

**ROMA REFUGEES:  
INTERNATIONAL REFUGEE PROTECTION AND EUROPE'S  
'INTERNAL OUTSIDERS'**

**by**

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## **Abstract**

The paper is concerned with the position of Roma refugees within the international refugee protection system, and how they face exclusion from asylum in an international context in which migration is represented as a threat to state sovereignty. Specifically, the paper argues that, because of their status both as Roma and as refugees, Roma refugees are represented and treated by states as a double threat to the territorial state order. As a result, they are subject to a unique logic of double exclusion that limits their ability to seek and obtain refugee protection after fleeing persecution in their home states. This exclusion operates at three distinct levels in the international system: within the European Union (EU), harmonized asylum policy among member states prevents Roma refugees from Europe from accessing refugee protection in other EU countries; in non-European destination countries, states use interdiction measures to prevent refugees from arriving on state territory; and in the refugee determination process itself, some decision-makers use stereotyping, racial profiling and problematic assessments of ethnicity to unnecessarily reject certain Roma claims. These three levels of exclusion operate simultaneously to limit Roma refugees' chances of being granted refugee protection under the current system. Furthermore, these mechanisms of exclusion are often framed by a discourse that de-legitimizes Roma refugee claims and portrays these refugees as 'bogus' claimants or 'illegal migrants' out to take advantage of liberal refugee policy, rather than people potentially fleeing persecution and seeking surrogate protection under international law.

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*To refugees*

# 1 Introduction

Since the end of the Cold War, the international realm has been increasingly marked by processes of globalization and convergence, as growing technology and communications capabilities and economic integration seem to point toward a world order increasingly defined not simply in terms of sovereign states but in terms of a cosmopolitan, post-national reality. However, despite the increasing popularity of this perspective, there are many indicators that the modern state, though ever more contested as the sole legitimate demarcation of political community, has not only *not* been transcended, but in fact continues to exert tremendous socio-spatial power over individuals, particularly in light of recent concerns regarding ‘security’ and ‘terrorism’ across states. In this way, the modern state continues to define the limits of migration in the international realm. There is thus a tension at the heart of the current international order, as the opposing dynamics of increasing fluidity and movement—most notably in the economic, communication and technological realms—on the one hand, and a logic of exclusion and closure—manifested in growing attempts to manage migration flows in the service of increased securitization and integrity of the state—on the other, come into contact at the level of the state. Indeed, migratory flows are increasingly subject to strict controls as “a reaction to state perceptions of a loss of control over policy initiatives in other areas” and as a reassertion of state sovereignty in a changing international context.<sup>1</sup> As external borders are entrenched and migratory controls tightened, those deemed ‘outsiders’ of the state system—both external, as refugees, trafficked people, and the stateless, and internal, as marginalized minorities and internally displaced persons—become increasingly vulnerable to being subjected to violent demonstrations of state control. Two such outsider figures are

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<sup>1</sup> Catherine Dauvergne, *Making People Illegal: What Globalization Means for Migration and Law* (New York: Cambridge University Press, 2008), 2.

refugees, represented as external outsiders threatening the state from without, and the Roma, represented as internal outsiders threatening from within.

Having left behind her home state and crossed the border into a new one to which she does not have claims of citizenship, the refugee moves between political communities. Unlike the citizen, she cannot be firmly connected with a territorial space, and thus challenges the assumption underpinning the state order that all individuals belong to a state. As an outsider in motion, evading easy categorization and attachment to a circumscribed political territory, the refugee is constructed as a threat to the order itself. Like the refugee, the Roma are representative of that which escapes the grasp of the state's mechanisms of socio-spatial control. An incredibly diverse and heterogeneous population, the Roma are so misrepresented in conventional discourse that "even a cursory attempt to explain who the Roma are, where they come from, and how they perceive themselves shatters much of the conventional wisdom about this community."<sup>2</sup> Contrary to the widespread notion that the Roma are inherently nomadic, many Roma communities are sedentary and have been so for centuries, and those who have been peripatetic have often been forced to migrate as a result of economic hardship and persecution.<sup>3</sup> However, like the refugee, they are represented as a rootless, nomadic, migratory people.<sup>4</sup> One well-

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<sup>2</sup> Zoltan Barany, *The East European Gypsies: Regime Change, Marginality and Ethnopolitics* (Cambridge: Cambridge University Press, 2002.), 8. It should be noted that many scholars have highlighted the difficulty and questioned the utility of defining "the Roma" as an analytical category based on ethnicity. Dimitrina Petrova, for example, emphasizes that many groups have been externally identified as Roma but do not necessarily always identify themselves as such, including the Travellers in England and Ireland and the Sinti in Germany. See Dimitrina Petrova, "The Roma: Between a Myth and the Future," *Social Research* 70, no. 1 (2003): 111-112. I have opted to employ the term "Roma" despite the problems associated with this term as an analytical category because while the issues arising from the construction and identification of Roma ethnicity are indeed relevant here, they are beyond the scope of this paper and have been discussed at length elsewhere. See for example János Ladányi and Iván Szelényi, "The Social Construction of Roma Ethnicity in Bulgaria, Romania and Hungary During Market Transition," *Review of Sociology* 7, no. 2 (2001): 79-89, Katrin Simhandl, "Beyond Boundaries? Comparing the Construction of the Political Categories 'Gypsies' and 'Roma' Before and After EU Enlargement," in *Romani Politics in Contemporary Europe: Poverty, Ethnic Mobilization and the Neoliberal Order*, edited by Nando Sigona and Nidhi Trehan (New York: Palgrave Macmillan, 2009), 72-93, and György Csepeli and Dávid Simon, "Construction of Roma Identity in Eastern and Central Europe: Perception and Self-identification," *Journal of Ethnic and Migration Studies* 30, no. 1 (2004): 129-150. Furthermore, I have focused on the Roma of Eastern Europe, rather than any of the other groups noted above, as they appear to constitute the largest number of Roma refugee claimants.

<sup>3</sup> Barany, *East European Gypsies*, 9-11.

<sup>4</sup> On the "misconception of nomadism" among the Roma, see Petrova, "The Roma", 136. Petrova points out that the "overwhelming majority of the Roma throughout the world have been settled for decades—some for centuries." See also Michaël Guet, "Challenges related to Roma migration and freedom of movement in Europe" (presentation, Romani mobilities in Europe: Multidisciplinary perspectives – International Conference, University of Oxford, January 14-15 2010), 77-78. However, as will be discussed below,

known perception of the Roma as a community that is accurate, however, is the extent to which they have been marginalized, excluded and scapegoated for every conceivable social ill in the societies they have inhabited. Over the past 700 years in Europe, “empires, authoritarian, and totalitarian states have come and gone, but in all of them the Roma have occupied the lowest rung on the social scale.”<sup>5</sup> Moreover, this marginality is unique, as the Roma—unlike many other social groups relegated to the bottom of the hierarchy of citizens—are transnationally located, often lacking attachment to a territorial state through formal citizenship, and thus may not have a home state to which they can appeal for protection in the first place.<sup>6</sup> They are therefore inherently problematic according to the global state order, as they cannot be fitted into the neat category of citizen, and thereby elude the mechanisms of the state, which has sought alternatively and at different times to exterminate, exclude, and assimilate them. Particularly since the end of the Cold War, due to increasing instances of racist violence and extreme social exclusion, many Roma have migrated outside of Europe and many of them have claimed refugee protection from persecution based on their race or ethnicity as Roma. However, the current international refugee protection regime—particularly among Western industrialized host states—appears to be evolving in such a way that these refugees may be less able to claim refugee status in potential recipient states, and when they are able to claim status, they may not be successful in doing so for reasons that are directly connected to their identity as Roma.

I will argue that, because of their status both as Roma and as refugees at the intersection of the state’s fears of threats from within and from without, Roma refugees are represented and treated by states as a double threat to the territorial state order. As a

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nomadism is seen as central to Roma identity, and this association between the Roma and a peripatetic lifestyle has served to construct the Roma as a “paradigmatic outsider” threatening the territoriality of the nation-state system. See David Fraser, “To belong or not to belong: the Roma, state violence and the new Europe in the House of Lords,” *Legal Studies* 21, no. 4 (2001): 582.

<sup>5</sup> Barany, *East European Gypsies*, 3.

<sup>6</sup> *Ibid.*, 2.



result, Roma refugees are particularly vulnerable to not being granted protection by any state. This 'double exclusion' operates through three key means. Firstly, European asylum policy, which precludes the recognition of refugees produced by European states, denies the possibility that Roma refugees may even exist. Secondly, given that Roma refugees do exist, despite this legal restriction, potential host states are enacting interdiction measures which, whether they are aimed at refugees in general or Roma refugees in particular, serve to prevent these refugees from accessing state territory in order to claim status. The third avenue for this exclusion is the refugee determination process itself in key recipient states, where the use of stereotyping and a reliance on problematic markers of ethnicity in some cases is contributing to negative decisions which may otherwise have been successful. While the latter two factors are particularly evident in Canada, there is some evidence of similar phenomena in Australia and the United States. Furthermore, in Canada these mechanisms of exclusion are framed by a discourse that de-legitimizes Roma refugee claims and are often couched in broader anti-Roma rhetoric. As examples from these countries will illustrate, the Roma appear to be increasingly vulnerable to a unique double politics of exclusion, by virtue of their refugeehood and their Romahood, which limits their ability to seek and obtain refugee protection after fleeing persecution in their home states.

In order to develop this argument, this paper is divided into three main sections. In the first section, I will examine the emergence of the notion of the refugee as an analytical concept and an inexorable part of the modern territorial state system. The development of an exclusionary politics of asylum and the illegalization of migration will also be discussed as a means of highlighting the increasingly vulnerable position of refugees in the international state order. In the second section, I will outline the construction of the Roma as Europe's 'internal outsiders' and the Roma refugee as a 'double threat' to the territorial

state order, a status further complicated by the statelessness of many Roma. In the third section, I will present the three key means through which the Roma refugee's 'double exclusion' from the state-centric refugee protection regime can be seen to operate—namely the preclusion of European refugee production, refugee interdiction practices among host states, and problematic refugee determination practices with respect to Roma, which in the Canadian case are framed in anti-Roma refugee discourse. Finally, I will conclude by presenting a few albeit limited ideas for enhancing access to refugee protection for the Roma.

## 2 The refugee as ‘problem’ and the exclusionary politics of asylum

In contrast to the conventional understanding of the refugee as an anomaly of the international system, scholars in recent years, including Emma Haddad and Liisa Malkki, have convincingly demonstrated that the refugee is in fact a product and constituent element of this system.<sup>7</sup> Haddad argues that, rather than seeing the refugee as an indicator of the international state order ‘going wrong’ and a known, ‘given’ concept created by a failure of the home state, we should understand her as a permanent feature of the international landscape emerging with the consolidation of the modern nation-state system.<sup>8</sup> As a result of the constitution of the key notions of citizenship, nation and state that are central to modernity, the refugee became the reference point for a whole series of binary oppositional categories that continue to define what it means to be a citizen through the elaboration of a dichotomy between the insider “and the imagined threat of the stranger.”<sup>9</sup>

Although the modern international refugee protection system is a creation of the 20<sup>th</sup> century, the ‘refugee’ as a concept is intimately tied up with the transition, beginning in the 16<sup>th</sup> century, from the feudal order of medieval Europe to the “modern vertical society of sovereign territorial states”, and the entrenchment of the citizen-state-territory hierarchy.<sup>10</sup> At the core of this new order was the relationship—bounded by territory—between the citizen as the object of socio-spatial organization and political power and the state as the provider of citizenship rights. Through this transformation, a specific notion of territory as a “bounded, exclusionary” space was articulated for the first time, demarcating

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<sup>7</sup> Emma Haddad, *The Refugee in International Society: Between Sovereigns* (Cambridge: Cambridge University Press, 2008) and Liisa Malkki, *Purity and Exile: Violence, Memory and National Cosmology Among Hutu Refugees in Tanzania* (Chicago: University of Chicago Press, 1995).

<sup>8</sup> Haddad, *Between Sovereigns*, 2.

<sup>9</sup> Philip Marfleet, *Refugees in a Global Era* (New York: Palgrave Macmillan, 2006), 263.

<sup>10</sup> Haddad, *Between Sovereigns*, 49 and Marfleet, *Refugees*, 263.

distinct political communities anchored in particular territories.<sup>11</sup> This process of transformation also necessitated the sorting of individuals to fit into these socio-political, territorial “units of belonging”, and any individuals who did not fit these spaces and transgressed the boundaries between them were understood as alien others who violated the principles central to national identification.<sup>12</sup> By categorizing individuals in this way and enacting practices to manage them, states “‘expropriated the legitimate means of movement’ and monopolized the authority to determine who may circulate within the territory as well as who could cross their borders.”<sup>13</sup> The state order, then, was from the outset intimately tied up with control of migration and the need to include some and exclude others in the service of nationhood.

Moreover, not only did this transformation signal the consolidation of a new conception of territory, but it also entailed the construction of a series of binary normative categories aimed at differentiating who was part of the political community—within the bounded space of the state territory—and who was not. This dichotomy was defined by the distinction between the ‘insider’ or citizen, who had claims to certain rights as well as specific obligations with regard to the state, and the ‘outsider’, non-citizen, alien, foreigner, or exile. “Exclusionary identity practices” were concomitantly enacted along this binary between “units of belonging”, and articulated through space, as inside versus outside; membership in the political community, as citizen versus non-citizen; and agency, as state versus individual.<sup>14</sup> This dichotomization also had a normative function, as it served to identify individuals as legitimate or illegitimate, with non-citizen outsiders signifying a

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<sup>11</sup> Haddad, *Between Sovereigns*, 50.

<sup>12</sup> Vicki Squire, *The Exclusionary Politics of Asylum* (Houndmills: Palgrave Macmillan, 2009), 4.

<sup>13</sup> Daniel Nordman, cited in John Torpey, “Coming and Going: On the State Monopolization of the Legitimate “Means of Movement”,” *Sociological Theory* 16, no. 3 (1998): 239. Nordman also states that “[a]gainst this background, we should reconsider the metaphor of “penetration” typically used to discuss the enhanced capacity of modern states relative to their predecessors, and instead think of states as “embracing” populations, identifying persons unambiguously in order to control their movements and to distinguish members from nonmembers.” *Ibid.*, 239.

<sup>14</sup> Haddad, *Between Sovereigns*, 50.

threat to the established order of the territorial state and its sovereignty. In other words, individuals acquired a specific relationship with a given state: they were either internally, legitimately located and thus contributing to internal order and security, or external and threatening the cohesion of the state. Those deemed illegitimate but residing within the state territory—such as the Roma, as will be seen—posed a particular problem for the new order, as they called into question the neat attachment of an individual to a state territory and his or her legitimation through this territorial connection. It is within this normative frame that the refugee emerged as a figure representing opposition to all that was rooted, legitimate and ordered.<sup>15</sup> Understood as the non-citizen outsider who cannot be contained within the boundaries of the sovereign state, the refugee came to occupy the gaps between states at the interstices of the international system, thus threatening “the essential values of national life”.<sup>16</sup>

As the hierarchy of citizen-state-territory was strengthened and embedded, the contemporary refugee problem continued to grow and transform.<sup>17</sup> Since the end of the Cold War and the discontinuation of the political utility of refugees, as well as the increased concern with security on the part of states, refuge is increasingly characterized as a security threat, highlighting a tension at the heart of the modern territorial order and the state.<sup>18</sup> As the liberal democratic state has, in Seyla Benhabib’s terms, “a series of

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<sup>15</sup> Although, as Haddad points out, people have been excluded and displaced throughout history, it was with the development of the sovereign state system that the ordering of people into territorial units became a subject of concern requiring a legal response, and large-scale movements of people across space came to be considered a threat to those within state borders. Acts and laws aimed at regulating the status of aliens were established in response to these movements—particularly following the French Revolution and the revolutions of the 1820s and 30s—and functioned to “construct an image of the external ‘other’, acting to establish the internal ‘citizen’ as the ‘normal’ subject of the state.” Haddad, *Between Sovereigns*, 55.

<sup>16</sup> Haddad, *Between Sovereigns*, 59 and Marfleet, *Refugees*, 263. In Giorgio Agamben’s terms, refugees “represent such a disquieting element in the order of the modern nation-state” because “by breaking the continuity between man and citizen, nativity and nationality, they put the originary function of modern sovereignty in crisis.” Agamben, quoted in Fraser, “To belong or not to belong”, 590. Italics original.

<sup>17</sup> Although the shifts in the character of and state responses to refugee movements have profound implications for the various ways in which the refugee problem is framed in political and scholarly discourse, an examination of these changes is beyond the scope of this paper and they have been sufficiently discussed elsewhere. See, for example Haddad, *Between Sovereigns*, 97-191.

<sup>18</sup> At the end of the Cold War, asylum ceased to serve as a tool for the great powers in jostling for normative claims to political legitimacy. This is one of the factors that has contributed to the increased concern with restricting migration, because “in a context where asylum no longer refers to those fleeing communist regimes, a commitment to political migration would seem to be of secondary concern.” See Squire, *Exclusionary Politics*, 7.

precommitments to a set of formal and substantive norms, usually referred to as ‘human rights’”, there is a tension between the moral attachment to the principle of asylum and the practical attachment to measures designed to keep outsiders *outside* the polity, in order to preserve the particular civic community bounded by the sovereign state territory.<sup>19</sup> It is through this fundamental paradox at the core of the sovereign democratic state system that refuge is articulated as a problem or threat to the integrity of the state order.

Particularly in the post-Cold War and post-9/11 context, this tension has been expressed through what Vicki Squire calls the “exclusionary politics of asylum”, within which “the articulation of asylum as a security issue has diluted the language of refugee protection, while facilitating a move away from an individual rights-based approach.”<sup>20</sup> Following events such as 9/11 and the London 7/7 attacks, as well as changing economic conditions and the collapse of communist regimes in Eastern Europe, the articulation of refuge and refugees as a threat has intensified worldwide, but especially in industrialized liberal democratic host states, serving to embed a highly exclusionary politics of movement in the territorial order.<sup>21</sup> The notion of an exclusionary politics of asylum refers to the “processes through which the territorial political community is constructed against the ‘threatening supplement’ of asylum-cum-illegal-immigration.”<sup>22</sup> Central to these processes is the conflation of refugees and economic migrants, who, despite being distinct legal categories, are seen as equally threatening, and equally mobile, subjects over which host states should exert increasing control.<sup>23</sup> Claude Cahn contends that in Europe, “the attack on the asylum right has been waged primarily through an effort to whither it to the point of

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<sup>19</sup> Squire, *Exclusionary Politics*, 5, and Seyla Benhabib, *The Rights of Others: Aliens, Residents and Citizens* (New York: Cambridge University Press, 2004), 45-47.

<sup>20</sup> Squire, *Exclusionary Politics*, 6. Three key assumptions that underpin this new, ‘hostile’ and restrictive discourse on asylum or refuge are that the number of asylum seekers is increasing, that the refugee protection system is being abused by opportunistic economic migrants, and that increased measures of restriction and control will resolve this problem.

<sup>21</sup> *Ibid.*, 7.

<sup>22</sup> *Ibid.*, 17.

<sup>23</sup> *Ibid.*, 12.

meaninglessness”, whereby debates over distinctions between ‘genuine’ and ‘bogus’ or ‘economic migrants’ seek to increasingly delegitimize the very notion of refuge.<sup>24</sup> As a result of this conflation, Western states are increasingly seeking to stem the flow of refugees seeking protection, as these are seen as potential illegal migrants, rather than individuals to whom these states may have obligations under international law. The varied approaches to restricting the ability of refugees to claim protection, which will be outlined below, demonstrate how refuge is currently operating to exclude rather than simply include, and speaks to a broader logic of illegalization of migration generally.<sup>25</sup> This exclusion is embedded in a larger trend toward what Catherine Dauvergne argues is “a worldwide crackdown on illegal migration”, as wealthy western states have become increasingly preoccupied with enlarging the categories through which migrants—particularly those from the South—are deemed illegal and thus subject to penalties for violating the territorial integrity of sovereign states.<sup>26</sup> The notion of refuge in this context has been represented more and more as a threat to the increasingly vulnerable state, which thus has to respond by re-affirming its borders and the boundaries of citizenship.<sup>27</sup> In a world in which borders are increasingly permeable and porous in a variety of important

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<sup>24</sup> Claude Cahn, “Racial Preference, Racial Exclusion: Administrative Efforts to Enforce the Separation of Roma and Non-Roma in Europe through Migration Controls,” *European Journal of Migration and Law* 5, no. 4 (2004): 485.

<sup>25</sup> Examples such as Australia’s move to excise part of its territory for migration purposes and its widely condemned extended, extraterritorial detention of asylum seekers and potential refugees immediately come to mind.

<sup>26</sup> Dauvergne, *Making People Illegal*, 14-15. , Moreover, this hostile new migration paradigm “underscores a shift in perception regarding the moral worthiness of these migrants. While previously immigration infringements were not regarded as criminal, those who enter and remain without authorization are increasingly perceived as ‘criminal’ in the *mala in se* sense.” Dauvergne, *Making People Illegal*, 16. According to Marfleet, beginning in the 1990s, “irregular migration was presented as a threat to global order and an influence which subverted the integrity of every state requiring demonstrations of authority which reaffirmed borders and border control.” See Marfleet, *Refugees*, 264.

<sup>27</sup>This illegalization of migration is also articulated through the “resurgence of authority” of citizenship—or “citizenship with a vengeance”—as part of an “emerging story of states making membership provisions, through citizenship laws, more meaningful.” Dauvergne, *Making People Illegal*, 121, 131, and 132. Both of these trends—the particular exclusionary character of refuge and the illegalization of migration generally—are a direct result of the specific ways in which sovereign states have responded to and attempted to manage the limits of the political community and citizenship in the context of “the struggle to stabilise the meaning and identity of a territorial political community”, a struggle that requires a “totalizing ideological strategy that attempts to mask the inevitable failure of a territorial order to fully constitute itself”. Squire, *Exclusionary Politics*, 32. In Europe, as David Fraser points out, the “constant invocations of the ‘flood’ of refugees” clearly reveal “the deep-seated unease at the heart British political discourses, public law and legal institutions about the future of the nation state with the New Europe. See Fraser, “To belong or not to belong”, 572.

ways, processes of exclusion and separation between those who belong to the state and those who do not are becoming increasingly relevant to the legitimizing aims of citizenship.



### 3 Europe's 'internal outsiders' and the double exclusion of Roma refugees

Analogous to the figure of the refugee, the Roma have also played an important role as an oppositional social construction of the European modernity project. As Angus Bancroft demonstrates, the construction of the figure of the Roma—again during the 16<sup>th</sup> century and the consolidation of the territorial order of sovereign European nation-states and the Enlightenment—was a direct result of attempts to manage the tensions between the universal and the particular that resulted from the modern preoccupation with identifying the 'essence' of the human while simultaneously categorizing and ranking visibly differentiated groups. Through each of the processes of identity formation, spatialized control, rectification of 'backwardness', and racialization, a particular facet of 'Gypsiness' was constructed, by which the Roma came to represent a violation of the identity, space, progressive trajectory, and racial integrity of the modern European nation-state and its citizens.<sup>28</sup> Firstly, as the territorial order was consolidated, so were processes of spatialized control and exclusion aimed at regulating populations within and through the borders of nation-states. These "intimately spatial forms of regulation", particularly of marginal populations such as the Roma, expressed the modern state's concern with "making spaces under its gaze ordered as well as bordered."<sup>29</sup> Those who were seen as 'Other' to the 'normal' citizen became objects of regulatory control, and the individual who was not located in a particular space and tied to private property was of special concern for the newly territorialized state.<sup>30</sup> In the context of these new concerns of the sovereign, the Roma—though, as was noted in the introduction, not necessarily always nomadic—were

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<sup>28</sup> Angus Bancroft, *Roma and Gypsy-Travellers in Europe: Modernity, Race, Space and Exclusion* (Aldershot: Ashgate Publishing Limited, 2005), 1-33.

<sup>29</sup> *Ibid.*, 22-23.

<sup>30</sup> *Ibid.*, 16. As Bancroft notes, particularly in the North-Western states of Europe, the 'vagrant' or 'nomad' was central to this concern: "The construction of and response to vagrancy illustrated two developments which combined to produce the modern idea of spatial control and order", namely the consolidation of the nation-state as the guarantor of property rights and the emergence of the modern work ethic.

constructed as a threat to a state composed of territorially rooted citizens tied to the land through the bonds of property.<sup>31</sup> The association between the Roma and a peripatetic lifestyle, whether chosen or forced due to persecution, contributed to the construction of these populations as inherently threatening the territoriality of the citizenry and evading the mechanisms of national law.<sup>32</sup>

Secondly, the Roma represented the antithesis of the progressive spirit of modernity and they were perceived as the living embodiment of the backward society within the heart of modernizing Europe.<sup>33</sup> The Enlightenment desire for progress had the effect of constituting a second dichotomy within the modernizing, 'civilizing' project, as those societies and peoples who did not appear to conform to this project were deemed 'backward' and incapable of civilizing.<sup>34</sup> Thirdly, the construction of the Roma as the 'internal outsiders' of Europe was articulated through a process of racialization, through which the Roma were constructed as the visible 'Other' threatening the racial homogeneity of the nation-state. Although the Roma came to be incorporated into different 'races' in various specific historical and social contexts in Europe, notably sometimes being associated with whiteness and sometimes with blackness, they generally served as visible and embodied figures of opposition to the white citizen, who was modern, civilized and rooted.<sup>35</sup> The racialization of the Roma thus proved useful in assisting with classifying

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<sup>31</sup> Bancroft argues that European states have managed this perceived violation of the spatial order by requiring that "Gypsies either have to stop being Gypsies (spatial control) or go and be Gypsies somewhere else (spatial exclusion)." See *Ibid.*, 122.

<sup>32</sup> It is important to emphasize that the distinction among various forms of peripatetic lifestyles between "nomadism"—often perceived to be a feature of cultural expression—and "migration" or "forced migration", usually seen to result from discrimination, maltreatment and economic hardship, may be more artificial than analytically accurate. On the challenge of identifying the various factors leading to the movement of Roma populations, see Guet, "Challenges", 77-79.

<sup>33</sup> The European modernity project was characterized by the ways that it revolutionized society's productive capacity, fuelled by a belief that progressive change was possible as a result human innovations in technology and production, a notion so powerful that "the extent to which social-technological forces [were] able to dominate nature and society [was] equated with progress. See Bancroft, *Roma*, 25.

<sup>34</sup> Indeed, backwardness became a moral category requiring a moral response on the part of Europeans to eradicate this problem from the new, progressive world. This phenomenon was of course particularly salient to colonization as a justification for the appropriation and destruction of colonized lands and peoples.

<sup>35</sup> *Ibid.*, 34-37.

individuals according to the European/Other dichotomy and its attendant normative categories.

Finally, and as a result of these processes, the transition from the feudal system entailed the development of a new political ideal, namely that of the settled, property-owning, civil, hard-working citizen of the state. In order to consolidate this identity and assign normative value to it, the state required an oppositional 'Other' through which to contrast the ideal citizen. The Roma fulfilled this role and were perceived and treated as a non-contributing, lazy, troublesome group who were permanently 'un-civilizable', an eternally backward peoples incapable of adapting to the force of progress. Therefore, just as the 'alien', 'exile', or 'refugee' served as an indeterminate but threatening 'Other' to the citizen of the territorial state, the Roma came to represent within the sphere of European modernity the physical, internal incarnation of opposition not just to the territorial order but to the very essence of modernity.<sup>37</sup> The legacy of modernity with respect to the Roma is such that even though many salient aspects of the modern movement have been contested in Europe, the processes of socio-spatial control and segregation, racialization and identity formation outlined here continue to function to exclude the Roma.<sup>38</sup> Indeed, Bancroft argues that the Roma continue to be "thought of as utterly outside European society" and as "almost supernaturally disruptive to the social order."<sup>39</sup>

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<sup>37</sup> David Fraser argues that "their lack of attachment to a land, a territory, despite there [sic] citizenship status in various European countries, their deterritorialized existence, interrogates and challenges the sanctity and relevance of the border and of the law as mechanisms for constituting and defining the nation-state." See Fraser, "To belong or not to belong", 590.

<sup>38</sup> For example, in the post-modern period of the second half of the 20<sup>th</sup> century, particularly since the end of the Cold War, new modes of management of space have emerged, as sovereign states create "light zones and dark zones, in which marginalized populations are pushed into dark zones, where they are left to their own devices" and effectively excluded from the obligations of the state. In states such as the Czech Republic and UK, the Roma have been increasingly been forced into these 'ungovernable spaces' in the service of 'spatial cleansing' aimed at making as many spaces 'light zones' as possible. See Bancroft, *Roma*, 122. Some states have adopted other strategies of governance of this 'internal outsider'. Isabella Clough Marinaro argues that in Italy, the Roma have increasingly been subject to biopolitical control by the state, as they have been forced "to reside in relatively safe but isolated state-run camps in which their private lives are under the constant scrutiny and control of the authorities, or to become internal exiles, bare life in a condition of constant flight from the police and vigilante attacks." Isabella Clough Marinaro, "Between Surveillance and Exile: Biopolitics and the Roma in Italy," *Bulletin of Italian Politics* 1, no. 2 (2009): 265.

<sup>39</sup> Angus Bancroft, "Closed Spaces, Restricted Places: Marginalisation of Roma in Europe," *Space & Polity* 5, no. 2 (2001): 147.

In practical terms, the response of states in which Roma reside—which are mostly located in Central and Eastern Europe—to ‘managing’ this ‘internal outsider’ has alternatively been to enact policies either of assimilation, containment or exclusion, which have operated “side by side during the same period in different states, or even simultaneously, seemingly in mutual contradiction, within a given state.”<sup>40</sup> The result of the processes of ‘Othering’ to which the Roma have been subjected, and the concomitant attempts of various states to manage this Otherness through coercive policies, all of which has been refracted through the lens of widespread social discrimination and anti-Roma hatred, is that the Roma are the most excluded and mistreated people in Europe.<sup>41</sup> The Roma have not only been relegated to occupying marginalized “dark” spaces outside the bounds of the regular polity, but they also experience extremely high levels of poverty, unemployment, illiteracy, racially motivated violence and other socio-economic problems.<sup>42</sup> Although, as Barany demonstrates, state policies in Eastern Europe toward the Roma are historically significantly varied, and pressure from the EU, the international community and Roma and non-Roma nongovernmental organizations since the mid-1990s in particular have helped put the condition of Roma on the agenda of these states, these

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<sup>40</sup> Liégeois and Gheorghe, cited in Bancroft, *Roma*, 27. In particular, the 20<sup>th</sup> century saw the crystallization of attempts by the state to either establish assimilative and regulative policies based on the construction of the Roma as a social problem, or remove or destroy them as a racial other, often by paradoxically tying them to the land while simultaneously denying them access to their own land. See *Ibid.*, 28 and 149.

<sup>41</sup> See for example, James A. Goldston, “Roma Rights, Roma Wrongs,” *Foreign Affairs* 81, no. 2 (2002): 146-148.

<sup>42</sup> Since the end of the Cold War, the living conditions of the majority of Roma, across European states, have deteriorated at a rapid rate, and although data is difficult to verify due to methodological challenges, a 2005 publication by the World Bank held that “the collapse of their living conditions is unprecedented” since 1989. See Dena Ringold, Mitchell A. Orenstein and Erika Wilkens, *Roma in an Expanding Europe: Breaking the Poverty Cycle* (Washington: The International Bank for Reconstruction and Development/The World Bank: 2005), xiii. The Roma as an admittedly highly diverse group are “poorer than other groups, more likely to fall into poverty, and more likely to remain poor. In some cases, Roma poverty rates are more than 10 times that of non-Roma. A recent survey found that nearly 80 percent of Roma in Bulgaria and Romania were living on less than \$4.30 per day.” Ringold, Orenstein and Wilkens, *Roma*, xiv. Among the Roma of Southeast Europe, two out of five Roma do not attend primary school (compared to 1 in 20 non-Roma), three quarters of Roma women do not complete primary school and one-third is illiterate (compared to one in five non-Roma women and 1 in 20 non-Roma women, respectively). See United Nations Development Programme Regional Bureau for Europe, *At Risk: Roma and the Displaced in Southeast Europe*, (Bratislava: UNDP Regional Bureau for Europe and the Commonwealth of Independent States, 2006), 29. For more on the lack of access to education, as well as to housing and employment, see UNDP, *At Risk*, 55, and Ringold, Orenstein and Wilkens, *Roma*, 38. On the methodological challenges associated with research on the Roma, see for example Barany, *East European Gypsies*, 6-8.

policies have been of extremely limited effectiveness in improving the lot of the Roma.<sup>43</sup> Since the end of the Communist period and the collapse of socialist regimes in Europe, the Roma have been “left exposed—to the ruthless logic of a fledgling market economy in which they were made redundant, to the moral vacuum of a legal interregnum in which they were left defenceless against an upsurge of murderous racism and to democratically elected governments which were uninterested in a constituency without electoral power.”<sup>44</sup> This changing political context has been characterized by increasing violence against Roma in states throughout Europe, by persistent anti-Roma sentiment among the public and political figures, and by a failure of these states to adequately address acts of violence and persecution, despite the initiation of national-level programs to do so.

Firstly, as Barany points out, “one of the most troubling developments in postcommunist Eastern Europe has been the large number of violent attacks on the Roma and their property.”<sup>45</sup> Human rights organizations and international media have documented these abuses in countries throughout Europe, including the Czech Republic, Kosovo, Hungary, Serbia, and Bulgaria.<sup>46</sup> Indeed, despite the accession of Central and Eastern European states to the EU and their attendant efforts to be perceived to be upholding human rights through the implementation of various initiatives to improve the social status of the Roma, there are very recent reports of continuing violence against Roma and of the authorities’ willingness to tolerate it. For example, in his report to the Council of

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<sup>43</sup> Barany attributes this failure to “the magnitude of the Gypsies’ difficulties and the differences between their value system and that of the majorities, the depth of societal prejudices, the divisions within political elites, and the dearth of available resources.” Barany, *East European Gypsies*, 353.

<sup>44</sup> Will Guy, “Introduction,” in *Between Past and Future: the Roma of Central and Eastern Europe*, edited by Will Guy (Hertfordshire: University of Hertfordshire Press, 2001), xv.

<sup>45</sup> Barany, *East European Gypsies*, 195.

<sup>46</sup> See Human Rights First, *Violence Against Roma: 2008 Hate Crime Survey* (New York: Human Rights First, 2008); “Kosovo: Investigate Attacks on Roma,” *Human Rights Watch*, 7 September 2009, [www.hrw.org](http://www.hrw.org); “OSCE human rights body concerned about anti-Roma violence in Italy,” *Organization for Security and Cooperation in Europe*, 16 May 2008, [www.osce.org](http://www.osce.org); “Roma girl burnt in neo-Nazi attack leaves hospital,” *Dalje*, 2 December 2009, [www.dalje.com](http://www.dalje.com); Adam LeBor, “Roma families experience the dark side of the Velvet Revolution,” *The Times Online*, 21 November 2009, [www.timesonline.co.uk](http://www.timesonline.co.uk); Eric Westervelt, “Wave of Violence Strikes Eastern Europe’s Gypsies,” *National Public Radio*, 2 September 2009, [www.npr.org](http://www.npr.org); “Czech Police Stop Rioters from Attacking Roma Camp,” *Spiegel Online*, 18 November 2008, [www.spiegel.de](http://www.spiegel.de).

Europe in February 2010, the Rapporteur on the situation of Roma, József Berényi, presented evidence of extensive violence targeted specifically at Roma individuals in many member states, and of the complicity or tolerance of state authorities in or toward the violence.<sup>48</sup> Moreover, the violence—some instances of which would likely amount to persecution under the 1951 Convention Relating to the Status of Refugees—is not limited to the new EU states, as is often thought, but occurs in older EU states as well, including France, Greece and Italy.<sup>49</sup>

Secondly, the post-Communist context in Europe is also plagued by the continued prevalence and acceptance of anti-Roma sentiment and commentary in the public, media and political realms. Anti-Roma sentiment is deep-rooted and widespread in many societies throughout Europe. Zoltan Barany states categorically that “there can be no doubt—and a slew of opinion polls support this conclusion—that the majority of people in Eastern Europe, as elsewhere, harbor extremely negative attitudes toward the Roma.”<sup>50</sup> Popular views tend to characterize Roma using “negatively marked stereotypes”, as Gail Kligman found in her study of non-Roma perceptions of Roma in Eastern Europe, such as that “they are ‘dirty’, ‘uncivilized’, ‘not to be trusted’, ‘immoral’, ‘thieves’.”<sup>51</sup> The processes of ‘Othering’ the Roma have been so powerful that these views have become naturalized,

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<sup>48</sup> József Berényi, “The situation of Roma in Europe and relevant activities of the Council of Europe.” *Committee on Legal Affairs and Human Rights*, Council of Europe, Parliamentary Assembly Doc. 12174, 26 February 2010.

<sup>49</sup> See for example, Berényi, “The Situation of Roma”, 9 and 12, “Report of the Independent Expert on Minority Issues, Gay McDougall : addendum : mission to Greece (8-16 September 2008)”, UN Human Rights Council, 18 February 2009, A/HRC/10/11/Add.3, <http://www.unhcr.org/refworld/docid/49b7b2e52.html>; Human Rights First, *2008 Hate Crime Survey* and European Roma Rights Centre, *Always Somewhere Else: Anti-Gypsyism in France*, Country Report Series, No. 15: November 2005.

<sup>50</sup> Barany, *East European Gypsies*, 189. However, it is important to emphasize the diversity of experiences of historical and current discrimination of the Roma in various parts of Europe. As Nicolae Gheorghe and Thomas Acton point out, pejorative stereotypes of the Roma vary between Eastern and Western Europe, “though both are overlain with nineteenth century romantic racism. In south-eastern Europe the Gypsy was seen as a slave, someone shiftless, ignorant and stupid, an image quite similar to the created by American anti-Black racism. The north-western European stereotype was more like a down-market version of anti-Semitism in which the Gypsy was seen as a cunning fox, but, unlike the Jews, illiterate.” Nicolae Gheorghe and Thomas Acton, “Citizens of the world and nowhere: Minority, ethnic and human rights for Roma during the last hurrah of the nation-state”, in *Between Past and Future: the Roma of Central and Eastern Europe*, 61. Bancroft is equally unequivocal about the non-Roma perception of the Roma in Europe and beyond: “Despite the heterogeneity of Roma and Gypsy-Traveller populations, there is one constant between almost every group in Europe and America: the low position in which they are held by settled people. It is not an exaggeration to say that anti-Traveller and anti-Roma feeling permeates the consciousness of every European society, as evidenced by the rising wave of racial violence against them that has spread since the revolutions of 1989 and the resurgence of nationalism in Europe.” See Bancroft, *Roma*, 47.

<sup>51</sup> Gail Kligman, “On the Social Construction of “Otherness”: Identifying “The Roma” in Post-Socialist Communities,” *Review of Sociology* 7, no. 2 (2001): 62-63.

serving to essentialize these negative stereotypes, as “prejudice against Roma is customarily predicated on racialized, socio-cultural ‘features’ attributed to them by others”.<sup>52</sup> In particular, skin colour has played a central role in the identification and essentialization of this population, where “skin color seemingly connotes genetically determined practices and ways of living that, in other contexts, are thought to be culturally or socially constructed, including ‘identity’. Roma are, ‘by nature’, essentialized.”<sup>53</sup>

Furthermore, it is in some cases seen as either socially appropriate or indeed beneficial, particularly among certain political actors, to adopt an expressly anti-Roma stance—a perspective that “poisons public discourse” and is “not always confined to the fringes.”<sup>54</sup> For example, James A. Goldston provides the following illustration of the political acceptability of expressing overt anti-Roma views: “Vadim Tudor, a member of the Romanian parliament who won more than a quarter of the vote in the 2000 presidential election, reportedly stated, “We are not interested in what Gypsies want. All [Gypsies] should be put in jail. There is no other solution.””<sup>55</sup> More recently, in February 2010, Minority Rights Group International reported that Romanian Foreign Minister Teodor Baconschi said, “We have some natural, physiological problems, of criminality within some of the Romanian communities, especially among the communities of the Romanian citizens of Roma ethnicity.”<sup>56</sup> In March 2009, Slovakian officials made statements denouncing the educational abilities of Roma children and stereotyping them as adopting “bad habits in their early childhood.”<sup>57</sup> Finally, human rights groups in Europe in July 2010 criticized the EU for failing to intervene following decisions by member states, including France and

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<sup>52</sup> Kligman, “Otherness”, 62.

<sup>53</sup> *Ibid.*, 62.

<sup>54</sup> Goldston, “Roma Rights”, 155.

<sup>55</sup> *Ibid.*, 155.

<sup>56</sup> “Pro-Roma NGOs demand resignation of Romanian Foreign Minister,” *Minority Rights Group International*, 24 February 2010, [www.minorityrights.org](http://www.minorityrights.org).

<sup>57</sup> Daniel Stanislav, “Tolerance to Racism in Slovakia,” *Roma Rights Journal* 1 (2009): 37.

Sweden, to round up and expel Roma from their territory.<sup>58</sup> French Interior Minister Brice Hortefeux stated that “illegal Gypsy camps” will be systematically evacuated, calling them sources of “trafficking, exploitation of children and prostitution”, and President Nicolas Sarkozy issued a statement citing the “unacceptable situation of lawlessness that characterises the Roma people who come from Eastern Europe onto French territory”.<sup>59</sup> Such flagrant racism and anti-Roma rhetoric is indicative of the persistently negative mainstream views toward Roma, despite growing efforts on the part of international institutions and non-governmental organizations to combat anti-Roma sentiment.<sup>60</sup> Moreover, the emergence of influential far-right parties with an explicit anti-Roma stance in states such as Hungary underscores the xenophobic movement emerging in Europe that has had only nefarious impacts on the status of the Roma.<sup>61</sup>

Finally, while states in Eastern Europe in particular are taking steps—more than ever before—to combat such stereotyping and to improve the living standards of Roma, CoE Rapporteur Berényi also found that national initiatives, including the Decade of Roma Inclusion in the Czech Republic, which is halfway through its five-year mandate, and the Government Strategy for the Improvement of the Situation of the Roma in Romania, have not been effectively implemented. Indeed, Berényi, found that the Czech government officials across various ministries with whom he met did not appear to be very familiar with the Decade initiative, and “no one was even able to mention any concrete positive

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<sup>58</sup> Leigh Phillips, Kate Connolly and Lizzy Davies, “EU turning blind eye to discrimination against Roma, say human rights groups,” *The Guardian*, 30 July 2010, [www.guardian.co.uk](http://www.guardian.co.uk).

<sup>59</sup> Jenny Barchfield and Cecile Roux, “Sarkozy orders illegal Roma immigrants expelled,” *Associated Press*, 28 July 2010, [www.google.com/hostednews/ap](http://www.google.com/hostednews/ap), and Rob Kushen, “Scapegoating will not solve ‘Roma problem’,” *The Guardian*, 3 August 2010, [www.guardian.co.uk](http://www.guardian.co.uk).

<sup>60</sup> For example, the EU has adopted the Platform for Roma Inclusion, which is intended to facilitate “an exchange of good practice and experience between the Member States in the sphere of inclusion of the Roma, provide analytical support and stimulate cooperation between all parties concerned by Roma issues, including the organisations representing Roma, in the context of an integrated European Platform”. See “Platform for Roma Inclusion,” *European Commission*, 7 August 2010, [www.ec.europa.eu/social](http://www.ec.europa.eu/social). A number of NGOs have loosely organized to form the EU Roma Policy Coalition, aimed at advocating on behalf of European Roma and promoting anti-discrimination and social inclusion.

<sup>61</sup> Goldston, “Roma Rights”, 150 and Dominic Hughes, “Growing marginalisation of Hungary’s Roma,” *BBC From Our Own Correspondent*, 29 August 2009, [www.news.bbc.co.uk](http://www.news.bbc.co.uk).



result based on this action plan.”<sup>62</sup> The EU Roma Policy Coalition reported in March 2010 that European initiatives to address the “intensifying discrimination” and “systemic socio-economic exclusion” of Roma across Europe have had a “questionable impact” on their status, and that there has been no real progress on enhancing inclusion of Roma.<sup>63</sup> One of the greatest obstacles to effective implementation of these strategies is the disjuncture between the national and local levels of governance. As Mit’a Castle-Kaněrova points out in her study of Czech asylum-seekers, the inability of local authorities to “devise adequate solutions” to combat anti-Roma violence remains one of the greatest barriers to reducing discrimination against Roma.<sup>64</sup>

It is in this complex context of socio-economic marginalization, extreme exclusion and anti-Roma sentiment within Europe that some Roma are attempting to claim refugee status. Since the end of the Cold War in particular, there has been an increased westward migration of Roma, particularly to northern and western Europe and the UK, and to the United States, Australia and Canada. Many of these Roma have claimed asylum in these states, most often on the basis of discrimination amounting to persecution in access to housing, employment and education, as well as racially motivated violence by skinheads and their state’s inability or unwillingness to protect them from these non-state actors.<sup>65</sup> However, it is extremely difficult to determine with any certainty either the number of Roma seeking refugee protection outside their home states or their rates of recognition as refugees. Firstly, though ethnicity is a common feature of refugee claims made today, most states limit their data collection on asylum to country of origin or nationality, partly due to the analytically problematic nature of ‘ethnicity’ as an objective marker of identity.

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<sup>62</sup> Berényi, “The Situation of Roma”, 15.

<sup>63</sup> “Second EU Roma Summit – ERPC Joint Statement”, *EU Roma Policy Coalition*, 30 March 2010, [www.statewatch.org/news/2010/apr/eu-roma-coalition-joint-statement.pdf](http://www.statewatch.org/news/2010/apr/eu-roma-coalition-joint-statement.pdf).

<sup>64</sup> Mita Castle-Kaněrova, “Round and Round the Roundabout: Czech Roma and the Vicious Circle of Asylum-Seeking,” *Nationalities Papers* 31, no. 1 (2003): 18.

<sup>65</sup> “Roma Asylum-Seekers, Refugees and Internally Displaced,” *United Nations High Commissioner for Refugees*, (Geneva: UNHCR, 2000), 2.

Therefore, data collected by home states do not include accurate statistics on Roma claims. Secondly, because of the refugee interdiction practices carried out by potential host states—which will be discussed below—it is increasingly difficult for Roma refugees to actually arrive on host state territory in order to make a refugee claim in the first place. For these two reasons, accurate data on Roma refugee cases is not available and can only be somewhat approximated using country of origin statistics, as the UNHCR did in the 2000 report cited above.<sup>67</sup>

With these caveats in mind, a few numbers can be provided to give a clearer sense of the scope of Roma asylum claims in the post-Cold War period. The UNHCR reports that there were 2,239 Bulgarian refugees in 2004, almost twice that, 4,254, in 2005, and 2,745 in 2009. The number of refugees originating in the Czech Republic has fluctuated much more than this, jumping from 1,179 in 2001 to 6,984 in 2002, then declining yearly since then to only 1,067 in 2009. In 2000, there were only 518 Hungarian refugees, but this number jumped to 3,517 in 2002 and remained generally above 3,000 until 2009, when it also dipped to 1,614. The UNHCR also reports that there were between 10,000 and 20,000 refugees from Poland between 2002 and 2006, with the number declining to 2,391 in 2009. In 2002, there were 8,846 refugees from Romania, 11,502 in 2005 and 4,358 in 2009. Finally, the number of Slovak refugees also rose in the mid-2000s from 191 in 2001 to 791 in 2005, falling again in 2009 to 334.<sup>68</sup> It is important to emphasize, though, that this does not reflect the number of asylum *claimants*, only those recognized as refugees by host

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<sup>67</sup> Please note that these figures do not include only Roma refugees, as there are other types of claims originating from these same states made on different bases of persecution, for example on the basis of membership in a non-Roma ethnic minority, or persecution by organized criminal groups. However, it is likely that the substantial majority of claims from Eastern Europe are Roma, so this means of approximating the number of Roma refugees using country of origin data is the best available way of estimating the number of Roma refugees and claimants.

<sup>68</sup> While many of these figures show a decline in the number of refugees originating from Europe over the past two decades, this should not be taken to mean that there are necessarily less Roma refugees seeking protection from persecution. Rather, the decline in the number of refugees from these states is likely in part indicative of the effectiveness of measures taken by host states to restrict access to asylum, both within and outside of Europe, as will be discussed in the following section.

states.<sup>69</sup> The applications for asylum lodged in Western host states by Central European claimants should also be noted. In a 2009 report, the UNHCR states that the countries of origin with the highest increase in refugee claims that year were Hungary (+697% from 350 in 2008 to 2,800) and the Czech Republic (+134% from 900 to 2,100).<sup>70</sup> According to the report, almost all of these claims were lodged in Canada by Roma claimants.<sup>71</sup> Claimants from Eastern and Central Europe who may be Roma are also seeking asylum in the United Kingdom, the United States, and Australia.<sup>72</sup> It appears that every year over the past decade, thousands of Roma have sought refugee protection in other countries, thus becoming uniquely vulnerable figures in international society, as they represent a particular, double threat to the territorial state order, both in terms of their being Roma and their being refugees.<sup>73</sup>

In addition to their double exclusion as Roma and refugees, the status of this group is further complicated by the fact that many Roma are stateless individuals not officially recognized as citizens. According to the 1951 Geneva Convention Relating to the Status of Stateless Persons, a stateless individual is “a person who is not considered as a national by any State under the operation of its law.”<sup>74</sup> The status of belonging to a state, which has been recognized as a fundamental human right and embedded within an array of international human rights instruments, is starkly contrasted by the status of statelessness,

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<sup>69</sup> The data for these countries of origin are provided as they are cited by the UNHCR as the key source countries for Roma asylum-seekers.

<sup>70</sup> “Asylum Levels and Trends in Industrialized Countries 2009: Statistical Overview of asylum applications lodged in Europe and selected non-European countries,” *United Nations High Commissioner for Refugees*, 24 March 2010, [www.unhcr.org](http://www.unhcr.org), 10-12.

<sup>71</sup> *Ibid.*, 12.

<sup>72</sup> “UNHCR Statistical Online Population Database,” *United Nations High Commissioner for Refugees*, 20 July 2010, [www.unhcr.org](http://www.unhcr.org).

<sup>73</sup> The Geneva Convention and Protocol Relating to the Status of Refugees defines as a refugee any person who “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country”. UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, [www.unhcr.org/refworld/docid/3be01b964.html](http://www.unhcr.org/refworld/docid/3be01b964.html).

<sup>74</sup> UN General Assembly, Convention Relating to the Status of Stateless Persons, 28 September 1954, United Nations, Treaty Series, vol. 360, [www.unhcr.org/refworld/docid/3ae6b3840.html](http://www.unhcr.org/refworld/docid/3ae6b3840.html). Statelessness can be either *de jure*, meaning that the individual is not recognized as a national by any state, or *de facto*, meaning that the individual “might have legal claim to the benefits of nationality but [is] not, for a variety of reasons, able to enjoy these benefits.” *De facto* statelessness, which has not been formally recognized under the legal definition of the Convention on Statelessness, “can occur when governments withhold the usual benefits of citizenship, such as protection, and assistance, or when persons relinquish the services, benefits, and protection of their country.” David Weissbrodt and Clay Collins, “The Human Rights of Stateless Persons,” *Human Rights Quarterly* 28, no. 1 (2006): 252.

long considered, in Hannah Arendt's terms, a situation of lacking "the right to have rights".<sup>75</sup> In the context of the international state system, the right of citizenship or nationality "is important because many states only allow their own nationals to exercise full civil, political, economic, and social rights within their territories. Further, nationality enables individuals to receive their nation's protection both domestically and internationally and allows a state to intercede on behalf of a national under international law."<sup>76</sup> In contrast, the stateless person, though recognized as having human rights under international law, has no state against which it can claim citizenship. The status of statelessness currently affects a large number of Roma, making them particularly vulnerable to social exclusion and precluding them from accessing the protection of a home state. Although the prevalence and causes of statelessness among the Roma vary widely among post-communist states, many Roma have been adversely impacted by nationality laws depriving them of citizenship status, particularly since the collapse of the Soviet Union.<sup>77</sup> For example, in 1993 the Czech Republic's widely criticized Citizenship Law classified most of the 200,000 Roma residing there as Slovaks—whether or not they were in fact born there—and established a series of complicated bureaucratic obstacles to make it extremely difficult for Roma to acquire Czech citizenship.<sup>78</sup> A number of other East European states have also taken active measures to render Roma populations stateless, including Croatia, Macedonia and Slovenia.<sup>79</sup> In the latter state, in 1992 "the Ministry of the Interior of the Government of Slovenia surreptitiously removed the files of many non-

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<sup>75</sup> Hannah Arendt, *The Origins of Totalitarianism* (Cleveland: The World Publishing Company, 1958), 296.

<sup>76</sup> Weissbrodt and Collins, "Human Rights", 248.

<sup>77</sup> Jasminka Dedic, "Roma and Statelessness," *European Parliament – Committee on Civil Liberties, Justice and Home Affairs*, (Brussels: EU, 2007), 2; Thomas Hammamberg, "Many Roma in Europe are stateless and live outside social protection," *Université de Montréal – Chaire de recherche du Canada en droit international des migrations*, 6 July 2009, [www.cerium.ca](http://www.cerium.ca); Jirina Siklova and Marta Miklusakova, "Denying Citizenship to the Czech Roma," *East European Constitutional Review* 7, no. 1 (1998); and Adam M. Warnke, "Vagabonds, Tinkers and Travelers: Statelessness Among the East European Roma," *Indiana Journal of Global Legal Studies* 7, no.1 (2000), 356-362.

<sup>78</sup> Barany, *East European Gypsies*, 310.

<sup>79</sup> Claude Cahn and Sebihana Skenderovska, "Roma, Citizenship, Statelessness and Related Status Issues in Europe," *Briefing Paper for Expert Consultation on Issues Related to Minorities and the Denial or Deprivation of Citizenship, 6-7 December 2007, Convened by the UN Independent Expert on Minority Issues, National Roma Centrum*, 7 April 2008, [www.nationalromacentrum.org](http://www.nationalromacentrum.org).

Slovene Roma from registers of the permanent residents of Slovenia...[which] had the effect of making the “erased persons,” also known as “the erased,” appear, at least on paper, as former permanent residents who no longer reside in Slovenia for reasons such as death or permanent emigration.”<sup>80</sup>

The impacts of statelessness on affected Roma are highly paradoxical. In particular, stateless people in general face considerable challenges, such as lack of access to education, property rights and health care; lack of free movement; and increased vulnerability to crimes such as trafficking.<sup>81</sup> Audrey Macklin argues that statelessness is “the limit concept against which citizenship defines itself”, and that refugee protection decision-makers have in practice failed to recognize the singularity of statelessness as a legal category, but rather have “[assimilated] stateless persons into the category of alien vis-à-vis the country of former habitual residence...neglecting the fact that an alien, in principle, has somewhere else to go (the state of citizenship) while the stateless person does not.”<sup>82</sup> There is thus a clear danger that stateless refugees may be subjected to prolonged detention.<sup>83</sup> Given the fact that so many Roma have been stripped of their nationality over the past two decades, the problems of statelessness render them particularly vulnerable in this sense when they flee their countries of residence as refugees. However, as will be further discussed below, statelessness may also paradoxically *enhance* Roma refugees’ access to asylum within Europe, due to the harmonization of EU asylum policy, as only stateless people or third country nationals have access to surrogate protection within the EU. Nonetheless, statelessness also limits refugees’ access to asylum outside of the continent, as it generally

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<sup>80</sup> Weissbrodt, and Collins “Human Rights”, 264.

<sup>81</sup> “Stateless People – Searching for Citizenship” and “What is Statelessness?” *United Nations High Commissioner for Refugees*, 2010, [www.unhcr.org](http://www.unhcr.org).

<sup>82</sup> Audrey Macklin, “Who is the Citizen’s Other? Considering the Heft of Citizenship,” *Theoretical Inquiries in Law* 8 (2007): 344.

<sup>83</sup>As Weissbrodt and Collins point out, stateless people who leave their country of habitual residence are often subjected to prolonged detention in another state as they may be prevented from reentering the former. The detaining state is often unwilling to allow the stateless person to reside in its territory illegally, and thus turns to indefinite detention as the solution to the question of where to send them. See Weissbrodt and Collins, “Human Rights”, 264, 267-268 and Macklin, “Citizen’s Other?” 345.

makes (legal) travel across borders extremely difficult.<sup>84</sup> Statelessness thus has significant and paradoxical implications for Roma refugees.

Given their status as outsiders internally within Europe as Roma and as outsiders in-between sovereigns seeking asylum, these refugees face a logic of double exclusion that manifests itself in distinct and troubling ways as they attempt to escape persecution. In other words, Roma refugees represent a double threat to the territorial state order, and they are therefore subject to exclusionary measures and practices aimed at both Roma and at refugees more generally, which intersect to potentially exclude Roma refugees from seeking protection.

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<sup>84</sup> Weissbrodt and Collins, "Human Rights", 266.

## 4 Double exclusion in practice

Located at the juncture of the state's fears from within and from without, the Roma refugee is subject to a double exclusion that operates at three distinct levels: firstly, at the level of Roma refugees' countries of origin in Europe, the international system is shifting to preclude the very existence of these refugees, through the harmonization of European asylum policy and its denial that Europe produces refugees; secondly, at the level of the countries of destination, host states enact measures to prevent these refugees from claiming protection, through interdiction measures targeting refugees in general and Roma in particular; and thirdly, at the level of refugee status determination, there are decision-making practices that unjustifiably exclude some Roma from protection based on stereotyping and problematic notions of ethnic identification.

Before assessing these factors, it is critical to also highlight the specific exclusionary discourse that has developed around Roma refugee claims. In Canada in particular, a discourse has emerged within the media and at the political level that portrays Roma asylum-seekers as illegitimate migrants inherently threatening the state order. According to Castle-Kaněrova, "Romani asylum seekers are perceived as economic migrants taking advantage of the benefits of Western social security systems: hard-nosed, organized, unscrupulous cheats."<sup>85</sup> A 2001 statement by Citizenship and Immigration Canada, outlining why it was imposing a visa requirement for Hungarian nationals, clearly demonstrates this perspective, stating that "until a final determination is made, these persons [Hungarian refugee claimants] have access to Canada's generous health care and welfare benefits. In some instances, these persons have also engaged in criminal activity."<sup>86</sup> In July 2009, just prior to the government's decision to reinstate a visa requirement for the

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<sup>85</sup> Castle-Kaněrova, "Round and Round", 21

<sup>86</sup> "Regulations Amending the Immigration Regulations, 1978 - Regulatory Impact Analysis Statement," *Canada Gazette* 135, no. 26 (2001).

Czech Republic, Canadian Citizenship and Immigration Minister Jason Kenney stated that this country is “hardly an island of persecution in Europe”.<sup>87</sup> Editorials covering that period talk about “floods” of Roma refugees, concerns about them “clogging the process for true refugees”, the difficulty of seeing “what grounds a...Czech would have for seeking refugee status in Canada”, and that Roma do not “usually” face persecution “to the degree that would justify a refugee claim”.<sup>88</sup> An article from March 2010 in the *Globe and Mail* stated that Canada was “forced to impose visa restrictions on Mexico and the Czech Republic to deal with the flood of questionable refugee seekers from those countries”, clearly implying that claimants from these states should be seen as likely economic migrants, rather than potential refugees with claims to protection under the 1951 Convention.<sup>89</sup> It is not clear how such perspectives have gained such widespread currency, given that the success rates of Czech Roma claims have been consistently extremely high over the past two decades in Canada.<sup>90</sup> Therefore, while the Canadian state has consistently recognized Czech Roma claims to surrogate protection, a discourse has simultaneously been erected around these claimants denouncing them as potentially illegal migrants seeking to take advantage of Canada’s “light” refugee determination policy, and as simply “in search of an easier life”—rather than one free from persecution.<sup>91</sup> While this is only a cursory overview of the

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<sup>87</sup> Peter O’Neil, “Canada to Reinstate visa requirement for Czech visitors,” *National Post*, 2 July 2009, [www.nationalpost.com](http://www.nationalpost.com). Kenney’s comments have attracted a great deal of criticism, and it is argued that they potentially jeopardize the independence of the Immigration and Refugee Board, and in fact constitute political interference in the refugee determination process. Indeed, a negative refugee decision was in fact appealed in June 2010 based on the argument that Minister Kenney’s comments “raise a serious concern over an apprehension of bias”. The appeal was dismissed by the Federal Court of Appeals. See *Dunova v. Canada*, 2010 FC 438.

<sup>88</sup> “Make room for real refugees,” *Winnipeg Free Press*, 16 July 2009, [www.winnipegfreepress.com](http://www.winnipegfreepress.com); Alan Caplan, “Refugee Claimants Cost Billions,” *Edmonton Sun*, 27 July 2009, [www.edmontonnews.com](http://www.edmontonnews.com); Peter O’Neil, “Canada Flooded with Czech Roma Refugee Claims,” *Canwest News Service*, 15 April 2009, [www.canada.com](http://www.canada.com).

<sup>89</sup> Gloria Galloway, “List of ‘safe countries’ among refugee proposals,” *Globe and Mail*, 30 March 2010, [www.globeandmail.com](http://www.globeandmail.com). An editorial from the *National Post* in March 2010 echoes this perspective, claiming that “Canada’s policy of granting a refugee hearing to anyone who can get here, by hook or by crook, constitutes a grotesque waste of resources. An astonishing 16% of all refugee claimants in 2009 came from European Union nations, and 2% of successful claims. Clearly it is past time to say, “no more.” Banning claims from EU nationals would free up resources to devote to the world’s neediest people”. The article goes on to argue that while Roma do sometimes face persecution in Europe, “it’s tough to say that’s Canada’s problem, as opposed to one for the European Union and its enormously powerful human rights apparatus”. See “National Post editorial: No More EU Refugee Claims,” *National Post*, 29 March 2010, [www.network.nationalpost.com/NP/blogs/fullcomment](http://www.network.nationalpost.com/NP/blogs/fullcomment).

<sup>90</sup>For example, prior to the 1997 visa requirement imposition, the IRB success rate for Czech claims was over 90%, and in 1996, 100%. Gerald Kernerman, “Refugee Interdiction Before Heaven’s Gate,” *Government and Opposition* 43, no. 2 (2008): 238.

<sup>91</sup> Squire, *Exclusionary Politics*, 12-14 and Bancroft, *Roma*, 103. Even in Canadian academia, one can find anti-Roma refugee statements, such as the following from Daniel Stoffman: “Are the Czech Gypsies refugees? According to reports, some have been murdered by Czech



discursive practices surrounding Roma refugees in one key recipient state, it highlights how the exclusionary measures detailed below can be legitimized and rendered politically palpable.

#### 4.1 EU asylum policy and the preclusion of European refugeehood

One of the most significant developments of the past decade concerning the ability of Roma refugees to access refugee protection is the harmonization of EU asylum policy and the concomitant denial that refugees originate from within the continent. With the signing of the Amsterdam Treaty in 1997, European Union member states signaled a renewed commitment to harmonization of asylum and migration policy, which had been created under the Maastricht Treaty.<sup>92</sup> This Treaty provided the legal basis for the implementation of an Area of Freedom, Security and Justice (AFSJ), and set out a number of key measures that formed the nuts and bolts of a harmonized, binding asylum policy for EU members.<sup>93</sup> These measures set out, among others, criteria for determining which member state should hold responsibility for processing asylum claims and assessing the need for protection, as well as minimum standards on the integration and entitlements of asylum

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racists. But Canadian natives have been murdered by Canadian racists. Should Canadian natives apply for refugee status in the Czech Republic? Blacks in Toronto have been shot by police and racism is an alleged motivating factor. Should Toronto blacks apply for refugee status in the Czech Republic?... A refugee is not someone who is discriminated against or unhappy or economically disadvantaged - not only Czech Gypsies but hundreds of millions of people in Canada and every other country in the world would be refugees under these criteria." See Daniel Stoffman, "Making Room for Real Refugees," *International Journal* 52, no. 4 (1997): 578-579. Another excellent example of such a perspective is a recent column in the *Toronto Star* from July 2009 that states: "No one doubts that Romas face discrimination, just as natives and visible minorities sometimes do in Canada. But that doesn't make them refugees under the UN Convention - defined as having a well-founded fear of persecution." The editorial goes on to claim that "when you waste time and resources processing refugee claims from (admittedly imperfect) democracies like Israel, Hungary, the Czech Republic and the U.S., you undermine confidence at home and encourage confidence-artists abroad. Bogus claimants impose a huge expense on the taxpayer and bog down the process - burdening legitimate refugees whose cases typically take 18 months." See Martin Regg Cohn, "The Unbearable Lightness of Refugee Policy," *Toronto Star*, 21 July 2009, [www.thestar.com](http://www.thestar.com). Again, given the historically high success rates of Czech refugee claims in Canada, it is not clear how such views are substantiated.

<sup>92</sup> "UNHCR Toolboxes on European Union Asylum Policy: Toolbox 1 - The Fundamentals," *United Nations High Commissioner for Refugees*, November 2003, [www.unhcr.org](http://www.unhcr.org), 97.

<sup>93</sup> *Ibid.*, 98. While previously member states' management of asylum and migration matters had been the subject of non-binding guidelines and recommendations on the part of the EU, the Amsterdam Treaty called for "binding Community legislation in the area of common asylum and migration policy." As a result, policy on refugee protection was now under the rubric of Community law, entailing particular decision-making processes and judicial control at the EU level.

seekers in member states, on procedures used for granting and withdrawing protection, and on temporary protection for displaced third country nationals.<sup>94</sup>

Most significantly for the present discussion, however, is the underlying principle of the AFSJ and its implications for Roma fleeing persecution in a home member state. Specifically, the Amsterdam Treaty and the harmonization of asylum policy hold that each member state should be seen as a safe country of origin by other member states, and thus presume that all refugees granted protection within the AFSJ will be third country nationals rather than EU citizens and that European states do not in fact produce refugees. This presumption was further cemented in the Qualification Directive (EU Directive 2004/83) on minimum standards for the qualification and status of third country nationals or stateless persons as refugees, whereby “only a third country national or a stateless person is eligible for subsidiary protection in a EU member states [sic]”, and citizens of a member state “fall outside the scope of the Directive and are as such precluded from complementary protection.”<sup>95</sup> Underlying this presumption of safety is the fact that all EU member states are considered to be liberal democratic countries where persecution is not tolerated and that, when minorities do face discrimination, the state makes all possible efforts to protect these groups and appropriately punish non-state actors that act in a persecutory manner.<sup>96</sup> Despite this presumption, however, there are clearly still Roma refugees being produced in

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<sup>94</sup> “UNHCR Toolboxes”, 99.

<sup>95</sup> Guet, “Challenges”, 80.

<sup>96</sup> It is important to emphasize, however, that this harmonization of EU asylum policy does not constitute a break in the way refugee-producing states and the presumption of state protection are conceptualized by European countries. Prior to the legal harmonization of EU asylum policy, many European states had already been declaring other European states as ‘safe’, thus precluding refugeehood originating in the continent and allowing the European refugee to be defined out of existence. Safe Country of Origin lists, for instance, were introduced in the early 1990s in a number of EU states, including the UK, Germany and Switzerland, and were intended to speed up the processing of asylum claims from countries deemed ‘safe’, which were thus considered ‘manifestly unfounded’. See Henry Martenson and John McCarthy, “In General, No Serious Risk of Persecution’: Safe Country of Origin Practices in Nine European States,” *Journal of Refugee Studies* 11, no. 3 (1998). Furthermore, David Fraser argues that in England, for example, skinhead-perpetrated violence against Roma has been characterized—as exemplified in the *Horvath v. Secretary of State for the Home Department* case in which a Slovak Roma family’s claim to refugee status was rejected—as violence occurring in the private sphere and thus an unfortunate but necessary feature of modern existence that does not amount to persecution. As “the law and the nation state operate as prophylactics against such violence” in Europe, the law presumes that claims to refugee status originating in these states are not valid, and any racially-motivated violence experienced by Roma in Europe should be understood as privatized violence against which the state cannot ever fully protect individuals, much as it may strive to do so. See Fraser, “To belong or not to belong”, 575.

member states—as the figures presented above attest. The implications of this policy and its underlying assumptions are clearly problematic for Roma who genuinely face persecution and require surrogate protection from another state.

In particular, this safe country presumption denies that refugees may be produced in Europe, rendering Roma claims to refugee protection inherently problematic in the eyes of the international state order. More concretely, it virtually precludes European Roma from seeking refuge in another EU member state, as their claim to refugee status would be rebutted by virtue of their country of citizenship or habitual residence. For example, Michaël Guet notes that 30 Hungarian Roma applied for refugee status in France in April 2009, but their applications were all “rejected simply on the grounds that they originate from an EU member state.”<sup>97</sup> In the context of the exclusionary politics of asylum described earlier, this policy can be understood as the first layer of exclusion Roma refugees face at the moment that they exit their country of persecution: as soon as these refugees are produced, European Community law denies the possibility that they may exist. Indeed, Castle-Kaněrova calls asylum-seeking for Roma in Europe a “no-hope option”.<sup>98</sup> Therefore, in order to successfully claim refugee status and access surrogate protection, Roma refugees may no longer remain on continental soil, but must leave Europe and seek that protection elsewhere.<sup>99</sup>

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<sup>97</sup> Guet, “Challenges”, 81.

<sup>98</sup> Castle-Kaněrova, “Round and Round”, 15. In light of these restrictions to asylum with the EU for European refugees, some could argue that the legal framework of free movement for all EU citizens removes the need to seek surrogate protection, as Roma facing persecution in their country of nationality or residence could simply move elsewhere in the Union. However, although there is indeed freedom of exit for EU citizens, there are still significant restrictions on the right to enter and remain in other member states. Specifically, an EU citizen has the right to remain in another member state only for three months, unless he or she is employed in that state, can prove to the authorities that he or she has sufficient funds to cover the period of residence, and is not considered a threat to the public order. For the Roma, many of whom face severe discrimination with regard to employment and housing throughout Europe, these requirements pose significant obstacles and may result in them simply moving from state to state without ever accessing rights or state protection. See Guet, “Challenges”, 79.

<sup>99</sup> It should be noted that while this analysis focuses on Roma refugees originating in member states of the EU, there have also been a number of Roma in non-EU countries—such as Albania, Macedonia, and Serbia—who have sought refugee status in other states. However, the number remains quite limited, and as these states are unofficial or official candidates for EU membership, they will also adopt harmonized EU asylum policy if and when they in fact join the Union. Therefore, this analysis is focused on the ways in which EU asylum policy harmonization operates to exclude Roma refugees originating in Europe, rather than those Roma from outside Europe trying to seek status within the EU.

## 4.2 Refugee interdiction and exclusionary strategies of host states

Beyond Europe, many host states have put in place measures to preclude many Roma from seeking refugee status at all.<sup>100</sup> Although some of these policies are in principle neutral in that they could be used to prevent *any* refugees from seeking status in a particular host country, they have also been recently used to prevent *specific groups* of refugees, including Roma, from accessing the refugee protection system in that country. The exclusionary nature of the current asylum system has been increasingly manifested in state policy aimed at limiting refugee claims “by interdicting [refugees] before they reach their borders.”<sup>101</sup> This approach—known as a non-entrée regime or what Gerald Kernerman calls “refugee interdiction”—is a key means of restricting access to protection, as wealthy industrialized recipient states who are signatories to the 1951 Convention are required to provide access to a refugee determination process to those who may be fleeing persecution in their home state.<sup>102</sup> Given the human rights ramifications of this obligation, this is an increasingly popular way for these states to reduce the number of refugee claims they must process. Interdiction measures include visa requirements for foreign nationals—with governments denying visas to those they suspect will claim asylum; carrier sanctions on airlines found to be transporting people without valid visas or passports; pre-inspection regimes, or migration policy “by ‘remote control’”, by which airport liaison officers are posted in select foreign airports to pre-screen passengers and prevent potential asylum-seekers from accessing flights to the destination state; territorial excision or the creation of

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<sup>100</sup> Mark Gibney, “Ethics and Refugees,” in *Ethics and international affairs: Extent and limits*, edited by Jean-Marc Coicaud and Daniel Warner (Tokyo: United Nations University Press, 2001), 231-239. I am focusing this analysis on Canada, the United States and Australia, as these are the key refugee destination states outside of Europe.

<sup>101</sup> Kernerman, “Refugee Interdiction”, 231.

<sup>102</sup> *Ibid.*, 231.

international zones in airports which allow states to avoid granting potential asylum-seekers protection-related rights required under international law; and finally, forcible interdiction, by which refugees are indiscriminately returned to their country of origin—a practice that is particularly troubling as it carries a high risk that some refugees may face *refoulement*, that is forced return to the country in which they will likely be persecuted, which is illegal under customary international law and the 1951 Geneva Convention.<sup>103</sup> While Matthew J. Gibney and Randall Hansen hold that these measures have been adopted in order for western recipient states to “avoid some of the social, economic and political costs of asylum”, Mark Gibney argues that “order is not the aim; elimination of refugee claims is.”<sup>104</sup>

Visa requirements and carrier sanctions in particular have been a very effective example of what Robert A. Davidson calls “‘passive pre-emptive’ forms of [refugee] interdiction”, which are less visible than such practices as the interception at sea of boats containing refugees or territorial excision.<sup>105</sup> From a research perspective, such indirect interdiction measures are extremely difficult to study, as they operate at a distance, that is outside the territory of recipient states, and it is thus virtually impossible to determine how many people they block. Furthermore, as Kernerman argues,

states practising interdiction employ a number of rhetorical strategies – or interdiction scripts – to frame, obscure or rationalize [carrier sanctions and visa requirements]. Thus, governments claim that visa requirements are necessary in order to block ‘illegal’ and/or ‘non-genuine’ refugees. Because of the ‘passive pre-emptive’ logic of these practices, such claims are difficult to contest.<sup>106</sup>

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<sup>103</sup>Matthew J. Gibney and Randall Hansen, “Asylum Policy in the West: Past Trends, Future Possibilities,” (presentation, UNU/WIDER Development Conference on ‘Poverty, International Migration and Asylum, 27-28 September 2002, Helsinki, Finland), 6. A particularly notorious example of a pre-inspection regime was the UK’s placement of immigration officers in the Prague airport in order to screen out those who might have claimed refugee status upon arrival in the UK. As Kernerman points out, “the legality of the strategy was contested immediately and, although the government withdrew its officers, the case led ultimately to a landmark 2004 House of Lords appeal judgment, *Regina v. Immigration Officer at Prague Airport*.” See Kernerman, “Refugee Interdiction”, 245. This indicates that the political costs to states of more direct interdiction measures and displays of extra-territorial sovereignty in the service of migration control may be much higher than less visible, more indirect measures.

<sup>104</sup>Gibney and Hansen, “Asylum Policy”, 9, and Gibney, “Ethics”, 232.

<sup>105</sup> Robert A. Davidson, as quoted in Kernerman, “Refugee Interdiction”, 231.

<sup>106</sup> Kernerman, “Refugee Interdiction”, 232.

With respect to Roma refugees, this particular pre-emptive interdiction measure has been employed in Canada to reduce inflows of potential Roma refugees since the 1990s. In two specific instances, the state enacted this policy in response to perceived “floods” of Roma refugees from Eastern Europe, and the Czech Republic and Hungary in particular. In 1997, apparently as a result of the broadcasting of a documentary in the Czech Republic about the life of Roma refugees in Canada, a number of Roma—“several hundreds” between August and September—arrived in Canada to seek refugee status.<sup>107</sup> The response of the Canadian government was to re-impose a visa requirement for Czech nationals, which had been lifted the previous year.<sup>108</sup> More recently, however, was a move in August 2009 again requiring Czech nationals to hold visas before flying to Canada, which had been lifted since 2007.<sup>109</sup> In January 2010, the Canadian Press reported that the federal government is considering reinstating a visa requirement on Hungary—which was imposed in 2001 and then lifted in 2008—in response to the “flood” of Hungarian claimants at the end of 2009.<sup>110</sup> Although it is difficult to measure the direct impacts of these restrictions on Roma seeking refuge in Canada, as Kernerman points out, it is clear that this exclusionary measure is intended to keep Roma refugees from the Czech Republic, and possibly Hungary, out of the country.

The United States also selectively uses visa requirements to prevent the movement of potential refugees from source countries to its territory. However, the country established a Visa Waiver Program (VWP) in 1986 to allow nationals of certain states the ability to enter the US without a visa. In 2008, Hungary, Czech Republic and Slovakia

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<sup>107</sup> Bancroft, *Roma*, 102.

<sup>108</sup> *Ibid.*, 103.

<sup>109</sup> *Ibid.*, 103.

<sup>110</sup> “Ottawa considers visas for Hungarian visitors: report,” *Canadian Press*, 8 January 2010, [www.cbc.ca/Canada](http://www.cbc.ca/Canada). However, the political risks of such a move are high for the Canadian government, particularly as Hungary is slated to take on the EU presidency in January 2011. Canada’s imposition of visas on Hungarian visitors would likely be an extremely unpopular move and cause further tensions in the EU-Canada relationship. However, recognition of Hungarian refugee claims would also likely strain this relationship.

(among others) were added to the program, which would appear to indicate that Roma refugees from these states should not have difficulty accessing American territory in order to claim status. Those Roma who are residents of non-VWP countries are required to obtain a visa to enter the US and thus are less likely to be granted entry to the US. Nonetheless, given the requirements that foreign nationals traveling under the VWP have biometric passports, have a return trip ticket to another state, and can demonstrate that they have sufficient funds to support themselves during the duration of their stay, it is likely that potential refugees from these states—that is, mainly Roma—may not be eligible and thus may also not be granted a visa to enter the US.<sup>111</sup> Specifically, given the high levels of poverty and discrimination faced by Roma in the Czech Republic, Hungary and Slovakia, it is likely that many individuals facing persecution would not be able to afford to provide both the costs of a flight and sufficient funds to enter the US. Therefore, while I do not argue that the VWP is acting to exclude Roma specifically from accessing refugee protection, it appears that the requirements for eligibility to travel under the VWP may be effectively preventing certain individuals from VWP countries—namely, the poor, of whom many in Hungary, Slovakia and Czech Republic are Roma—from benefiting from the program and thus entering the country without a visa and subsequently claiming refugee status.

Finally, it is interesting to note that Australia requires visas for nationals of all European states and a host of other countries, which appears to indicate that there is not a non-entrée policy aimed at refugees from Eastern European states in particular. Indeed, many of Australia's indirect and direct interdiction measures are targeted at asylum-seekers arriving from other states such as Indonesia, Afghanistan and China, rather than

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<sup>111</sup> "Visa Waiver Program," *US Department of State Bureau of Consular Affairs*, 7 July 2010, [www.travel.state.gov/visa](http://www.travel.state.gov/visa).

from Europe.<sup>112</sup> Despite this, however, the use of visa requirements and carrier sanctions here operates to exclude refugees generally, and thus Roma refugees as well.

These interdiction measures, which are evidence of the generalized assault on the refugee protection system and its accelerating closure in the past twenty years, constitute a second layer of exclusion that is hampering the ability of Roma refugees to access surrogate protection. As the United States and Canada are key destination states for Roma refugees, it is likely that the restrictions on access to asylum that these states have implemented have prevented thousands of refugees from being able to claim status. However, due to the methodological difficulties outlined earlier, it is nearly impossible to assess just how many Roma refugees have been affected by these policies.

#### **4.3 Exclusionary practices in refugee determination**

Finally, the double exclusion of the Roma can be seen to operate at the level of the refugee status determination process in potential recipient states. At the individual case level, my analysis found evidence of refugee decisions and appeals in the United States, Australia, and—most prevalently—Canada that revealed troubling practices among decision-makers when determining individual claims. Specifically, it appears that certain refugee status decision-makers in these states have in some instances relied on racial and ethnic profiling in their decisions, or have conflated general socio-economic conditions with ethnicity in determining whether a claimant is in fact Roma and whether he or she will thus be granted protection. In these states, a number of cases were found in which decision-makers demonstrated a reliance on claimants' physical appearance and skin tone, on problematic conceptions about the connection between language usage and ethnicity, or on generalized stereotypes or socio-economic conditions of a 'typical' Roma in determining

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<sup>112</sup> On Australian refugee interdiction measures, see Suvendrini Perera, *Australia and the Insular Imagination: Beaches, Borders, Boats and Bodies* (New York: Palgrave Macmillan, 2009).



claimants' ethnicity or the credibility of their claims to protection. These practices are not defensible for two reasons. Firstly, they imply that a refugee claimant should be required to *prove* their ethnicity—which is contrary to the presumption of truthfulness that characterizes the refugee determination hearing as a legal process—and that providing such proof is a fundamental part of the refugee determination process.<sup>113</sup> Secondly, such practices may exclude those who are exceptions to the stereotypes or profiles. The following cases indicate a troubling disregard of these problems, and reveal an exclusionary impulse at the heart of these states' refugee status determination procedures, an impulse which, when combined with the two additional layers of exclusion outlined above, serves to unnecessarily exclude certain Roma from accessing protection. These cases should be seen as illustrative of exclusionary practices toward Roma refugees that have occurred at the individual status determination level, rather than evidence of systematic anti-Roma discrimination in refugee determination hearings. However, given that most refugee decisions worldwide are not published, and most refugee decisions are not appealed, the fact that a number of published cases provide evidence of exclusionary decision-making suggest that the problem may be more widespread and not limited to the cases outlined here. In addition, the Canadian refugee determination tribunal has used an entirely novel 'lead case' strategy in refugee determination hearings to reduce the likelihood of positive decisions for Hungarian Roma claimants in particular. While no evidence has been found of a similar practice in other states, this example deserves closer analysis in light of the argument presented here.

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<sup>113</sup> It should be noted that this concern with 'proving' ethnic identity appears to be unique to Roma refugees, at least in the case of Canada. While an exhaustive comparative analysis with other refugee claims based on ethnicity was not carried out, a cursory review of a number of refugee claims made in Canada based on persecution due to non-Roma ethnicities revealed that these claimants were not questioned about their purported ethnicity. In each of the five cases reviewed, the claimant's ethnicity was taken as given and the decision-makers' analysis focused on establishing the credibility of the claimant and his or her story, rather than the 'truth' of his or her ethnic identity, as in the Roma cases outlined here. See X (Re), 2007 CanLII 70667 (I.R.B.); X (Re), 2008 CanLII 85840 (I.R.B.); X v. Canada (Immigration and Refugee Board), 2001 CanLII 26955 (I.R.B.); X v. Canada (Immigration and Refugee Board), 2001 CanLII 26911 (I.R.B.); and X (Re), 2005 CanLII 60039 (I.R.B.).

Firstly, it appears that some decision-makers rely on stereotypes about what a 'typical Roma' looks like in assessing claimants' credibility, based on faulty assumptions about the link between skin colour and ethnicity and pointing to a process of essentializing what constitutes a Roma. In decisions made in the three states identified above, panel members contended that claimants did not "appear" to be or "look like" a Roma, without providing any objective evidence for how this decision was reached and what justified this assessment, beyond the members' own pre-existing notions of "Roma-ness" and general ethnic information drawn from country information packages. These decisions demonstrate the persistent 'Othering' of the Roma on the part of some refugee status decision-makers in host states, as Roma are taken to be identifiable "by racial features, particularly skin color that seemingly reveals their origins", such that "skin color is allegedly a sure sign of Gypsiness, a social skin that defines for others the persons within."<sup>114</sup>

In Canada, for example, the most troubling case found in this analysis is *Pluhar v. Canada* (1999), which demonstrates the harmful impact of reliance on stereotypes when it intersects with the racialization of the Roma as a group. In this case, the Federal Court granted an application for judicial review of a negative decision, as the judge found that the refugee tribunal had "erred in law by effectively basing the decision [to make a negative finding] on its assessment that Ms. Pluhar was not dark skinned."<sup>115</sup> The claimant, who was described by the tribunal as having a "sun-tanned" appearance, was deemed to not be a Roma as a result of her skin tone alone, which was perceived as too fair. Justice Evans asserted that "it is inherently dangerous for Board members to base a finding on whether people in another country would regard a claimant as of particular ethnicity solely on the

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<sup>114</sup> Kligman, "Otherness", 64-65.

<sup>115</sup> *Pluhar v. Canada* (1999) 174 FTR 153 (T.D.).

basis of the members' observation of the person concerned."<sup>116</sup> He points out that "[s]kin tone cannot be categorized simply as either "light" or "dark": there is a broad spectrum between these polarities. Racists may be able to identify a person as a member of a minority group by physical characteristics that would not necessarily be apparent to people in other countries."<sup>117</sup> Justice Evans's analysis has been used in deciding a number of subsequent judicial review applications for cases where the panel's decision relied on profiling or racialized stereotyping about the Roma as a means for determining the claimants' ethnicity.<sup>118</sup> In *Conkova v. Canada* (2000), the Federal Court dismissed an appeal of the Refugee Protection Division (RPD)'s rejection of a refugee claim in which the board found the claimant to not be credible, as she "does not look like a stereotypical Roma (though it said that her son does)."<sup>119</sup>

Moreover, in a number of other refugee determination decisions—rather than appeals at the Federal Court—the RPD focused extensively on claimant's skin colour or appearance as a way of assessing whether or not the claimant's story was credible and whether he or she was in fact Roma. In five other cases, the RPD noted "that the claimant's skin was not observably dark", that claimants were "very visible as Roma because of their physical attributes", that a claimant was "not physically identifiable as a Roma to a stranger" and that claimants "appear Caucasian" or "very fair-skinned" as opposed to Roma".<sup>120</sup> In yet another decision, the RPD in fact sought to "confront" the claimant "regarding her statements about her typically gypsy appearance, about the colour of the

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<sup>116</sup> *Pluhar v. Canada* (1999) 174 FTR 153 (T.D.).

<sup>117</sup> *Ibid.*

<sup>118</sup> See *Szostak v. Canada* (2001) FCT 938; *Negoita v. Canada* (2003) FCT 770; *Mitac v. Canada* (1999) FC 98S; *Vatchev v. Canada* (2001) FCT 776.

<sup>119</sup> *Conkova v. Canada* (2000) FCJ 923. It is interesting to note that the Court's decisions use the word 'stereotypical' without highlighting the problematic nature of stereotyping in refugee determination.

<sup>120</sup> *X (Re)*, 2002 CanLII 52608 (I.R.B.); *X (Re)*, 2008 CanLII 86752 (I.R.B.); *X (Re)*, 2002 CanLII 52592 (I.R.B.); *X (Re)*, 2002 CanLII 52599 (I.R.B.); and *X (Re)*, 2002 CanLII 52589 (I.R.B.).

claimant's skin, for example, which is not dark.”<sup>121</sup> Still another negative decision of the board found that “there was nothing obvious in the family's features of physical appearance that would make them stand out as Roma Gypsies”, and thus that there was no reason that they would face persecution in their home state of Hungary.<sup>122</sup> Finally, a particularly striking decision contained the RPD’s assertion that the submission of photographs containing stereotypically ‘Roma-looking’ individuals with claimants as evidence is sometimes useful in assessing that claimant’s ethnicity:

The claimant presented numerous photographs as additional evidence of her Roma ethnicity. Such photographs are occasionally somewhat useful in Roma refugee claims if they show the particular claimant with people who have obvious stereotypical Romani physical features which would be obvious, even to non-experts such as the panel. The panel is unable to give any weight to the photographs as evidence of her ethnicity, as the panel could see no stereotypical features in the photographs which had been taken in Poland...These photographs are not adequate to outweigh the panel's credibility concerns as set out in these reasons regarding the establishment of the claimant's ethnicity.<sup>123</sup>

The notion that the board would ascertain that a Roma claimant who has photographs of herself with someone with “obvious stereotypical Romani physical features” is more likely to be Roma than another claimant without such ‘evidence’ is highly questionable and lacks clear logic.

Similarly problematic assessments can be found in several Australian cases as well. In a September 2004 decision, the Refugee Review Tribunal of Australia (RRTA) said that “it was put to the applicant that he did not visually appear to be Roma”, suggesting that the applicant’s claim to persecution was somewhat less credible because he did not have a physical appearance that corresponded with what the tribunal members had in mind when

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<sup>121</sup> X (Re), 2002 CanLII 52648 (I.R.B.)

<sup>122</sup> X (Re), 2000 CanLII 21341 (I.R.B.)

<sup>123</sup> X (Re), 2002 CanLII 52587 (I.R.B.)

considering how a Roma should “appear”.<sup>124</sup> In another case, “expert” evidence was used that employs racialized stereotyping about physical appearance and subjective observations in order to assess a claim:

Generally, the Romanian Gypsies have very dark skin - compared for instance with the Hungarian Gypsies, whose skin is rather fair. There is however no hard and fast rule regarding this; [Roma expert] Dr Morrow mentioned that in her own [Roma] family, the colour of skin varies from very fair to dark. Regarding personal odour - Gypsies as such, do not have any specific diet that would cause them to have any uniquely distinctive odour.<sup>125</sup>

While it is not inherently problematic to use generalized information about Roma populations in specific countries in order to assess the plausibility of refugee claims—indeed, such information is necessary and crucially important—it is highly questionable to rely on generalizations about skin colour—and even more outrageously, to imply that generalizations about body odour could be countenanced as plausible indicators of ethnicity—in order to determine whether a claimant is in fact Roma. Such assessments are little more than broad generalizations and entirely subjective assessments that lack an objective basis. In this same case, the Presiding Member “commented that [the claimant] had a very fair complexion, and reference was made to the same evidence by Morrow that generally Romanian Roma have very dark skin.”<sup>126</sup> The RRTA found that “his fair skin casts further doubt on his claim to be a Roma.”<sup>127</sup> Yet another decision stated that the claimant did not “have the typical appearance of a Roma” and another still noted that the RRTA evinced “scepticism about the applicant’s fair appearance”, implying that the claimant’s fair skin made it difficult to believe that she was in fact Roma, or that she would be perceived as such by the persecuting actors.<sup>128</sup> A final example of this type of racialized stereotyping is a June 2004 decision where the RRTA relied on “independent information that Roma in

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<sup>124</sup> N03/46505 [2004] RRTA 608 (14 September 2004).

<sup>125</sup> N03/45905 [2004] RRTA 124 (12 February 2004).

<sup>126</sup> N03/45905 [2004] RRTA 124 (12 February 2004).

<sup>127</sup> *Ibid.*

<sup>128</sup> N03/15761 [2004] RRTA 204 (10 March 2004) and 1001442 [2010] RRTA 396 (21 April 2010).

Albania generally have darker skin than ethnic Albanians, and the applicant was asked why he does not have darker skin."<sup>129</sup>

In the US, another case provides evidence of a problematic understanding of how physical appearance is related to the determination of ethnicity. In *Ivanov v. Gonzales*, the US Court of Appeals for the Seventh Circuit set aside the Board of Immigration (BIA)'s refusal to grant claimant Ivanov asylum because the Court found that the immigration judge had improperly demanded corroboration of the claimant's ethnicity. According to the Court's reasons, the immigration judge asked Ivanov:

"is there something about you, like for example, there are certain African people who have markings on their face that are like tattoos or scars, tribal marks. Do you have those kinds of marks?" Ivanov informed the IJ [Immigration Judge] that ethnic Gypsies like him live in different neighborhoods, speak a different dialect, and that there are school records that note his Romani ethnicity. Unconvinced, the IJ replied, "you look Bulgarian to me" and "I can't even tell if you're Roma."<sup>130</sup>

These comments display a clear lack of understanding on the part of the immigration judge of the different means by which an individual may be identified or perceived as Roma in his or her country of origin by a persecuting actor, which may not be evident to decision-makers in destination states.

Indeed, in all of these cases, the decision-makers do not provide any evidence that their assessments are based on anything more than general descriptions of ethnicity provided in country of origin information packages.<sup>131</sup> Given the questionability of making claims about a person's identity by relying on appearance and skin colour as markers of ethnicity, these assessments are not defensible in a decision-making procedure that is intended to be impartial, objective and fair. These decisions also suggest that there is a

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<sup>129</sup> N04/48893 [2004] RRTA 470 (23 June 2004).

<sup>130</sup> 157 Fed. Appx. 939; 2005 U.S. App. LEXIS 28574.

<sup>131</sup> For information on country of origin information in Canada, for example, see the *National Documentation Packages, Issue Papers and Country Fact Sheets* page of the RPD's website, at [www.irb-cisr.gc.ca:8080/Publications/index\\_e.aspx](http://www.irb-cisr.gc.ca:8080/Publications/index_e.aspx). These packages usually include reports by human rights groups, non-governmental reports, information from institutions such as the EU, relevant legislation and news reports.

profile that all Roma will fit in terms of physical appearance, and that claimants who do not fit this profile are, firstly, either not what they say they are or, secondly, that this physical appearance is the sole means by which persecuting actors could determine a person's ethnicity and thus anyone who does not fit that profile is not perceived as Roma. However, a recent RRTA decision found, for example, that in Hungary, a state in which many Roma have been partially integrated into non-Roma society, "Roma often lack language, cultural or similar traits that could serve as objective indicators of their ethnicity. However, there may be other less tangible factors that local communities use to identify Roma inhabitants."<sup>132</sup> This statement highlights the fact that while refugee determination tribunal members may not perceive a claimant as Roma based on his or her physical appearance, there must be due consideration for the fact that non-physical characteristics may be equally or more important than appearance in the perception of a claimant as Roma by a persecuting actor.

In addition to assessments of claimants' physical appearance and their inherent limitations in refugee status determination, there is also evidence that tribunals in the three case study states have sometimes relied on profiling of non-physical characteristics, such as general socioeconomic conditions or language usage, as markers of Roma ethnicity. In a number of cases, tribunal members found claimants' identity as Roma to be questionable because they did not fit the 'typical' socioeconomic profile of Roma in their country of origin, either with respect to their education attainment, employment status, family size, language usage, or some combination of these. This type of profiling, while it may provide a general overview of the situation of a persecuted group in their country of origin, is problematic as it is likely to lead to the exclusion of some claimants who are the

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<sup>132</sup>1001442 [2010] RRTA 396 (21 April 2010).

exception to these ‘rules’ of ethnic identification—which in reality are little more than generalizations.

With respect to language usage in particular, it has been convincingly argued that the use of language analysis—that is, analysis of whether a claimant’s spoken language supports his or her claims to a given ethnicity—in refugee status determination is inappropriate unless conducted by a qualified linguist and adhering to a given set of stringent criteria. In their study of language analysis in Australian refugee determination procedures, Diana Eades et al contend that “linguists have established that a person’s nationality cannot always be determined by the language he or she speaks, and a few key words and their pronunciation normally cannot reveal a person’s nationality or ethnicity.”<sup>133</sup> They argue that the use of language analysis reports in Australia demonstrates a “folk-view” that it is always possible to determine a speaker’s origin from their word usage and accent, a position that is not necessarily validated by linguistic research.<sup>134</sup> Such research has also shown that the Romani language—to which a number of decisions described below refer—is highly diverse, and “from a linguistic point of view Romani may be described as a heterogeneous cluster of varieties without any homogenising standard.”<sup>135</sup> Furthermore, as Barany points out, due to the assimilationist policies of state governments throughout Eastern and Central Europe, particularly during the period of communist rule, and to the increasingly frequent interactions between Roma and non-Roma, the number of Roma who can speak or write in Romani has decreased markedly over the past fifty years.<sup>136</sup> It would therefore appear that the use of generalized assumptions about language usage, such as ‘all Roma speak Romani in Hungary’, are not

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<sup>133</sup> Diana Eades, Helen Fraser, Jeff Siegel, Tim McNamara and Brett Baker, “Linguistic Identification in the Determination of Nationality: A Preliminary Report,” *Language Policy* 2, no. 2 (2003): 183.

<sup>134</sup> *Ibid.*, 180.

<sup>135</sup> Mihaela Zatreanu and Dieter W. Halwachs, “Romani in Europe,” *Council of Europe, DGIV/EDU/ROM* (2003), 3.

<sup>136</sup> Barany, *East European Gypsies*, 128, and Petrova, “The Roma”, 112.



valid from a linguistic point of view and thus cannot be used to determine a refugee claimant's ethnicity. Furthermore, Brian Belton convincingly demonstrates that ethnic markers generally used in much analysis of Roma identity, including rituals, language and itinerancy, are in fact "defective determinants" of Roma ethnicity and do not illuminate how this identity is constituted or ascribed.<sup>137</sup> Despite the problems associated with socioeconomic profiling and generalizations about language use, however, the following cases demonstrate that decision-makers in the three states have in some cases relied on these practices to determine claimants' ethnicity and thus the plausibility of their claims of persecution.

In Canada, the application for judicial review in *Tubacos v. Canada* (2002) was granted by the Federal Court, as it was found that the tribunal's original decision had relied on a "stereotypical profile" of the Roma, and thus its finding that the applicant was not Roma—and its decision to reject his claim on this ground—was deemed patently unreasonable.<sup>138</sup> In his analysis, Justice Kelen found that the tribunal

held that he was not of Roma ethnicity because he did not conform with the stereotypical profile of a Roma. The CRDD [Convention Refugee Determination Division, the previous iteration of the RPD] general description of a Roma includes dark skin, large families, no education, unemployed, and marrying young. Since the applicant was not "dark skinned", was not from a "large family", did not marry young, was not uneducated, and was not unemployed, the CRDD found that he was not Roma.<sup>139</sup>

These stereotypes have pejorative implications that indicate a disturbing lack of awareness or "specialized knowledge" about the Roma on which the tribunal is purported to rely. For instance, the notion that the claimant's ability to find employment—as he found work as an engineer soon after completing his education—somehow precludes him from being Roma

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<sup>137</sup> Brian A. Belton, *Questioning Gypsy Identity: Ethnic Narratives in Britain and America* (Walnut Creek, CA: AltaMira Press, 2005), 13-37. Belton argues instead that Roma identity is constituted primarily through social considerations and cannot be understood as a homogenous 'ethnicity' composed of a number of specific physical and non-physical characteristics.

<sup>138</sup> *Tubacos v. Canada* (2002) FCT 225.

<sup>139</sup> *Ibid.*

is absurd, as many Roma are able to find employment despite their status in most states in Europe as marginalized populations. The tribunal here evidently confused evidence of general socioeconomic conditions and social marginalization with one's ethnicity, and revealed a lack of awareness of the heterogeneity of the Roma populations in Europe.

In another decision, the RPD found that the family of claimants “did not fit the profile of Polish Roma in terms of language and education”, and went on to argue that while “profile obviously is not a determinative issue”, it is “rather one of numerous factors which went into the panel's conclusion.”<sup>140</sup> In another decision, also referred to above, where the RPD found that the claimant did not physically appear to be Roma—without providing clear and convincing reasoning for this conclusion aside from generalizations and stereotyping of the variety Justice Evans warned against—it was also argued that the claimant's story was not “typical” of Polish Roma experiences in a variety of respects. The board held in its reasons that there were a number of “factors in this case which are also not typical of a Romani claim”, including the claimant's level of education, the occupations of her father and brother, and, oddly, her grandparents' place of residence during World War II.<sup>141</sup> Using the word “typical” eight times in one section of the decision, the RPD appeared to reason that the fact that the claimant did not appear to fit the socioeconomic conditions outlined in their documentary evidence, when combined with its uncertainty surrounding her fair-skinned physical appearance, meant that she was not Roma.<sup>142</sup>

In decision X (Re), 2000 CanLII 21341 (I.R.B.), also referred to above, the RPD also found the claimants' “lifestyle” to be “inconsistent with the documentary evidence regarding Roma suffering severe discrimination”, and that as they were not physically

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<sup>140</sup> X (Re), 2002 CanLII 52733 (I.R.B.).

<sup>141</sup> X (Re), 2002 CanLII 52587 (I.R.B.).

<sup>142</sup> *Ibid.* Indeed, The board argued that “none of these factors are determinative but when considered with all of the other factors set out in these reasons, they contribute to the panel's ultimate conclusion against the claimant.”

identifiable as Roma—again, the board did not provide clear and convincing reasoning as to how such a conclusion could be objectively reached—the board was not persuaded that the claimants were in fact Roma.<sup>143</sup> Similarly, in decision X (Re), 2002 CanLII 52608 (I.R.B.), the board held that the claimant’s “level of education and a skilled occupation resulting in continuous employment is not typical of Polish Roma according to the documentary evidence”, and that his “educational background and his language skills suggest that he is highly integrated into Polish society and not credible evidence of his Roma ethnicity.”<sup>144</sup> The fact that the tribunal has relied in a number of decisions on such profiling of what is a ‘typical’ Roma or Roma ‘lifestyle’ to ascertain that a claimant’s credibility is questionable is deeply problematic, as many Roma facing persecution throughout Europe—not just in Poland—would not necessarily exhibit these socioeconomic characteristics.

In Australia, there is also some evidence that the Refugee Review Tribunal has employed similar generalizations in assessing claimants’ ethnicity and thus the validity of their claims of persecution. For example, in a March 2004 decision, the tribunal found that because the claimant “spoke Bulgarian at home as a young child, he does not look like an ethnic Roma, he obtained an education and he obtained employment”, the member was “satisfied he does not have the profile of an ethnic Roma who was unemployed with little or no education”, thus undermining the plausibility of his story.<sup>145</sup> In yet another case, the RRTA, relying on independent evidence provided to the tribunal, carried out a lengthy questioning of the claimant’s purported ethnic identity as a Roma from Albania. The tribunal held that “a “real” Roma identity depends on blood-connections, as well as on some cultural factors such as the preservation of the Romani language. The applicant was

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<sup>143</sup> X (Re), 2000 CanLII 21341 (I.R.B.).

<sup>144</sup> X (Re), 2002 CanLII 52608 (I.R.B.).

<sup>145</sup> N02/44879 [2004] RRTA 216 (15 March 2004).

therefore asked how he is Roma if he does not speak Romani.”<sup>146</sup> Similarly, in decision 45905, cited above, the RRTA held “that it was hard to accept that [the claimant] is a Roma since he did not indicate in his protection visa application that he speaks, reads or writes Roma, and having regard to the below-cited independent evidence from Dr Marni Morrow that language is the most important factor in making a Roma.”<sup>147</sup> This assessment of ethnic identity is inherently problematic, particularly because it proposes that there is some ‘real’ Roma identity, to which language usage is central, that a person must hold if he or she is to be identified as Roma, and that his or her identity is questionable if he or she does not fit this profile. Given the arguments against language profiling provided above, and the diversity of Roma populations, this argument is not tenable as a means of determining a claimant’s identity and thus the credibility of his or her claims.

In a similar decision in the US Court of Appeals for the Ninth Circuit, *Dimitrov v. Holder*, the Court found fault with the BIA’s original decision to reject the claimant’s asylum application, as the board argued that the story of the claimant, Yanko Dimitrov, was “‘implausible” because Dimitrov does not speak the Roma language.”<sup>148</sup> One of the judges in this appeal dissented, arguing that it was not merely speculative to expect that a Roma who grew up in a Roma neighbourhood in Bulgaria would speak Romani—despite independent evidence demonstrating that, due to language suppression by the Communist government, many Roma in Bulgaria do not speak Romani at all.<sup>149</sup> In this case, the fact that the claimant did not speak the Romani language was used as evidence that he was lying about the rest of his claims. The BIA’s original decision was remanded by the Court.

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<sup>146</sup> N04/48893 [2004] RRTA 470 (23 June 2004).

<sup>147</sup> N03/45905 [2004] RRTA 124 (12 February 2004).

<sup>148</sup> *Dimitrov v. Holder*, 346 Fed. Appx. 200; 2009 U.S. App. LEXIS 20830.

<sup>149</sup> *Ibid.*

The decisions outlined above, though by no means characteristic of all refugee determination processes involving Roma claimants, nevertheless speak to a highly contestable view of ethnicity and of processes of ethnic identification that is clearly underpinning the decision-making of certain refugee tribunals in a surprising number of cases. Indeed, in the Canadian Federal Court a number of such cases have been successfully appealed based on the assertion that they reveal reasoning that is not legally defensible but is in fact based on stereotyping and specious evidentiary foundations, and that they unjustifiably presume that applicants must ‘prove’ their ethnicity even when their overall credibility as a claimant is otherwise accepted<sup>150</sup>. For example, in *Szostak v. Canada*, Justice Lemieux found that the CRDD’s reasoning that the claimant was not a Roma because he had a higher-than-average level of education for a Roma, spoke Polish fluently without an accent and had Polish, non-Roma friends was not reasonable, and thus set aside the CRDD’s negative decision.<sup>151</sup> Justice Lemieux held that the tribunal had “engaged in stereotyping, that is, based some of its findings without any evidentiary foundation, a gap which could not be filled by its reliance upon its specialized knowledge.”<sup>152</sup> These comments reflect Justice Kelen’s findings, noted above, that stereotyping—in this case based on socioeconomic, rather than racial, profiling—does not constitute a defensible means of determining the validity of a claimant’s appeal to protection.

In addition, in *Vodics v. Canada*, Justice Campbell set aside the RPD’s original decision to reject the applicant’s refugee claim because the board “applied ethnic stereotypes” in reaching its decision.<sup>153</sup> In his reasons, Justice Campbell reaffirmed the

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<sup>150</sup> A claimant is considered credible if he or she is considered to be telling the truth in refugee status determinations. The decision as to whether the claimant’s experiences fit within the Convention definition and thus that he or she is a refugee remains to be decided. On the challenge of making credibility assessments, see Michael Kagan, “Is Truth In the Eye of the Beholder? Objective Credibility Assessment in Refugee Status Determination,” *Georgetown Immigration Law Journal* 17 (2002).

<sup>151</sup> *Szostak v. Canada* (2001) FCT 938.

<sup>152</sup> *Ibid.*

<sup>153</sup> *Vodics v. Canada* (2005) FC 783.

principle that the refugee claimant should be presumed to be truthful unless there is reliable evidence to rebut that presumption, stating that “to disbelieve someone about his or her ethnicity, which is a critical feature of his or her humanity, is a most serious matter requiring extreme caution and careful deliberation.”<sup>154</sup> He went on to assert that

the failure of the person giving the evidence to meet a decision-maker's understanding of an ethnic stereotype does not constitute reliable evidence which can be used to rebut the presumption. That is, the mere fact that a person is the exception to an ethnic profile, even on a number of factors, does not provide a sound basis for deciding that he or she is not who he or she claims to be. It might very well be that, where there is no admissible and reliable evidence contrary to the claim of ethnicity...the person's own sworn statement of his or her ethnic identity must be accepted.<sup>155</sup>

It is clear that the examples provided above do not conform to this principle, and are thus inherently problematic in the sense that Justice Campbell highlights.

The common factor among all of the cases described above is that they imply that a refugee claimant should be required to *prove* their ethnicity, that providing such proof is a fundamental part of the refugee determination process, and indeed that this proof is a starting point for assessing claimant's overall credibility. However, as Justice Campbell's arguments indicate, the only point at which a refugee tribunal should doubt a claimant's ethnic identity is if there is “admissible and reliable evidence contrary to the claim of ethnicity” and if this evidence is examined with “extreme caution and careful deliberation.” In the decisions analyzed here, generalizations about socioeconomic conditions and racial and ethnic stereotyping about what constitutes a ‘typical’ Roma appear to have taken the place of reliable evidence. When ‘folk-views’ about language usage and racial profiling are brought into play, the objectivity and fairness of the refugee determination process can become very questionable indeed.

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<sup>154</sup> *Vodics v. Canada* (2005) FC 783.

<sup>155</sup> *Ibid.*

A final—and much more novel and direct—manifestation of the double exclusion of Roma refugees operating in the refugee determination process is the ‘lead case’ strategy adopted by the Canadian refugee tribunal—then the Convention Refugee Determination Division [CRDD]—in 1998. In 1997, the number of Hungarian Roma arriving in Canada to claim refugee protection began to rise significantly. However, rather than immediately impose a visa requirement, as it had done for travelers from the Czech Republic, the Canadian government chose a more experimental approach to managing the flow of potential refugees and began seeking out a closer relationship with the refugee tribunal—which is an arm’s length, independent body.<sup>156</sup> As a result of pressure from the Canadian government, the CRDD adopted an entirely new refugee determination practice specifically dealing with Hungarian Roma claims, in which, “for the first time, ‘representative’ or ‘lead’ cases were chosen and adjudicated in order to guide other similar cases. In both lead cases, the claim for refugee status was rejected.”<sup>157</sup> This process was unprecedented in Canadian refugee law, as the 1951 Convention intends for each refugee claim to be assessed individually.<sup>158</sup> Such an approach had not been adopted for any other group of refugees, and the strategy was implemented “without either publicity, or consultation with interested NGOs or members of the immigration and refugee law bar”.<sup>159</sup> While these cases did not have legally precedential status, due to the quasi-judicial nature of the board, “the factual findings and legal conclusions in the lead case were said by the Board to be intended to provide guidance to future panels hearing similar cases. The lead case would thus promote consistent, informed, efficient, and expeditious decision-making.”<sup>160</sup> In practice, they had the effect of drastically reducing the success rates of Hungarian Roma

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<sup>156</sup> Kernerman, “Refugee Interdiction”, 245-246.

<sup>157</sup> *Ibid.*, 246.

<sup>158</sup> Martenson and McCarthy, “No Serious Risk”, 304.

<sup>159</sup> *Kozak v. Canada* (2006) FCA 124.

<sup>160</sup> *Ibid.*

claims, from nearly 70% in 1997 to 15% the following year.<sup>161</sup> When the Canadian government then imposed a visa requirement on Hungary in 2001, it was able to support its claims that many Hungarian refugee claims were unfounded by pointing to the newly low recognition rate—which it was not able to do with Czech Roma claimants, whose success rate was very high prior to the visa requirement imposition.<sup>162</sup> In the framework of the present analysis, the ‘lead case’ approach had clear implications for the second layer of exclusion—non-entrée policies and practices of interdiction—as this approach facilitated the smooth operation of the ‘passive pre-emptive’ form of interdiction, the visa requirement, which could now be legitimized politically. However, the Federal Court of Appeals found in its decision *Kozak v. Canada* in March 2006 that the board, in rejecting a Hungarian Roma applicant’s claim made following the ‘lead case’ decisions, had violated its required impartiality, because

one of its two panel members may have been predisposed towards denying the appellants’ claims since he had played a leading role in an exercise that may seem to have been partly motivated by a desire by CIC and the Board to produce an authoritative, if non-binding legal and factual “precedent”, particularly on the adequacy of state protection, which would be used to reduce the percentage of positive decisions in claims for refugee status by Hungarian Roma.<sup>163</sup>

However, as Kernerman points out, this judgment, though representing a “legal victory”, did nothing to rectify the potentially “thousands” of negative decisions that had been rendered to Hungarian Roma claimants as a result of the lead case strategy.<sup>164</sup>

I do not argue that the evidence provided here demonstrates that the Roma are systematically discriminated against in refugee determination procedures, or that these procedures are inherently exclusionary toward Roma. Indeed, the historically high success

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<sup>161</sup> Kernerman, “Refugee Interdiction”, 246.

<sup>162</sup> Kernerman, “Refugee Interdiction”, 246. Kernerman therefore argues that the “lead case strategy was a success”, as it allowed the Canadian government to legitimize a new practice of refugee interdiction without jeopardizing its ‘interdiction script’ by which Roma refugee claimants are painted as having largely unfounded claims to protection.

<sup>163</sup> *Kozak v. Canada* (2006) FCA 124.

<sup>164</sup> Kernerman, “Refugee Interdiction”, 247.



rate of Czech Roma claimants in Canada, for example, speaks to the high level of recognition that many claims of persecution have received, and to the positive credibility assessments undergirding these successful claims. Many decision-makers make reasoned and equitable decisions with respect to Roma refugees facing persecution. However, the cases outlined above can be seen as illustrative examples of the type of reasoning that has been and is being employed to assess Roma claims to asylum in some instances. These cases are particularly troubling because such decision-making practices may be much more widespread than the analysis presented here attests, as it is limited to published decisions and appeals, which represent only a fraction of the refugee decisions made every year in recipient states. Given that many states do not publish all of their refugee determination decisions, and most decisions are not appealed, it is conceivable that many more claims have been decided using the same specious and harmful reasoning analyzed here. Furthermore, the fact that the exclusionary logic that prevents some Roma refugees from accessing protection has been shown to operate in decision-making in a number of key recipient states indicates that this phenomenon, though apparently most prevalent in Canada, is transnational in scope. In light of the two additional layers of exclusion outlined above—the effects of which are extremely difficult to measure—as well as the dominant exclusionary discourse that frames policies and practices surrounding Roma refugees in Canada in particular, it appears that the international refugee protection regime is not fully and effectively protecting Roma refugees who require surrogate protection.<sup>165</sup>

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<sup>165</sup> Of course, this is not to say that the international refugee protection regime is fully and effectively protecting any particular group of refugees. On the limitations of international refugee protection globally, see for example Ninette Kelley, “International Refugee Protection Challenges and Opportunities,” *International Journal of Refugee Law* 19, no. 3 (2007). However, the phenomena outlined here are evidence of a particular exclusionary logic that is operating to prevent Roma refugees specifically from claiming status, making them uniquely vulnerable compared to other groups of refugees.

## 5 Conclusion

There is little reason to believe that the exclusionary politics of asylum and the refugee interdiction practices currently being vigorously pursued by industrialized host states will be reversed in the foreseeable future. Given the powerful processes of legitimation that frame these practices, the continued concern with anti-terrorism measures and security, and the desire of state governments in the west to curb ‘illegal migration’ and its associated ills and costs, refugee protection will likely continue to be chipped away from all sides as states party to the 1951 Geneva Convention continue to find new and innovative ways of avoiding their obligations under it. In this context, it is difficult to assess how the situation of Roma refugees—or other groups of refugees currently under-protected in the refugee protection system—could be improved, to ensure that those who require surrogate protection are not unjustifiably denied it. The first two levels of exclusion facing Roma refugees, namely harmonized EU asylum policy and interdiction policies on the part of host states, are part of a broader trend of restricting access to asylum, and appear extremely difficult to contest and transform. Unfortunately, it is these two levels of exclusion that are likely causing the most damage in terms of limiting access to asylum for Roma refugees, though they are also the most difficult to measure. However, it is at the third level of exclusion—the refugee status determination process—and also at the level of public discourse, that there is a clear opportunity for more equitable practices with respect to Roma refugees.

Firstly, refugee status decision-makers in Western host states must stop relying on racialized stereotypes about what constitutes a ‘Roma appearance’ or skin-tone when assessing Roma claimants. This practice is ethically and legally indefensible, and has deleterious consequences for Roma who do not conform to these stereotypes. The

racialization of Roma refugees in status determination hearings reflects stereotypes about how a Roma 'should' look, and is indicative of a deeply misguided view of appropriate methods for determining credibility. Related to this, it is imperative that decision-makers abandon any reliance on socioeconomic profiling or on inaccurate assumptions about language usage as a means of determining the credibility of an asylum-seeker's claim of Roma ethnicity. While it is reasonable to expect a refugee tribunal to rely on detailed and accurate country information in order to make a decision, decision-makers should not conflate socioeconomic status and language usage with ethnicity. Many Roma throughout Europe have managed to overcome barriers to housing, employment and education and may still face persecution on account of their identity as Roma. Moreover, many Roma do not speak Romani and are nonetheless subject to persecution. Reliance on stereotypes or on generalizations about language and social standing is inherently dangerous and risks unnecessarily excluding some refugees from surrogate protection by virtue of who they are—ironically the very reason they faced persecution in the first place.

Secondly, such questionable practices for establishing ethnicity should be replaced with a renewed emphasis on the presumption of claimant truthfulness in the absence of convincing evidence to the contrary, and on the principle that unless there are serious other reasons—which do not include ethnic profiling or stereotyping—to doubt a claimant's credibility, her claimed ethnicity should be believed. Claimants should not be expected to have to prove their ethnicity, barring any serious reasons to doubt their credibility. As the status determination decisions examined demonstrate, many refugee status decision-makers appear to believe that a claimant must prove his or her ethnicity in order for the refugee claim to be believed. Though ethnic identity goes to the heart of Roma refugee claims, the focus on proving Roma ethnicity while relying on stereotypes and

generalizations as evidence is simply not defensible or effective practice. Rather, refugee determination procedures must rely on Justice Campbell's argument and be able to demonstrate that there is "admissible and reliable evidence contrary to the claim of ethnicity" before contesting a claimant's purported ethnicity.

Finally, the dominant representation of Roma refugees—as well as non-Roma refugees—in mainstream discourse as bogus or illegitimate asylum-seekers, rather than as potential refugees, must be contested. Comments such as those made by Canadian Citizenship and Immigration Minister Kenney risk interference with the independence of the refugee decision-making process and serve to delegitimize these refugees' claims to protection in the eyes of the public. Media portrayals of Roma asylum seekers must move away from language depicting 'floods' of 'bogus' migrants from Eastern Europe, and instead present a more legally accurate view of refugee protection. Increased awareness on the part of the media and political figures in host states of the nature of refugee protection and its relationship to international law will be crucial in bringing about a more balanced public debate on asylum policy and in ensuring that democratic states produce refugee protection systems that are as fair and equitable as possible.

The increasingly exclusionary effects of the international refugee protection regime present serious obstacles to Roma refugees seeking protection from persecution. The analysis presented here is limited in some ways in demonstrating how the international system is actively excluding potential Roma refugee claimants from gaining refugee status in Canada and elsewhere, for the reasons noted above. Furthermore, although I have argued that the Roma are a uniquely vulnerable group in the context of international migration, this should in no way detract from a recognition that many other refugees and marginalized groups of migrants—including the stateless and trafficked people—are

increasingly experiencing the blunt end of repressive state policies stemming from the illegalization of migration globally. However, the unique status of the Roma as Europe's internal outsiders, doubly excluded from the state order, and their continued social exclusion and discrimination in dozens of states make them especially at risk of living under the eternal, precarious status of "refugees in orbit", wandering on the roads or as clandestine passengers of trains and boats and planes, sent back and forth from one airport or provisional camp to another without any state accepting them physically or, even less, as full citizens."<sup>166</sup> A recognition at the academic, refugee decision-making and political levels of this vulnerability and of the problem of the migration discourse that characterizes the refugee—and Roma refugees in particular—as threats to a reasserted state sovereignty is the first insufficient but necessary step in moving toward a more equitable refugee regime that offers the potential to provide persecuted people with the surrogate protection they urgently need.

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<sup>166</sup> Pierre Hassner, "Refugees: A Special Case for Cosmopolitan Citizenship?" in *Re-imagining Political Community: Studies in Cosmopolitan Democracy*, edited by Daniele Archibugi, David Held, and Martin Köhler (Cambridge: Polity Press, 1998), 274.

## Bibliography

- Arendt, Hannah. *The Origins of Totalitarianism*. Cleveland: The World Publishing Company, 1958.
- Bancroft, Angus. "Closed Spaces, Restricted Places: Marginalisation of Roma in Europe." *Space & Polity* 5, no 2 (2001): 145-157.
- \_\_\_\_\_. *Roma and Gypsy-Travellers in Europe: Modernity, Race, Space and Exclusion*. Aldershot: Ashgate Publishing Limited, 2005.
- Barany, Zoltan. *The East European Gypsies: Regime Change, Marginality and Ethnopolitics*. Cambridge: Cambridge University Press, 2002.
- Barchfield, Jenny and Cecile Roux. "Sarkozy orders illegal Roma immigrants expelled." *Associated Press*. 28 July 2010. [www.google.com/hostednews/ap](http://www.google.com/hostednews/ap).
- Belton, Brian A. *Questioning Gypsy Identity: Ethnic Narratives in Britain and America*. Walnut Creek, CA: AltaMira Press, 2005.
- Benhabib, Seyla. *The Rights of Others: Aliens, Residents and Citizens*. New York: Cambridge University Press, 2004.
- Berényi, József. "The situation of Roma in Europe and relevant activities of the Council of Europe." *Committee on Legal Affairs and Human Rights, Council of Europe, Parliamentary Assembly Document 12174*. 26 February 2010.
- Cahn, Claude. "Racial Preference, Racial Exclusion: Administrative Efforts to Enforce the Separation of Roma and Non-Roma in Europe through Migration Controls." *European Journal of Migration and Law* 5 (2004): 479-490.
- Cahn, Claude and Sebihana Skenderovska. "Roma, Citizenship, Statelessness and Related Status Issues in Europe." Briefing Paper for Expert Consultation on Issues Related to Minorities and the Denial or Deprivation of Citizenship, 6-7 December 2007, Convened by the UN Independent Expert on Minority Issues, National Roma Centrum. 7 April 2008. [www.nationalromacentrum.org](http://www.nationalromacentrum.org).
- Canadian Press. "Ottawa considers visas for Hungarian visitors: report". 8 January 2010. [www.cbc.ca](http://www.cbc.ca).
- Caplan, Alan. "Refugee Claimants Cost Billions." *Edmonton Sun*. 27 July 2009. [www.edmontonsun.com](http://www.edmontonsun.com).
- Castle-Kaněrova, Mit'a. "Round and Round the Roundabout: Czech Roma and the Vicious Circle of Asylum-Seeking." *Nationalities Papers* 31, no 1 (2003): 13-25.
- Cohn, Martin Regg. "The Unbearable Lightness of Refugee Policy." *Toronto Star*. 21 July 2009. [www.thestar.com](http://www.thestar.com).

- Collinson, Sarah. "Visa Requirements, Carrier Sanctions, 'Safe Third Countries' and 'Readmission': The Development of an Asylum 'Buffer Zone' in Europe." *Transactions of the Institute of British Geographers* 21, no 1 (1996): 76-90.
- Cooper, Belinda. "'We Have No Martin Luther King': Eastern Europe's Roma Minority." *World Policy Journal* 18, no 4 (2001): 69-78.
- Csepeli, György and Dávid Simon. "Construction of Roma Identity in Eastern and Central Europe: Perception and Self-identification." *Journal of Ethnic and Migration Studies* 30, no 1 (2004): 129-150.
- "Czech Police Stop Rioters from Attacking Roma Camp." *Spiegel Online*. 18 November 2008. [www.spiegel.de](http://www.spiegel.de).
- Dauvergne, Catherine. *Making People Illegal: What Globalization Means for Migration and Law*. New York: Cambridge University Press, 2008.
- Dedic, Jasminka. "Roma and Statelessness." *European Parliament – Committee on Civil Liberties, Justice and Home Affairs*. June 2007. [www.europarl.europa.eu](http://www.europarl.europa.eu).
- Eades, Diana, Helen Fraser, Jeff Siegel, Tim McNamara and Brett Baker. "Linguistic Identification in the Determination of Nationality: A Preliminary Report." *Language Policy* 2, no 2 (2003): 179-199.
- European Roma Rights Centre. "Always Somewhere Else: Anti-Gypsyism in France." *Country Report Series, No. 15*. 28 November 2005. [www.errc.org](http://www.errc.org).
- Fraser, David. "To belong or not to belong: the Roma, state violence and the new Europe in the House of Lords." *Legal Studies* 21, no 4 (2001): 569-593.
- Galloway, Gloria. "List of 'safe countries' among refugee proposals." *Globe and Mail*. 30 March 2010. [www.globeandmail.com](http://www.globeandmail.com).
- Gheorghe, Nicolae and Thomas Acton. "Citizens of the world and nowhere: Minority, ethnic and human rights for Roma during the last hurrah of the nation-state." In *Between Past and Future: the Roma of Central and Eastern Europe*, edited by Will Guy, 54-70. Hertfordshire: University of Hertfordshire Press, 2001.
- Gibney, Mark. "Ethics and Refugees." In *Ethics and international affairs: Extent and limits*, edited by Jean-Marc Coicaud and Daniel Warner, 217-247. Tokyo: United Nations University Press, 2001.
- Gibney, Matthew J. and Randall Hansen. "Asylum Policy in the West: Past Trends, Future Possibilities." Presentation, UNU/WIDER Development Conference on 'Poverty, International Migration and Asylum, Helsinki, Finland, 27-28 September 2002.
- Goldston, James A. "Roma Rights, Roma Wrongs." *Foreign Affairs* 81 (2002): 146-148.

- Guét, Michaël. "Challenges related to Roma migration and freedom of movement in Europe." Presentation, Romani mobilities in Europe: Multidisciplinary perspectives – International Conference, University of Oxford, 14-15 January 2010.
- Guy, Will. "Introduction." In *Between Past and Future: the Roma of Central and Eastern Europe*, edited by Will Guy, xiii-xvii. Hertfordshire: University of Hertfordshire Press, 2001.
- Haddad, Emma. *The Refugee in International Society: Between Sovereigns*. Cambridge: Cambridge University Press, 2008.
- Hammamberg, Thomas. "Many Roma in Europe are stateless and live outside social protection." *Université de Montréal – Chaire de recherche du Canada en droit international des migrations*. 6 July 2009. [www.cerium.ca](http://www.cerium.ca).
- Hassner, Pierre. "Refugees: A Special Case for Cosmopolitan Citizenship?" In *Re-imagining Political Community: Studies in Cosmopolitan Democracy*, edited by Daniele Archibugi, David Held, and Martin Köhler, 273-286. Cambridge: Polity Press, 1998.
- Hughes, Dominic. "Growing marginalisation of Hungary's Roma." *BBC From Our Own Correspondent*. 29 August 2009. [www.news.bbc.co.uk](http://www.news.bbc.co.uk).
- Human Rights First. *Violence Against Roma: 2008 Hate Crime Survey*. New York: Human Rights First, 2008.
- Human Rights Watch. "Kosovo: Investigate Attacks on Roma". 7 September 2009. [www.hrw.org](http://www.hrw.org).
- Kagan, Michael. "Is Truth In the Eye of the Beholder? Objective Credibility Assessment in Refugee Status Determination." *Georgetown Immigration Law Journal* 17 (2002): 1-68.
- Kelley, Ninette. "International Refugee Protection Challenges and Opportunities." *International Journal of Refugee Law* 19, no 3 (2007): 401-439.
- Kernerman, Gerald. "Refugee Interdiction Before Heaven's Gate." *Government and Opposition* 43, no 2 (2008): 230-248.
- Kligman, Gail. "On the Social Construction of "Otherness": Identifying "The Roma" in Post-Socialist Communities." *Review of Sociology* 7, no 2 (2001): 61-78.
- Komárek, Michael. "Apartheid Begins in the School." *Presseurop*. 4 December 2009. [www.presseurop.eu](http://www.presseurop.eu).
- Kushen, Rob. "Scapegoating will not solve 'Roma problem'." *The Guardian*. 3 August 2010. [www.guardian.co.uk](http://www.guardian.co.uk).



- Ladányi, János and Iván Szelényi. "The Social Construction of Roma Ethnicity in Bulgaria, Romania and Hungary During Market Transition." *Review of Sociology* 7 no 2 (2001): 79-89.
- Lambert, Hélène. "Asylum-seekers, refugees and the European Union: case studies of France and the UK." In *Migration and European Integration: The Dynamics of Inclusion and Exclusion*, edited by Robert Miles and Dietrich Thranhardt, 112-131. London: Pinter Publishers Ltd, 1995.
- LeBor, Adam. "Roma families experience the dark side of the Velvet Revolution." *The Times Online*. 21 November 2009. [www.timesonline.co.uk](http://www.timesonline.co.uk).
- Macklin, Audrey. "Who is the Citizen's Other? Considering the Heft of Citizenship." *Theoretical Inquiries in Law* 8 (2007): 333-366.
- "Make room for real refugees". *Winnipeg Free Press*. 16 July 2009. [www.winnipegfreepress.com](http://www.winnipegfreepress.com).
- Marfleet, Philip. *Refugees in a Global Era*. New York: Palgrave Macmillan, 2006.
- Marinaro, Isabella Clough. "Between Surveillance and Exile: Biopolitics and the Roma in Italy." *Bulletin of Italian Politics* 1 no 2 (2009): 265-287.
- Martenson, Henry and John McCarthy. "'In General, No Serious Risk of Persecution': Safe Country of Origin Practices in Nine European States." *Journal of Refugee Studies* 11, no 3 (1998): 304-325.
- "National Documentation Packages, Issue Papers and Country Fact Sheets." *Refugee Protection Division*. 30 July 2010. [www.irb-cisr.gc.ca:8080/Publications/index\\_e.aspx](http://www.irb-cisr.gc.ca:8080/Publications/index_e.aspx).
- "National Post editorial: No More EU Refugee Claims." *National Post*. 29 March 2010. [www.network.nationalpost.com/NP/blogs/fullcomment](http://www.network.nationalpost.com/NP/blogs/fullcomment).
- O'Neil, Peter. "Canada Flooded with Czech Roma Refugee Claims." *Canwest News Service*. 15 April 2009. [www.canada.com](http://www.canada.com).
- \_\_\_\_\_. "Canada to Reinstate visa requirement for Czech visitors." *National Post*. 2 July 2009. [www.nationalpost.com](http://www.nationalpost.com).
- "OSCE human rights body concerned about anti-Roma violence in Italy." *Organization for Security and Cooperation in Europe*. 16 May 2008. [www.osce.org](http://www.osce.org).
- Perera, Suvendrini. *Australia and the Insular Imagination: Beaches, Borders, Boats and Bodies*. New York: Palgrave Macmillan, 2009.
- Petrova, Dimitrina. "The Roma: Between a Myth and the Future." *Social Research* 70, no 1 (2003): 111-161.

- Phillips, Leigh, Kate Connolly and Lizzy Davies. "EU turning blind eye to discrimination against Roma, say human rights groups." *The Guardian*. 30 July 2010. [www.guardian.co.uk](http://www.guardian.co.uk).
- "Pro-Roma NGOs demand resignation of Romanian Foreign Minister." *Minority Rights Group International*. 24 February 2010. [www.minorityrights.org](http://www.minorityrights.org).
- "Regulations Amending the Immigration Regulations, 1978 - Regulatory Impact Analysis Statement". *Canada Gazette* 135, no 26 (2001), SOR/2001-525.
- "Report of the Independent Expert on Minority Issues, Gay McDougall : addendum : mission to Greece (8-16 September 2008)." *UN Human Rights Council*. 18 February 2009. A/HRC/10/11/Add.3. [www.unhcr.org/refworld/docid/49b7b2e52.html](http://www.unhcr.org/refworld/docid/49b7b2e52.html).
- Ringold, Dena, Mitchell A. Orenstein and Erika Wilkens. *Roma in an Expanding Europe: Breaking the Poverty Cycle*. Washington: The International Bank for Reconstruction and Development/The World Bank, 2005.
- "Roma Asylum-Seekers, Refugees and Internally Displaced." *United Nations High Commissioner for Refugees*. (Geneva: UNHCR, 2000).
- "Roma girl burnt in neo-Nazi attack leaves hospital." *Dalje*. 2 December 2009. [www.dalje.com](http://www.dalje.com).
- "Second EU Roma Summit – ERPC Joint Statement." *EU Roma Policy Coalition*. 30 March 2010. [www.statewatch.org/news/2010/apr/eu-roma-coalition-joint-statement.pdf](http://www.statewatch.org/news/2010/apr/eu-roma-coalition-joint-statement.pdf).
- Siklova, Jirina and Marta Miklusakova. "Denying Citizenship to the Czech Roma." *East European Constitutional Review* 7, no 1 (1998): 110-118.
- Simhandl, Katrin. "Beyond Boundaries? Comparing the Construction of the Political Categories 'Gypsies' and 'Roma' Before and After EU Enlargement". In *Romani Politics in Contemporary Europe: Poverty, Ethnic Mobilization and the Neoliberal Order*, edited by Nando Sigona and Nidhi Trehan, 72-93. New York: Palgrave Macmillan, 2009.
- Squire, Vicki. *The Exclusionary Politics of Asylum*. Houndmills: Palgrave Macmillan, 2009.
- Stanislav, Daniel. "Tolerance to Racism in Slovakia." *Roma Rights Journal* 1 (2009): 35-38.
- Stoffman, Daniel. "Making Room for Real Refugees." *International Journal* 52, no 4 (1997): 575-580.
- Torpey, John. "Coming and Going: On the State Monopolization of the Legitimate "Means of Movement"." *Sociological Theory* 16, no 3 (1997): 239-259.
- United Nations Development Programme Regional Bureau for Europe. *At Risk: Roma and the Displaced in Southeast Europe*. Bratislava: UNDP Regional Bureau for Europe and the Commonwealth of Independent States, 2006.

United Nations General Assembly, Convention Relating to the Status of Refugees. 28 July 1951, United Nations, Treaty Series, vol. 189, 137.  
<http://www.unhcr.org/refworld/docid/3be01b964.html>.

\_\_\_\_\_. Convention Relating to the Status of Stateless Persons. 28 September 1954, United Nations, Treaty Series, vol. 360, 117.  
[www.unhcr.org/refworld/docid/3ae6b3840.html](http://www.unhcr.org/refworld/docid/3ae6b3840.html).

United Nations High Commissioner for Refugees. "Asylum Levels and Trends in Industrialized Countries 2009: Statistical Overview of asylum applications lodged in Europe and selected non-European countries". *UNHCR Division of Programme Support and Management*. March 2010. [www.unhcr.org](http://www.unhcr.org).

\_\_\_\_\_. "Stateless People – Searching for Citizenship." *UNHCR Website*. 2009.  
[www.unhcr.org](http://www.unhcr.org).

\_\_\_\_\_. "What is Statelessness?" *UNHCR Website*. 2009. [www.unhcr.org](http://www.unhcr.org).

\_\_\_\_\_. "UNHCR Statistical Online Population Database." *UNHCR Website*. 20 July 2010. [www.unhcr.org](http://www.unhcr.org).

\_\_\_\_\_. "UNHCR Toolboxes on European Union Asylum Policy: Toolbox 1 – The Fundamentals." *UNHCR Website*. November 2003. [www.unhcr.org](http://www.unhcr.org).

"Visa Waiver Program." *US Department of State Bureau of Consular Affairs*. 7 July 2010.  
[www.travel.state.gov/visa](http://www.travel.state.gov/visa).

Warnke, Adam M. "Vagabonds, Tinkers and Travelers: Statelessness Among the East European Roma." *Indiana Journal of Global Legal Studies* 7, no 1 (2000): 335-367.

Weissbrodt, David and Clay Collins. "The Human Rights of Stateless Persons." *Human Rights Quarterly* 28, no 1 (2006): 245-276.

Westervelt, Eric. "Wave of Violence Strikes Eastern Europe's Gypsies." *National Public Radio*. 2 September 2009. [www.npr.org](http://www.npr.org).

Zatreanu, Mihaela and Dieter W. Halwachs. "Romani in Europe." *Council of Europe*. DGIV/EDU/ROM 7. 2003.

## **Case Law**

### **Australia**

1001442 [2010] RRTA 396 (21 April 2010).

N02/44879 [2004] RRTA 216 (15 March 2004).

N03/15761 [2004] RRTA 204 (10 March 2004).

N03/45905 [2004] RRTA 124 (12 February 2004).

N03/46505 [2004] RRTA 608 (14 September 2004).

N04/48893 [2004] RRTA 470 (23 June 2004).

**Canada**

Bancsok v. Canada (2005) FC 350.

Boncidai v. Canada (2005) FC 30.

Conkova v. Canada (2001) FCJ 923.

Horvath v. Canada (2001) FCT 398.

Kozak v. Canada (2006) FCA 124.

Mitac v. Canada (1999) FC 98.

Negoita v. Canada (2003) FCT 770.

Pluhar v. Canada (1999) 174 FTR 153 (T.D.).

Szostak v. Canada (2001) FCT 938.

Tubacos v. Canada (2002) FCT 225.

Vatchev v. Canada (2001) FCT 776.

Vodics v. Canada (2005) FC 783.

X (Re), 2000 CanLII 21341 (I.R.B.).

X (Re), 2002 CanLII 52587 (I.R.B.).

X (Re), 2002 CanLII 52589 (I.R.B.).

X (Re), 2002 CanLII 52592 (I.R.B.).

X (Re), 2002 CanLII 52599 (I.R.B.).

X (Re), 2002 CanLII 52608 (I.R.B.).

X (Re), 2002 CanLII 52648 (I.R.B.).

X (Re), 2002 CanLII 52733 (I.R.B.).

X (Re), 2005 CanLII 60039 (I.R.B.).

X (Re), 2007 CanLII 70667 (I.R.B.).

X (Re), 2008 CanLII 85840 (I.R.B.).

X v. Canada (Immigration and Refugee Board), 2001 CanLII 26911 (I.R.B.).

X v. Canada (Immigration and Refugee Board), 2001 CanLII 26955 (I.R.B.).

**United States**

Dimitrov v. Holder, 346 Fed. Appx. 200; 2009 U.S. App. LEXIS 20830.

Ivanov v. Gonzales. 157 Fed. Appx. 939; 2005 U.S. App. LEXIS 28574.