

STATEMENT OF

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REGARDING

THE U.S.-CANADA SAFE THIRD COUNTRY AGREEMENT

BEFORE THE

**HOUSE SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY,
AND CLAIMS
HOUSE COMMITTEE ON THE JUDICIARY**

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2141 RAYBURN HOUSE OFFICE BUILDING**

Mr. Chairman and Members of the Committee:

I thank you for the opportunity to discuss the proposed “safe third country” agreement between the United States and Canada. This proposed agreement would allocate responsibility between the United States and Canada for processing claims of certain asylum-seekers, enhancing the two nations’ ability to manage, in an orderly fashion, asylum claims brought by persons crossing our common border. The proposed agreement would cover asylum-seekers arriving at ports of entry on the land border between the United States and Canada. With certain important exceptions, these persons will be required to present any asylum claim to the country from which they came to the port of entry, rather than the country they are next seeking to enter. That is, an asylum-seeker must seek asylum in Canada, if seeking to enter the United States from Canada at a land border port of entry, or in the United States, if seeking to enter Canada from the United States, unless an exception applies. Consistent with the statutory authority that Congress put in place a half decade ago, the proposed agreement is founded on the premise that there can appropriately be limits on the ability of an asylum-seeker to choose a country of refuge, so long as that asylum-seeker has a full and fair opportunity to present a claim for protection, and to receive asylum if he or she is a refugee.

On December 3, 2001, Attorney General John Ashcroft signed an accord with then Minister of Citizenship and Immigration Canada, Elinor Caplan, and the Solicitor General of Canada, Lawrence MacAuley agreeing “to begin discussions on a safe third country exception to the right to apply for asylum. Such an arrangement would limit the access of asylum-seekers, under appropriate circumstances, to the system of only one of the two countries.” The agreement became a critical element of the 30-point Action Plan under the Smart Border Declaration signed by Governor Tom Ridge, Director of Homeland Security, and Deputy Foreign Minister John Manley of Canada on December 12, 2001. This blueprint action plan has four pillars: the secure flow of people; the secure flow of goods; secure infrastructure; and information sharing. This safe third country agreement has become a critical element of realizing our broader goals to ensure a secure flow of people and, therefore, must be viewed in the context of the mutually beneficial 30-point Action Plan and related measures taken by Canada and the United States.

In outlining for you how the proposed agreement would operate, I would like to emphasize four key points about the proposed agreement. First, the United States and Canada each have asylum systems that are among the best in the world. Second, the proposed agreement has been constructed carefully to apply to individuals where it is clear that the individual is arriving from the other country and to ensure that no asylum-seeker would be returned home without first having the claim decided in one of those two systems. Third, the proposed agreement has a broad family unity exception, so that an asylum-seeker with family in one of the two countries may join those family members to pursue the asylum claim, even if the agreement would otherwise call for return to the other country. Fourth, the government has engaged in an extraordinarily open process developing the proposed agreement, consulting at various points with congressional staff, the staff of the United Nations High Commissioner for Refugees, and with representatives of non-government organizations.

Under the proposed agreement, the U.S. and Canada would return asylum-seekers arriving at land border ports of entry to the “country of last presence” for the determination of a “refugee status claim,” unless one of the exceptions listed in the proposed agreement applies. In addition to asylum-seekers arriving at Canada-U.S. land border ports-of-entry, the proposed agreement addresses those who seek protection while being removed from either Canada or the United States and transiting through the other country. A person being removed from the United States who is transiting Canada when he or she requests protection shall be permitted onward movement to the country to which he or she is being removed, if the protection claim was rejected by the United States prior to removal. If the claim was not adjudicated by the United States, the person shall be returned to the United States to have the protection claim examined in accordance with U.S. immigration law.

We decided to limit the proposed agreement to individuals arriving at our shared land border ports of entry or being removed through Canada or the United States, because these are the only places where it is incontrovertible that the person was present in the other country. This limitation ensures that adjudications under the proposed agreement will be as simple and speedy as possible. It avoids

prolonged determinations of an asylum-seeker's itinerary, which in some cases, may be impossible to ascertain with a degree of certainty and, in other cases may be as complex as the determination of the individual's protection need. By limiting the proposed agreement in this way, we also avoid conflicts with the government of Canada over whether an individual did or did not transit through the United States en route to Canada or vice versa.

In addition to making the proposed agreement simple and straightforward with respect to whom it applies to, we made it clear that each individual's protection concerns must be heard. The proposed agreement specifically requires that any asylum-seeker returned to the United States or Canada under the proposed agreement will not be removed to another country without an adjudication of the asylum claim. This avoids placing refugees in a situation where they are bounced from one country to another with no country taking responsibility for assessing the refugee claim – the so called "refugee-in-orbit" problem that has arisen under the Dublin Convention in Europe.

With the principle of family unity in mind, we sought and obtained in the proposed agreement a generous exemption for family members, such that asylum-seekers with spouses, sons, daughters, parents, legal guardians, siblings, grandparents, grandchildren, aunts, uncles, nieces and nephews will be allowed to reunite with family members in either the United States or Canada, overriding the obligation of the "country of last presence" to take the asylum seeker back. This exception applies as long as the anchor relative has lawful status, other than as a visitor, or has a pending asylum claim in the country where the person is seeking asylum. The range of family members who may qualify as anchor relatives is far broader than those recognized under other provisions of immigration law by including grandparents, grandchildren, siblings, aunts, uncles, nieces, and nephews.

The proposed agreement also contains exceptions for unaccompanied minors and legal entrants who have a validly issued visa by the receiving party or are not required to obtain a visa. Importantly, the proposed agreement contains a provision that allows the United States and Canada the discretion to exempt an asylum-seeker from the agreement based on public interest considerations.

Finally, I would like to share with you the consultations we engaged in when developing the proposed agreement and certain changes to the draft resulting from those consultations. After agreeing to an initial draft in June 2002, both the U.S. and Canada met with the United Nations High Commissioner for Refugees and their respective non-governmental organizations ("NGOs") to solicit comments on the draft. INS and Department of State officials also met with Congressional staff, providing background information on the proposed agreement. Members of the public were offered an opportunity to address the terms and implications of the proposed safe third country agreement at two meetings held at INS headquarters. The first, in January 2002, was attended by the INS Office of the General Counsel, INS Office of International Affairs-Asylum Division, and NGOs. The second, in August 2002, was open to the public and was announced by publication of a meeting notice in the Federal Register on July 12, 2002. The June 2002 version of the proposed agreement also was made available to the public on the Service's Website prior to the August meeting. At that meeting, the Department of State's Office of Population, Refugees and Migration joined INS officials in addressing the public's questions and concerns.

Many of the NGO and UNHCR comments have mirrored the principles with which the United States has negotiated the proposed agreement: (1) the agreement must guarantee that persons subject to it would have their refugee claims heard in one of the two countries; (2) the agreement should not act to separate families; and (3) it would be applied only in circumstances with limited factual issues, i.e., at land border ports of entry where it is clear that the person is arriving directly from the other country. After considering the comments received, we resumed negotiations with Canada, finding ways to address the public comments in ways that enhance our adherence to these principles.

Several NGOs urged us to include a transit exception for persons who entered one country simply for the purpose of proceeding to the other to seek asylum there. After considering this suggestion, both the U.S. and Canada agreed that such an exception should not be included. The main reason is that a transit exception would require a significantly more complex process for determining whether an individual was subject to return under the agreement, which would prolong and complicate the determination

process to the extent that it could eliminate the benefit of requiring these individuals to apply in the country of last presence.

After carefully considering the public's concerns, we made changes to the proposed agreement to broaden the family unity exception. The final draft abandons a two-tier system included in the first draft that would have prevented more distant relatives (siblings, aunts, uncles, nieces and nephews) from acting as anchor relatives if they merely have a pending asylum claim. Other changes that were made to the draft text include provisions to ensure that asylum information remains confidential and to develop a role for the UNHCR to monitor the implementation of the agreement.

With these changes that followed consultations with House and Senate staffers, the UNHCR and interested NGOs, the United States and Canada negotiators initialed a proposed agreement on August 30, 2002.

Upon adoption of the agreement, the INS will implement its obligations under the agreement through the normal rulemaking process. The INS will begin with publication of a proposed rule, accept public comments for a period of at least thirty days, analyze those comments, and prepare a final rule for publication. After the appropriate clearance process, the final rule will be published, with implementation commencing thirty days thereafter. Implementation in this prescribed, transparent manner will minimize uncertainty and anxiety among affected persons and border communities.

This concludes my testimony and I look forward to responding to any questions that you may have.