their claims.<sup>3</sup> The impact the policy changes have had on Mexican refugees is a very important topic to consider and explains why I chose to focus on this issue.

In researching my thesis, I used a systematic approach to finding my topic of interest and organized my research process in order to thoroughly address all the issues I discuss. While taking a course at the University of Iowa in United States borderland history, I discovered that not much immigration policy has been focused on the U.S.-Canada border. This made me think about the seemingly “open” immigration policy Canada has had until the past decade. I wondered whether Mexicans took advantage of Canada’s seemingly friendly policies as an alternative to the United States.

As I began researching the history of the Temporary Foreign Worker Program (TFWP) in Canada, which allows Mexicans to work temporarily (mostly during agricultural seasons), I came across an article on Canada’s immigration website about changing its policies due to large Mexican refugee claimant numbers.<sup>4</sup> This sparked my interest, as it seemed strange that Mexicans would choose to go all the way to Canada to flee Mexico. I went to the library with questions in hand raised by Canada’s asylum policy changes to conduct further research on Mexican immigration in Canada, only to find that Canada is the number one destination for Mexican asylum seekers.

For the starting point of my research project, I found that significant policy changes occurred when the North American Free Trade Agreement (NAFTA) was enacted in 1994 for Canada, Mexico, and the United States. This agreement not only increased commerce between the countries, but also made the movement of people easier

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<sup>3</sup> Citizenship and Immigration Canada. 2009. “Canada Imposes a Visa on Mexico.” *Government of Canada*. <http://www.cic.gc.ca/english/departement/media/releases/2009/2009-07-13.asp> (accessed February 8, 2013).

<sup>4</sup> Citizenship and Immigration Canada. “Canada Imposes a Visa.”

with expanded visa programs. Temporary Foreign Worker Program, NAFTA, and the general relaxed immigration laws made Canada seem like a natural location for Mexicans fleeing violence and drug wars in Mexico. Using statistical data from the Government of Canada, I demonstrate how the changes in Canadian immigration policy drastically negatively affected Mexican refugees in search of asylum.

I have organized my thesis into three chapters in a chronological order. Chapter One focuses on the history of Mexicans in Canada. By examining the historically, relatively friendly immigration policy in Canada, I offer a bigger picture and provide background for the reasons Mexicans might choose Canada as their prime asylum destination in later years. In 1974 Canada began recruiting Mexicans to fill labor shortages, giving them legal access to Canada to live and work for specific time periods. This policy was the starting point for large numbers of Mexican immigrants entering Canada, using social networks of friends, family, and acquaintances already living there to learn how to claim refugee status.

Chapter Two addresses another boost to potential immigration from Mexico to Canada—the implementation of NAFTA, which increased trade between the three North American countries. Mexico’s labor market changed as small-scale farmers were taken over by large farming operations, causing many people to find work elsewhere in places such as Canada where the TFWP was and is still active. NAFTA opened the door for more visa use between the countries, making the movement of persons even easier during this time.

Chapter Three aims to narrate the story of Mexican refugees themselves. Seeing the almost “open door” policy Canada had for Mexicans versus the stricter policy in the United States, it is easy to ascertain why Mexican refugees would choose overwhelmingly to seek asylum in Canada rather than in the United States. Thousands of Mexican refugees have fled to Canada for various reasons including domestic abuse and

the drug wars. The sheer number of cases entering Canada made for slow processing and clogged system that soon became too much for it to handle.<sup>5</sup>

In response to the backlogged system and continual applications from Mexicans, Canada changed their immigration policies in 2009, 2010, and then again in 2012 in an attempt to reduce the number of refugee applications, mainly from Mexico, and to expedite the process in order to get those denied refugee status out of the country quicker.<sup>6</sup> In my conclusions I attempt to make sense of the situation in Canada and how it affects and will affect Mexican refugees in future years. As the avenue for asylum in Canada has been virtually closed to Mexican immigrants, they now need to find another country as a destination.

An insight I gained during the process of researching and understanding the Canadian asylum process is that it is not much different than the United States' process. Meaning, the reasoning behind the decisions both nations make for who to admit or not as refugees depends a lot on economics. If Canada or the U.S. is tied economically to a country, they hesitate to admit refugees from that nation for fear of hurting future economic relations with that country. This is the case with Canada refusing to accept Mexican claims ultimately due to economic trade relations set up by the North American Free Trade Agreement. This challenges the idea that Canada is a "friendly" nation willing to accept anybody, when in reality its policies are not much different than the United States'. Throughout my thesis, I refer to policies and positions of the Canada and

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<sup>5</sup> Rehaag, Sean, "2011 Refugee Claim Data and IRB Member Recognition Rates," (12 March 2012), online: <http://ccrweb.ca/en/2011-refugee-claim-data>.

<sup>6</sup> Citizenship and Immigration Canada, 2013, "Making Canada's Asylum System Faster and Fairer," *Government of Canada*, <http://www.cic.gc.ca/english/departement/media/releases/2013/2013-02-14.asp> (accessed April 14, 2013).

U.S. government, not generalizations regarding the entire country and their beliefs and ideas for handling refugees in each country.

I seek to answer these questions: What impact did NAFTA have on Mexican refugee claims in Canada? Why has Canada become a primary destination for Mexican asylum seekers? What has been Canada's response to Mexican refugee claims? Why was Canada's immigration policy so open compared to the United States and what explains the changes in recent years? What effects have immigration and refugee policy reform had on Mexican asylum seekers or what will be the likely effects in the coming years?

By addressing the aforementioned questions, I intend to provide a better understanding to the effects of immigration policy reform in general, especially in cases of refugees from countries deemed democratic and able to protect their own citizens. Due to the apparent generous nature of Canada's immigration policy towards Mexicans, many have used the opportunity during crises caused by drug violence throughout the Mexico. As a result of numerous claims of asylum from Mexico, Canada responded with strict immigration reform on three different occasions, effectively eliminating any viable asylum claims from Mexico.

## CHAPTER ONE: THE HISTORY OF MEXICANS IN CANADA

Mexicans did not start arriving in Canada in significant numbers until the mid-1970s when the Canadian government expanded their Temporary Foreign Worker Program (TFWP) to specifically recruit Mexicans to fill unskilled labor shortages in their agriculture industry.<sup>7</sup> As Mexicans started arriving to work seasonally for typically six months at a time, this migration continued because of the spread of knowledge built around how to enter Canada and how to adjust to life there. I speculate that the expansion of the guest worker program is why Mexicans have continued to choose Canada as their preferred destination of choice when they feared life in Mexico.

The importance of the history of Mexicans in Canada and their immigration patterns points to a trend which is most likely going to continue for the foreseeable future. Although immigration from Mexico to Canada is a recent phenomenon and occurs in much smaller numbers than to the United States, it still represents an important trend in migration within North America. While the TFWP has been fairly documented and researched by scholars, general immigration information and especially the emergence of large numbers of Mexican refugee claims in Canada and its meaning has not been analyzed by scholars.<sup>8</sup> In this chapter, I seek to show how this history of Mexican immigration in Canada has shaped and influenced current immigration patterns of Mexicans in Canada.

According to authors such as Irene Bloemraad, the United States is more important in numbers when it comes to Latin American immigration than Canada,

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<sup>7</sup> Tanya Basok, "Mexican Seasonal Migration to Canada and Development: A Community-based Comparison," *International Migration* 41 (2003): 7. The Temporary Foreign Worker Program (TFWP) was created in 1966 and first recruited workers from the Commonwealth Caribbean countries, until it was expanded to include Mexicans in 1974.

<sup>8</sup> Richard E. Mueller, "Mexican Immigrants and Temporary Residents in Canada: Current Knowledge and Future Research," *Migraciones Internacionales* 3 (2005): 32-56.

specifically from Mexico. The United States appears more willing and able to accept persons from Mexico into their society based on the total number of Mexican immigrants, but the percentage of persons who actually obtain citizenship and claim refugee status is much higher for Mexicans in Canada. Using census data from 1991 to 2001, Bloemraad illustrates how the United States consistently receives the most Mexican immigrants, while Canada has mostly relied on European immigration.<sup>9</sup> However, this trend has been changing. When considering the policies toward immigrants and refugees historically in each nation, it becomes obvious why a greater percentage of Mexican immigrants in Canada become citizens and choose to claim asylum there as well.

Table 1 illustrates the low numbers of Mexican immigrants in Canada prior to their inclusion in the Temporary Foreign Worker program in 1974. As you will see in Table 2, numbers increased at a very high rate once Mexicans were recruited for temporary work, and they continue to increase each year for labor purposes.

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**Table 1 Number of Mexican Immigrants in Canada, 1966-1975**

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1966	114
1970	448
1975	845

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Note: Citizenship and Immigration Canada. 2011. "Immigration Overview: Permanent and Temporary Residents." *Government of Canada*: i-124.

Table 2 shows the number of foreign-born in Canada in the years 1991, 1996, 2001, and 2006. The latest census data in Canada was taken in 2011 with results being released mid-2013 for individual nations. The foreign-born population consists of all persons living and working in Canada at the time the data was collected. Canada

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<sup>9</sup> Irene Bloemraad, *Becoming a Citizen: Incorporating Immigrants and Refugees in the United States and Canada* (Berkeley, California: University of California Press, 2006), 32.

categorized its population into permanent and temporary residents. It defines permanent residents as those individuals granted permission to have permanent resident status in Canada; permanent residents are given all the rights of Canadian citizens with the exception of the right to vote in elections. The Division of Citizenship and Immigration of Canada defines temporary residents as persons granted to be in Canada on a temporary basis with the authority of a valid document (i.e., a work permit, study permit, temporary resident permit, or a visitor record). Temporary residents include foreign students, foreign workers, and the humanitarian population including persons seeking asylum in the country. The table shows a steady increase of foreign-born Mexicans in Canada since 1991.

**Table 2 Number of Foreign-Born in Canada, 1991-2006**

<b>Country of Origin</b>	<b>1991</b>	<b>1996</b>	<b>2001</b>	<b>2006</b>
<i>MEXICO</i>	22,035	30,085	42,740	49,925
Cuba	1,965	3,395	5,320	8,865
Dominican Republic	3,215	4,875	5,155	6,505
Grenada	5,550	7,805	8,975	8,740
Haiti	41,695	51,145	53,905	63,350
Jamaica	105,390	117,790	121,795	123,420
Trinidad and Tobago	56,425	63,565	65,145	65,540
Caribbean (total)	245,650	285,515	299,290	312,570
Belize	1,005	1,595	1,395	2,080
Costa Rica	1,735	1,875	2,500	2,940

Note: Mueller, 24. Data from the Migration Policy Institute and Statistics Canada, includes both immigrants and non-permanent residents. Immigrants are defined as those foreign born who have been granted the right to live permanently in Canada. Non-permanent residents are persons in Canada on student and employment authorizations, with Minister's permits or are refugee (humanitarian) claimants.



Table 2 Continued

El Salvador	33,315	40,180	39,200	42,780
Guatemala	10,180	13,965	14,095	15,705
Honduras	3,150	3,935	4,505	5,165
Nicaragua	9,285	8,960	9,535	9,095
Panama	2,325	2,515	2,520	2,760
Central America (total)	60,995	73,025	73,750	80,525
Argentina	13,510	12,495	13,830	18,120
Bolivia	1,935	2,435	2,420	3,770
Brazil	8,645	10,200	13,455	15,120
Chile	24,440	26,945	25,210	26,505
Colombia	8,585	9,855	18,115	39,145
Ecuador	8,685	10,250	11,370	13,480
Guyana	67,810	78,280	84,160	87,195
Paraguay	5,050	5,140	5,020	7,530
Peru	12,435	16,200	18,105	22,080
Uruguay	5,770	5,955	6,300	6,635
Venezuela	4,065	6,730	8,035	10,270
South America (total)	161,640	185,490	206,955	249,850
<b>Latin America (less Mexico)</b>	<b>468,285</b>	<b>544,030</b>	<b>579,995</b>	<b>642,945</b>
<b>All countries (total)</b>	<b>4,566,300</b>	<b>5,137,785</b>	<b>5,647,125</b>	<b>6,452,310</b>

### Worker Programs

Mexicans began their migration to Canada in exponentially larger numbers when the Canadian guest worker program was expanded to fill the need for more migrant labor in the country. Canada launched a new part of the Temporary Foreign Worker Program in 1966, called the Agricultural Seasonal Workers Program (ASWP). This was a means to address the labor shortages that growers were facing in Ontario. Known commonly throughout the region as the “offshore program,” at first, it only applied to workers from commonwealth Caribbean countries (i.e. Jamaica, Trinidad & Tobago, and Barbados).

The sole use of Caribbean workers did not fully fill the gap in worker needs, so it was expanded to recruit workers from Mexico in 1974.<sup>10</sup>

Authors such as Tanya Basok argue the reason temporary immigrant labor was needed during this time period and continues as Canada needed persons willing to participate in “unfree” labor or captive labor. This type of labor means persons are unable to change jobs once hired for their contract and these persons must also be able to fill the labor requests whenever the need arises.<sup>11</sup> Canadian agricultural employers prefer this type of unfree labor in order to maintain control and stability in their working environment.<sup>12</sup> In addition, contract workers cannot unionize or organize to improve their working conditions, except in British Columbia.<sup>13</sup> The temporary workers are willing to comply with the conditions because they need the work and fear losing future opportunities with the program. Native laborers in Canada are unwilling to accept this type of labor for which they must stay under contract, accept lower wages, and at times extremely strenuous working conditions. They choose to take higher skill-level jobs that allow them the freedom of movement throughout Canada, not tied to the growing season or a contract.

The Mexican economic situation makes Mexicans the perfect population to fill the void of labor in Canada. As many Mexican rural residents lost their farmland after 1994 when Mexico opened their economy to large, foreign companies, which was redistributed to large land owners for mass production, they were left unemployed and needed to find work to provide for their families. Canadian agricultural work was the

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<sup>10</sup> Tanya Basok, “Human Rights and Citizenship: The Case of Mexican Migrants in Canada,” *Center for Comparative Immigration Studies* 72 (2003): 7.

<sup>11</sup> Tanya Basok, *Tortillas and Tomatoes: Transmigrant Mexican Harvesters in Canada* (Montreal, Canada: McGill-Queen’s University Press, 2002), 14.

<sup>12</sup> Basok, *Tortillas and Tomatoes*, 16

<sup>13</sup> Basok, *Tortillas and Tomatoes*, 60-61.

best solution to their problems. Mexicans were willing to accept the work and conditions that went along with it. According to Basok:

Unlike local workers, Mexicans are willing to accept minimum wages for work that is back-breaking, monotonous, and detrimental to their health. Even though Mexican labour is relatively costly because of the high transportation and accommodation costs, for many growers it is extremely valuable because it is unfree. Most Mexican workers stay with the same employer as long as there is work for them to do; they are available to work long hours every day; and they do not take time off work, even when they are sick or injured.<sup>14</sup>

Growers who use seasonal laborers through the ASWP can request workers for the next season who have worked for them in the past in order to ensure they receive reliable and trusted laborers. Many workers establish a relationship with a specific farmer and return year after year to the same farm. The employers are required to provide adequate housing on or near the farm for free where the laborers are required to stay.<sup>15</sup> The free housing is both an advantage and disadvantage to the migrant workers. They work late hours and live far from non-Mexican communities, giving them limited time in the community to interact and establish any kind of connection. However, this living arrangement gives the laborers more of an opportunity to save money for their families than immigrant workers in the United States.

Mexican contract laborers are given benefits that they would not receive in the United States for the same work. Although they get paid on average five cents above Canada's minimum hourly wage, they receive money for their transportation costs and are provided housing during the duration of their employment as well. The employers must arrange and pay for transportation to Canada and back to the worker's country of

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<sup>14</sup> Basok, *Tortillas and Tomatoes*, 107.

<sup>15</sup> Human Resources and Skills Development Canada, "Hiring Seasonal Agricultural Workers," *Government of Canada* 2013, [http://www.hrsdc.gc.ca/eng/jobs/foreign\\_workers/agriculture/seasonal/index.shtml](http://www.hrsdc.gc.ca/eng/jobs/foreign_workers/agriculture/seasonal/index.shtml) (accessed April 10, 2013). The only exception is in British Columbia where workers have part of their room and board costs deducted from their pay.

origin, but some of the costs can be taken out of their payroll during the season.<sup>16</sup> This is a huge added benefit to working in Canada and helps ensure loyalty to farmers from Mexican workers who have high productivity, are willing to accept their working environment, and stay for the entire season. In addition, since they work long hours and are isolated from the cities, they are available to work even on the weekends.<sup>17</sup> While the migrants are entitled to a day of rest for every six consecutive days they work, they like to work as many days and hours as their employer will allow.<sup>18</sup> Mexicans' willingness to work and accept all the terms makes them the ideal population to fill labor shortages of Canadian farmers.

Table 2 shows the number of temporary workers from Mexico in Canada per year from 2002 until 2011. Also, the table includes the total number of foreign workers during the same time period from all countries in Canada. While the numbers from Mexico overall seem like a rather small percentage of the total foreign worker population, their numbers are second only to workers entering from the United States, and Canada is followed in total numbers by France and the United Kingdom. This demonstrates the increasing presence of Mexicans in Canada, especially in the past decade. Figure 1 illustrates how the implementation of a visa requirement for Mexicans in 2009 had a negative effect on the temporary worker population.

The more persons from Mexico involved in temporary work in Canada means more people returning to Mexico after the expiration of their permit each season who will tell their friends and relatives about the programs Canada offers. Mexicans learn about the benefits to choosing Canada over other destinations such as the United States via word of mouth. As Mexicans seeking a better life deduce that Canada would be the best

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<sup>16</sup> Human Resources, "Hiring Seasonal Agricultural Workers."

<sup>17</sup> Basok, *Tortillas and Tomatoes*, 127.

<sup>18</sup> Basok, *Tortillas and Tomatoes*, 119-120.

choice in situations such as those where asylum is needed. Canada is viewed as an immigrant-friendly country that offers assistance to temporary workers as well as those seeking asylum. As stories of successful experiences in Canada make their way back to Mexico, it increases the likelihood more Mexicans wanting to find work or needing to seek asylum will choose Canada.

**Table 3 Number of Temporary Foreign Workers From Mexico**

Year	Total Number of Mexican Temporary Workers Present	Total Number of Foreign Workers in Canada
2002	11510	211714
2003	11278	212608
2004	11647	237258
2005	12941	263036
2006	14661	299241
2007	17688	362684
2008	20955	440401
2009	18406	457873
2010	17966	461571
2011	18655	491053

Note: "Immigration Overview: Permanent and Temporary Residents," CIC.gc.ca, last modified February 27 2013, <http://www.cic.gc.ca/english/resources/statistics/menu-fact.asp>.



Note: “Immigration Overview: Permanent and Temporary Residents,” CIC.gc.ca, last modified February 27 2013, <http://www.cic.gc.ca/english/resources/statistics/menu-fact.asp>.

### International Human Rights

Canada also has a relatively good record of upholding international human rights norms when it comes to immigrants in their country. Universal human rights principles such as those established by the United Nations after WWII cannot be implemented and enforced without the consent of nations. Migrants are protected internationally by the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. While this covenant provides protections to migrant workers, it carries no weight if Canada chooses not to implement and enforce international human rights standards associated with migrant workers. In other words, if Canada became a signatory of the Convention, they would be held accountable by the international community to uphold its provisions. All migrant workers in Canada are protected under the same laws that protect all Canadian citizens.<sup>19</sup> Even though these

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<sup>19</sup> Basok, Tanya, and Emily Carasco, “Advancing the Rights of Non-Citizens in Canada: A Human Rights Approach to Migrant Rights,” *Human Rights Quarterly* 32 (2010): 344.

legal frameworks exist in Canada that protect migrant workers, they still suffer from human rights violations but at much less frequency than other nations.<sup>20</sup>

Guest workers lack inclusion in social communities in Canada due to being isolated from them. Being isolated impedes laborers from accessing their full rights causing them to experience human rights violations such as poor housing conditions, unsafe working situations, and fear of losing their job, preventing them from addressing health concerns. Being away from the community and living in a rural area, they are physically separated from where they access services such as medical facilities or locations where they can claim their benefits. Another reason they tend to have their human rights violated is their acceptance to work under any and all conditions including when ill or injured, because many fear they will lose their job in future years if they take off time to address their needs. If they speak up for their rights, they fear the consequence of being deported or not hired back for the next season.<sup>21</sup> Migrants thus suffer human rights violations when they are cut off from accessing economic and social services when those services are needed.

Canada is not a signatory of the United Nations' International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Despite not signing the Convention, which would show their commitment to protect migrant workers in Canada to the international community, the country has implemented laws that do protect migrant workers including:

1. Right to minimum wage (called prevailing wages in Canada);
2. Workers' compensation;
3. Access to Medicare;

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<sup>20</sup> Tanya Basok, "Human Rights and Citizenship," 2.

<sup>21</sup> Basok and Carasco, 366.

4. Provisions of the Employment Standards Act such as vacation pay and public holiday pay if employed for at least 13 weeks (these are only granted to “harvest” not “farm” workers).

They are granted one day of rest for every six consecutive days they work via the agreement for “Employment in Canada of Seasonal Workers from Mexico.”<sup>22</sup> In addition to the aforementioned rights, migrant workers in Canada also qualify for the Ontario Health Insurance Plan (OHIP). However, their fear of losing their job prevents migrant workers from taking full advantage of their healthcare benefits when needed, showing that while Canada provides added benefits for temporary workers they are not used to their fullest.

As with all laborers who choose to migrate to a country with a different language than their primary language, it makes it difficult to communicate or understand what rights they have within that nation. This results in social exclusion from the community for Mexicans in Canada who cannot speak English to communicate with people in the community. In addition to not being able to understand what rights they do have, the language barrier makes it more difficult for them to fully understand what procedures they need to undertake in order to take advantage of those rights granted to them.<sup>23</sup> Employers have access to posters alerting workers of their rights, but they are only required to post them in English.<sup>24</sup> Despite these disadvantages they face, according to the numbers, they are still choosing Canada as a location for temporary work and this trend does not show signs of slowing anytime soon. As long as they cannot find adequate

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<sup>22</sup> Basok, 11.

<sup>23</sup> Basok, 13.

<sup>24</sup> Delphine Nakache and Paula J. Kinoshita, “The Canadian Temporary Foreign Worker Program: Do Short-Term Economic Needs Prevail over Human Rights Concerns?” *IRPP STUDY* 5 (2010): 26.



work in Mexico and the demand for temporary labor stays constant, Mexicans will continue to migrate to Canada.

Canada's policies have changed in many ways since the inclusion of Mexico in the ASWP in 1974. Among the significant changes in policy is the signing and implementation of the North American Free Trade Agreement (NAFTA) in 1994. Until 2009, for the most part, Canada was liberal and supportive of those wishing to immigrate to their country. As opposed to the bureaucratic nature of the United States immigration system, Canada's system tends to cater to the needs of immigrants, including refugees, in favor of supporting their move toward citizenship. According to Bloemraad:

First, Canadian bureaucracy overseeing immigration and citizenship supports integration and has a normative bias in favor of citizenship. Second, federal, provincial, and municipal governments in Canada tend to offer more public assistance with the practical business of settlement and integration, subsidizing, for example, classes to learn English or programs to find a job.<sup>25</sup>

In conclusion, while immigration from Mexico to Canada is a relatively recent phenomena, it grew to much larger numbers in the mid-1990s in areas other than temporary labor. While temporary labor has been examined, scholarship about Mexican refugee claims in Canada has not been fully discussed in literature. The trend towards an increase in all types of Mexican immigration is important to study in order to understand why Mexicans are choosing Canada as a key destination, especially with regard to refugees. By examining the migration patterns of Mexicans to Canada, this research can promote understanding of the reasons for Canada's change in immigration and refugee policies in 2009, 2010, and again in 2012. In my next section I explain how NAFTA impacted Mexican immigration to Canada and argue that NAFTA's provisions promoted an increase in immigration to Canada from Mexico, which contributed to Canada's implementation of a closed immigration policy in recent years.

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<sup>25</sup> Bloemraad, 2.

## CHAPTER TWO: THE IMPACT OF THE NORTH AMERICAN FREE TRADE AGREEMENT ON MEXICO-CANADA MIGRATION

The history of Mexicans in Canada has been influenced and shaped by numerous policies and practices over the years. Canada does not seem like a natural location of choice for Mexicans wishing to migrate, due to its distance in comparison to the close proximity of the United States. This is why there was not a notable increase in the number of Mexicans in Canada until the adoption of a specific policy and legislation targeted at Mexicans to give them incentives to make the trip.

Significant numbers of Mexicans began arriving in Canada after the expansion of the Seasonal Agricultural Workers Program in 1974. The SAWP became an alternative to the United States and it offered legal, social, and economic benefits that rivaled and even exceeded opportunities in the U.S. This program started the flow of Mexicans by the thousands to and from Canada each year, which aided in the communication between the two countries. More and more Mexicans learned about the benefits of working and living in Canada from returning migrants to Mexico. When policy and practices changed, word of mouth became even more essential to Mexicans wishing to migrate to Canada.

The North American Free Trade Agreement (NAFTA) was enacted on January 1, 1994, with the intent of increasing economic relations between the three North American countries. The main provision of NAFTA was eliminating or reducing tariffs on the majority of goods being exported and imported among the nations. The parties signed this agreement in 1992. The events leading up to the decision to create such an agreement were dire as thousands of people in Mexico had lost their jobs by 1993, which resulted from a severe economic downturn and foreign competition.<sup>26</sup>

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<sup>26</sup> Jorge G. Castañeda, "Can NAFTA Change Mexico?" *Foreign Affairs* 72 (1993), 66-80.

Canada entered into the NAFTA Agreement believing that it was the best option for its economic situation. Canada used its signature as a defensive strategy to avoid losing out on the opportunity to have preferential access to Mexican markets. According to Roberto J. Mejias and José G. Vargas-Hernández:

...to have stayed out of the agreement would have allowed the United States privileged access to Mexico's tremendous market potential. From the Canadian perspective, Canada would be affected via trade diversion whether or not it joined a free trade agreement.<sup>27</sup>

Canada did not fear that it would lose potential economic gains in Mexico, but rather it would lose in the U.S. markets as the United States increased trade with Mexico at the expense of Canada.

Canada and the United States had already entered into the U.S.-Canada Free Trade Agreement a few years prior in 1989. This agreement reduced trade barriers, similar to NAFTA's provisions, which is another reason Canada was not too vested in being a signatory to NAFTA. Because they essentially had already made the same deal with the United States just years earlier, they went into NAFTA with a lot of reservations, as they did not have nearly as many geopolitical interests in Mexico as the United States. In the end, Canada agreed to the tri party agreement with the mindset to welcome the opportunities Mexico's markets offered.<sup>28</sup>

Economically, many in Mexico hoped NAFTA would aid Mexico's dying economy with foreign capital investments aimed at providing the country with sustainable growth for the future. President Carlos Salinas de Gortari used NAFTA's economic and political promise to gain support for his 1994 campaign. Salinas saw the country's falling per capita growth as a chance to attract foreign capital to finance

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<sup>27</sup> Roberto J. Mejias and José G. Vargas-Hernández, "Emerging Mexican and Canadian Strategic Trade Alliance Under NAFTA," *Journal of Global Marketing* 14 (2001), 90.

<sup>28</sup> Mejias and Vargas-Hernández, 90.

economic growth. Author Jorge G. Castañeda argues that at the same time, Salinas hoped by further linking Mexico's economy with the United States, it would help lay a foundation for more democratic processes in Mexico and therefore boost Salinas' political power at the same time.<sup>29</sup> President Salinas promised modernization through economic changes via NAFTA and political process improvement through a democratic change of power. His promises gave faith to the Mexican people, but they were ultimately disappointed when the political promises were not kept.

While the promises NAFTA brought seemed bright, Mexico remained a very corrupt and seemingly lawless country. While the transition to a more democratic nation was going nowhere, NAFTA gave opportunity for this already risky economic policy to take hold and help those who had the means to take advantage of the program. NAFTA was designed to "open (Mexico's) borders quickly and indiscriminately to more efficient and lower-cost producers" in order to create an export manufacturing base.<sup>30</sup> This was done in a manner that disregarded any industrial policy already in place in the country and was done at the detriment of Mexican workers who were left jobless when large corporations and farming operations took over their small-scale farms.<sup>31</sup>

Large agriculture corporations especially took advantage of the open-door policy and shut out small-scale farmers, leaving them jobless and in extreme poverty. The implementation of NAFTA contributed to drastic declines in several producer prices as well as reductions in government assistance to small-scale farmers throughout the country in order to appease corporate farms.<sup>32</sup> A similar pattern occurred in the United

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<sup>29</sup> Castañeda, 74.

<sup>30</sup> Castañeda, 66.

<sup>31</sup> Castañeda, 68.

<sup>32</sup> Leigh Binford, *Tomorrow We're All Going to the Harvest: Temporary Foreign Worker Programs and Neoliberal Political Economy* (Austin, Texas: University of Texas Press, 2013), 47.

States. As large agriculture companies took over and reduced their goods' prices, they reduced wages for workers in many cases. Such a pattern repeated itself in Mexico and contributed to widespread poverty.

Not only were U.S. corporations taking over farming operations in Mexico, they were also exporting large amounts of goods and products to Mexico. The effect of these practices was a shift from "food self-sufficiency" where smaller-scale farmers produce grains and other basic foods for local consumption to a practice of "food security" production, which relies on the government to interact with international markets to supply foods to Mexicans. The government used this to reduce costs by importing foods that can be produced more cheaply in other areas or sold at a cheaper price due to state subsidy benefits in other nations.<sup>33</sup>

Increased unemployment was the effect of the NAFTA policy in Mexico that relied on foreign investors in farming. There was an increase in average farm size in Mexico while the total number of farms decreased. As foreign manufacturing and farming increased in Mexico, so did the use of new technologies, with which small industry and farming owners could not realistically compete. The corporatization of farms in Mexico had lasting effects including: "deregulation, reduced government spending and support, privatization of state industries that service the farm sector, emphasis on attracting foreign investment, and the trade and corporatization of agriculture."<sup>34</sup> This led many to conclude that Mexico no longer had an agriculture policy, but rather just a trade policy.

NAFTA focused the Mexican economy heavily on trade relations with the United States and Canada while at the same time attempting to modernize Mexico. Rather than focusing on the current farming situation and needs of local farmers, the Mexican

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<sup>33</sup> Binford, 47.

<sup>34</sup> Binford, 48.

government used the trade agreement to bring in large-scale farming operations, which pushed out those already farming in the country. NAFTA policies also affected the health of individuals, infrastructure, and social relationships in rural communities, which further contributed detrimentally to Mexico's social and economic infrastructures.<sup>35</sup> As unemployment rose among rural residents, poverty levels increased putting those residents at risk for malnutrition and other health concerns. The increase in unemployment and desperation of those who lost their farms caused unrest in rural areas for those competing for any kind of jobs they could find, whether that meant legal or illegal work. As more Mexicans found themselves without employment, the opportunity for legal employment outside of Mexico became more and more appealing.

In 1995, the peso went through a devaluation process caused by a stagnant economy, increasing economic deficit, and a lack of credibility in the exchange rate mechanism.<sup>36</sup> The Mexican government was running out of options for how to turn the economy around other than devaluation of its currency. This was detrimental to Mexico's economy, contributing to the seemingly negative effects of opening their doors through NAFTA. The devaluation, however, did not stop the growing relationship between Canada and Mexico at the time. As Mexican businesses went bankrupt and unemployment soared, economic relations between Canada and Mexico increased. Mexico's heavy reliance on foreign investment and trade after the implementation of NAFTA increased their foreign economic capital as the workers in Mexico suffered from unemployment. The economic turmoil in Mexico at this time coupled with increasing trade relations between Mexico and Canada contributed to the increased migration flow from Mexico to Canada.<sup>37</sup>

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<sup>35</sup> Binford, 200.

<sup>36</sup> Maxwell A. Cameron and Vinod K. Aggarwal, "Mexican Meltdown: States, Markets and Post-NAFTA Financial Turmoil," *Third World Quarterly* 17 (1996): 976.

<sup>37</sup> Mejias and Hernández, 91.

The two-way trade between Canada and Mexico more than double after NAFTA was implemented. It increased from \$6.5 billion to \$15.1 billion in a ten-year period since its creation. Canada is Mexico's second-most important export market, while Mexico is Canada's fourth-most important export market.<sup>38</sup> As these economic connections have grown between the two nations, so has the movement of people between Canada and Mexico. Canada has always been a nation to actively solicit immigration, because of the belief that immigrants, overall, have a positive impact economically, social, and politically on their country.<sup>39</sup>

Mexican immigration to Canada grew exponentially after the implementation of NAFTA in 1994. While NAFTA opened economic doors between the three nations, it also further opened the doors to people wishing to migrate. The Trade NAFTA visa (TN visa) was created to allow professionals the ability to pursue employment opportunities in another signatory nation. While this would seem to a very viable opportunity provided by NAFTA, only 101 Mexicans were in Canada on a TN visa in 2001.<sup>40</sup> Rather, as Mexico's unemployment rate increased, the need for temporary workers in Canada increased, from which most of the increase in Mexican migration post-NAFTA stemmed.

As trade between Canada and Mexico increased after the implementation of NAFTA, new migration streams flourished. Movements of people between the nations

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<sup>38</sup> Rebecca Jannol, Deborah Meyers, and Maia Jachimowicz, "U.S.-Canada-Mexico Fact Sheet on Trade and Migration," *Migration Policy Institute* (2003): 1.

<sup>39</sup> E.G., "The United States v Canada," *The Economist*, (Austin, Texas), May 20, 2011.

<sup>40</sup> Jannol, Meyers, and Jachimowicz, 1. There are four categories of NAFTA workers. Business visitors are involved in international commercial activities and need to visit Canada to fulfill their duties. Intra-company transferees are Mexican or American citizens who, under certain conditions, can enter Canada with a work permit issued at the point of entry. Investors and traders are those individuals who intend to invest substantially in Canadian businesses, or who are involved in significant trade with Canada. These individuals are required to have work permits, which are usually issued outside of Canada. Professionals are those with advanced education who work in certain occupations, and who have pre-arranged employment in Canada.

grew as economic connections also increased. Unlike the United States, Canada sought to accommodate the influx of immigrants through legal channels including increasing the number of foreign workers. Conversely, the United States forced a majority of Mexicans to migrate illegally. This difference gave Mexicans a choice between legal or illegal migration and the costs associated with each.

As migration flow levels increased in Canada from Mexico, Canada showed a greater interest in taking advantage of the legal opportunities offered. The temporary worker program was designed and successful at minimizing settlement, maximizing return migration, and providing better wages and working conditions. Douglas S. Massey and Amelia E. Brown explain:

Temporary labor migration from Mexico rose by 153 percent from 1998 to 2007, going from an annual flow of around 7,000 workers to a little under 18,000 workers in ten years. Mexico is now the second largest source of temporary workers for Canada, accounting for 11 percent of all entries of foreign workers.<sup>41</sup>

The largest increase in temporary workers was within the Seasonal Agricultural Worker Program category.<sup>42</sup> This was in comparison to the number of high-skilled laborers or those coming for live-in caregiving, for example. Of the Mexicans coming during this time period for temporary work, 94 percent were SAWP laborers.<sup>43</sup>

The plan was for NAFTA to place Mexico in a position to “modernize” at a very fast pace, but the result was the opposite. The reorganization of the Mexican economy after NAFTA displaced thousands of workers, leaving many unemployed and in poverty. Income differentials were increasing and disparity was growing during the 1990s in Mexico. What options did Mexicans have for employment?

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<sup>41</sup> Douglas S. Massey and Amelia E. Brown, “New Migration Stream between Mexico and Canada,” *Migraciones Internacionales* 6 (2011), 121.

<sup>42</sup> Mueller, 37.

<sup>43</sup> Massey and Brown, 122.



At the same time that Mexico was experiencing high levels of unemployment and poverty, Canada was experiencing significant demographic changes. The retirement of its baby boomer population was happening, which was causing a shortage in their low-skilled employment sector. This put pressure on the government to expand temporary worker programs to fill labor shortages with programs like the SAWP.<sup>44</sup> Canada became a legal alternative labor destination to the United States for Mexicans lacking economic opportunities within Mexico.

Despite Mexico's difficulties post-NAFTA, it was able to form a lasting relationship with Canada, especially economically. Each country took advantage of what the other had to offer. Canada seized the opportunity to increase its trade relations, while Mexicans used Canada as an alternative destination to the United States for employment opportunities. Their relationship was used to improve their situations individually and collectively as well.

Canada and Mexico even used their newfound relationship strength to confront the U.S. together. Using both their voices, they protested the Helms-Burton bill from passing and becoming law in the U.S. in 1996. This bill would fine or restrict any business entity that chose and was currently choosing to exchange goods or services with Cuba. Mexico and Canada saw this as a violation of international laws because neither country has instituted economic sanctions against Cuba. Both Canadian and Mexican officials believe that this legislation was in violation of the intentions and purpose of NAFTA.

The effort by Canada and Mexico resulted in the suspension of the Helms-Burton bill for a period of six months until it was decided by the Clinton Administration they would reduce the amount of pressure they were putting on Mexican and Canadian

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<sup>44</sup> Mueller, 51.

businesses with ties to Cuba.<sup>45</sup> Economic collaboration between Mexico and Canada helped them collaborate to go up against the U.S. This action proved their relationship had grown exponentially since Canada was hesitant to even enter into the NAFTA with Mexico.

Overall, the North American Free Trade Agreement among Canada, Mexico, and the United States had mixed results, but in the end each country gained from the agreement. Although Mexico's economy essentially collapsed for Mexicans as they lost their land, became unemployed, and their currency was devaluated, their increased relationship with Canada proved extremely beneficial. Mexico and Canada were able to successfully collaborate to protect their economic interests in Cuba against the United States.<sup>46</sup> Also, as Mexico's economy worsened and unemployment rose, Canada expanded their temporary worker programs to accommodate more Mexicans as a legal alternative to the U.S. While the reason for increased migration from Mexico to Canada cannot be equated directly to NAFTA policies, the increased economic relationship between Canada and Mexico can be somewhat attributed to their willingness to sign the Agreement and increase trade relations at the highest level they'd ever been.

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<sup>45</sup> Mejias and Hernández, 98.

<sup>46</sup> The collaboration of Mexico and Canada in order to protect their interests in Cuba against the United States was successful. Together they were able to get the Helms-Burton bill suspended so they could continue their economic trade relations with Cuba and not have any backlash from the United States for it. This shows the progression and tangible benefits NAFTA was able to provide for Canada and Mexico, who used the Agreement to the benefit of their economic interests.

### CHAPTER THREE: MEXICAN REFUGEE CLAIMS IN CANADA

Since the implementation of NAFTA in 1994, the increase in illegal market activity has triggered a violent and dangerous environment forcing Mexican citizens to seek refuge. Having a familiarity with Canada through the Temporary Foreign Worker Program, Mexicans choose Canada overwhelmingly as their preferred destination to claim refugee status. While it would appear that Canada is open and welcoming of Mexicans, it has accepted only a small percentage of refugee claims from Mexico out of the thousands of applicants. The failure to accept Mexicans as refugees has left thousands of Mexicans with nowhere to turn, leaving them even more vulnerable to violence and persecution by narco-traffickers, gangs, and corrupt government officials.

Refugee claims are denied because of three main reasons. First, the corruption in Mexico does not allow Mexican refugees to be protected by the government or give them the ability to flee within the country. Yet, Canada believes Mexico is a democratic nation that can protect its citizens. Second, Canada does not want to accept refugee claims from Mexicans for fear of hurting its trade relations with Mexico in light of NAFTA. Finally, the new Canadian refugee claim system leaves Mexicans vulnerable and unable to fully explain their situation and need for asylum.

Canada became a signatory to the 1951 Convention on the Status of Refugees in 1969, and in 1970 the Department of Manpower and Immigration incorporated the UN convention definition of a refugee into its new guidelines for refugee admissions. The 1976 Immigration Act made those guidelines law. This made it binding for Canada to adhere to international human rights standards set by the United Nations, at least in theory. Placing international human rights law into its own country's legal system gave more legitimacy to Canada and their refugee program in the eyes of the international community.

Canadian refugee policy was originally based on the *Immigration Act* of 1976, which formalized refugee policy in the country. This act gave recognition to convention refugees, as defined by the United Nations Convention Relating to the Status of Refugees as well as humanitarian refugees, a term used in Canada for those groups of displaced or persecuted persons who do not necessarily meet the convention definition which tends to be stricter.<sup>47</sup>

The Immigration and Refugee Board of Canada (IRB) is an independent tribunal that makes all the decisions in regards to immigration and refugee matters. When asylum claims are made in Canada, the IRB determines whether the claimant is a Convention refugee or a person in need of protection. Canada defines a Convention refugee as,

People who are outside their home country or the country where they normally live, and who are unwilling to return because of a well-founded fear of persecution based on race, religion, political opinion, nationality, or membership in a particular social group, such as women or people of a particular sexual orientation.<sup>48</sup>

IRB makes the distinction of a person in need of protection as a person who would be subject to potential torture, a risk to their life, or a risk of cruel and unusual treatment or punishment if they were to return to their home country or country in which they normally live.

As a part of the process of making an initial claim at either the port of entry into Canada in which the individual arrived or at a Citizen and Immigration Canada (CIC) office located inside Canada, one must bring identifying documents including a passport, driver's license, and any other documents proving one's identity. This makes it more difficult for individuals from Mexico who do not have those types of documents such as driver's license or passport to prove their identities.

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<sup>47</sup> Bloemraad, 131-132.

<sup>48</sup> Immigration and Refugee Board of Canada, "Refugee Claims," *Government of Canada* 2013, <http://www.irb-cisr.gc.ca/Eng/media/info/Pages/rpdfacts.aspx> (accessed February 12, 2013).

Since 1976, Canada has based its program on the *Immigration and Refugee Protection Act* (IRPA), which passed in 2002. This Act created three separate categories for permanent residents in the country including family class, economic immigrants, and refugees. The family class consists of foreign nationals who come to Canada through a sponsorship by close relatives or direct family members. People included in this category can be spouses or partners, dependent children, parents, and grandparents. Economic immigrants refer to people granted permission to work and contribute to the Canadian economy. The final category is refugees, and they are broken into three categories: government-assisted refugees, privately sponsored, and refugees landed in Canada.<sup>49</sup>

Each refugee claimant is required to fill out a Basis of Claim Form (BOC Form).<sup>50</sup> The BOC Form asks the claimant to detail who they are and why, very specifically, they are making their claim. Each claimant is also required to include a descriptive narrative of all the events that took place, which led them to claiming refugee status, and this is the part where specific events are key to being accepted or rejected as a refugee. If a refugee cites a general fear without offering specifics, their applications will likely be rejected. The claimant must include any actions they took to seek protection from the authorities or if they attempted to seek refuge in another part of their country, and if they did not do one or both, the claimant must explain why they did not.<sup>51</sup> Each claimant is required to provide documented proof to back up their claim including any medical, travel, or police documents that can verify their story.

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<sup>49</sup> Citizenship and Immigration Canada, “Immigration Overview: Permanent and Temporary Residents,” *Government of Canada* (2011): 1. Dependents of landed refugees living abroad are also included in this category of permanent residents according to IRPA.

<sup>50</sup> This form was previously called the Personal Information Form (PIF) before Canada reformed their system in 2012.

<sup>51</sup> Immigration and Refugee Board of Canada, “Claimant’s Guide 2013: Refugee Protection Division,” *Government of Canada* (2013): 5.

If a claimant is accepted into the program, the refugee is given assistance by the Canadian government. The Resettlement Assistance Program provides financial support for the first year of a refugee's time in Canada, language training, and the Interim Federal Health Program, which gives the refugee health insurance until they are eligible for provincial health care plans in the areas they ultimately settle. Although refugees who attempt to claim protection from inside Canada are not able to receive any benefits from the Resettlement Assistance Program. The money from this program can be used to offset the costs of:

- meeting the refugee at the airport or port of entry;
- temporary accommodation;
- help in finding permanent accommodation;
- basic household items such as clothing and food; and
- general orientation to life in Canada.

In addition to the abovementioned uses, the funds are also used to supplement income for up to one year or until said person can become self-sufficient.

This generous program is very unlike the assistance the United States offers to refugees, where the main objective is to get them employment within the first 30-90 days. After this time period, they are taken off assistance and are on their own to survive in the "real world." In addition, refugees who are accepted prior to arrival in Canada receive permanent residency upon arrival as well as assistance to find housing and employment. Individuals who make in-land refugee claims are able to apply for permanent residency once they are accepted as protected refugees.<sup>52</sup>

During the 1980s, Canada gave a special designation to Salvadorans as a special humanitarian class of refugees. It even admitted some persons that failed to make asylum claims in the United States and saved them from being deported back to El Salvador. At

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<sup>52</sup> Bloemraad, 296.

the time, the Canadian policy was less stringent than the U.S. and gave more people opportunities to seek asylum and be accepted as refugees. In opposition of the U.S. policy at the time and current Canadian policy in regards to Mexican refugee claims, Salvadorans were given a special protection during this time period, because Canadian officials recognized the human rights abuses occurring in El Salvador.<sup>53</sup>

There are several reasons that Mexicans give for claiming refugee status, including domestic violence, drug war-related fear, and persecution based on sexual orientation. Narco-traffickers in Mexico threaten the lives of those who are not willing to cooperate with them. For example, the Méndez family owned a small grocery store in Morelia, Mexico, when traffickers realized their store would be a perfect front for their drug operations. The Méndez's refused to allow the narco-traffickers to use their store and in retaliation the traffickers threatened their lives and physically assaulted them, causing psychological scars, and forcing the family to flee to Canada.<sup>54</sup>

In 2008, Mexico became the number one source country of asylum seekers in Canada with 9,527 applicants that year alone. That was a 33 percent increase from 2007. However, only 11 percent of cases were accepted by the Immigration and Refugee Board of Canada compared with 78 percent of 3,132 Colombian claims and 42 percent of 4,936 Haitian claims accepted in 2008.<sup>55</sup> This data reveals the percentage of Mexicans who are turned away and sent back to Mexico or else try to claim asylum in another country. Those sent to Mexico are vulnerable to further persecution and the possibility of physical, mental, and emotional trauma from narco-traffic-related violence.

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<sup>53</sup> María Cristina García, *Seeking Refuge: Central American Migration to Mexico, the United States, and Canada* (Berkeley, California: University of California Press, 2006), 129.

<sup>54</sup> Angela Day, "Refusing the Refugees: Taking the Trade," *Canadian Dimension* 43 (2009): 28.

<sup>55</sup> Day, 28.

Table 3 shows the number of refugee claimants from Mexico in Canada from 1994 until 2011. The numbers show the rapid increase in refugee claims after 1994, when NAFTA was implemented. From 1994 until the peak number of claims in 2008, there was an increase of over 9,000 claims in that 14-year time span alone. By 1996, Mexico was already listed as a top source country for refugee claims in Canada, while the percentage accepted was still consistently very low compared to Colombian and Haitian claims as previously mentioned. The drop-off seen after 2009 can be attributed to the change in visa policy, requiring persons from Mexico to obtain a visa to enter Canada.

**Table 4 Refugee Claimants from Mexico in Canada, 1994-2011**

<b>Year</b>	<b># of Claimants</b>	<b># of Total Accepted Claims</b>	<b>Accepted Claims %</b>
2011	763	84	11.0
2010	1,221	286	13.7
2009	7,607	217	11.4
2008	9,527	256	13.1
2007	7,226	383	11.0
2006	4,945	359	25.2
2005	3,446	709	19.0
2004	2,802	674	25.0
2003	2,512	600	27.0
2002	2,083	292	24.0
2001	1,704	239	20.0
2000	1,310	322	26.0
1999	1,172	293	22.0

Note: The UN Refugee Agency, "2005 UNHCR Statistical Yearbook: Canada," United Nations High Commissioner for Refugees, <http://www.unhcr.org/4641836c11.html> (accessed May 20, 2012).



Table 4 Continued

1998	1,158	294	25.0
1997	926	156	19.0
1996	951	105	30.0
1995	548	--	--
1994	247	--	--

Before Canada changed their visa policies, it was easy for Mexicans to get to Canada to claim asylum, whether or not their claim would be accepted. Narco-traffickers control entire regions in Mexico by paying off the police and government officials. This leaves citizens caught in the middle of cartel wars over territory with nobody to turn to for protection. One of the main reasons Canada refuses refugee claims is because they are deemed not legitimate and the Mexican government is considered “democratic” and therefore, able to protect its citizens. Obviously, this is not the case as many officials are corrupt and bought off by bribes from cartel and gang members, making it difficult for Mexico’s citizens to feel protected or safe in their own country.

Officially, Mexico is not in the middle of a war or occupation, making it difficult for immigrants for citizens to demonstrate their fear of persecution at home and their government’s inability protect them. Refugee claimants are required to demonstrate this in a determination hearing with the IRB, and this is what makes their situation far different from those Salvadorans in the 1980s. The government of Canada officially recognized human rights violations in El Salvador, while they do not recognize the narco-trafficking conflict that has been going on in Mexico.

Since the implementation of NAFTA, refugee claims from Mexico in Canada have multiplied tenfold. In 1993, there were only 200 refugee claimants from Mexico in

Canada. This increase from 200 in 1993 to 9,527 in 2008 has occurred in conjunction with an increase in narco-trafficking and criminal gang activity in Mexico. NAFTA has increased the illegal market activity as millions of farms went bankrupt and jobs became scarce. Many Mexicans turned to either migrating north or entering the illegal economy.<sup>56</sup>

The dangerous environment in Mexico has been due to the illegal economy fueled by drugs and gang activity. In 2008, drug revenue was over 23 billion U.S. dollars. Also, in 2007-2008, there were over ten thousand drug-related deaths, which demonstrates the dangerous nature that life in Mexico poses for its citizens. In order to claim refugee status in Canada, claimants must have a specific reason, rather than just a general fear of violence in the nation. The IRB in Canada states that many people claiming refugee status have the option to flee to another part of Mexico called the internal flight option. This is why a huge portion of Mexican refugee claims have been denied in Canada.<sup>57</sup>

While the IRB believes Mexicans have an internal flight option, in reality, many Mexicans believe they cannot just relocate for fear of being found by those threatening their lives or for financial reasons. With the intense level of corruption within Mexico, their options to file complaints or request protection from the police are met with deaf ears of corrupt officials. This makes it difficult and dangerous for citizens to know to whom they can turn when they fear for their lives. So it makes sense why they would choose rather to flee to Canada, a place they are familiar with and trust to protect them via asylum.<sup>58</sup>

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<sup>56</sup> Day, 28.

<sup>57</sup> Day, 29.

<sup>58</sup> Day, 29.

Mexico and Canada have had excellent trade relations since the implementation of NAFTA. With the increase in fear due to gang and drug violence, Mexicans' need to flee has increased in order to preserve their safety. This causes a predicament for Canada and the IRB in determining the validity of Mexican refugee claims. If they accept the claims, they are demonstrating that the Mexican government cannot protect its citizens. By doing this, it could damage trade relations between the nations, causing damage to future relations and the validity of NAFTA.<sup>59</sup>

Similarly, the United States used policies in regards to certain countries as justification for their denial of refugee claims from those countries. In the 1980s and 1990s, the United States approved claims from Nicaragua, but denied claims in large numbers from El Salvador. Nicaragua was in the middle of a conflict between the Contras and Sandinistas, and since they were fleeing communist oppression in the country, the U.S. accepted 2.6 percent of 48,000 claims from 1984-1990. In the same time period, only 2.6 percent of 45,000 claims from El Salvador were accepted, because the U.S. was backing the Salvadoran government at the time.<sup>60</sup> This shows the U.S. and Canadian governments were practicing similar policies in regards to which refugee claims they were willing to accept.

Canada avoids discrepancies in claim determinations from people from the same nation by sticking to consistent policy and practice. All refugee status determinations occur within one agency in Canada: the Refugee Protection Division of the Immigration and Refugee Board (IRB). This makes for a streamlined and centralized process, resulting in better outcomes in a more timely fashion than systems such as the U.S. With only one agency dealing with refugee claims, rather than the seven agencies the U.S.

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<sup>59</sup> Day, 30.

<sup>60</sup> Michael J. McBride, "Migrants and Asylum Seekers: Policy Responses in the United States to Immigrants and Refugees from Central America and the Caribbean," *International Migration* 37 (1999): 296.

Refugee Admissions Program (USRAP) partners with, it makes for a simpler process.<sup>61</sup> The process for obtaining refugee status includes an inquisitorial hearing in Canada, which requires extensive background research by the IRB into the conditions of the claimants' home country. The Canadian government pays for this research.

By not needing a lawyer, this makes it financially easier on the claimant as the government does not use a lawyer to represent its position either. By leaving it mostly in the hands of the IRB, it can leave claimants from Mexico vulnerable to being denied refugee status due to not being able to fully explain their situation. When the IRB researches and fails to find any certified danger such as war or conflict within their country, claimants from that country have a harder time proving their need for asylum.<sup>62</sup> Language barriers and the inability to fully understand legal processes and terms associated with claiming refugee status in Canada can cause a failure on the part of claimants to be able to articulate everything they need in order to sufficiently explain their situation and need for asylum. I believe this is the case with Mexican claimants in Canada who are unable to demonstrate their fear of violence with nowhere else to turn, due to corruption in Mexico.

In Canada, there are three types of hearings: expedited, regular, and extended. Most claimants go to a regular hearing in order to have their claim determined. If the claimant is from a high-acceptance-rate country or their case fits the "basic profile" they will go through an expedited process to free up the system for those who have a less than

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<sup>61</sup> U.S. Citizenship and Immigration Services, "The United States Refugee Admissions Program (USRAP) Consultation and Worldwide Processing Priorities," *U.S. Department of Homeland Security* 2013, <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextchanel=385d3e4d77d73210VgnVCM100000082ca60aRCRD&vgnextoid=796b0eb389683210VgnVCM100000082ca60aRCRD> (accessed May 4, 2013).

<sup>62</sup> Rebecca Hamlin, "International Law and Administrative Insulation: A Comparison of Refugee Status Determination Regimes in the United States, Canada, and Australia," *Law and Inquiry* 37 (2012): 947.

clear-cut case. Expedited processing does not involve board members directly, rather an officer meets with the claimant to either verify their story and grant them refugee status or recommend them for a regular hearing. Extended hearings are for more complex cases, which are presided over by a board member.<sup>63</sup>

Another method the IRB uses to make consistent judgment calls on refugee cases is identify cases that will be used as “lead” or precedential in order to guide their decisions and make the process more autonomous from the court system. The goal is to designate a specific case as the “lead” and use it as a precedent for all future cases from a specific country. This is used mostly when claims increase rapidly from a specific country in order to streamline the process and make consistent judgment across board members in all areas of the country.

In recent years, this approach has been somewhat applied to Mexican refugee claims in Canada. The IRB modified the process by selecting three cases as “Persuasive Decisions.” These decisions occurred after the fact and they do not have wide general application language that “lead” decisions have in them, but they are still used as a guide for future decisions. All three of the cases chosen as examples for Mexican refugee claims were rejections, stating that the claimants had the option of state protection within Mexico. This decision in 2006 set the precedent in many ways for future Mexican claims, showing they are not true refugees. Claim rates dropped 35 percent in 2006 to only 15 percent the following year and to 11 percent in 2009.<sup>64</sup>

The use of the Persuasive Decisions can be seen as controversial, as the cases used for the Persuasive Decisions are not generalizable for all cases from Mexico. The Decisions discount corruption, which eliminates the in-flight option of many people fleeing from violence and threats against their life. This eliminates the need for

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<sup>63</sup> Hamlin, 948.

<sup>64</sup> Hamlin, 948-949.

interaction with the court system leaving more room for flexibility with accepting refugee claims. However, the Persuasive Decisions strategy can also lump all claims together from the same country that may have different concerns and needs.

### Policy Reforms

Since 2002 and the implementation of the IRPA, Canada has made three significant changes to their immigration and refugee system. As refugee claims from Mexico increased at a high rate even with a low rate of acceptance, the Canadian government reacted with policy reforms that specifically affected Mexicans. Starting with requiring visas in 2009, then passing the Balanced Refugee Reform Act, and finally overhauling their asylum system in 2012. Since the first change in 2009, as Table 3 demonstrates, refugee claims from Mexico dropped significantly. Canada's reforms to immigration and refugee policy achieved its ultimate aim of deterring Mexicans from claiming asylum in Canada.

Starting in 2009, Canada began a series of reforms that greatly affected Mexican immigration to Canada and especially those immigrants seeking refugee status. Due to the large influx of refugee claims, most of which the IRB rejected, the government of Canada decided they needed to take action to protect those who had legitimate asylum needs by streamlining the process and requiring that all Mexican nationals apply for a Temporary Resident Visa prior to travelling to Canada. In a news release, the Government of Canada explicitly stated the number of Mexican refugee claims was the pushing factor behind the implementation of the visa requirement. The government hoped this would be a step toward reducing the abuse of the refugee system by persons wishing to immigrate quicker to Canada.<sup>65</sup>

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<sup>65</sup> Citizenship and Immigration Canada, "Canada Imposes a Visa on Mexico." *Government of Canada* 2009,

The second reform that took place was in the following year, 2010, and targeted refugees, specifically. The Balanced Refugee Reform Act implemented the Refugee Appeals Division (RAD) was attempted to have been passed originally in 2002. On Parliament's first try the IRB thought it was redundant to add an appeals process, because their process was already very thorough and strong. Courts take a very hands-off approach and ultimately only take less than 15 percent of cases that request to have their case heard. This demonstrates the trust and cooperation level between the courts and the IRB, making for more streamlined processes in refugee claims. Originally this is what fueled their belief that they did not need a RAD in order to successfully process all the claims. As claims became exponentially more numerous, the need for reform became apparent.

The Balanced Refugee Reform Act passed in 2010 by Parliament added the Appeals Division that was introduced in 2002. In addition to adding an appeals processing division, the Act reformed the process for low acceptance rates to make the process more expedient. The other aspects of the system remained intact, and the main aim was to reduce the number of claims going to the court system.<sup>66</sup> This reform also sought to reduce applications from high claim countries such as most recently from Mexico. Since Mexico had low acceptance rates, Canada can more easily expedite those claims to streamline the process. This is yet another way that Canada can easily deter or quickly process and then deport Mexicans making refugee claims.

The most recent and ultimately the most extensive reform to the refugee claims system in Canada came in 2012 when Parliament passed the Protecting Canada's Immigration System Act (known as Bill C-31). Effective on December 15, 2012, this

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<http://www.cic.gc.ca/english/department/media/releases/2009/2009-07-13.asp> (accessed February 8, 2013).

<sup>66</sup> Hamlin, 949.

piece of legislation further reformed system for seeking asylum, adding measures to address human smuggling as well as requiring data collection as a part of the temporary resident visa, work permit, and study permit applications.<sup>67</sup>

While still allowing all claimants to obtain a fair oral hearing before the Immigration and Refugee Board of Canada, Bill C-31 streamlines the process to quicken judgments of cases. Those whose claims are accepted will be given refugee status quickly, while those whose claims are denied will be deported more quickly as well. This Act identifies “Designated Countries of Origin” (DCO), which labels a country as able to democratically protect its citizens. Mexico is included in the list of DCOs, meaning individuals making refugee claims from Mexico have fewer rights during the refugee process to have their claims heard thoroughly. Claimants from DCOs do not have appeal privileges. This Act will potentially leave thousands of Mexican refugee claimants vulnerable. The claimants will inevitably be quickly deported back to Mexico where the very people they are seeking protection from, most likely, still reside.

Since the implementation of NAFTA, Mexican refugees in Canada have gone through a journey with which many people are unfamiliar. As NAFTA increased unemployment causing an increase in the activity in illegal markets, the corruption and violence due to large-scale narco-trafficking forced thousands of Mexicans to flee and attempt to find asylum in Canada. Within only a few years, the rapid increase in claims became too overwhelming for the Canadian IRB system, causing them to react with a series of immigration and refugee policy reforms that ultimately targeted Mexican refugee claimants. These policies aimed at deterring claims while streamlining the

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<sup>67</sup> “Overview of C-31 Refugee Determination Process,” Canadian Council for Refugees 2013, <http://ccrweb.ca/en/overview-c-31-refugee-process> (accessed February 12, 2013).



process in order to assist those with “legitimate” claims from countries where their government cannot protect them. Unfortunately, Mexico is not one of these countries.

## CONCLUSION

Canada and Mexico's relations have not been addressed by scholars extensively, beyond Canada's Temporary Foreign Worker Program, which targets Mexican laborers since it was expanded in 1974. After the inclusion of Mexicans in the program, mainly in agricultural work, their numbers in Canada began to grow very quickly. The number of Mexicans in Canada increased over the years due to several reasons, including the creation of the Northern American Free Trade Agreement in 1994. This agreement had a major role in the increase of Mexicans in Canada mainly due to an increase in temporary work to fulfill labor shortages, which aided Mexicans who at the time were suffering from an overwhelmingly high unemployment rate. Also, the high employment rate triggered the increase in illegal market activity and violence associated with narco-trafficking, causing Mexicans to fear for their lives due to threats and general violence in Mexico.

As a result, in recent years migration from Mexico to Canada has increased at an exponential rate. The most significant and notable increase has been in the number of refugee claims from Mexicans wanting to seek asylum in Canada. It has been found that Canada is the number one destination for Mexican refugee claimants. Canada accepts their claims at an alarmingly low rate compared to claims from other nations, even other nations in Latin America. This leaves Mexicans with very few options of where to turn for protection from the violence.

I argue the reason Mexicans chose Canada to claim refugee status is Canada's long history of an open immigration policy and especially its economic and temporary labor agreements with Canada that have given the impression to Mexicans they are very much welcomed in Canada. This proved to be false when Canada changed their immigration and refugee policies in 2009, 2010, and 2012, in response, specifically, to the overwhelming number of Mexican refugee claims.

Now Canada has seen a drop in the overall number of Mexicans living in Canada due to its new restrictionist immigration attitude towards Mexicans. While Canada is still accepting and using large numbers of Mexicans for temporary work, other methods of immigration have been nearly completely shut off to Mexicans. This has left many Mexicans with nowhere else to turn in their time of need due to violence and danger caused by the narco-trafficking, gangs, and corruption in Mexico. In the future, this very recent change in policies might hurt Mexico's economic relationship with Canada, especially with regards to the use of Mexicans for temporary labor. Such a potential pitfall will likely occur if the United States chooses to implement a large temporary worker program in the upcoming immigration reform laws. Otherwise, the United States might see a slight increase in undocumented immigration from Mexico, as those who are turned away from Canada might choose to take their chance in the U.S.

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