

**Analyzing the Multiscalar Production of Borders through the Various Degrees of State
Membership in Canada**

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Abstract

There has been great scholarly interest in examining the management, proliferation, and dynamic articulations of borders through an actor-network lens in recent years. In tracing the networks of Mohamed Harkat, the irregular arrival of a particular group of Tamil migrants, and Deepan Budlakoti, I demonstrate how the border is a fluid entity composed of socio-technical actors dispersed across time and space capable of producing varying degrees of membership statuses. In exploring the cases of these non-citizens, this thesis aims to understand what each of these multi-level networks tells us about the notion of borders and bordering practices alike. This study contributes to the expanding literature that situates the border as a fluid and malleable entity that is made up of interwoven socio-technical practices, discourses, symbols, institutions, and networks through which power is dispersed and the binary distinctions between membership and non-membership increasingly become layered concepts.

Table of Contents

ACKNOWLEDGEMENTS	II
ABSTRACT	III
TABLE OF CONTENTS	IV
INTRODUCTION: BEYOND THE “LINE IN THE SAND”	1
CHAPTER 1: LITERATURE REVIEW.....	5
1.1 CONTEXT.....	5
1.2 CRIMMIGRATION: THE OVERLAPPING MANDATES OF IMMIGRATION LAW AND CRIMINAL LAW	8
1.3 SURVEILLANCE: SOCIAL SORTING, DIGITIZED DISSECTION, SURVEILLANT ASSEMBLAGES, AND THE iBORDER.....	14
1.4 “THE JURISDICTIONAL GAME”: THE FLUID, UNFIXED, AND HETEROGENEOUS FORMULATIONS OF MEMBERSHIP.....	17
1.5 THEORETICAL FRAMEWORK: ACTOR-NETWORK THEORY	22
1.5.1 <i>History and Background of Actor-Network Theory</i>	24
1.5.2 <i>Theoretical Concepts and Component Parts of Actor-Network Theory</i>	26
1.5.3 <i>Actor-Network Theory and the Present Study</i>	29
CHAPTER 2: METHODOLOGY AND RESEARCH DESIGN	32
2.1 WHAT IS A CASE STUDY?	32
2.2 ANT AND CASE STUDIES: HOW IS IT USEFUL?.....	33
2.3 RESEARCH QUESTION.....	35
2.4 RESEARCH DESIGN AND DATA COLLECTION.....	36
2.5 CASE STUDY SUMMARIES.....	38
2.5.1 <i>Mohamed Harkat (2002)</i>	38
2.5.2 <i>MV Ocean Lady (2009) and MV Sun Sea (2010)</i>	40
2.5.3 <i>Deepan Budlakoti (2014)</i>	41
CHAPTER 3: GOVERNING THROUGH LEGAL TECHNICALITIES.....	44
3.1 STATELESSNESS.....	45
3.2 SECURITY CERTIFICATES.....	51
3.3 HUMAN SMUGGLING	61
CHAPTER 4: LOCATING BORDERING PRACTICES	68
4.1 SPATIAL BORDERING.....	68
4.2 SURVEILLANT BORDERING	74
4.3 CORPOREAL BORDERING.....	85
CHAPTER 5: TOWARDS MULTISCALAR BORDERWORK AND FLUID MEMBERSHIP	90

CONCLUSION	95
REFERENCES.....	96
APPENDIX A	108
APPENDIX B	109

Introduction: Beyond the “Line in the Sand”

Traditional geographic discourses on borders are synonymous with the physical and highly visible line that distinguishes the limits between different social, political, and economic spaces (Newman, 2006: 144). Among traditional border scholars, abstract theorizations that extended beyond the border as a rigid spatial marker often seemed like foreign and incomprehensible concepts (Newman, 2006: 172). Geographers often portrayed the border as a passive line on a map that was used to demarcate spaces of territorial sovereignty and described the dynamic physical feature of a landscape (Newman, 2006: 174; Newman, 2006: 144). This field of study was primarily concerned with descriptive analyses of borders, their location, and the political and historical processes that led to their demarcation (Newman, 2006: 145).

A series of historical developments and modern innovations have indeed contributed to the actual spaces borders now occupy and how they work to regulate the movement of people and things in unique ways. The codification of laws contributed to defining the types of persons allowed to move within, enter, or cross borders (Torpey, 1998: 241). The border as a physical line also enabled the collection of information and represented the earliest forms of centralized knowledge production (Ford, 1999: 870). This was followed by the development of formalized systems of registration, conducting censuses, distributing passports, identity cards and the like in the state’s attempt to store knowledge on its subjects (Torpey, 2000: 12; Ford, 1999). This enabled state officials to closely regulate and manage cross-border mobility at physically established ports of entry where passers were required to prove their status via state-issued documentation (Torpey, 2000: 9; Torpey, 1998: 241). A lack of official documents served as legitimate grounds for excluding certain groups of people from entering into a state. In addition, a body of legal norms was also created to “adjudicate claims by individuals to enter into particular spaces and territories” (Torpey, 1998: 241).

Recently, the field of border research has been significantly expanded, entailing new conceptual and theoretical underpinnings that have been added to understand the ways in which borders are studied. One analytical framework challenges the fixity of borders and conceptualizes the border as a set of complex, fluid practices or processes located within a complex network of social and material relations (Pötzsch, 2015; Rumford, 2008; Rumford, 2006; Stasiulis, 2017; Van Houtum & Van Naerssen, 2001). Only more recently have we begun to understand the multiple facets of borders that extend beyond its representation as a rigid

spatial divider to a fluid process imbued with social and cultural significance (Newman, 2006: 144; Diener & Hagen, 2009: 1197).

The purpose of the present study is to contribute to the growing body of literature that rests on a multidimensional analysis of bordering as a process involving differently positioned actors working at various levels and scales. In moving away from studying the border as a fixed entity in the ground, we are able to assess how heterogeneous assemblages constantly produce and reproduce the boundaries of inclusion and exclusion, citizenship and non-citizenship beyond their binary formulations. To this effect, actor-network theory is employed as an analytical guide to investigate how the presence of non-citizens, migrants, and permanent residents tend to fluctuate between multiple forms of inclusions and exclusion. Said differently, they “can climb up ladders towards more secure presence and rights (perhaps only momentarily) or be pushed down a chute towards more vulnerability, fewer rights or less access and more uncertain presence in Canada” (Goldring & Landolt, 2013: 16). Adding the concept of assemblages and networks to this analysis of bordering invites attention to how a network of social and institutional actors – with infinite resources, authority, and legal status – make and unmake boundaries by upholding and suspending formal and informal conditions to their liking (Goldring & Landolt, 2013: 16; Stasiulis, 2017). They engage in a complex and dynamic web of interactions to control, negotiate, and contest the degrees of membership of particular individuals (Goldring & Landolt, 2013: 16; Stasiulis, 2017).

Three empirical case studies have been chosen to explore this thickening of borders into multidimensional networks. These examples substantiate the claim that borders are not simply physically rooted and material in their manifestation – they are much more versatile than what we attribute them to be. In fact, certain transversal elements have been uniquely mobilized by a range of actors to control and govern the presence and status of a host of political subjects. Analyzing the border as a set of localized practices and processes demonstrates how the degrees of membership in a particular state are always in flux and are assembled over time and across space.

The first chapter presents a literature review on citizenship studies and bordering practices along with its various socio-legal and actor-network renditions. As a result of the limited scholarship on citizenship and bordering practices in Canada (Stasiulis, 2017), I explore these phenomena primarily with reference to the U.S. scholarship. The Canadian literature was

referenced whenever possible. The first section of this chapter provides a contextual overview of the diverse configurations of borders and its related practices and processes. The next section delves into the socio-legal research related to “crimmigration law” – otherwise known as the intersection between immigration law and criminal law. This section is intended to demonstrate the legally mediated configurations of exclusionary practices. The second section discusses the notion of social exclusion through the lens of surveillance studies. In the last section, before delving into the theoretical framework, I critique the presumptuous fixity embedded in categories of membership and non-membership. I propose a different frame of analysis that sees non-citizens as active participants in the network of dynamically articulated degrees of membership. In essence, I suggest that we move away from the dichotomous articulations of membership and non-membership, and instead, frame these categories as fluid and unfixed entities located in a larger assemblage of human and non-human actors. This expanded analysis is intended to capture how borders, and the status and presence of the people located within them, are fluid constructs that are mediated in a complex network of social and material relations. After situating the scholarly debates of primary significance, I introduce the theoretical framework that guides this research study. In engaging with actor-network theory, I explore how its theoretical concepts and components are relevant to studying the multiscale articulations of bordering practices.

In chapter two, I introduce the methodology and research design that was employed to gather and analyze the empirical material. This chapter details the “blueprint” of this thesis and answers what I intend to study, how I aim to study it, what data were collected, and how it was analyzed. In brief, I traced the trajectory of non-citizenship through three distinct Canadian case studies to provide a broader analysis of how the border is articulated as a diffused and unfixed entity, made up of a collection of practices and processes, performed at various levels and scales by multiple actors. The cases of Mohamed Harkat, Deepan Budlakoti, and the irregular arrival of the Tamil migrants of the MV Ocean Lady and MV Sun Sea are used to problematize the various formulations of inclusion and exclusion, and by extension how the border is enacted at various sites of operation by various actors. My aim with these case studies was to illuminate the nature and depth of bordering and citizenship practices in Canada. Specifically, the inclusion of the Canadian examples served to contribute to the conversations related to the development of Canadian citizenship and border studies and to allow others to further explore these ideas.

From chapter three and onwards, I embark on providing a detailed analysis of the empirical material. In chapter three, I demonstrate how a legal framework, composed of social and material actors, has situated the ongoing status and presence of non-citizens through fluctuating degrees of membership. In doing so, I also refocus the discussion on borders as a set of relationally mediated practices and processes enacted by diverse social actors located at various levels and scales. This, in turn, resituates the debate on how borders are fluid entities, dispersed through time and space, whose reach and limits are enacted and performed by a wide range of actors. This discussion is primarily led by a socio-legal analysis on statelessness, security certificates, and human smuggling as they appear in the three case studies.

Chapter four continues the discussion from the previous chapter and links it to how the border materializes in the three case studies. In this chapter, I proceed to outline three different, but sometimes intersecting, manifestations of the border. I label these three articulations as spatial bordering, surveillant bordering, and corporeal bordering. These three fluid categorizations are meant to give practical meaning to the border and demonstrate that it is not a rigid entity that is fixed in time a space.

Finally, before reaching the conclusion, chapter five synthesizes the empirical material in relation to analytical framework. In this chapter, I describe the nature of Harkat's, the Tamil migrant's, and Budlakoti's networks and the significance it holds in terms of borders and bordering practices. In doing so, I intend to contribute to the growing body of literature that construct the border as a fluid set of practices and processes performed by diverse actants located at various levels and scales.

Chapter 1: Literature Review

In this chapter I introduce the current literature and examine some of the gaps in the research within the field of border work, citizenship and socio-legal studies and other related disciplines. The first section provides a contextual background of the evolution of bordering practices and its diverse configurations.

In the next section, I explore the key concepts and ideas necessary to answer how multi-level networks composed of diverse social actors – working at various levels and scales – deploy a range of legal and non-legal resources, state policies, regulations, technologies, and so forth to dynamically shift non-citizens' presence in and out of a particular jurisdiction. First, I explore the socio-legal literature related to crimmigration and the various dimensions of how exclusionary practices are mediated through the law. The second section furthers the discussion related to the social, political, and territorial exclusion of non-citizens through the lens of surveillance studies and other intersecting social science disciplines. Finally, drawing from the literature on citizenship studies, I review the scholarly debates that challenge the first two interpretations. This frame of analysis critiques the presumptuous fixity embedded in categories of membership and non-membership, and instead, proposes that we view these categories as fluid and unfixed, located on a spectrum that produces varying degrees of membership based on contextually specific circumstances.

Following the review of scholarly debates, I introduce and develop my theoretical framework to help further investigate my research inquiries. In doing so, I engage with actor-network theory. Within that section, I provide a brief historical overview and the origins of actor-network theory. From there, I explore and explain its main concepts. Finally, I specify the relevance of actor-network theory for the present study.

1.1 Context

The commonly held academic position of geographers in the study of borders rests on the assumption that they are a self-evident and inevitable phenomenon, while opposing views have underscored the diverse configurations of the border. These scholars address how the changing geopolitical landscapes have shifted traditional understandings of the border by claiming that it is more complex than credited to be. These explanations have been expanded to capture the rapidly changing circumstances of contemporary social life, which is typically characterized by a highly complex and increasingly interconnected world. Specifically, the meanings attributed to borders

have evolved concurrently with the growing demands and trends of globalization, understood as a phenomenon that encourages an increasingly integrated and borderless political economy wherein national barriers against the flow of commodities and people have been progressively dismantled (Rumford, 2008: 3).

In turn, two contesting views have emerged from this discourse: one that proposes the thesis of a “borderless” world and another that proposes the intensification of territorial boundaries. As a result, some scholars have contended that globalization has rendered state borders obsolete in an effort to create a cohesive global polity (Newman, 2006: 172), while others have claimed that globalization has contributed to the production of new forms of closure and entrapment, allowing for an intensified form of power to spread across the social body (Robertson, 2011: 283; Los, 2006; Los 2004; Shamir, 2005). Building from this interpretation, some have additionally claimed that borders have simply transcended traditional forms of territoriality and have been reconfigured to penetrate deeper into social practices, norms, and organizations to become ubiquitously present in our daily lives (Diener & Hagen, 2009; Newman, 2006; Brunet-Jailly, 2004; Paasi, 1998).

Those who support the borderless thesis have increasingly predicted the imminent demise of borders as a result of international pressures that tend to push for greater social and economic integration (Diener & Hagen, 2009: 1198; Rumford, 2006: 157). As a result, these scholars posit that globalization trends have the capacity to eventually render the state’s existence obsolete. In this context, the changing spatial politics reflect a major shift where borders once acted as single points of entry and exist, and now, they are multiple and dispersed throughout society (Rumford, 2006: 160). This changing political arrangement has reshaped state sovereignty wherein the sovereign no longer possesses exclusive power over a fixed set of territorial borders or boundaries. Instead, the disaggregation of geographical borders has created a borderless era in which control is relinquished to supra-national governments (e.g. The European Union), networks of global cities, transnational communities, and micro-level political authorities (Rumford, 2006: 160). As a result, territorial borders have undergone a significant transformation in which the central role of the state seems to be undermined by efforts of decentralization and the unrestricted flow of capital.

Though the borderless thesis provides an interesting perspective, the counterargument drives a more compelling case. These scholars have rejected the discourse of “endism” that

projects the collapse of territorial borders and have adopted the view that states are not disappearing as much as diversifying and adapting to the changing social, political, and economic circumstances (Parker & Adler-Nissen, 2012: 773). As a result, the border has been reconfigured to encompass new forms of spatial and social realities. Under this model, the traditional meaning of the border is profoundly altered as it has acquired a level of spatiality that extends far beyond the limits of geography. Los (2004, 2006: 71) and Shamir (2005: 199) agree that opening borders for the transnational flow of people and capital will gradually dissolve the border as a solid line, eventually leading to a borderless world. However, rather than rendering the state's existence obsolete, the very vagueness, ambiguity, and shapelessness of the political structure is what reinforces its domination according to them (Shamir, 2005; Los 2004; Los, 2006). The diffusion of borders produces an absence of an exit by extending the state's reach beyond territorial markers. This produces new forms of closure and entrapment where borders have permeated all facets of social life, creating an inescapable reality (Los, 2006: 71; Shamir, 2005: 199). Therefore, in an effort to relinquish state control through deregulation, the paradox of globalization becomes apparent in that it ironically fortifies the state's ability to exert control over its people through the dispersed and ubiquitous nature of power (Los, 2006: 71-72; Los, 2004: 22; Shamir, 2005: 214).

Moreover, others who support this view add that the border has been reinvigorated instead of rendered obsolete (Newman, 2006; Brunet-Jailly, 2004; Paasi, 1998; Rumford, 2012). These theorists posit that borders are no longer confined to the realm of inter-state activity and territorial sovereignty, and as a result, no longer embody a physical or geographical shape (Newman, 2006: 172; Rumford, 2006: 160; Rumford, 2012: 888). It moves away from the assumption that borders are territorially demarcated to an assumption that borders can effectively exist anywhere and everywhere (Rumford 2006: 161-162; Rumford, 2012: 894). Despite the changing nature of borders, these authors contend that the state will continue to play a significant role in the organization of social life by adjusting itself to the changing global order of society. Boundaries and sovereignty will also remain intact, but not in the form of centralized power; rather, nation-states will retain power in that they are now able to police multiple borders, not just the territorial ones (Paasi, 1998: 71; Newman, 2006: 182). The sections that follow are intended to detail the shifts and diverse/changing modes of governance that momentarily grant non-citizens authorized status before bracketing them outside the political community once

again. This second approach is what I intend to explore in this thesis as it allows me to capture the fluid articulations of the border and its associated practices.

1.2 Crimmigration: The Overlapping Mandates of Immigration Law and Criminal Law

Immigration law and criminal law are two unique realms of legal jurisprudence that permit us to see how bordering practices and processes are enacted at multiple sites of operation and contribute to (re)making the status of various political subjects. In Canada, criminal law is the primary vehicle used to prosecute criminal offences. The *Criminal Code* (1985) codifies a wide range of these criminal offences along with any associated judicial procedures. Typically, the *Criminal Code* (1985) is applicable to Canadian citizens who have been charged with a criminal offence in Canada. Broadly speaking, it provides the legal principles in proving an offence, the applicable defenses, and the available judicial protections. In theory, immigration law encompasses a separate set of legal practices and procedures when compared to criminal law. Immigration procedures have been understood as primarily being located within the administrative arena of the law. In Canada, matters related to immigration are governed by the protocols stipulated under the *Immigration and Refugee Protection Act (IRPA)*. The *IRPA*, applicable to various categories of non-citizens, outlines the general grounds for admissibility and inadmissibility.

However, in practice, some scholars now point towards the growing amalgamation between the trends and practices of Canadian immigration law and criminal law to the point of indistinction. This intersection has captured the interest of border enforcement/regulation, immigration and criminal law scholars alike. Stumpf (2006, 2013), who refers to this integration as “crimmigration law” or the “crimmigration crisis”, has detailed “the existence of this merger, described the parallels between deportation and criminal punishment, and outlined the constitutional consequences of criminalizing immigration law” (Stumpf, 2006: 10). Operating as a distinct sphere of governance, crimmigration law has generated more severe punitive outcomes for non-citizens resulting in what some have also termed immigration or bordered penalty (Aas, 2014; Pratt, 2012). Extensive scholarly remarks have been made in studying how this integration has steadily eroded the boundaries between criminal law enforcement and immigration practices, in addition to how it has aggravated the use of severe punitive outcomes increasingly intended to segregate non-citizens (Stumpf, 2013: 59). Indeed, a significant portion of the crimmigration literature has focused entirely on the exclusionary practices enacted on non-citizens (Aas, 2014;

Stumpf, 2006; Stumpf, 2013). In fact, more recent academic research indicates the dynamic articulations of how bordering practices have subtly framed the insider-outsider distinction. These scholars posit that non-citizens are governed and bounded by a constellation of legal conditions that are used to legally exclude and alienate non-citizens (Pratt, 2005; Stumpf, 2006; Levi & Valverde, 2008; Valverde, 2009; Pratt, 2012; Goldring & Landolt, 2013; Stumpf, 2013; Aas, 2014; Landolt & Goldring, 2016). The intersection between criminal law and immigration law fortifies the sovereign state's powers to allocate punishment via the strategic mobilization of an array of legal resources that mark an ever-expanding regime of exclusion (Stumpf, 2006). Broadly speaking, the apparatus of the state and the absence of formal membership are used to deny legal protections and political rights, while justifying the use of coercive, indefinite, and arbitrary sanctions. Aas (2014) articulates

The idea that different substantive and procedural standards apply to non-citizens lies at the heart of immigration law. Non-citizens can be punished for other offences than citizens (Aliverti, 2013). They can be detained on other grounds, their property and belongings can be searched for other reasons and, most importantly, they can be deported, and thus territorially completely excluded from society...Criminal law and immigration law thus operate under conditions of interchangeability and mutual reinforcement (p. 523; p. 525).

In this context, non-citizenship places these permanent residents, undocumented migrants, and foreign-nationals in a legal predicament where they are neither eligible to receive the legal protections granted to conventional criminals, nor are they processed through the ordinary criminal justice system (Aas, 2014: 527). Instead, they are processed through an alternate system, one that operates under the elusive pretense of immigration and adopts the practices and conventions associated to the criminal justice system (Aas, 2014: 527). Despite never being formally charged for criminal misconduct, these non-citizens are susceptible to indefinite detention and forcible deportation orders (Aas, 2014: 525). Their confinement in closed detention centers and special prisons and prison wings exclusively catered to house non-citizens clearly falls outside the realm of routine governance. In theory, these spaces of confinement have been enlisted as non-criminal administrative spaces used to house individuals with impending immigration issues. However, in practice, these reasons have been employed to support prolonging immigration detention while reproducing punitive practices under the pretext of satisfying administrative standards. Indeed, the socio-spatial realities of immigration detention centers and other similar holding facilities have begun to bear strong resemblances to the penal

culture that is geared towards containing populations, depriving liberties, and administering punishment (Turnbull & Hasselberg, 2017).

To contextualize the punitive administrative immigration processes aimed at non-citizens, it is necessary to delve into the major areas of research concerning the administration of criminal justice punishment and penal practices. To begin, detention is often the first stage in a string of strategies used to legally exile an array of non-citizens. Foucault's (1979) *Discipline and Punish: The Birth of the Prison*, a widely recognized publication in the study of prisons and penal systems, details how punishment is no longer exerted physically *on* the body itself, rather, it is exerted *through* the body. That is, the act of branding the body through torture, dismemberment, amputation, and exposure is largely non-existent under modern penal systems (Foucault, 1979: 8). However, some may argue that imprisonment and confinement constitute "physical" penalties that directly affect the body (Foucault, 1979: 11). Indeed, the body is involved to a certain degree in exerting physical pain, but it now "serves as an instrument or intermediary" through which pain is inflicted (Foucault, 1979: 11; 16). As Foucault (1979) posits, imprisonment is used as a punitive intervention

...in order to deprive the individual of a liberty that is regarded both as a right and as property. The body, according to this penalty, is caught up in a system of constraints and privations, obligations and prohibitions. Physical pain, the pain of the body itself, is no longer the constituent element of the penalty (p. 11).

According to this interpretation, the physical body as a target of penal repression has largely dissipated and has been replaced by a series of deprivations intended to punish the soul. If it is necessary to reach and manipulate the body, it is done at a distance using subtle forms of coercion (Foucault, 1979:11) that may be "calculated, organized, [and] technically thought out" (Foucault, 1979: 26) to train its "movements, gestures, [and] attitudes" (Foucault, 1979: 137). This is achieved by restraining the body via incarceration. This enables institutions to systematically act upon and discipline, control, and condition the body to operate alongside specific institutional policies (Foucault, 1979: 26).

Noting that criminal justice punishment is rendered punitive by incapacitating the body and rendering it powerless, Canadian immigration law, policy, and practices employ a similar disciplinary rationality. Diffusing penitentiary techniques under a veil of administrative adjudication adds a new layer of punishment for non-citizens who are processed through the Canadian immigration system. According to official law and policy, the *IRPA* specifies that

under Division 6 three classes of non-citizens can be detained in Canada. Under section 55.1, an officer may issue a warrant for the arrest and detention of a permanent resident or a foreign national who the officer has reasonable grounds to believe is inadmissible, is a danger to the public, or is unlikely to appear for examination, admissibility hearing, or removal from Canada. As per section 55.2, an officer may also arrest and detain a foreign national who the officer has reasonable grounds to believe is inadmissible, is a danger to the public, or is unlikely to appear for examination, and in addition if the officer is not satisfied with the identity of the foreign national in the course of any procedure under the Act. Lastly, section 55.3 also allows for detention without a warrant upon entry to Canada, if an officer considers it necessary to do so in order for the examination to be completed or has reasonable grounds to suspect that the permanent resident or the foreign national is inadmissible on grounds of security, violating human rights or international rights, serious criminality, criminality or organized criminality.

Despite the legal differentiation between criminal imprisonment and administrative detention, some scholars posit that such distinctions are largely irrelevant to those who are actually detained (Pratt, 2012: 289). The material consequences they suffer greatly transform their experiences of detention to the point where it is perceived as punishment (Turnbull & Hasselberg, 2017: 138). As an extended arm of penal repression, immigration detention acquires the grounds to punish through the spatial dimensions of confinement, carceral controls, bodily restraints, and forcible expulsion (Pratt, 2012: 289). In addition, detainees are exposed to an array of humiliating degradation ceremonies rendering them increasingly helpless and powerless (De Genova, 2013: 1181). Similar to punitive incapacitation, immigration detention deprives detainees of their liberties and continuously dehumanizes them causing constant pain, suffering, and distress (Turnbull & Hasselberg, 2017: 138). The spatial confinement of immigration detainees insinuates how coercive penal practices are intended to assure the constant subjection of bodily “movements, gestures, [and] attitudes” (Foucault, 1979: 137). These constraints are specifically intended to deprive, control, and discipline unruly or unwanted bodies. These looming elements of punishment can certainly be justified in relation to the administration of criminal justice where the deprivation of liberty is warranted under punitive grounds and inmates are guaranteed a set of legal protections to guard their interests against the state’s potential abuse of power. However, when it is brought into the realm of immigration detention, it is regarded as a coercive demonstration of sovereign power intended to cause pain and assure the constant

subjection of non-citizen bodies (Foucault, 1979: 137). These practices remove immigration enforcement from the administrative arena and into the ambit of criminal law. The logics of these crimmigration practices seem to be part of a larger politics of citizenship that seek to externalize border control in an effort to exclude non-citizens by rendering criminal forms of punishment indistinguishable from administrative immigration detention.

Thus far, the crimmigration scholars have detailed the parallel between penal practices and immigration detention. Piché and Larsen (2010) take this discussion one step further and offer a new layer of analysis for the disciplinary and exclusionary techniques used under immigration detention. They offer an interpretation based on the carceral consequences of criminal justice imprisonment. According to them, the carceral consequences of criminal justice imprisonment involve the “diffusion of penitentiary techniques and disciplinary norms throughout society” (Piché & Larsen, 2010: 292). Based on this interpretation, the pervasive merger between incarceration and immigration has increasingly relegated non-citizen to carceral spaces, largely stemming from their legal “non-status” rather than any alleged criminal involvement (Piché & Larsen, 2010: 403). The carceral consequences of immigration practices begin to materialize when repressive and disciplinary techniques are extended beyond the traditional confines of administrative detention and holding facilities. Immigration detention and criminal incapacitation are premised upon the exclusion of unwanted subjects. By way of covert coercive bodily sanctions and incapacitation, immigration detention “constitutes and enforces borders, polices noncitizens, identifies those deemed dangerous, diseased, deceitful, or destitute, and refuses them entry or casts them out” (Pratt, 2005: 1). Its purpose is to “separate it [the non-citizen] from the political community and purge it from the sovereign territory” (Piché & Larsen, 2010: 403). Therefore, the carceral controls exercised over individuals without formal membership and the nuanced punitive practices embedded in immigration detention and deportation alike are key technologies in the processes that constitute borders, “that ‘make up’ citizens and govern populations” (Pratt, 2005: 1).

The same disciplinary mechanisms employed in prison settings are steadily emulated in the enforcement of forcible removal orders of non-citizens. Peutz and De Genova (2010) analyze the contemporary manifestations of deportation and detention of non-citizens and locate its component parts – expulsion, detention, and the control of mobility – under an overarching concept termed the “deportation regime.” While punitive practices are intertwined in the

practices of immigration detention, they are also widely used to forcibly remove “illegal aliens,” migrants, and other non-citizens, further deepening the complex association between belonging, bordering, and punishment (Peutz & De Genova, 2010). Similar to detention, deportation – defined as “the compulsory removal of ‘aliens’ from the physical, juridical, and social space of the state” – is presumed as a natural, administrative response in receiving and handling persons found illegally traversing state boundaries, living or working without “permission,” and earning a living without full membership (i.e. permanent residents, foreign-nationals) (Peutz & De Genova, 2010: 1). At the same time, deportation produces and (re)configures the status of non-citizens in insidious ways, carrying punitive ramifications that reinforce social inequalities, excessive state powers, and sovereignty “into the everyday production of social space and the disciplining of mundane social relations” (Peutz & De Genova, 2010: 2). The practical effects of such immigration enforcement symbolically criminalize non-citizens by acting upon and treating them like criminals (Peutz & De Genova, 2010: 1). Said differently, the threat of deportation can constitute an aggravated form of punishment. Though it is intended to serve administrative purposes and not intended to be painful, in many instances it is experienced as such. Like criminal justice imprisonment and immigration detention, deportation entails severe deprivations, which are often experienced as deeply distressing and exclusionary in nature (Aas, 2014: 528). By physically uprooting their subjects from their territorial settings, deportation precisely establishes a demonstrably physical distance between citizens and non-citizens. This forcible expulsion, when combined with the indefinite detention, has the effect of removing immigration practices from the realm of administrative law, thereby transforming it into an intensified form of punitive intervention. Likewise, this impending threat of removal riddles deportees’ presence in uncertainty and precariousness, especially if expulsion results in potentially facing torture in their country of origin. In essence, this evokes a sentiment that these individuals are expendable subjects who are not expected to return to the society which initially detained them.

Additionally, the forcible removal order, when combined with the indefinite nature of immigration detention, insinuates that “foreignness” is somehow associated to the heightened anxieties about crime and security (Pratt, 2005: 1). These external “others” or “undesirable” foreigners, therefore, rupture the presumed inviolability of state boundaries and are testament to the weakening nature of the state’s ability to effectively defend its internal boundaries from

outside intrusion (Peutz & De Genova, 2010: 8). Therefore, the deportation regime has been fashioned as a mechanism to restore the balance and global order of society by acting as a means of filtering and controlling its borders while regulating entry based on membership (Peutz & De Genova, 2010: 1-2). In fact, deportation is, in its finest, a manifestation of dominant notions of sovereignty, citizenship, national identity, cultural homogeneity, racial purity, and class privilege (Peutz & De Genova, 2010: 2). The forcible expulsion of individuals from their physical territorial location represents a sovereign state's exercise of power in that they are able to more or less coercively "return" non-members back to their original spatial locations, which are determined in accordance to a narrow understanding of their perceived "national" place in the world (Peutz & De Genova, 2010: 8).

In sum, these efforts represent a broader undertaking in delineating and (re)conceptualizing the limit and scope of territorial borders. Rooted in law and governance, its practices establish distinct socio-spatial relations that increasingly govern the spatial ordering of people by systematically reinforcing divided categories of membership and non-membership. However, a question that remains to be explored is the overarching assumption that guides crimmigration law: can the binary distinction between member versus non-member be called into question? In other words, can these fixed categories of state membership be challenged by a wider lens of analysis based on a system of varying degrees of membership?

1.3 Surveillance: Social Sorting, Digitized Dissection, Surveillant Assemblages, and the iBorder

With these innovative socio-spatial relations that transcend traditional territorial borders, new questions are evidently raised with regards formal and informal membership. Though the openness of borders has facilitated an integrated global polity, these strategies are not void of potential threats posed by unknown "others" or immigrants who are categorically suspected of carrying criminalized statuses. Fueled by an overwhelming fear of crime, opening borders has escalated insecurities making it an intense site of securitizing identities. Built on the premise of filtering out unwanted passers, states have implemented innovative surveillance systems to ensure the protection of their intra-state affairs and activities. These measures ultimately promise to offer safety and security from outside threats through pre-emptive detection and action. In fact, the deportation regime and immigration detention are based on this exact rationality. In these instances, borders act as sites to create differences and maintain order within "our" spaces

and that of the “other”. Inevitably, these practices create transnational inequalities where new systems of stratification employed by border enforcement agencies legitimize the exclusion of particular groups in society, begin to justify xenophobic discourses, and eventually reinforce marginalized identities (Van Houtum & Van Naerssen, 2002; Newman, 2003; Adey, 2006; Mau, 2010; Patel, 2012; Perkins & Rumford, 2013; Bigo, 2014; Côté-Boucher, Infantino, & Salter, 2014).

In the digitalized era, surveillance is not only simplified to a voyeuristic process, but rather it involves the mass accumulation of data. Data are being captured through digitally transmitted signals with the assistance of networked computers and databases (Gandy, 2012: 129). This has increased the scope and power of surveillance by rendering surveillance mechanisms capable of “producing status location and relational information [which] interact routinely with devices worn by, or implanted, in individuals” (Gandy, 2012: 129). These devices then transmit the digitalized information into integrated and networked data streams (Gandy, 2012: 129). From there, individuals are placed in various risk categories that sort and classify them accordingly. Lyon (2003, 2006) terms this function as “social sorting” whereby individual data is sorted according to predetermined categories that can carry subjective biases of race, class, and gender differentiations. Once individuals are placed within a coded category, they can be subjected to differential treatment and/or exploited for a specific purpose. This strategy holds the assumption that the mass accumulation of data through surveillance technologies will reduce potential risks and threats that prevail in society.

Other authors explore how the digitalization process has fragmented the body into disparate pieces of information, producing plural temporalities and modes of spatial governance (Pötzsch, 2015: 107; van der Ploeg, 2012: 177). Under this framework, expanding the operational reach of security and surveillance technologies serve to penetrate into the deepest parts of the body to sort wanted from unwanted flows of people, creating a segmentation of mobilities (Adey, 2006: 198; Bell, 2006: 162). Amoore and Hall (2009) have referred to this as digitally dissecting the multiple layers of the human body and translating its information into digital codes. The purpose of this is to extract and display information for viewing, analyzing, and aggregating data to pre-emptively detect threats based on actionable intelligence (Amoore & Hall, 2009: 447). In this context, the body becomes a site to be mined in order to establish certainties. It is widely held that objective “truths” are embedded in the body, and it therefore

serves as a unique marker of verifying identity and establishing authenticity as the signs written into it are unlikely to be manipulated (Aas, 2006: 153, 145; Pötzsch, 2015: 105; Los, 2006: 85). According to these scholars, once the body comes into contact with territorially established frontiers, the multiple layers of the body are opened for interpretation (Amoore & Hall, 2009: 447). This represents an effort to avidly unveil every concealed, hidden, and deeply permeated truth of the body in an attempt to either grant or restrict membership in a given geographical state (Amoore & Hall, 2009: 447). These hidden truths are uncovered by subjecting individuals to a nexus of security and surveillance technologies used at the border (Liu, 2012: 3). Various biometric technologies have been enrolled in this rigorous system of visualization as tools that are used to manage the flow of mobility based on measurable biological and behavioral characteristics (Adey, 2006: 198; Ajana, 2012: 859; Haggerty & Ericson, 2000: 611; Liu, 2012: 22). Although these technologies make the subjects of surveillance hyper-visible, they cannot appear (Nield, 2008: 144). In other words, despite the various technologies employed to make non-citizens visible to institutional and non-institutional actors, they are uniquely made invisible and bounded in an alternate space governed by different institutional arrangements, legal exceptions, and power relations. As Neild (2008) describes it, “they are present before the law, but invisible to it. They have entered the apparatus of disappearance, and vanished in plain sight. Here, but not here” (p. 144). Interestingly enough, De Genova (2013) describes this spectacular visibility as the “Border Spectacle” where migrant illegality is rendered visible through material practices of immigration and border policing technologies. These understandings also intersect and mesh with the literature that studies the various dimensions of temporality and spatiality (Griffiths, 2013).

For Haggerty and Ericson (2000), these various systems of visualization are characterized through what they term the “surveillant assemblage.” The surveillant assemblage converges disparate pieces of information related to the human body by reassembling it into distinct “data doubles” for the purposes of targeted interventions (p. 606). Even more, other authors describe this assemblage as the networked formulation between places, spaces, and things (Bigo, 2014; Côté-Boucher et al., 2014; Pötzsch, 2015). Similarly, Haggerty and Ericson (2000) support the view that an assemblage consists of a “multiplicity of heterogeneous objects, whose unity comes solely from the fact that these items function together, that they ‘work’ together as a functional entity” (Patton 1994: 158 in Haggerty and Ericson, 2000: 608). Deriving his interpretations from

the literature on border work, Pötzsch (2015) conceptualizes this phenomenon as a socio-technological assemblage termed the “iBorder.” Similar to the surveillant assemblage, the iBorder refers to a collection of entities that come together to mutually constitute meanings between material reality, human subjectivity, and immaterial conceptualizations of categories of people, technologies, and things (Pötzsch, 2015: 102). More precisely, the iBorder denotes the interactive practices between human subjects and technological objects that are joined together to make and remake the border (p. 101). Under this model, the border acts as an emergent phenomenon where it appears and disappears depending on the nodal interactions between various human subjects and interoperable databases (Bigo, 2014: 217). The flexibility attached to these networks permit new forms of visualization that demonstrate the co-dependent interaction between an array of entities located in a networked assemblage (Pötzsch, 2015). In addition, these integrated networks provide a new dimension of analysis where surveillance systems, digitalization, and computerized databases have innovated the ways in which we designate favorable versus unfavorable identities, while implicitly (re)constituting the boundaries between “us” and “them.”

In the context of escalated insecurities, the border has functioned as an intense site of securitizing identities and citizenship through the networked bordering of spaces, places, and identities. In the wake of pervasive securitization and surveillance technologies aimed at filtering unwanted and supposedly dangerous “others”, legitimate questions have been raised as to how likely they are to avert or escape the subjective and discriminatory forces of the gaze. Undoubtedly, this creates a host of transnational inequalities where new surveillance and securitization systems deployed at the border re-orient the management of citizenship to reinforce marginalized statuses (Van Houtum & Van Naerssen, 2002; Adey, 2006; Mau, 2010; Perkins & Rumford, 2013; Bigo, 2014; Côté-Boucher et al., 2014).

1.4 “The Jurisdictional Game”: The Fluid, Unfixed, and Heterogeneous Formulations of Membership

Thus far, the literature has provided a socio-legal framework intended to illuminate the production of membership and non-membership. Under this framework, the study of citizenship is embedded in transnational efforts to govern a plethora of mobilities by restricting and facilitating access to various resources and entitlements. This research captures the essence of migrant illegalization where immigration detention and deportation are used in tandem with

criminal law policies and practices (Pratt, 2005; Stumpf, 2006; Peutz & De Genova, 2010; Pratt 2012; Stumpf, 2013; Aas, 2014) to generate “differential inclusion for noncitizens in a variety of administrative categories (e.g. undocumented, irregular, and temporary)” (Landolt & Goldring, 2016: 855). A second portion of the literature has captured the various surveillance techniques and technologies that have been enrolled in a complex assemblage of human and technological entities to designate different degrees of membership (Haggerty & Ericson, 2000; Lyon, 2003; Adey, 2006; Lyon, 2006; Perkins & Rumford, 2013; Pötzsch, 2015). Through ubiquitous forms of surveillance, these actors and technologies are able to confer meaning on human subjects by reinforcing marginalized statuses, eventually being able to forcefully and physically uproot them from their territorial setting (Haggerty & Ericson, 2000; Amoore & Hall, 2009; Pötzsch, 2015).

Both of these perspectives presuppose the existence of fixed categories of membership and non-membership statuses. A third area of scholarship is premised upon challenging these binary distinctions and focuses on boundary negotiations between institutional and non-institutional actors (Landolt & Goldring, 2016: 855; Pratt, 2005). These authors posit that the membership/non-membership dichotomy is not fixed, sharp, or impermeable (Dijstelbloem & Broeders, 2015: 23; Landolt & Goldring, 2016: 855). Instead, they hold that since the border is now articulated as a set of diverse practices and processes through which power is dispersed, the binary distinctions between concepts such as membership and non-membership, along with the notions of legality/illegality, citizenship/non-citizenship, and inclusion/exclusion, become layered concepts (Dijstelbloem & Broeders, 2015: 23; Rumford, 2008: 3). As a result, membership and non-membership are regarded as fluid, unfixed, and heterogeneous categories that generate “different kinds of people with different statuses and opportunities” (Dijstelbloem & Broeders, 2015: 23). This framework explores how multi-level networks composed of diverse social actors deploy legal mechanisms, state policies, regulations, and technologies to affect an individual’s ongoing presence in a given jurisdiction (Landolt & Goldring, 2016; Goldring & Landolt, 2013; Pratt, 2005; Pratt, 2012; Valverde, 2009). These networks can encompass “diverse and intersecting state and non-state authorities, technologies, forms of knowledge, and a regime of rules” (Pratt, 2012: 276). It includes actors from the public health sector to social welfare professionals, to criminal justice, immigration, border service, and security intelligence actors (Pratt, 2012: 276).

According to De Genova (2013), migrant “illegality” relies on a constellation of discursive formations that construct the conditions of social exclusion. This interpretation draws attention to how the inclusion of non-citizens is mediated by a conditional and exclusionary rhetoric that is used to “ensure that this ‘inclusion’ is itself, precisely, a form of subjugation” (De Genova, 2013: 1184). For De Genova (2013), these discursive formations are part of a larger socio-political and legal agenda of normalizing “inclusion through exclusion.” Stemming away from assumptions that conceive the law as a set of overly privileged, well-bounded, and codified practices, Valverde (2003 in Aitken, 2008: 390) along with Goldring and Landolt (2013) and Landolt and Goldring (2016) offer a fruitful perspective that reconceives the law “in terms of its deeply held connections to decentralized networks of mundane techniques and practices” (Valverde, 2003 in Aitken, 2008: 390). Goldring and Landolt (2013) and Landolt and Goldring (2016) explore this phenomenon through the concept of “conditionality” while Valverde (2009) conceptualizes this assemblage as a “legal complex.”

Conditionality “refers to the insecurity and contingency surrounding an individual’s ongoing presence, and includes the formal and practical conditions that must be met in order to retain some form of legal status and/or remain present in a jurisdiction” (Goldring & Landolt, 2013: 3). Specifically, it includes (1) state- and government-imposed conditions (e.g. policies, rules, regulations); (2) the individual’s variable capacity to meet the conditions necessary to remain present and retain status; and (3) “the multiple ways that conditions are upheld, breached, or challenged in practice, at various levels and sites, by multiple institutional actors, with variable outcomes” (Goldring & Landolt, 2013: 15). In working towards meeting the conditions necessary to maintain presence, formal membership and non-membership within a given state are relationally assembled, negotiated, and reassembled in a complex web of interactions. In this process, individuals and institutions alike “negotiate and navigate formal and substantive systems that confer or deny rights to remain present in a country” (Landolt & Goldring, 2016: 854). Non-citizens are able to simultaneously influence their own presence by exercising agency in choosing or not choosing to make claims to substantive rights (Landolt & Goldring, 2016: 854). In this process, non-citizens move in and out of “various precarious legal status categories...[that are] generated by state policies and shifts in these policies, changing regulations, and by the migrants’ own efforts to improve their situation” (Goldring & Landolt, 2013: 15).

Likewise, for Rose and Valverde (1998) and Aitken (2008) this legal assemblage of governance is built into what they call the “legal complex.” The component parts of the legal complex are comprised of “the assemblage of legal practices, legal institutions, statutes, legal codes, authorities, discourses, texts, norms and forms of judgments” (Rose & Valverde 1998: 542). But nonetheless, the workings of the legal complex have increasingly become welded to various non-legal assemblages and networks as well (Rose & Valverde, 1998: 543). Its regulations, practices, deliberations and techniques of enforcement have been progressively supplemented by an array of non-legal professionals, individuals and forms of knowledge (Rose & Valverde, 1998: 543).

In general, these scholars provide valuable insights in dispelling the simplistic understandings that situate non-citizens in fixed, binary categories of membership and non-membership. They contribute to shifting the discussion away from the presumed linear trajectory that non-citizens undergo in securing presence in a given state (Goldring & Landolt, 2013: 3). This linear course is typically characterized by distinct moments of irregularity, regularity, and finally, an ultimate decision that grants non-citizens some forms of authorized legal status or assigns them to an inadmissible category (Goldring & Landolt, 2013: 3). To this effect, Goldring and Landolt (2013) and Landolt and Goldring (2016) challenge the fixity and limited scope of these status categories by pursuing more nuanced theorizations that consider a changing and negotiated pathway towards citizenship and non-citizenship. For this reason, other academics among Goldring and Landolt (2013) and Landolt and Goldring (2016) conceptualize non-citizenship as a dynamic assemblage that converge disparate elements, including but not limited to social actors, relations of power, regulations, bureaucracies, policies etc., in meaningful ways (Pratt, 2005; Levi & Valverde, 2008; Valverde, 2009; Pratt, 2012; Goldring & Landolt, 2013; Landolt & Goldring, 2016).

To articulate the multiscalar and multi-actor assemblage of citizenship and non-citizenship, Goldring and Landolt (2013) engage with a metaphorical jurisdictional game of chutes and ladders. They reveal the dynamic interactive landscape that “propel[s] people up ladders to secure status, down chutes to ‘illegality,’ or along horizontal bridges to other forms of precarious status” (Goldring & Landolt, 2013: 4). Said differently, individuals “can climb up ladders towards more secure presence and rights (perhaps only momentarily) or be pushed down a chute towards more vulnerability, fewer rights or less access and more uncertain presence in

Canada” (Goldring & Landolt, 2013: 16). The principle of conditionality thus offers a new lens of analysis through which “boundaries are challenged and perhaps resituated through negotiation” (Goldring & Landolt, 2013: 16). The socio-legal production of these fluctuating degrees of membership offer insights into the ways in which various legal status categories are mediated through law, regulations, and social practices making these status categories relational, dynamic, and ultimately, uneven (Landolt & Goldring, 2016: 854; Valverde, 2009; Levi & Valverde, 2008).

Similarly, Valverde (2009) engages with a game of jurisdiction and scale to conceptualize the politics of formal and informal presence. Her work provides critical insights into how large-scale legal systems tend to operate in tandem with small- and medium-scale modes of governance (Valverde, 2009: 141). The fact that a variety of legal systems operate at different scales is integral to understanding the “constant interactions among different legal orders – each of which has its own scope, its own logic, and its own criteria for what is to be governed, as well as its own rules for how to govern” (Valverd, 2009: 141). Santos (1987 in Valverd, 2009: 141) terms this process “interlegality.” This concept concerns how different legal assemblages often tend to deploy intersecting, cross-jurisdictional modes of legal governance without a great deal of overt conflict (Valverde, 2009: 141). For Valverde (2009: 142), legal and regulatory governance of people and spaces falls under a complex game of jurisdiction and scale. Under this frame of analysis, various actors with asymmetrical resources, authority, and legal status strategically mobilize the different rationalities, technologies of governance, and discursive and legal resources available in one scale to challenge or manipulate the workings of another scale. More precisely, the practices and legal modes of governance that operate under national and international scales, for instance, can, under this framework, be used in local or city-scales to effect changes in outcome, order space, or regulate conduct (Valverde, 2009: 143).

The emphasis here is that these cross-jurisdictional modes of governance can eventually normalize exceptional practices and serve as a standard way of legally mediating the constant subjugation of non-citizens through relational and ultimately uneven practices. The scholarship in this area treats the notion of exceptionalism as separate from what Giorgio Agamben (2005 in Aas, 2014: 521) refers to as the “state of exception” that involves the suspension of the law via extra-legal measures. Under this exceptional logic, the associated practices and processes in making and unmaking citizenship is by and large a “legally regulated, but differentiated, two-tier

system of justice” (Aas, 2014: 521). In other words, as noted by Mark Neocleous (2008 in Larsen & Piché, 2009), “far from *suspending* the law,...'emergency conditions' have been legitimated *through* law” (p. 209). In this context, laws are strategically drafted and interpreted with the explicit goal of circumventing barriers that prevent action (Larsen & Piché, 2009: 209). Goldring and Landolt (2013), Landolt and Goldring (2016), Pratt (2005, 2012), and Valverde (2009) would suggest that these nuanced variances embedded in interpreting and enforcing legal codes, policies, and laws serve as a driving force in understanding how legal doctrines and practices are strategically mobilized to institute a system of fluid membership status where non-citizens tend to fluctuate between different degrees of membership.

To recap, the pathway to obtaining in/formal membership is relational and dynamically assembled. In fact, various actors, located in multiple scales and jurisdictions, can mediate and negotiate the degree of an individual’s membership status by mobilizing an array of legal and non-legal mechanisms, resources, and strategies. In other words, a multiscale and multi-actor network works to shift individuals in and out of various status categories rendering the boundaries between membership and non-membership fluid. This line of thinking can be framed by the theoretical underpinnings of actor-network theory. As will be explored in the following section, actor-network theory studies the relational functions between a series of disparate entities and their patterned and changing ways of organizing different modes of governance, establishing norms, and social practices.

1.5 Theoretical Framework: Actor-Network Theory

After conducting a detailed review of the literature pertaining to the socio-legal understandings of bordering practices and citizenship studies, the main gaps in social theory are found in integrating the mutually constitutive relationship between human and non-human actors in assembling the border and creating varying degrees of membership. The theoretical orientation of a significant portion of current social research has accustomed us to describing the influence of technologies on human relations and vice-versa, but has not yet made us experts in “weaving together the two resources into an integrated whole” (Latour, 1991: 111). Therefore, I propose that one productive way to describe the current developments in understanding the fluctuations of jurisdictional or territorial membership is by adopting actor-network theory (ANT) as a theoretical backdrop. In doing so, this will help explain the interconnections between a wide range of human and non-human actors and how they articulate the border and its

associated practices and processes. Actor-network theory falls within what John Law (2009) characterizes as “material semiotics.” Material semiotics uses “tools, sensibilities and methods of analysis that treat everything in the social and natural worlds as a continuously generated effect of the webs of relations within which they are located” (Law, 2009: 141). As a material semiotic approach, actor-network theory “describes the enactment of materially and discursively heterogeneous relations that produce and reshuffle all kinds of actors including objects, subjects, human beings, machines, animals, ‘nature’, ideas, organizations, inequalities, scale and size, and geographical arrangements” (Law, 2009: 141). In applying this framework for this analysis, I will describe how the border is composed of multiple networks and its practices are relationally enacted by an array of actors, both human and non-human alike. The layout of the following section will explore the key facets of actor-network theory and then proceed to demonstrate the specific links between the concepts and the objective of the present study.

In today’s networked society, it is not sufficient to think of technologies and society as mutually exclusive entities. Rather, technologies and society are woven together in a complex assemblage of practices, processes, artifacts, institutional arrangements, texts and documents that symbolically and discursively articulate or establish a particular social order. Under this framework, technologies have evolved beyond their mechanical, technical, and physically localized articulations; instead, they can take dynamic forms in that they evoke a chain of beliefs, practices, emotions, people, products, tools, and so forth (Akrich, 1992). That being said, even the most mundane objects and practices appear to be the product of a diverse set of forces that are born out of the relations between heterogeneous elements (Akrich, 1992: 205). Developed in the 1980s by science and technology studies scholars, Bruno Latour and Michel Callon, along with sociologist, John Law, this framework has been dubbed Actor-Network Theory (ANT) (Stasiulis, 2017: 6; Law, 2009: 142). At its most basic level, ANT proposes that humans and technologies concurrently play a role in shaping the social world. ANT proposes that human realities and technologies are indissociable where technology is socially shaped and society is technically shaped, and together, they co-construct the meanings of the social world and its affiliated artifacts and practices (Bijker, 1995; Dijstelbloem & Broeders, 2015: 27; Pötzsch, 2015). In this sense, humans and objects are not ascribed static, absolute statuses; rather, their meaning is emergent and contingent upon procedures and practices that interact together in an assemblage of human and technological entities (Akrich, 1992: 206; Dijstelbloem & Broeders,

2015: 27; Pöttsch, 2015). In this context, the border is regarded as being composed of a series of articulations presented by human and non-human actors alike that come together to mutually define its reach, practices, protocols, and operations.

Since the 1980s, ANT has been diversified and used in multiple fields of studies, including socio-legal studies and a variety of other social science disciplines (Levi & Valverde, 2008; Pöttsch, 2015). The actor-network approach represents an important methodological and theoretical innovation in that it is grounded in empirical case studies that draw attention to the “messy practices of relationality and materiality of the world” (Law, 2009: 142). While some theorists reject the actor-network approach as a theory and accept it as more of a methodology (Law, 2009: 142), others regard that its flexible nature permits it to be interchangeably used as a theory and/or methodology (Dijstelbloem & Broeders, 2015: 27).

1.5.1 History and Background of Actor-Network Theory

Actor-network theory studies initially began in scientific laboratories where scientists and engineers were interested in “documenting *knowledge in the making* [emphasis by author]” (Levi & Valverde, 2008: 807). This follows a process-oriented approach that tracks the development of scientific phenomenon through the constellation of people (e.g. scientists, patients, grant committees, etc.), things (e.g. beakers, measurement tools, grant proposals, laboratory benches), ideas (e.g. Newton’s Laws), resources, and so on (Levi & Valverde, 2008: 807). When Latour made these observations in the mid-1970s, he did not speak of actor-network theory per se, but its elements were clearly present:

materially heterogeneous relations analyzed with semiotic tools, a symmetrical indifference to the truth or otherwise of what it is looking at; concern with the productivity of practice; an interest in circulation; and the predisposition to exemplary case studies; all of these are signatures of actor network theory (Law, 2009: 144).

One of the earliest formulations of an actor-network driven analysis stems from the work of Thomas Hughes, historian of technology. His work emerged alongside Latour’s in the mid to late 1970s and early 1980s (Law, 2009: 143). Hughes traced the work of Thomas Edison, engineer and manager, and his New York electricity supply network (Law, 2009: 143).

Following Latour’s interpretative framework, Hughes demonstrated that Edison’s creation was

an artful combination of transmission lines, generators, coal supplies, voltages, incandescent filaments, legal maneuvers, laboratory calculations, political muscle, financial instruments, technicians, laboratory assistants, and salesmen. In short, it

was a system, and it worked because Edison engineered the bits and pieces together (Huges, 1983 in Law, 2009: 143).

In tracing the component parts of the technology, the complexities behind the architecture of the system are able to surface and reveal the individual elements, people, or objects that created or reshaped that system (Law, 2009: 143). In studying “knowledge in the making,” Latour (1993 in Levi & Valverde, 2008: 808) privileges neither the scientific revelations nor the social ones. Instead, Latour (1993 in Levi & Valverde, 2008: 808) favors a position that celebrates rather than critiques scientific discoveries. By dissecting the component parts of systems, objects, and processes, he develops a profound appreciation for the intricacies that are embedded in the production of knowledge (Levi & Valverde, 2008: 808). Alongside Latour, Callon’s work provided a clearer problematization: “how can we describe socially and materially heterogeneous systems in all their fragility and obduracy?” (Callon, 1980 in Law, 2009: 143). This is where the foundation of actor-network theory was first realized (Law, 2009: 143).

While refraining from making overstated claims about the world, ANT prefers to focus on documenting the “processes, networks and actors through which the world is constantly being assembled” (Levi & Valverde, 2008: 808). Latour, and other actor-network theorists, posited that we needed to step away from the dangers of dualism that saw the world through a binary lens of human and non-human, big and small, micro and macro, and social and technical – these are just some of the dualisms that have been dismantled by the relational constructs of ANT (Levi & Valverde, 2008: 808; Law, 2009: 147). In fact, Latour (1993, 2004 in Levi & Valverde, 2008: 808) stressed that these binary divisions have never accurately captured the realities of our social world. ANT scholarship challenged these static, immutable categories and demonstrated how these ontological distinctions are, in reality, fluid, unstable, and ever-changing in nature (Law, 2009: 808; Latour, 1992: 151). Latour (1993 in Levi & Valverde, 2008: 808) encouraged us to embrace the idea of a more hybrid interpretation of these categories; in turn, he proposed one that moved away from a stringent divide between object X and object Y.

These early developments surely carried recognizable ingredients of ANT, but its establishment as a distinct social theory is arbitrary. Law (2009) holds that the ideas described above were officially woven together to craft a workable set of tools to describe social phenomena around 1986 or 1994. It was during this time that actor-network theory began to organize a vocabulary of concepts: it set out to study *semiotic relationality* (how networked

elements worked to define and shape one another), *heterogeneity* (where networks were composed of diverse actors, humans or otherwise), and *materiality* (where we were interested in studying objects, subjects, human beings, machines, animals, nature, ideas, and organizations, not just “the social”) (Law, 2009: 146). In addition, ANT insisted on redirecting our focus on *processes* and its *precariousness* (Law, 2009: 146). There was also attention given to *power* and its impact on how networks were configured to reflect *spatial* and *scalar* relations that “translate[ed] distant actors” (Law, 2009: 146). To this effect, ANT is the study of *how* things work together. While staying true to these foundational principles, ANT has developed a sophisticated set of concepts over the years to articulate the relational practices enacted between variously located actors.

In sum, this section has traced the origins of ANT and provided an introductory basis to its various concepts and components. The most prominent feature of ANT is that it deviates away from deterministic models that attribute scientific outcomes to human development and creativity. Instead, the logics of ANT trace all the inputs to explain how heterogeneous entities function together as a system. In social science research, ANT has provided a rich and innovative perspective to the traditional “debates about social construction versus material/biological reality, preferring instead to document which actors played which role in a particular ‘production’” (Levi & Valverde, 2008: 811). In the next section, I provide a more detailed account of the various concepts of ANT and how they are relevant in the present study.

1.5.2 Theoretical Concepts and Component Parts of Actor-Network Theory

Actor-network theory aids in determining how human and non-human actors coexist in a networked assemblage and confer meaning upon spaces, places, and “things.” ANT theorists have argued that designers develop technologies with the intention of serving a predetermined purpose (Akrich, 1992: 208). In doing so, developers make certain assumptions about the entities that make up the social world into which the object or technology is inserted (Akrich, 1992: 208; Latour, 1992: 151). Therefore, it is understood that designers “define actors with specific tastes, competences, motives, aspiration, political prejudices, and the rest, and they assume that morality, technology, science, and economy will evolve in particular ways” (Akrich, 1992: 208). The process of *inscribing* or envisioning a predetermined meaning about the world into the technical content of the object is a component part of what is called a *script* or a “scenario” (Akrich, 1992: 208). According to Akrich (1992),

the technical realizations of the innovator's beliefs about the relationship between an object and its surrounding actors is thus an attempt to predetermine the setting that users are asked to imagine for a particular piece of technology and the prescriptions that accompany it (Akrich, 1992: 208).

Bearing this theoretical framework in mind, the intended purpose of a border, in its most simplistic form, is to serve as a geographical marker that distinguishes the reach and limits of territorial and jurisdictional boundaries. This is the *prescribed* value that is attached to the border, also known as the intended function it is expected to fulfill (Slack & Wise, 2005: 119). However, its prescribed purpose can be compromised since the border and its practices are negotiated by various actors, or *actants*, that are *enrolled* in a complex ensemble of disparate elements (Slack & Wise, 2005: 118; Akrich, 1992: 208-209; Latour, 1992: 151; Levi & Valverde, 2008: 809). When the border is observed as an *actor-network*, we see different entities come together to *articulate* the contingent relationships between “different elements that, when connected in a particular way, form a specific unity” (Slack & Wise, 2005: 27). These units of disparate elements are situated in *networks* that outline the various entities located within the actor-network and describe how it is built, maintained or transformed (Slack & Wise, 2005: 121). The actor-network approach explores the “strategic, relational, and productive character of particular smaller-scale, heterogeneous actor networks” (Law, 2009: 145).

When these entities are assembled together in an actor-network, flows of *translations* interject to alter the object's original purpose or its role envisaged by the designer (Akrich, 1992: 209). The notion of translation “refers both to the connection between actors and the resulting changes in meaning” (Dijstelbloem & Broeders, 2015: 30). It is useful to explore Callon's (1986) application of translation to his empirical case study involving the commercial production of scallops in France. Callon (1986) traced how knowledge is produced and constructed through a “network of relationships in which social and natural entities mutually control who they are and what they want” (p. 6). In tracing these networks, he described four distinct moments of translation whereby certain actors “impose themselves and their definition of the situation on others” (p. 1). Callon (1986) described these moments as (a) problematization, (b) interssement, (c) enrolment, and (d) mobilization. During the first phase, problematization, the primary actor(s) come together to identify and define the nature of the problem, decide on the knowledge claim(s) that is/are necessary, and determine what actors are required within the network to solidify the problematization. If these primary actors, or spokespersons, are successful in convincing other

actors, the problematization and the suggested course(s) of action are locked into place and solidified within the network, transforming them into “obligatory passage points” (Callon, 1986: 7). As these actors work to build and advance their problematization, negotiations will take place with other actors concerning the roles they may play within the network. This is known as *interessement*. During this phase of translation, certain collective entities are vigorously engaged in defining the identity, goals, projects, orientations, motivations, or interests of other actors through its problematization. The ultimate goal of these collective entities is to impose and stabilize the identity of the other actors as per its problematization. According to Callon (1986), “to interest other actors is to build devices which can be placed between them and all other entities who want to define their identities otherwise” (p. 9). In essence, the solidarity of the problematization is dependent on the capacity of these devices and entities to successfully convince other actors into accepting their ascribed roles, identities, and inclinations. *Interessement* devices will be successful in enrolling actors in the network only if they are able to convince the actors of the necessity of their role and the importance the problematization. Successful *interessement* will lead to enrolment where actors accept the roles they have been given. Lastly, mobilization then occurs as others external to the network move to support it, hardening the connection between disparate elements located within the network. As will be demonstrated with the empirical case study, translation is an ongoing process that is never fully completed, and may fail or crumble.

By this logic, the intended or prescribed function of the border as a spatial divider is significantly transformed by an infinite amount of actors located in a multiplicity of uneven spaces that co-construct its various practices, processes, reach, extent, and so forth through a series of articulations. Therefore, the original attributes inscribed in the border have been suddenly displaced, reassembled, and enrolled to translate a series of newly established norms, functions, practices, processes, and modes of governance that extend well beyond its prescribed purpose. It is no surprise that the actor-network composition of bordering practices have reconfigured the prescribed values attached to the border. Beyond acting as a mere spatial divider, the reformulated border and its associated practices have generated an array of intersections between institutions (e.g. detention centers, border control and immigration agencies, courts), documents (e.g. passports, legal files, birth certificates), machines (e.g. iris, fingerprint, and body scanners), humans (e.g. judges, lawyers, non-citizens, migrants, asylum-

seekers), and so on. In using Law's (2009) notion of material semiotics and Callon's (1986) moments of translation along with the broader ANT concepts, I will demonstrate how bordering practices have been problematized in specific scenarios. These scenarios, or networks, constitute material semiotic assemblages that carry their own problematizations, devices of interessement, techniques of enrollment and mobilization. Through this, I will demonstrate how the connections between some networks are able to hold stronger than others. The strength and weakness of each network is directly dependent on the capacity of the primary actors in convincing the masses of the relevance and importance of their problematization.

1.5.3 Actor-Network Theory and the Present Study

Over the years, actor-network theory has made significant advancements in a variety of disciplines that extend far beyond the realm of science studies (Law, 2009; Levi & Valverde, 2008). As a sociological approach, ANT has been applied to the scholarship related to socio-legal studies' undertaking of bordering and citizenship practices (Valverde, 2009; Peutz & De Genova, 2010; Goldring & Landolt, 2013; Landolt & Goldring, 2016; Stasiulis, 2017). This scholarship has provided critical insights on the relationship between individuals and states. While departing from traditional understandings that regard the relationship between individuals and states as involving particular statutory rights and obligations, the actor-network approach imagines this relationship as existing in a network of institutions and social interactions that negotiate its depths and limits (Stasiulis, 2017: 4). More importantly, such sociological understandings illuminate the everyday practices involved in making and unmaking citizenship while remaining attentive to the process of how it occurs across "different scales and in different locales" (Stasiulis, 2017: 4). In paying attention to the contextually specific arrangement of practices, processes, events, and circumstances, ANT, and its broader sociological framework, "enrich our appreciation [for] the social relations of power that underlie the making and unmaking of citizenship" and the meaningful connections attached to mundane or everyday practices (Stasiulis, 2017: 4).

My aim for the present study is to use the actor-network approach and document how various human agents and material objects are assembled together in a complex web of interactions that relationally construct the various degrees of membership, and how these articulations restructure the border as a fluid, heterogeneous assemblage of people and things. Typically, actor-network scholars and theorists will proceed by identifying a "network" to be

studied and then “document the processes of knowledge production” of a specific social phenomenon or physical object (Levi & Valverde, 2008: 811). Whether one is analyzing a technical innovation or a piece of legislation, ANT treats the chain of disparate elements as a temporary assemblage of actants, “ranging from people to laboratory instruments, legal texts, forms of discourse, architecture or ideational concepts” (Levi & Valverde, 2008: 811). In the same way, I demonstrate the various connections between these actors who possess asymmetrical resources, authority, and legal status and have been enrolled in a network where the production of membership and non-membership is perpetually made and unmade through a process of constant deliberation and negotiation. As Levi and Valverde (2008) insist,

the goal is to document which of the indefinite number of potential actants did in fact act – that is, did or did not successfully contribute to shaping the network under study by recruiting or borrowing or riding on the coattails of other actors (p. 811).

More precisely, to examine the production of the various degrees of membership, the primary research question that guides this study is as follows: in exploring cases of various migrants as complex assemblages of social and technical entities articulated together, what does it mean for the notion of borders and bordering practices alike? In other words, what does each of these networks tell us about bordering? It is useful to examine these practices through a multi-layered understanding of state membership because it compels us to see the complexities behind bordering practices. By discussing the various degrees of membership, we see that the border itself is a multi-layered concept. For example, throughout this thesis, it can be argued that the border means different things to different actors. Given this, the border is constantly being molded and (re)molded by variously located actors and it can take the shape of an idea or a notion in one instance, a network in another, or even a technology in yet another instance. As such, the binary conceptions that are attached to the border are only one of many actualizations that exist throughout this multi-level approach in understanding borders and bordering practices. For the purposes of my analysis, I am interested in focusing on how the various degrees of membership articulate the border as a constantly moving reality.

Guided by the pre-existing literature, the aim of this study is to examine the constellation of textual, spatial, temporal, legal, and discursive technologies or mechanisms that have been strategically mobilized by a series of actors to bracket non-citizens in and out of particular political communities or territorial jurisdictions (Pratt 2005; Stumpf, 2006; Levi & Valverde,

2008; Valverde, 2009; Peutz & De Genova, 2010; Pratt, 2012; Griffiths, 2013; Goldring & Landolt, 2013; Stumpf, 2013; Landolt & Goldring, 2016; Stasiulis, 2017). The network of relations among these events, people, documents and other objects tend to constitute membership and non-membership in varying degrees, leading to the production of diverse forms of membership. These networked assemblages demonstrate the diverse articulations of the border and how its techniques and practices are exerted in different ways to (re)configure, shift, and transform the status and presence of non-citizens in Canada. That being said, in the next chapter I present my research design and methodology and explain its association with my theoretical framework. Specifically, I aim to establish how my theoretical framework drove me to the methodology I ultimately chose to answer my research question.

Chapter 2: Methodology and Research Design

Yin (1994) describes the research design as “the logical sequence that connects the empirical data to the study’s initial research questions and, ultimately, to its conclusions” (p. 19). In other words, a research design outlines a plan of action “from getting here to there” (Yin, 1994: 19). This includes a detailed description of the major steps undertaken by the researcher(s) in the collection and analysis of relevant data (Yin, 1994: 19). More specifically, a research design

guides the investigator in the process of collecting, analyzing, and interpreting observations. It is a logical model of proof that allows the researcher to draw inferences concerning causal relations among the variables under investigation. The research design also defines the domain of generalizability, that is, whether the obtained interpretations can be generalized to a larger population or to different situations (Nachimias & Nachimias, 1992: 77-78 in Yin, 1994: 19-20).

In this chapter, I focus on explaining the “blueprint” of this research project and answer what I intend to study, how I intend to study it, what data were collected, and how it was analyzed. In brief, this study is guided by three case studies of which the data have been collected from a variety of sources that will be explained in detail.

2.1 What is a case study?

Oftentimes, social science researchers will investigate social phenomena and their overt manifestations through case studies. In trying to understand the complexities of the social world, case studies are the most feasible approach when faced with meager resources (Stake, 1994: 237). However, when we are highly involved in producing result-oriented or generalization producing studies, we sometimes tend to lose sight of the epistemological intricacies embedded in case studies and take their existence for granted (Stake, 1994: 238). Thus, case study method has rarely been given attention (Stake, 1994: 238). For this reason, it is important to build an appreciation for the methodological underpinnings associated with the selection of case studies before delving into the details of the cases I have chosen to be analyzed for this research project.

Different researchers can have different reasons for studying cases. In general terms, cases are undertaken as objects of analysis because the researcher has an intrinsic interest in illustrating the workings of some kind of theory, concept, or social or cultural practice (Stake, 1994: 237; Yin, 1994: 2). Case studies are a multi-disciplinary research strategy that has been used in psychology, political science, business, and social work (Yin, 1994: 2). They are intended to contribute to our knowledge about individual, organizational, social, and political

phenomena (Yin, 1994: 2). Case studies are intriguing because “it draws attention to the question of what specifically can be learned from the single case” (Stake, 1994: 236) and provides meaningful insights into real-life events (Yin, 1994: 3). To some degree, there is a general consensus and understanding among academics when they refer to the name “case study” (Stake, 1994: 237). However, the fine-tuned elements of what specifically constitutes a “case” and a “study” remains ambiguous and are subject to debate (Stake, 1994: 237).

In social science disciplines, a case study is identified based on its specificity and boundedness. This means that the case must be narrowly situated within an integrated system, rather than involving events, topics, or situations that touch on overbroad generalities. According to Stake (1994), case studies are patterned, consistent, and “it is common to recognize that certain features are within the system, within the boundaries of the case, and other features outside...the boundedness and the behavior patterns of the system are key factors in understanding the case” (p. 237). Ultimately, single cases can be studied in relation to one another to understand a broad social phenomenon, “but each case study [must be] a concentrated inquiry into a single case” (Stake, 1994: 237).

There are several types of case studies, but for the purpose of this research project I will be adopting the methods associated to what is called a collective case study. In the study of collective case studies, individual cases are jointly assembled to inquire into a phenomenon, population or general condition of interest (Stake, 1994: 237). The individual cases in the collection may be similar or dissimilar. They are chosen based on the belief that becoming familiar with their details, story, or general narrative “will lead to better understanding, perhaps better theorizing, about a still larger collection of cases” (Stake, 1994: 237).

2.2 ANT and Case Studies: How is it Useful?

The versatility of ANT not only enables researchers to use its underpinnings to theorize about the social, political, economic, and technical worlds and their interrelated systems, but it can also be employed as an analytical method (Levi & Valverde, 2008: 812; Stake, 1994: 239). Methodologically, ANT studies micro-level cases or phenomena to understand how and where something comes into being within a broader network (Burga & Rezania, 2017: 1027). These smaller sites of analysis allow researchers to draw insights on how the interrelationships between variously located actors constitute, sustain, and transform the emergent social, political, technical, and cultural worlds around them (Akrich, 1992; Burga & Rezania, 2017; Law, 2009;

Levi & Valverde, 2008). As such, the collective case study approach can be regarded as a methodological technique wherein disparate elements, events, situations, and actors are drawn from multiple cases or sites of analysis to string together a narrative about larger social, political, or economic issues (Stake, 1994: 239). Each case study is embedded

with its own unique history, the case is a complex entity operating within a number of contexts, including the physical, economic, ethical, and aesthetic. The case is singular, but it has subsections, groups, occasions, a concentration of domains – many so complex that at best they can only be sampled (Stake, 1994: 239).

When cases are studied together, researchers are able to draw rich insights about the workings of various practices and how they constitute the vast degrees of membership. In this research, this combined approach has the potential of enriching our understandings about how non-citizens “meet, navigate, and try – or not – to change their formal or substantive conditions of presence and access over time” (Landolt & Goldring, 2016: 858). The similarities and differences in the trajectories of the non-citizens across the three cases illuminate how the degrees of membership are processual constructs that undergo transformation through various stages and articulate the border and its interrelated practices in a variety of different ways. They also capture the importance of how non-citizens exert their own form of agency in a relationally constructed network to perpetually influence their presence in Canada.

By refocusing our attention on the analysis of multiple case studies as opposed to a single, in-depth case, I am able to fulfill my research objective of how the border is articulated as a heterogeneous collection of human and non-human actors where its shape and form is contingent upon contextually specific circumstances, practices and processes. In doing so, my intention is to move away from theorizations that regard the border as a fixed or rigid entity. My aim is to contribute to the newer literature that views bordering as a series of different practices performed by a variety of actors who contest and negotiate its bounds under multiple of contexts. For the next step, ANT requires researchers to identify and choose a/the network(s) and the actors to follow through their trajectories (Burga & Rezania, 2017: 1027). Typically, this requires researchers to pick a specific thread and follow its associations. According to Roth (1996), researchers must choose what he calls “tracers.” That is, the chain of “artifacts, procedures, actions, talk, or written symbols” that are followed across space and time and the networks in which they are located in (Roth, 1996: 193). In a similar way, I traced the collection

of people and “things” (e.g. court documents, files, legislation, etc.) through the three case studies. For this thesis, I have conceptualized each case study to embody a distinct network that reflects on the fluid categories of inclusion/exclusion and the varying ways in which bordering techniques, practices, and processes are articulated through these constructions. According to Côté-Boucher et al. (2014), studying the essence of a practice is advantageous because it “entails paying sociological attention to the set of shared understandings and disagreements, implicit social and cultural norms, skills, competencies, informal knowledge, attitudes and embodied dispositions” that make up the border (p. 198). This requires us to engage with the idea of the border as a socially negotiated and contested space that is dynamically articulated by variously located actors. For this reason, border studies have emphasized the conceptual shift from borders as a fixed entity to the notion of bordering as a set of practices that are performed by multiple actors (Côté-Boucher et al., 2014: 198; Pötzsch, 2015; Rumford, 2008; Rumford, 2006; Stasiulis, 2017; Van Hourtum & Van Naerssen, 2001).

2.3 Research Question

This analysis is predicated upon exploring how borders are constituted as a collection of broadly articulated practices and processes performed by dynamically located actors. In order to empirically explore this notion, this research project is guided by the following research question: how are the notion of borders and bordering practices, as examined through three distinct case studies involving non-citizens, articulated as an arrangement between a series of disparate socio-technical relations? In other words, what do each of these arrangements, or networks, tell us about bordering? In order to tangibly illustrate, observe, and analyze these specific occurrences, I drew my empirical material from three Canadian case studies each of which are concerned with specific issues related to how non-citizens navigated through a complex system of legal norms, practices, and processes.

Given the analytical framework of this research project, the epistemological and ontological orientations have a direct bearing in shaping my methodology. Social science research is highly interpretative where there are multiple ways of understanding reality; it assumes that a diverse set of actors are involved in constructing reality through co-constitutive processes and practices that frame our understandings of “what is” or “what is not” (Hammersley, 2013: 61; van den Hoonaard, 2015: 25). By this logic, my research is aimed to demonstrate how the border is articulated through relational processes and negotiations between

different actors. In doing so, my interest is not to ascribe motives to the actors who employ an array of discursive, technical, or legal strategies to define the border; rather, my aim is to describe “the processes, procedures or strategies through which particular social realities are created and sustained” (Hammersley, 2013: 62-63).

2.4 Research Design and Data Collection

The principal aim here is to discuss the methodological procedures that were undertaken in the course of my data collection. The research design for this project called for a qualitative document analysis that was subsequently studied through an ANT lens. Many researchers often prefer conducting their research by collecting data from pre-existing documents given their unobtrusive method of gathering data, and therefore protecting the integrity and dignity of otherwise vulnerable populations (van den Hoonaard, 2015: 120). This method of analysis endows the researcher with the agency to create his/her “own issue spaces” by exploring ideas and uncovering their cultural significance (van den Hoonaard, 2015: 121). Given my limited resources, time constraints, and inability to easily access the subjects of the case studies, a qualitative document analysis was the most feasible and realistic option given my circumstances. At its most fundamental level, qualitative research involves uncovering the underlying details of textual material, objects, people, places, or “things” in order to gain a deeper understanding of the social world (van den Hoonaard, 2015: 3). The flexibility and fluidity embedded in qualitative research processes allows researchers to acquire different perspectives and adopt a range of analytical techniques (van den Hoonaard, 2015: 21). Therefore, studying borders through a qualitative lens is particularly advantageous because it accounts for the “diffuse, differentiated, and networked” collection of practices and processes, performed at various levels and scales, by multiple actors, in addition to the multiplicity of meanings they ascribe to the border (Rumford, 2008: 3).

The analysis of this study has been primarily drawn from four individual case studies, two of which have been collapsed into one. Each case study was selected based on whether the event (1) dealt with issues related to the *Immigration and Refugee Protection Act (IRPA)*, (2) involved non-citizens (i.e. permanent residents, illegal migrants, foreign-nationals, refugees, asylum seekers, etc.) who had been informally criminalized, detained, and/or had their mobility restricted, (3) and occurred between the years 2000-2017 to assure the significance of the findings. As I sifted through the various possibilities, I came to the conclusion that the cases

should capture the diverse social, political, economic, and cultural trends and shifts that occurred during this vast time span. I eventually settled on selecting one case from three time frames to capture this diversity: early-2000s ranging from 2000-2005, mid-2000s ranging from 2006-2011, and late-2000s ranging from 2012-2017. I have assigned these demarcations arbitrarily in an attempt to situate the case studies and provide a narrow reference point. I acknowledge that the use of three case studies is not sufficient enough to constitute a representative sample of the vast time frame and its respective historical and contextual circumstances. Though it is not an exhaustive, generalizeable sample, my intention is to show how the “findings...carry more conceptual weight [when] they [are] shown to apply in different times and places” (Curtis, Gesler, Smith, & Washburn, 2000: 1006). A commonly held belief is that case studies are lacking in their generalizability. However, case studies are not meant to be generalized to a population or universe; rather, they are generalizable to theoretical propositions (Yin, 1994: 10). In this sense, my objective is not to contribute to statistical generalizations, but rather to expand on analytical generalizations (Yin, 1994:10). Given these criteria, I chose to center my analysis on the case of Mohamed Harkat (2002), the MV Ocean Lady (2009), the MV Sun Sea (2010), and Deepan Budlakoti (2014). The MV Ocean Lady and MV Sun Sea cases have been collapsed and analyzed as a single case study due to their factual similarities.

Since this study is guided by an actor-network framework, I recognize that there are infinite networks and assemblages involved in making and unmaking membership and non-membership, and, by extension, even more ways in which borders are articulated and rearticulated. For practical reasons, I have narrowed my analysis to a detailed description of small-scale, heterogeneous actor-networks (Slack & Wise, 2005: 121). In this regard, I present the three case studies as specific assemblages or networks of human and non-human actors that relationally maintain or transform the various aspects of bordering.

The data for each case study were collected from disparate sources to trace the individual narratives presented in each case study. The strength of case studies lies in its ability to include a variety of evidentiary sources to guide the analysis (Yin, 1994: 8). As such, documents, artefacts, interviews, and observations are all acceptable sources of empirical material (Yin, 1994: 8). To observe the emergent and fluid production of the border and its practice, I collected evidence from a variety of news sources, official websites, and publicly available court decisions to establish a timeline of events for each case study. The information gathered from all the sources

were eventually woven together to constitute the network of social and material relations that distinctly made up each of the case studies. By converging disparate sources of evidence, I was able to enhance the validity of my findings as I consciously assured that the details of each case study were corroborated by the different sources (Yin, 1994: 13). I utilized ANT as an analytical guide throughout my discussion

In total, the search across a variety of news outlets and websites (e.g. Justice for Harkat and Justice for Deepan) yielded 375 articles that were pertinent to laying out the events of each case study. Of the 375 articles, 182 were related to Harkat, 144 were related to the MV Ocean Lady and MV Sun Sea, and 49 were related to Budlakoti. In addition, any relevant Federal Court or Supreme Court decisions that were publicly available and pertinent in developing each network were included in the data set. Where a single Federal Court decision was consulted for Budlakoti (See Appendix A), 19 court cases were consulted in developing Harkat's timeline of events (See Appendix B). For the MV Ocean Lady and MV Sun Sea, no court cases were consulted due to the lack of accessibility. It is worth noting the sheer amount of data available on Harkat's case compared to Budlakoti, and the MV Ocean Lady and MV Sun Sea. This is due to the fact that Harkat's case has been an ongoing ordeal for over 10 years. It is no surprise that I came across more data related to Harkat compared to the other two cases.

2.5 Case Study Summaries

The following three sub-sections will provide a brief synopsis of each of the case studies that have been selected for this project. These sub-sections are intended to provide the background details necessary to contextualize the specific references made in the analytical chapters that follow. The cases below are discussed chronologically starting with Mohammed Harkat and ending with Deepan Budlakoti.

2.5.1 *Mohamed Harkat (2002)*

Mohamed Harkat, a native-born Algerian and permanent resident in Canada, arrived in 1995 claiming refugee status, turning over his false Saudi passport immediately after landing in Toronto, Ontario. Prior to arriving in Canada, Harkat worked for the Muslim World League – an Islamic charity organization based in Pakistan that was suspected of financing terrorism – in the early 1990s as an agent supervising the delivery of food and relief supplies for Afghan refugees. Unable to renew his work papers and visa in Pakistan, he began exploring options for leaving and eventually settled in Canada. Once in Canada, he worked as a gas station attendant and a

deliveryman for Pizza Pizza, and eventually married Sophie Lamarche Harkat, a Canadian citizen.

Harkat was arrested in December 2002 under Canada's security certificate regime outside his home in Ottawa. The Solicitor General of Canada and the Minister of Citizenship and Immigration initially declared Harkat inadmissible to Canada on the grounds of national security as he was suspected of having ties to and engaging with Al-Qaeda and the Osama Bin Laden network. After a successful constitutional challenge and a subsequent amendment of *IRPA*'s security certificate clause¹ in 2008, the ministers issued a new security certificate against Harkat stating that he was inadmissible to Canada on security grounds pursuant to section 34² of *IRPA*. Following the new amendments, Harkat was provided with newly declassified summaries of the allegations against him, which commenced new proceedings before the Federal Court to determine the reasonableness of the new security certificate.

While simultaneously fighting his deportation order, Harkat was eventually released on bail on June 21, 2006 under the strictest bail conditions in Canadian history. In what seemed like the beginning of an endless string of legal proceedings, Harkat's journey through the criminal justice system was not an easy one – it was physically, mentally, and emotionally exhausting. In 2010, Harkat's certificate was referred to the Federal Court for a determination of its reasonableness. After careful consideration of all the evidence presented at both open and closed hearings, the Federal Court upheld the security certificate placed against Harkat in December 2010 (Harkat [Re], 2010 FC 1241). In addition, the Federal Court also dismissed a defense application to declare the security certificate process unconstitutional (Harkat [Re], 2010 FC 1243) along with another application which sought a stay of proceedings due to mishandled evidence (Harkat [Re], 2010 FC 1242).

¹ See *IRPA*, S.C. 2001, c. 27, Division 9

² *IRPA*, S.C. 2001, c. 27, s.34(1) A permanent resident or foreign national is inadmissible on security grounds for (a) engaging in an act of espionage that is against Canada or that is contrary to Canada's interests; (b) engaging in or instigating the subversion by force of any government; (b.1) engaging in an act of subversion against a democratic government, institution or process as they are understood in Canada; (c) engaging in terrorism; (d) being a danger to the security of Canada; (e) engaging in acts of violence that would or might endanger the lives or safety of persons in Canada; or (f) being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b), (b.1), or (c).

Soon after the rendering of the Federal Court decision, Harkat's legal counsel filed an appeal to the Federal Court of Appeal challenging the constitutionality of the newly amended security certificate program in January 2011. In 2012, the Federal Court of Appeal partly overturned the Federal Court ruling (*Harkat v. Canada*, 2012 FCA 122). They held that Harkat's security certificate was reasonable and that the security certificate program under *IRPA* was, ultimately, constitutional; however, they did determine that Harkat's rights were, in fact, violated by the use of summaries of intercepted conversations that Harkat had not been privy to, of which the originals have since been destroyed (*Harkat v. Canada*, 2012 FCA 122). To remedy the situation, the Federal Court of Appeal sent the case back to the Federal Court to be reconsidered based on the exclusion of the summaries containing the intercepted conversations (*Harkat v. Canada*, 2012 FCA 122).

In a peculiar turn of events, both the Crown and the defense sought an appeal to the Supreme Court of Canada in an attempt to avoid a re-trial at the Federal Court. After thorough deliberation, the Supreme Court of Canada delivered its decision in May 2014 and upheld the security certificate issued against Harkat and held that the system was consistent with the Charter. In its decision, the Supreme Court reinstated the original Federal Court decision and found that the "designated judge did not err in refusing to exclude summaries of intercepted conversations" (*Canada v. Harkat*, 2014 SCC 37, para. 111). The Supreme Court agreed in that the Federal Court judge was not wrong to use the summaries to find Harkat inadmissible on security grounds. Now, spanning over a decade, Harkat still continues to fight in an attempt to clear his name. This legal ordeal has left him with ever-increasing feelings of uncertainty, precarity, and helplessness.

2.5.2 *MV Ocean Lady (2009) and MV Sun Sea (2010)*

The *MV Ocean Lady* (2009) and *MV Sun Sea* (2010) vessels arrived in British Columbia carrying hundreds of Tamil migrants fleeing political violence in Sri Lanka. The arrival of both these irregular migrant vessels and their ensuing refugee claims spurred intense political debates around Canada's human smuggling laws. The controversial mass detention of men, women, and children in both cases was compounded further by the fear that some migrants belonged to the Liberation Tigers of Tamil Eelam (LTTE, also known as the Tamil Tigers), a listed terrorist organization.

After suffering a long civil war, the Sri Lankan military defeated the Tamil Tigers' efforts to create an independent Tamil state in May 2009, after almost 25 years of armed conflict and political violence. Following the end of the war, the Tamil minority continued to face violence and were systematically persecuted. Murders, abductions, and brutal human rights abuses were rampant during this initial post-war period. For them, Sri Lanka was no longer safe and many fled their homes in an attempt to rebuild their lives. Without access to any other options, many of the migrants were compelled to use unconventional means to ensure safety for themselves and their families. These measures included purchasing, producing, or using fraudulent documentation or paying ship owners or business men large sums money to be smuggled to safety.

With arrival of the first migrant vessel in October 2009, the MV Ocean Lady, the Canadian government refused to openly embrace the Tamil migrants, and instead opted for a "tough on refugees" stance. They were quick to characterize the Tamil migrants as "queue jumpers" or potential terrorists who threatened the fabric of Canadian society. These same discourses were later evoked with the arrival of the MV Sun Sea in 2010, despite the efforts of refugee rights organizations and advocates to dispel the factual inconsistencies inherent in that line of reasoning. Amidst this tense political climate, the Conservative government adopted stringent measures to strengthen the Canadian immigration system in an attempt to proactively prevent any future irregular arrivals. This resulted in the introduction of several new legislative measures that used the rhetoric of securitization and crime control to revamp existing human smuggling laws. Based on this new legislative framework, four individuals were accused of orchestrating the MV Ocean Lady smuggling job and six individuals were accused of organizing the MV Sun Sea operation. The accused persons have either been acquitted due to insufficient evidence or are released on bail pending re-trial.

2.5.3 Deepan Budlakoti (2014)

Deepan Budlakoti's journey towards statelessness began with his first encounter with the criminal justice system and his ensuing criminal convictions. In 1985, Budlakoti's parents arrived in Canada to work as private household help by providing gardening, cleaning, and cooking services for the Ambassador of India. In October of 1989, Budlakoti was born at the former Grace Hospital in Canada's capital, the city of Ottawa. As per paragraph 3(1)(a) of the *Citizenship Act* (1985), any person born in Canada on or after February 14, 1977 acquired

Canadian citizenship. By this logic, Budlakoti was issued an Ontario birth certificate which served as sufficient proof of his citizenship status. In 1996 and 1997, his parents applied for and received Canadian citizenship for themselves. They were left under the impression that their son was not required to apply as he was already a Canadian citizen by virtue of his birth in Canada. In 2003, Budlakoti's parents applied for a Canadian passport for him. The passport was issued and stated his nationality as Canadian, further supporting his citizenship status.

During Budlakoti's adolescent years, he had several problems with his family leading him to run away and eventually become a ward of the state under Children's Aid Society. Around 2006, Budlakoti reconciled with his family before moving out on his own. Despite completing several technical training programs and owning his own construction business, Budlakoti had extensive run-ins with the law. While he was serving his sentence for a break and entry in 2010, the Minister of Citizenship and Immigration's Office launched a simultaneous investigation into his status in Canada. In a notice sent from the Immigration and Refugee Board (IRB), Budlakoti was suddenly informed that pursuant to section 44 of the *IRPA*, he was deemed inadmissible to Canada, as a non-citizen, for reasons of serious criminality.

The central debate surrounding Budlakoti's status as a non-citizen hinged on his parent's employment status at the time of his birth. Canadian citizenship law stipulates that under subsection 3(2) of the *Citizenship Act* (1985), citizenship by birth in Canada is not granted to a child born in Canada if neither parent is a citizen or permanent resident, and either parent was employed by the following at the time of the child's birth: (a) a diplomatic or consular officer or representative or employee in Canada of a foreign government; (b) an employee in the service of a diplomatic or consular officer or representative or employee in Canada of a foreign government; or (c) an officer or employee in Canada of foreign or specialized organization, such as the United Nations or any other international organization, which is granted diplomatic privileges and immunities. Supported by the diplomatic exception under paragraphs 3(2)(a) and 3(2)(b), IRB officials and judges in subsequent court proceedings contended that Budlakoti's parents, in fact, did not conclude their employment with the Indian High Commission prior to his birth, and they enjoyed a form of diplomatic immunity that legally considered their son a non-citizen despite being born in Canada.

Budlakoti's opinion was that he was born after his parents had resigned with the Indian High Commission. To support this contention, Budlakoti provided the courts with signed

affidavits by both the former Indian High Commissioner and the Nepean doctor whom his parents worked for at the time of his birth. These documents stated that the Budlakotis did not work for the Indian High Commissioner in any capacity after June 12, 1989, four months prior to the birth of their son. In another affidavit, the physician whom Budlakoti's parents claimed to have been employed by after leaving the Indian High Commission confirmed that they began to work for him at about that time. Taken together, this evidence was presented to confirm that Budlakoti's parents had left the Indian High Commission by the time of his birth, giving him the automatic right to Canadian citizenship. In addition, Budlakoti was issued an Ontario birth certificate and a Canadian passport to further corroborate his status as a Canadian citizen. However, courts and IRB officials routinely invalidated these documents and legal proofs in favor of an alternative set of evidence that indicated that Budlakoti's parents were still employed by the Indian High Commission at the time of his birth, exempting him from birthright citizenship due to his perceived diplomatic privileges. Relying on several countervailing documents, they placed the work departure of the Budlakotis from the Indian High Commission in December 1989 (as opposed to June 12, 1989), approximately two months after the birth of their son. By this logic, their son was, in fact, ineligible for Canadian citizenship as he was born to foreign diplomatic staff. In addition, the government contested the integrity of the former Indian High Commissioner's affidavit by the mere fact that the "3rd page of the four-page affidavit [was] missing" (Budlakoti v. Citizenship and Immigration, 2014 FC 855, para. 22). With regards the passport and the birth certificate that entitled Budlakoti to Canadian citizenship, the government responded saying those documents were issued in error, and thus, failed to serve as conclusive proof of his citizenship status.

After a thorough review of his case, a deportation order was issued against Budlakoti on the grounds that the government of Canada did not consider him a citizen. Based on his perceived country of origin, Budlakoti was set to be deported to India – a country he had very few social and familial ties towards. However, Indian authorities refused to issue Budlakoti travel documents on the grounds that they did not formally recognize him as an Indian citizen. Over the years, this has placed Budlakoti in a serious legal, financial, and social predicament where he has been virtually rendered stateless.

Chapter 3: Governing through Legal Technicalities

This chapter explores how different degrees of membership are dynamically produced through legally mediated channels. As discussed earlier, in theory, Canadian immigration and criminal law encompass separate sets of legal practices and processes. Immigration procedures have been understood as primarily being located within the administrative arena of the law, applicable to non-citizens located in a variety of administrative categories (e.g. undocumented migrants, irregular arrivals, temporary foreign workers, foreign-nationals, etc.), while criminal law is the primary vehicle used to prosecute criminal offences committed by citizens. Although some authors have cited a growing amalgamation between the two areas of law to the point of indistinction (Stumpf, 2006; Stumpf, 2013), I argue that criminal law and immigration law have actually been contextually mobilized to dynamically influence non-citizens' presence and their degree of membership in a state (Valverde, 2009). Thus, instead of categorizing criminal and immigration law as either separate entities or a single entity enmeshed under "crimmigration law," it is important to realize that these two categories are actually more fluid than credited to be. Contrary to commonly held assumptions that conceive the law as a set of well-bounded, organized legal codes, the law, in practice, is actually differentially applied to fit contextually specific circumstances and is reconceived in "in terms of its deeply held connections to decentralized networks of mundane techniques and practices" (Valverde, 2003 in Aitken, 2008: 390). Therefore, when we talk about the indistinction between criminal and immigration law, we lose sight of the complex interplay between the two modes of governance that relationally construct various degrees of membership.

The expanding mechanisms of border control depend heavily on the criminalization of non-citizens through intricate legal systems and technicalities. Although these technicalities tend to be embedded in immigration law, they still evoke notions of criminality. These techniques and strategies of governance have the effect of dynamically shifting the presence of non-citizens and entails differential access to rights, privileges, and entitlements. The following sections discuss three techniques of legal governance intended to exclude non-citizens: (1) the production of statelessness; (2) the use of security certificates; and (3) the reframing of human smuggling laws. In doing so, I explore the interplay between a wide range of social and material relations to illustrate the diverse and changing categories of non-citizenship, and by extension refocusing the discussion on the border as a series of dynamic articulations and networked relations performed

by various actors, at various scales. This interpretation is important because it promotes the notion of borders as fluid entities, dispersed through time and space, embedded with a multiplicity of functions, some intended and others unintended. This effectively allows us to move away from conceptions that view the border as rigid spatial markers, with a single prescribed function, and allows us to explore and appreciate the deeply entrenched complexities associated with bordering practices and processes.

3.1 Statelessness

In her analysis, Stasiulis (2017) traces the legally mediated actor-networks involved in the production of Budlakoti's statelessness. She describes how Budlakoti was enrolled in a heterogeneous network of humans (e.g. judges, IRB tribunals, lawyers) and things (e.g. a legal technicality, affidavits, court documents) that were ultimately mobilized to produce an extraordinary form of statelessness at the expense of his "Canadianness." Initially, Budlakoti was caught up in the criminal justice system on charges related to breaking and entering and a subsequent conviction involving the transfer of firearms (Justice for Deepan, n.d.; Justice for Deepan, 2013b). After serving his initial two-year federal sentence, prison authorities were confident that he was prepared to be released under a very light parole plan (Justice for Deepan, n.d.; Dimmock, 2012; Justice for Deepan, 2013b). However, due to his pending immigration issues, he was quickly transferred to Toronto West Detention Center and held under administrative detention for an additional four months (Justice for Deepan, n.d.; Dimmock, 2012; Justice for Deepan, 2013b). Since he served the full judicially ordered sentence for his criminal convictions, authorities were unable to elongate his sentence without just legal cause. However, in an attempt to lawfully prolong his detention, authorities made strategic use of a legal technicality embedded in immigration law to justify his prolonged detention. As a result, Budlakoti was justifiably detained under section 44 of the *IRPA*, which deemed him inadmissible to Canada as a non-citizen for reasons of serious criminality (See Appendix C; Budlakoti v. Citizenship and Immigration, 2014 FC 855, para. 9). Therefore, state and institutional actors were successful in circumventing the normal rules of criminal redress to reinstate Budlakoti's detention under a new, multifaceted immigration network.

As soon as Budlakoti was enrolled in this network, successive Immigration and Refugee Board (IRB) commissioners were able to legally uphold his detention. First, they deemed him a flight risk and later, a danger to the public, despite having a highly positive prison assessment

while serving his criminal sentence (Justice for Deepan, n.d.; Dimmock, 2012; Justice for Deepan, 2013b). As a result, he was detained and confined but under the pretext of satisfying administrative standards. The vast array of institutional actors who were enrolled in this immigration network – lawyers, judges, IRB commissioners, and the like – were interested in extinguishing Budlakoti's citizenship status and producing an extraordinary form of statelessness to reinforce his continued subjection (Stasiulis, 2017). A constellation of relationally assembled legal, institutional, and technological actors, with competing understandings of membership, were able to enlist and maneuver an array of resources at their disposal to influence Budlakoti's status in Canada.

Based on competing documentary evidence, the government claimed that Budlakoti's parents were employed by a foreign diplomat at the Indian High Commission at the time of his birth. Under Canadian law, a child born of parents on diplomatic status cannot claim and is not entitled to Canadian citizenship by virtue of their birth in Canada (Dimmock, 2011). These reasons, along with the fact that India has legally refused to acknowledge his status and the fact that he had not exhausted all avenues of reobtaining citizenship in Canada, have all been enlisted to support the production of his statelessness.

In Budlakoti's case, an array of artefacts and technologies have been translated to defend the contention that he was, in fact, a non-citizen exempted from birthright citizenship. According to Callon (1986), translation requires actors to engage in a performative process whereby an artefact or technology gains its definition through processes of problematization, interessement, enrolment, and mobilization. Likewise, in Budlakoti's case, a network of immigration tribunals, court judgments, and legal personnel interpretatively and relationally problematized Budlakoti's status in Canada. Crown attorney's and the government problematized Budlakoti's status as inadmissible. To support this contention, they assembled various legal documents, artefacts, and evidence to dismiss his claims to Canadian citizenship. It is to no surprise that power relations intricately mediated which legal documents, artefacts, and evidence were given credence. In this case, documents that supported the position of extinguishing Budlakoti's Canadian citizenship were enrolled in the network as evidence and treated as factual. For example, the government submitted evidence pertaining to Budlakoti's parents indicating that they did not give up their diplomatic status until January 1990, months after Budlakoti was born (Duffy, 2014). This technicality meant that Budlakoti did not in fact qualify for Canadian citizenship by virtue of

being born to foreign nationals employed by the Indian High Commission (Duffy, 2014). The government enrolled these documents in his network as devices of interessement to problematize or support the contention that he was an inadmissible non-citizen.

In response, Budlakoti's lawyers provided the court with two signed affidavits to support the fact that his parents left the Indian High Commission before Budlakoti's birth, thus disproving any claims of diplomatic privilege. The first affidavit was signed by the Indian High Commissioner declaring that Budlakoti's parents were not employed by the Indian High Commission "'in any capacity' at the time of Budlakoti's birth" (Justice for Deepan, 2013a). The second affidavit was signed by the doctor whom Budlakoti's parents were employed by after leaving the Indian High Commission and before Budlakoti's birth. The defense attorneys prescribed a role to these documents; in other words, the affidavits were entered into the network to serve a pre-determined purpose. The intended function of the affidavits was to weaken the government's problematization of Budlakoti's status as a stateless and inadmissible non-citizen by creating doubt in the factual arguments of the government's case. Although the documents were given a prescribed function, they were actively acted in the network to define Budlakoti's status in Canada. Without the support of these documents, the defense's position would crumble. This demonstrates the co-dependence between human and non-human actors that are engaged in Budlakoti's network.

Unfortunately, these documents that reinforced Budlakoti's birthright citizenship were interpreted as suspect, "lacking integrity, undermined by several other documents, internally inconsistent, or dismissed as having been produced in error and of no significance to his effort to regain state and judicial recognition of his status as a Canadian citizen" (Stasiulis, 2017: 18). The government questioned the integrity of the former Indian High Commissioner's affidavit since the "3rd page of the four-page affidavit [was] missing" (Budlakoti v. Citizenship and Immigration, 2014 FC 855, para. 22). It is true that the government once considered Budlakoti as a legitimate citizen and issued him a passport (on two occasions) and an Ontario birth certificate, with no one questioning his status (Duffy, 2014). However, the government was able to minimize their fault by refocusing the discussion around Budlakoti's criminal history in that he was "never really a citizen" and the revocation of his citizenship status was justified on the grounds that he was "a criminal...[who] deserv[ed] to be deported" (Koring, 2012).

In this situation, documents that otherwise served as legitimate proofs of citizenship – such as birth certificates and passports – were clearly undermined in Budlakoti’s legal case. The credibility of these documents were dependent on the collective actors’ capacity to convince the masses of the relevance and importance of their problematization. For Budlakoti’s case, the government’s problematization was locked into place within the network and documents supporting government officials’ narrative were treated as factual. Typically, official documents possess a certain level of agency in that they are capable of communicating particular truths pertaining to humans. For example, a birth certificate and passport are intended to confirm identities, citizenship status, and place of birth. In Budlakoti’s case, the intended purpose of these documents were altered and given a new meaning by the government actors who mobilized them as tools to support their problematization. These legal documents operated in a web of relational interactions where their meanings were transformed and made to speak in favor of the institutional authorities who had a stake in campaigning against Budlakoti’s inclusion as a Canadian citizen. In addition, through technical interpretations of the law, namely subsection 3(2)(a) and 3(2)(b) of the *Citizenship Act* (1985) along with section 44 of the *IRPA*, and official documents, government authorities repeatedly contributed to making and unmaking his citizenship status. As mentioned earlier, they held that Budlakoti was issued a Canadian birth certificate and passport due to an administrative error, thereby placing him in an unusual situation that effectively rendered him stateless, in addition to being inadmissible on the grounds of serious criminality (Duffy, 2014). Here, the network of immigration officials, judges, and government personnel were able to assert a higher level of power and invalidate the claims of these legal documents as having been accidentally produced. This raises questions about his status as an accidental subject and the ramifications it entailed for his political category.

In normal circumstances, and in ANT jargon, humans delegate tasks to objects, but in return objects prescribe behaviour to humans. In Budlakoti’s case, his Ontario birth certificate and passport were contested in a string of legal proceedings whereby a judicial ruling ultimately pronounced that these documents were produced through an administrative error (Budlakoti v. Canada, 2014 FC 855). Although material objects are considered as actants within the actor-network framework, their ability to fully act and assert themselves was partly minimized by the human actors’ ability to have the final judgment on the legal status of Budlakoti’s presence in Canada. His Ontario birth certificate and Canadian passport figured as relevant actors within the

network, but their capacity to fully act as independent agents was partly suppressed by the string of legal proceedings whereby a judicial ruling ultimately pronounced that these documents were produced through an administrative error.

This chain of proceedings was first initiated by Budlakoti's earlier encounter with the law. During this phase, the Minister of Citizenship and Immigration's Office launched an investigation into Budlakoti's status while he was serving time at OCDC for a break and entry (Dimmock, 2010). This is when Budlakoti was first given a formal notice from the Immigration and Refugee Board (IRB) that he was no longer a citizen of Canada (Dimmock, 2010). From there, the case began to gain steady momentum after the defense attorneys submitted an application to the Federal Court stating that pursuant to section 24(1) of the *Charter of Rights and Freedoms*, the applicant, Budlakoti, was a citizen of Canada and rendering him stateless was in violation of his Charter rights (see Appendix C for Federal Court application). In his network, this document was given the role that commenced the long chain of legal proceedings that followed. It defined the problem according to Budlakoti, refuted the claims made by the government, and presented tangible evidence to support his position (See Appendix C). From there, several admissibility hearings took place to determine the nature of his status in Canada. After debating the issue at length, IRB officials eventually decided, "based on a technical reading of the law," that Budlakoti was in fact a non-citizen inadmissible to Canada based on section 44 of the *IRPA*, for reasons of serious criminality (Justice for Deepan, n.d.; *Budlakoti v. Citizenship and Immigration*, 2014 FC 855).

It is important to emphasize here how various documents, all considered actants, were given varying degrees of power within Budlakoti's network. By tracing the intricacies of his network, we are able to see that certain material objects are given a lesser role in the network and their capacity to act can be overridden by other, human actors. However, in other instances, other material objects had a stronger ability to assert themselves within the network. For example, the Federal Court application possessed considerable power in that it was the initial step that began the legal process for Budlakoti. From there, the material objects that were once silenced by the government's problematization, were revitalized and gained a stronger capacity to act within the network. While the relevance and importance of Budlakoti's birth certificate and passport were muted by the government's problematization, they gained a new role after the start of his legal proceedings. The defense attorneys argued that the government's administrative error could not

be easily dismissed, and thus these documents were afforded with a stronger capacity to act within the network. The defense argued that passports were typically issued only to citizens and it was the government officials' responsibility to check the validity of the supporting documents that are routinely submitted by its applicants (Koring, 2012). For this reason, they submitted that Budlakoti could not be held responsible for this incident and revoking his citizenship and rendering him stateless was an unjustified consequence.

By way of a strict technicality in the law stipulated under paragraphs 3(2)(a) and 3(2)(b) of the *Citizenship Act* (1985), Budlakoti was denied citizenship on the grounds that he supposedly enjoyed diplomatic privileges. However, as reflected in Stasiulis' (2017) analysis, Budlakoti's life represented quite the contrary and his youth was rife with hardships and petty criminal activity. At a young age, Budlakoti also became a ward of the province of Ontario. A critical reading of his situation indicates that he was not immune from the obligations of citizenship (e.g. paying taxes and respecting criminal law); on the contrary, Stasiulis (2017) describes how

he has been subjected to the full force of Canadian criminal law in his convictions and sentences. More sympathetic readings of his brushes with Canadian law have pointed out how his pleas and sentencing have reflected his status as a young and low-income person, and the particular vulnerabilities associated with his racialized Otherness (p. 19).

The production of Budlakoti's statelessness represents only one way in which non-citizenship is manufactured through legal technicalities. These technologies of governance, employed by state and institutional actors, have the ability to create new fluid typologies of citizenship and varying degrees of membership that may be used to create a host of political subjects. The effect of conceptualizing non-citizenship as a dynamic assemblage reveals how individuals "can climb up ladders towards more secure presence and rights (perhaps only momentarily) or be pushed down a chute towards more vulnerability, fewer rights or less access and more uncertain presence in Canada" (Goldring & Landolt, 2013: p. 16). While an assemblage of social actors, legal technicalities, and material objects worked to push Budlakoti's status down towards more vulnerability and limited presence, Budlakoti was simultaneously able to manoeuvre particular resources at his disposal to dynamically shift and advance the nature of his presence in Canada. In addition to the loss of his status as a Canadian citizen, Budlakoti was informed that he was no longer entitled to health care in Ontario under his current status (Justice

for Deepan, n.d.). As a stateless person, the Ontario Ministry of Health revoked his Ontario Health Insurance Plan (OHIP) (McBay, 2014). Despite the Ministry's efforts to push Budlakoti's status down chutes towards more vulnerability and precarity, Budlakoti effectively challenged the boundaries of his ascribed status by taking matters into his own hands. He contested the provincial government's decision in a constitutional hearing in front of the Health Services Appeal and Review Board, arguing the revocation of his health care benefits were in direct violation of his Charter rights (Justice for Deepan, 2015). Although the appeal was denied, Budlakoti was able to momentarily rectify his situation by mobilizing the resources at hand and obtaining private health insurance to compensate for the loss of his OHIP insurance.

With the loss of his status also came the loss of his SIN card, which barred him from legally seeking employment in Canada unless he was able to obtain a work permit. As a result, immediately after being released from the immigration holding center, Budlakoti filed a request for a work permit as "he [did not] want to sit at home idly" (Fenton, 2013). Bounded in a network of laws and regulations, Budlakoti's presence was negotiated and contested among different actors with competing interests. While Citizenship and Immigration Canada (CIC) issued delays and attempted to withhold his work permit, Budlakoti's legal team pressured the Federal Court to order CIC to immediately respond to his request. After successful lobbying and constant political pressure, Budlakoti was able to eventually obtain a work permit by September 2013. Despite being legally declared stateless, Budlakoti's enrollment in a multiscalar and multi-actor network enabled him to relationally redefine the stringent boundaries of his non-citizenship by conditionally securing presence in Canada through a variety of legal systems and intersecting techniques and strategies. As a result, he was able to reinstate certain rights, privileges, and entitlements associated to full Canadian citizenship. Budlakoti's case provides a glimpse into how the interplay between cross-jurisdiction modes of legal governance work to challenge the fixity of the dichotomous categories of citizenship and non-citizenship. It also demonstrates the complex co-dependent relations between material objects, human actors, and varying relations of power that articulate membership in Canada as a fluid, relational, and dynamically assembled concept.

3.2 Security Certificates

These similar analytical techniques can be used to understand how legally mediated technicalities were used to articulate the dynamic formulations of membership in the case of

Mohamed Harkat. The fluid categories of membership in these cases further deconstructs the presupposition that membership entails fixed categories of inclusion and exclusion. Where Budlakoti's membership was defined through statelessness, Harkat's weak degree of membership was articulated through his security certificate where an array of judicial actors, legal proceedings and processes, and documents constituted his varying degrees of membership within the fabric of Canadian society. Harkat's security certificate had the effect of constructing him as a suspected terrorist who was potentially criminal or associated with criminality without explicitly using the provisions of criminal law. More precisely, he was repeatedly "criminalized" through the security certificate provisions outlined in Division 9 of the *IRPA*³ without ever having to be formally charged under criminal law. Law enforcement authorities, judges, and lawyers were able to circumvent and suspend the rules associated with normal judicial trials and proceedings by treating his case through immigration law that operates separately from the criminal justice system. The Canadian immigration system is governed by its own rules and logic that legally justifies the revocation of legal protections, rights, and privileges that are normally afforded to citizens under the premise that non-citizens lack formal status (Stumpf, 2006; Stumpf, 2013). This logic is primarily grounded in the assumptions of deservingness. The premise of this argument rests in the widespread view that those who have lost their citizenship by virtue of a criminal conviction, or never gained citizenship in the first place, are understood as undeserving of sympathy and unentitled to access public benefits for having engaged in criminal activity (Stumpf, 2006: 34). Public benefits are, therefore, only available to law-abiding individuals who enjoy full citizenships (Stumpf, 2006: 34).

A cursory glance at the security certificate provisions⁴ calls for a suggestive erasure of the rule of law and transforms the meaning of the legal trials itself. Security certificates operate on the basis of secret evidence and non-disclosure where the person named in the certificate has no right to see or challenge the material on the basis of which it was issued (*IRPA*, SC 2001, c 27, s.83). As a result, it omits cross-examination and prevents defendants from confronting their accusers. Non-sensitive material may be disclosed to the named person; however, sensitive or confidential material must remain secret (*IRPA*, SC 2001, c 27, s.83(1)(d)). This material is only presented at closed hearings before a Federal Court judge. The named person is prohibited from

³ See *IRPA*, S.C. 2001, c. 27 sections 76-87

⁴ *Ibid.*

attending the closed proceedings and is instead represented by a “special advocate” – a security cleared, private lawyer who is independent of the government, and is appointed to protect the interests of the permanent resident or foreign national who is subject to the security certificate (*IRPA*, SC 2001, c 27, s.85). In this regard, the security certificate regime is criticized for foregoing traditional judicial protections in favor of weaker standards of proof that require evidence to be deemed probably, rather than affirmatively, true. Security certificates, therefore, make a mockery of the notion of criminal justice trials by showing a lack of commitment to impartiality and fairness – it nullifies “the trial most effectively by taking on the name of the ‘trial’” (Bell, 2006: 75). Under the elusive pretense of preventative action, the security certificate provisions normalize exceptional practices that fall outside the realm of the normal judicial order (Larsen & Piché, 2009). The legally supported framework enables different actors to justifiably deprive non-citizens of the rights and protections typically granted to individuals during normal legal proceedings (Aitken, 2008: 383). This places non-citizens in a suspended zone located outside the normal judicial order (Aitken, 2008: 383).

Harkat’s security certificate can be equated to a legally mediated method of excluding non-citizens. Similar to Budlakoti, Harkat’s inadmissibility was also produced through heterogeneous networks of legal proceedings and trials, courts, lawyers, appeals, judges, policies, affidavits, and so forth. Under this “legal complex” (Valverde, 2009), an array of institutional actors and legal artefacts engaged in a performative process to relationally construct Harkat’s non-citizenship. With only a general understanding of the charges laid against him, Harkat’s legal team had no ability to cross-examine the individuals who testified against him claiming that he was an Al-Qaeda operative. In fact, with no witnesses to cross-examine or concrete evidence to challenge, Harkat’s legal team was left to simply discredit how the Canadian Security Intelligence Services (CSIS) handled security investigations. For this, the defense team invited several expert witnesses to testify for Harkat. In particular, Jean-Luc Marchessault, a former CSIS agent, was recruited to provide insight on the internal operations of CSIS and how it collected, deciphered, assessed, handled, and reported security information. In spite of federal prosecutors contesting the testimony on the grounds that it could potentially compromise CSIS’s methodological and operational tactics, the Federal Court judge allowed the testimony based on the public interest in the Harkat case. The defense team’s objective of introducing Marchessault as an expert witness was to draw suspicion on CSIS’s overall methods

of gathering intelligence information with the hope of raising doubts in the general allegations against Harkat contained in the 40-page written summary provided to him. Unable to call a CSIS operative to the stand for cross-examination, Harkat's legal team was compelled to question the CSIS's general competency in the handling of his case and bring its evidentiary practices into question (See Harkat [Re], 2005 FC 393, para. 71-79).

In this process, the prescribed functions that are accorded to legal artefacts are relationally contested, negotiated, (re)interpreted, and translated whereby the artefact gains a newly formulated prescribed function. By virtue of enlisting Marchessault in this legal complex, Federal prosecutors also played a significant role in reframing Marchessault's testimony. They translated his testimony as lacking integrity and that he was motivated to testify due to personal animosities against CSIS (Duffy, 2004a; Harkat [Re], 2005 FC 393 para 71-79). While the defense lawyers had imagined a prescribed function and outcome by enrolling Marchessault's testimony in Harkat's legal network, this function was effectively altered and reinterpreted by the Federal prosecutors who were determined to discredit his status as an expert in order to maintain Harkat's marginalized political status. After reviewing the legal arguments, the Federal Court judge presiding over the case was able to further reinforce Harkat's marginality by denying Marchessault from testifying as an expert, which meant that his testimony would be given less credence in determining the reasonableness of Harkat's security certificate (Harkat [Re], 2005 FC 393 para 71-79).

In this network of legal decision-makers, courts, and tribunals, evidence that supported the contention that Harkat was an Al-Qaeda agent was enrolled into the network and treated as factual. This is illustrated by the instance in which Harkat's indirect associations to Al-Qaeda members were taken as conclusive proof of his status as an undercover Al-Qaeda agent. During his testimony in determining the reasonableness of his first security certificate hearing, the Crown attorneys were able to draw doubt in Harkat's testimony regarding his whereabouts in Pakistan as well as the route he took to get to Canada (CTV News, 2004). Crown attorneys were quick to call attention to the factual inconsistencies in his testimony since there were discrepancies between his story and the evidence heard during the closed hearings. After admitting to lying under oath, Harkat defended his actions by claiming that he intended to protect one of his friends from being subjected to harassment (CBC News, 2004). Since his case began, he claimed that some of his friends have been harassed by the authorities in an attempt to extort

information from them or force them to become informants (CBC News, 2004). Harkat's attorney defended his client's actions claiming that lying under oath was problematic, but it was reasonable given the circumstances of his case (CBC News, 2004). In making her judgment, the Federal Court judge held that "on the basis of the confidential information it [was] clear and beyond doubt that Harkat lied under oath to the court in several important respects" (Steinbachs, 2005). His lies and denials confirmed the government's suspicion that he knowingly supported or assisted Islamic extremists (Steinbachs, 2005). The story presented by the Crown attorneys was taken as truthful while the defense's evidence was interpreted as suspect or lacking integrity. Under this interpretative legal framework, power relations played a significant role where the presiding judge had the ultimate decision-making power in deciding Harkat's fate in Canada.

However, the fluid actor-network composition of Harkat's membership enabled him to exert his own agency "in negotiating the constraints imposed by non-citizenship or lack of authorized status" and allowed him to perpetually redefine his presence and status in Canada (Goldring & Landolt, 2013: 12). Despite these seemingly top-down power relations, Harkat was able to simultaneously influence the nature of his status and jurisdictional presence through successive appeals. This is presented as a significant departure from top-down, Orwellian theories of power that focus on hierarchical power structures that concentrate on its unidirectional manifestations (Haggerty & Ericson, 2000). Under this new model, the underlying power dynamics are manifested in the nodal interactions of an array of interconnected actors (Haggerty & Ericson, 2000). In this regard, power is no longer a top-down affair and is dispersed among a variety of actors where it flows in a multidirectional web of interactions (Haggerty & Ericson, 2000). By this logic, far from being a passive actor, Harkat played an active, participatory role in the process of exerting influence on the outcome of his case and changing the legislative framework that governed security certificates. In a constitutional challenge⁵, Harkat and his legal team argued that the security certificate provisions outlined in *IRPA* infringed s.7 of the *Canadian Charter of Rights and Freedoms* (the Charter)⁶.

⁵ See *Charkaoui v. Canada* (Citizenship and Immigration), 2007 SCC 9. Adil Charkaoui, Mohamed Harkat, and Hassan Almrei were represented together at the Supreme Court of Canada. All three individuals challenged the security certificate proceedings as unconstitutional.

⁶ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, section 7: "Everyone has the right to life, liberty and

In a final appeal to the Supreme Court of Canada, the highest appeal court in Canada, the judge ruled that the security certificate provisions outlined in the *IRPA* were, in fact, unconstitutional. Specifically, the Supreme Court concluded that Division 9 of the *IRPA*, the security certificate clause, suffered from major defects that were inconsistent with the Charter and gave Parliament one year to amend the security certificate legislation. This ruling effectively suspended the security certificate issued against Harkat while the government worked on revising its technicalities. These efforts make it clear that the dichotomous conceptualizations of membership are much more complex and better represented according to varying degrees of membership within a state where state membership tends to fluctuate. Since power is scattered through the actor-network, Harkat was able to participate and relationally reframe his status in Canada. While co-existing alongside actors who actively attempted to reinforce his status as an inadmissible non-citizen, Harkat was able to mobilize other resources at his disposal to secure his presence in Canada, even if it was only momentarily (*Charkaoui v. Canada [Citizenship and Immigration]*, 2007 SCC 9).

In addition to the human actors, non-human actors and objects equally possessed the agency to alter outcomes under the principles of actor-network theory. In the relationally assembled network, the Charter played a role in steering the outcome of Harkat's case and ultimately influencing his status in Canada. The Charter was inserted into Harkat's legal network with the prescribed role of rearticulating his status by challenging the provisions of the security certificate clause outlined under the *IRPA*. Together, the Charter and the *IRPA* presented two different narratives regarding Harkat's status in Canada, only one of which could prevail. While the *IRPA* constructed Harkat as inadmissible to Canada on the grounds of national security, the Charter rearticulated that meaning to momentarily help stabilize his status in Canada. By claiming that the Division 9 of the *IRPA* was in violation of s.7 of the Charter, Harkat's status was temporarily pushed up ladders of stability by the Charter challenge as parts of Division 9 were deemed unconstitutional (See *Charkaoui v. Canada*, 2007 SCC 9). Similar to Budlakoti, Harkat's legally mediated assemblage of human and non-human actors, legal technicalities and laws, along with relations of power enabled some (e.g. judges, Crown prosecutors) to push him

security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.”

down towards more vulnerability and limited presence, while simultaneously allowing himself and others to dynamically shift and advance the nature of his presence in Canada.

Specifically, the dynamic articulations of his status can be traced back to the introduction of Bill C-3, the government's response to the Supreme Court ruling. After the one-year suspension period, Bill C-3 came into effect in 2008 and implemented significant changes to the security certificate protocols (Charkaoui v. Canada, 2007 SCC 9; Bell, Hamilton, & Hanes, 2008). Soon after the amendments came into effect, the Ministers reissued a new certificate against Harkat. However, under the reinstated certificate regime, Harkat was able to newly challenge his allegation by virtue of being provided with new declassified case summaries containing an unprecedented level of detail (Bell, Hamilton, & Hanes, 2008; Freeze, Ha, el Akkad, 2008; Daubs, 2008). Hundreds of pages of declassified documents filed with the Federal Court were enrolled in the network and presented, for the first time, the evidence that led CSIS to conclude that Harkat was a foreign terrorist (Bell, Hamilton, & Hanes, 2008; Freeze, Ha, el Akkad, 2008; Daubs, 2008).

These new revelations were crucial in understanding how the declassified court filings, which were treated as evidence, were connected and translated to produce Harkat's inadmissibility despite countervailing evidence that seemed to suggest otherwise (Bell, Hamilton, & Hanes, 2008). These declassified case summaries, although seemingly mundane, played a crucial role in discursively rearticulating Harkat's presence in Canada. From an ANT perspective, the process of legally and discursively producing non-membership rests not only in the hands of human agent, but also involves the agency of seemingly inanimate objects and "things", particularly documents (Stasiulis, 2017: 5). As ANT insists, "human action is entangled with its physical environment and material objects" (Stasiulis, 2017: 5). According to ANT, documents, texts, and other material objects are frequently featured as actants in the networked assemblage of people and things (Stasiulis, 2017: 6). As potential actants, these material objects are afforded the agency to ascribe meaning on particular social phenomena, people, processes, and practices (Stasiulis, 2017: 7).

Here, the newly declassified documents were endowed with the capacity to speak to the problematizations associated with Harkat's inadmissibility. These documents were afforded a particularly strong voice in the network of human and non-human interactions and represented a textual technique of bracketing non-citizens out of the Canadian political community. The

documents simultaneously engaged with the human actors to co-constitute Harkat's status in Canada. Due to the adversarial nature of the case, the translation process typically involved competing interpretations of the legal documents and evidence. In this regard, the documentary evidence collected by CSIS and presented in the closed Federal Court hearings became crucial instruments in the decision-making process of rearticulating Harkat's status from a lawful permanent resident to an inadmissible foreign-national labeled as a terrorist (*Canada v. Harkat*, 2014 SCC 37; Duffy, 2004b; Duffy, 2004c). Where Budlakoti's vulnerabilities were generated through the production of his extraordinary statelessness, a similar, but different, rhetoric led to the production of Harkat's status as an inadmissible non-citizen. Unable to lawfully declare him stateless, since he was a mere permanent resident, the government opted to expel him under the banner of the security certificate regime that was supposedly instituted under the pretext of national security measures.

Even though he was unable to completely quash the security certificate placed in his name, Harkat was still able to manoeuvre the resources available to him under the revised system. Soon after being reissued a security certificate, the Federal Court judge obliged CSIS to disclose their "secret" evidence against Harkat in order for him to craft an adequate defense against the Ministers' claims (CBC News, 2008). This included CSIS drafts, diagrams, recordings, photographs and other incriminating evidence that were used to label Harkat as a terrorist (CBC News, 2008). The new procedural components introduced under the revised provisions enabled Harkat to dynamically contest and challenge the nature of his status in Canada and momentarily stabilize his presence. With the introduction of "special advocates," Harkat was finally provided with a chance to have his interests represented during the closed proceedings where a security cleared lawyer was appointed to contest the allegations made by the government. In particular, Harkat's legal team and special advocate were rigorously involved in reinterpreting the evidence presented in court by the Federal lawyers in an attempt to clear his name. They proposed viewing the legal evidence and the intelligence information provided by CSIS in a new light – one that considered seeing the situation from Harkat's point of view that regarded the security certificate process as a leading to a gross miscarriage of justice and abuse of process (*Harkat [Re]*, 2003 FC 918).

With access to the CSIS's intelligence gathering tactics, wire taps, clandestine searches, and the large volume of declassified allegations, Harkat and his legal team were able to present a

reinterpreted version of this evidence before the Federal Court judge. In reframing the material, they ascribed a new meaning to the evidence, one that worked in favor of clearing his name. They resorted to re-problematizing the integrity and reliability of this evidence by arguing how the intelligence information and the CSIS's data collection methods were grossly flawed, misinterpreted, and non-exhaustive (Shephard, 2004). In trying to convince the judge, Harkat's legal team sought a stay of proceedings on the account that CSIS mishandled evidence and the Ministers unjustly placed a security certificate against him (Harkat [Re], 2009 FC 1243). What followed was a series of legal submissions and appeals in which Harkat argued that the CSIS evidence, used to connect him to terrorist activities, were riddled with inaccuracies, which subsequently led him to request to have that evidence omitted (Czekaj, 2010; *Canada v. Harkat*, 2014 SCC 37).

First, Harkat's lawyers requested the right to read eight intelligence files from the archives of the CSIS. Special advocates for Harkat had already seen more than 2,000 documents containing at least 8,000 pages of information. However, they held that the additional eight files would allow them to better defend Harkat's interests (Duffy, 2009). The Federal counsels argued that additional disclosure was irrelevant and Harkat had been provided adequate amount of information to produce a well-informed defense. The Federal Court judge concurred with the Federal lawyers and denied the request on the grounds that it would require the disclosure of thousands of documents, each of which would have to be carefully vetted (Harkat [Re], 2009 FC 340). He added that such an order would cause unacceptable delays in the proceedings which are "legislatively mandated to proceed as expeditiously and informally as possible" (Harkat, [Re], 2009 FC 340, para. 21). In this scenario, the position and power embedded in the role of the Federal Court judge enabled him to override the agency of the documents enrolled in the network and pushed Harkat back down chutes of uncertainty and illegal jurisdictional presence. In the end, it is the legal decision that ultimately framed Harkat's problematization as a terrorist.

However, this second example demonstrates how Harkat was able to propel himself back up to secure his status before being pushed back down by judges and Crown prosecutors into a state of uncertainty. Harkat's lawyers held that since the originals of some documents, tapes, transcripts, and electronic recordings had been destroyed, the summaries provided contained little to no evidentiary value (Harkat [Re], 2009 FC 553). The Federal Court of Appeal deemed Harkat's security certificate reasonable, but held that the electronic interception of

telecommunications that have since been destroyed indeed violated his rights (Makin, 2012). This instance represents the ways in which actors can momentarily change the nature of their status by rearticulating legal artefacts and giving it a new meaning. For Harkat, this ruling momentarily enabled him to advance towards more secure state presence and away from the statuses that evoked a sense of illegality and criminalization. It gave him a chance to respond to the allegations against him in a way that questioned the reliability and validity of the CSIS intelligence information and present his own version of the story that relied on an alternate set of proofs. However, by virtue of operating in a multi-actor network, his semi-secured presence in Canada was understandably short-lived as other actors were introduced into the legal framework and imposed their judgments to alter his status. Although the appeal decision was made in Harkat's favor and the judge ordered the exclusion of the summaries of the intercepted communications, it was also recommended that the case be referred "back to the [Federal Court] judge for a new determination of the reasonableness of the security certificate" (Harkat v. Canada, 2012 FCA 122, para. 160). On the surface, this resembled a successful turning point in the legal turmoil that Harkat has had to encounter; however, a closer examination uncovered how a re-trial would slow down the process and further drain Harkat's resources, time, and energy.

To remedy the situation, both the defense and the prosecuting attorneys sought an appeal to the Supreme Court of Canada in an unlikely turn of events. In this scenario, Harkat's defense counsels and the Crown prosecutors were able to engage in a legally mediated court battle where they relationally defined the role of various legal objects, court filings, and documents. When unable to access one avenue to effect change, the networked formulation of Harkat's legal case enabled him to turn to other options in an attempt to clear his name. In this regard, Harkat is far from a passive agent who is fed binding legal decisions regarding his status in Canada; rather, as a human subject located in a complex legal assemblage, Harkat's agency in the network affords him the ability to negotiate and navigate some of the consequences associated with the formal and substantive articulations that deny him the right to remain present in Canada. Despite the Supreme Court ruling that found the CSIS's systematic destruction of operational material concerning Harkat in accordance with its internal policies, Harkat was able to nonetheless exercise a considerable level of power in influencing his jurisdictional presence in Canada by mobilizing a series of legal resources and tools available at his disposal. Overall, the actor-network assemblage of his legal case illuminates the complexities behind dichotomous

articulations of inclusion and exclusion. Harkat's legally mediated network demonstrated that the associations between an array of actors, human and non-human, are used to dynamically articulate his level of membership in Canada. The security certificate system was introduced as a legal technicality to govern Harkat's presence in Canada and ultimately expel him. However, because all actors are active agents in the process of making meaning within the network, Harkat's status frequently fluctuated through his trajectory within the legal system as new evidence was uncovered and new technicalities and laws were applied, which rearticulated the bounds of his formal legal status in Canada.

Overall, the provisions contained in the *IRPA* are legally mediated ways of normalizing emergency powers. Its provisions are uniquely applicable only to non-citizens and represent a legally regulated means of circumventing the normal judicial order. The *IRPA* is used against non-citizens to evade the protocols of normal justice by authorizing extended periods of detention (coercive controls), weakening procedural safeguards, approving the use of closed hearings and secret evidence, and protecting questionable evidentiary practices. These practices seem impermeable because they are embedded in the law, but their networked formulation makes it possible for a range of political subjects and actors, human and non-human, to challenge, contest, and negotiate the degrees of membership within a given state. Despite being ostensibly situated outside the guarantees and benefits of full citizenship status in Canada, Budlakoti and Harkat's cases have illustrated how human and non-human actors were able to problematize their status in numerous ways that either push them down towards vulnerability or momentarily elevate their status. In the same way, the journey of the subjects of the MV Ocean Lady and MV Sun Sea reflected how membership was characterized as multidimensional and negotiated on a continuum rather than the binary formulations of inclusion/exclusion.

3.3 Human Smuggling

Following the irregular arrival of the MV Ocean Lady and MV Sun Sea that carried hundreds of Tamil migrants, the Conservative government implemented new legislative measures intended to strengthen the Canadian immigration system. A closer examination reveals how these legislative amendments were intended to advance legally mediated exclusionary practices under the pretext of securitization and crime control. With the introduction of Bill C-4 (formerly Bill C-49), the *Preventing Human Smugglers from Abusing Canada's Immigration System Act* that was introduced in October 2010, the government proposed significant

amendments to the *IRPA* to address irregular mass arrivals of refugee claimants (Government of Canada, 2012). Bill C-4 was intended to address the growing trend of individuals paying large sums of money to human smugglers and traffickers to gain entry into Canada (Government of Canada, 2012). It proposed the mandatory detention of groups of people designated as “irregular arrivals” by the Minister of Public Safety who had the authority to categorize them as “designated foreign nationals” under the *IRPA* (Government of Canada, 2012). These labels effectively evoked a sense that the migrants did not belong in Canada by virtue of their lack of formal membership and their chosen mode of entry.

Being unable to secure permanence, undocumented migrants occupy a unique space where they are placed in between categories. This entails living “illegally inside nation states, undocumented and therefore invisible to the law, unprotected and without recourse to rights” (Nield, 2008: 138). In addition, their enrollment in a complex “crime-security nexus” (Pratt, 2012) had the effect of transforming them into suspected criminals and terrorists. Far from suspending the law, “laws [were] drafted or reinterpreted with the goal of circumventing barriers to preventative action” (Larsen & Piché, 2009: 209). The implicit purpose of imposing these conditions was to situate non-citizens, migrants, and/or foreign nationals within spaces that were located outside of the normal judicial order in which different laws and rules of governance applied. The relational interactions between political figures, ministers, lawyers, judges, and law enforcement authorities who were interested in restricting the migrants’ access to Canada were able to exploit these legal technicalities and problematize them as a threatening and dangerous group of people, justifiably depriving them of legal and procedural protections (Aitken, 2008: 383; Larsen & Piché, 2009).

After receiving substantial criticism from the political opposition, refugee, human rights, and civil rights activists for being overbroad and widening the net of its indefinite detention powers to include children who fled with their parents, Bill C-4 was eventually abandoned (Government of Canada, 2012). This moment was indicative the weak hold of the government’s problematization of the Tamil migrants as dangerous others with terroristic inclinations. The Canadian Council for Refugees, Amnesty International Canada, the Canadian Tamil Congress, and the International Civil Liberties Monitoring Group were able to rupture the government’s problematization by reframing the narrative of the irregular migrants (Amnesty International Canada, 2011). These groups vigorously contested the government’s problematization that casted

these migrants out as dangerous criminals with potential ties to the Tamil Tigers. While the government continued to push for their exclusion on the grounds of security measures, these groups urged compassion towards the men, women, and children who were indefinitely detained (Amnesty International Canada, 2011). They called for a broader public understanding of the complex political situation in Sri Lanka that compelled them to abandon their homeland (Amnesty International Canada, 2011; MacLeod, 2009). The rampant murders, abductions, torture, and deaths left them with no option but to adopt unconventional modes of transportation in an attempt to flee the increasing political violence (MacLeod, 2009). These activists and civil rights groups were compelling actants in the complex network that called for the detention of the Tamil migrants. Eventually, their efforts and lobbying produced semi-fruitful results where they were able to momentarily bring the status of the Tamil migrants towards more security. Their constant political pressuring led the government to abandon Bill C-4 in favor of Bill C-31, *Protecting Canada's Immigration System Act*.

Unfortunately, Bill C-31 may have technically replaced Bill C-4, but it kept all of the measures contained within it (Government of Canada, 2012). Rearticulating the legislative framework by adjusting some technicalities and leaving others intact was an effective governing strategy that allowed institutional authorities to circumvent the provisions of criminal law to, instead, criminalize the Tamil migrants through immigration law. By evoking their potential criminal or terrorist associations, institutional authorities were able to connect their narrative to human smuggling and trafficking. As an actively participating agent, the anti-smuggling legislation itself figured as an important actor in the Tamil migrants' network. The new anti-smuggling legislation inscribed new legislative powers within the *IRPA* that enabled the government to convict, fine, or imprison any persons who "organize[d], induce[d], aid[ed] or abet[ted] the coming into Canada of one or more persons," knowing that their coming into Canada would contravene Canadian law (*IRPA*, S.C. 2001 c.27, s.117[1]). Also contained within s.117 of *IRPA* was a maximum fine of \$1,000,000 and/or a maximum term of 14 years in prison for persons who facilitated the illegal entry of 10 or more persons (*IRPA*, S.C. 2001 c.27, s.117[1]). In this context, the anti-smuggling legislation, and by extension the *IRPA*, were prominent actants in the Tamil migrants' network that delineated prescribed roles to government authorities and classified incoming migrants according to different categories of non-citizenship. These prescribed roles were distinct in nature, despite the fact that they were all concerned with

individuals who lacked formal membership within Canada. The different categories of non-citizenship carried different degrees of membership, which in turn endowed individuals with varying access to rights and privileges within Canada. For instance, Harkat's membership within Canada as an inadmissible non-citizen placed under a security certificate can be undoubtedly different from the degree of membership that Budlakoti held as a stateless non-citizen, which in turn can also be drastically different from the degree of membership possessed by the Tamil migrants who were deemed inadmissible as human smugglers and terrorists. While s.117 of the *IRPA* defined the role of human smugglers, human actors come together to apply this definition to specific situations. Here, the clause has been applied to the Tamil migrants by government authorities in an attempt to support their problematization of the Tamil migrants as dangerous terrorists with potential ties to the Tamil Tigers. These actors translated this specific clause to support their contention and fit their political agendas and convince Canadians that the government is proactively engaged with protecting them from outside threats. This example illustrates how human and non-human actors are connected together and concurrently define the varying degrees of membership.

More specifically, Bill C-31 legitimized greater expenditure of state power by authorizing the Minister of Public Safety to "designate the arrival of a group of people into Canada as an irregular arrival" (Government of Canada, 2016). In an attempt to facilitate the prosecution of human smuggling, the courts were afforded the ability to impose mandatory minimum sentences on convicted human smugglers, thereby legitimizing the use of prolonged detention (Derosa, 2012). Moreover, they were authorized to hold "ship owners and operators accountable for use of their ships in human smuggling operations" (Government of Canada, 2016). In addition, if these individuals were unable to present satisfactory identity documents within two weeks, they would be automatically detained without recourse to further review for a minimum of six months. The revised bill further prevented refugees from securing permanent residency for up to five years, and even more, during this time they were restricted from travelling outside of Canada and were prevented from sponsoring family members (Government of Canada, 2016).

This expanded legal framework requires us to recognize the relational interactions between potentially different actants who engaged in a co-constitutive process to articulate the varying degrees of membership. A constellation of human actors (e.g. government authorities, judges, IRB commissioners, CBSA agents) and non-human objects (e.g. legislations, the *IRPA*)

were inserted into the migrants' network to constitute the fluid articulations of their status and presence in Canada. The agency of multiple actors ranging from the border service agents whom the migrants first encountered to the intermittent appearances of the IRB officials, judges, lawyers, and politicians all were able to exert their influence and power in articulating the migrants' status within the fabric of Canadian society (CTV News, 2010). For example, the government's aggressive stance to advance their problematization of the Tamil migrants as dangerous "others" were reflected in the continued detention of a Tamil journalist who arrived on the MV Sun Sea (Canada [Citizenship and Immigration] v. B188, 2011 FC 94). In this context, the journalist had been previously cleared by the IRB, but the government was insistent on prolonging his detention due to their suspicions that he might have been an LTTE sympathizer (Canada [Citizenship and Immigration] v. B188, 2011 FC 94). Despite their efforts to prevent his release, the journalist was eventually freed, having to spend an extra three months in detention (Canada [Citizenship and Immigration] v. B188, 2011 FC 94). This situation speaks to how relational interactions and negotiations between IRB and government officials can push migrants down towards vulnerability in one instant, and suddenly elevate their status towards more stability in another.

Moreover, technical objects ranging from legal artefacts (i.e. policies, amendments, legislations, laws, court fillings, etc.) to CBSA databases and intelligence reports were also enlisted in the network to shift the status of the migrants (CBC News, 2010). It was mentioned that once the migrants entered Canada, they were photographed, fingerprinted, and screened for criminality (CBC News, 2010). These devices and technologies were capable of communicating particular truths about the human body that was travelling through international borders. In the actor-network, these devices were presented as actants that revealed attributes about the migrants that they may not officially have disclosed. As such, in addition to the human actors who contribute to shifting the nature and presence of these migrants in Canada, these biometric technologies and databases were also capable of (re)articulating the status of the migrants in Canada. Therefore, while some actors were relentlessly involved in pushing the migrants' status down towards more vulnerability, others were involved in rearticulating their status to momentarily shift and advance their presence in Canada as legitimate refugees and asylum seekers.

It is through this simultaneous process of negotiation between an array of actors, along with their own agency, that migrants were shifted between different degrees of membership in Canada. It was determined at successive court proceedings that the supervisors of the engine rooms, engineers, captains, crew members, ship owners, and even water distributors and cooks were guilty of organizing, inducing, aiding, or abetting the illegal entry of Tamil migrants into Canada. In a 2015 Supreme Court ruling, it was declared that section 117 of the *IRPA*, the section that dealt with human smuggling and trafficking in Canada, was flawed and overbroad (Mulgrew, 2015; The Canadian Press, 2017; CBC News, 2015; CTV News, 2015). In reinterpreting the law, lawyers representing the various accused persons argued that section 117 had the effect of potentially criminalizing parents who accompanied their children on the vessels (Mulgrew, 2015; The Canadian Press, 2017; CBC News, 2015; CTV News, 2015). It effectively placed family members and humanitarian workers assisting people seek asylum in the same category as human smugglers. In using this legally supported framework, the lawyers were able to rearticulate the human smuggling and trafficking provisions contained within section 117 of the *IRPA* and transform the rhetoric surrounding the Tamil migrants (Mulgrew, 2015; The Canadian Press, 2017; CBC News, 2015; CTV News, 2015). The Supreme Court held that those who were in charge of steering the ship, acting as a lookout, or cooking meals for passengers could not automatically be branded as human smugglers.

Based on this interpretation, three of the individuals accused of facilitating the MV Sun Sea voyage were acquitted of all charges related to human smuggling, while one was allowed to be released on bail while awaiting a new trial (Mulgrew, 2015; The Canadian Press, 2017; CBC News, 2015; CTV News, 2015). For the MV Ocean Lady, the judges agreed that the four accused individuals should be re-tried (Mulgrew, 2015). These rulings effectively demonstrated the dynamic interplay between actors located and working at various scales to influence the status and presence of the Tamil migrants in Canada. While some actors promoted their illegality by using a legally mediated framework, other actors were able to mobilize those same resources and rearticulate the legal technicalities embedded in the law in order to shift and advance the status of some of the migrants. Although, some of the accused persons still faced a potential re-trial, this, nonetheless, represented a favorable outcome. With a lack of recourse to formal or conventional avenues of asserting themselves in Canada, these non-citizens were constantly in search of alternate means to make themselves appear in a state and better their situation by

making claims to the rights, privileges, and benefits that the state has to offer. In this regard, these techniques of reinterpreting legal technicalities represented a set of alternate means of elevating their status from being completely vulnerable to being slightly less vulnerable.

In conclusion, the cases of Budlakoti, Harkat, and the Tamil migrants have been intended to shed light on how a legally supported framework has enabled different actors to justifiably deprive non-citizens of the rights and protections typically granted to individuals during normal legal proceedings. Various located actors at different levels and scales were able to govern the jurisdictional presence of non-citizens and temporarily locate them outside the normal judicial order until other actants, both human and non-human, were inserted into their networks to stabilize their status. The provisions of the *IRPA* as articulated through Budlakoti's statelessness, Harkat's security certificate, and the Tamil migrants' status as human smugglers functioned as a legal mechanism by which a heterogeneous assemblage of human and non-human actors used to negotiate the boundaries between the varying degrees of membership. These cases have demonstrated that formal membership can be an essential condition that contributes to the recognition of jurisdictional presence, but it certainly is not the only way in which non-citizens secure presence and make themselves appear. The fluid constructions of membership expressed throughout this section attest to how legally mediated technicalities have been dynamically mobilized to produce varying forms and degrees of membership.

Chapter 4: Locating Bordering Practices

The plurality of membership categories that are produced as a result of the socio-technical realities that surround us compel us to re-evaluate the prescribed functions that are attributed to the border. The border is more than a passive spatial divider designated to create difference between insiders and outsiders; it is a complex assemblage of a variety of spatial, material, social, cultural, and technical realities that are brought together to dynamically articulate the functions, reach, and extent of the border (Rumford, 2006; Rumford, 2008; Goldring & Landolt, 2013; Dijstelbloem & Broeders, 2015; Pötzsch, 2015; Landolt & Goldring, 2016; Stasiulis, 2017). This innovative level of analysis reveals a different dimension of spatial relations that tend to transcend traditional state borders. As such, this chapter suggests an alternative reading of borders through an actor-network lens that theorizes the different embodiments of borders along three main axes of reflection. The first practice related to bordering involves spatial forms of containment that are structurally manifested through detention and holding facilities. The second practice addresses the notion of surveillant bordering techniques where a combination of direct and indirect methods of monitoring and visualization are used to influence the status and presence of non-citizens in Canada. Lastly, I address the idea of corporeal bordering which is closely entwined with the practices of surveillant bordering. I would like to emphasize that these three typologies are overlapping rather than separate categories that give practical meaning to borders. Depending on the context, all three categories can potentially be fused together to explain the notion of bordering and its associated processes.

4.1 Spatial Bordering

Bordering as the spatial ordering of people and things symbolizes an ongoing effort “to make a difference in space among the movement of people, money or products” (van Houtum & van Naerssen, 2002: 126). Spatial theorizations figure prominently in each case study in similar, but also different ways that communicate the variegated articulations of borders as a heterogeneous ensemble of human and non-human actors. At the spatial scale, it is interesting to see that non-citizens are bordered by liminal spaces that are neither outside nor inside the polity. This notion of “spatial bordering” situates non-citizens in an ambiguous space characterized by “exceptional measures operating outside the usual parameters of judicial rule” (Pratt, 2005: 12).

In following the trajectories of Harkat, the Tamil migrants, and Budlakoti, we can see how exclusionary spaces are created and legitimated by the law. However, while it may seem

that a rhetoric of exclusionary measures enacted by sovereign authorities predominate these liminal spaces, in actuality they are directed by the decisions of a constellation of actors who actively engage in the networked assemblage to influence the day-to-day administration of the inner workings of the system (Pratt, 2005: 20). Harkat, the Tamil migrants, and Budlakoti were indefinitely detained, at separate times, in unique institutional arrangements under the pretext of administrative adjudication. Kingston Immigration Holding Center (KIHC) was one among many institutions that were designed to segregate non-citizens and push them towards contours of mainstream society. Prior to being transferred to KIHC, Harkat was kept in a segregated unit at Ottawa-Carleton Detention Center (OCDC), a detention center intended to house male and female adult offenders on remand and awaiting transfer to a federal or provincial correctional institution (CBC News, 2006; Singer, 2006). This spatial segregation is an interesting bordering technique used to physically bracket non-citizens outside the polity by restraining and restricting their mobility. They are physically present within the jurisdiction, but are rendered invisible by virtue of being bounded in an alternate space governed by a different set of institutional practices, legal norms, and power relations.

KIHC is a unique space of confinement that operated within the contours of a parallel penal system, but was guided by a different logic. It was a jointly operated endeavor led by the Canadian Border Service Agency (CBSA) and Correctional Services of Canada (CSC) that effectively merged immigration, national security, and penal regimes together (Larsen & Piché, 2009). The facility was located on the grounds of Millhaven Institution, a federal maximum security prison, and was built to exclusively hold individuals subjected to security certificates until a decision was rendered on the reasonableness of their certificate (Larsen & Piché, 2009). Essentially, “this [was] a prison within a prison, with its own perimeter and security gate, its own specially cross-trained work-force of multi-function detention officers, and its own set of rules, guidelines, President’s Directives, and Standing Orders” (Larsen, Harkat, & Harkat, 2008: 6). These detainees occupied an ambiguous space, defined by its own mandates, located outside the realm of what “normal” inmates would be governed by. Their separation from the “convicted population” evoked the notion that security certificate detainees were different in that they were managed by an exceptional body of rules and governing practices only applicable to them. More than this, KIHC was a facility that coexisted within a penal institution designed to administer punishment (Larsen, Harkat, & Harkat, 2008: 6). KIHC was a deeply problematic hybrid

institution that fused correctional mandates with immigration orders where CSC was contracted as a detention “service provider” by CBSA, who was named the “detention authority” (Larsen, Harkat, & Harkat, 2008: 6). This contractual arrangement allowed CBSA and CSC to effectively circumvent their respective responsibilities; CSC was able to set aside the entire “correctional” component of its mandate and administer punishment on behalf of CBSA (Larsen, Harkat, & Harkat, 2008: 6). This greater expenditure of power vested in CBSA allowed it to use CSC as a conduit in spatially segregating Harkat, even if it was only temporarily. These reconfigured spatial perimeters effectively blur the lines between administrative detention and punitive incapacitation.

Harkat’s placement in this institution served as a symbolic representation of stripping away his rights and political relevance in Canada while forcing him to occupy a liminal state of being where his physical body was present in reality, but his representation was entered into the apparatus of disappearance (Nield, 2008: 144). In other words, he was physically located within the Canadian jurisdiction, but his status was reconfigured such that his presence was made increasingly precarious. He was visible to the law, but in a way that rendered him inadmissible and eventually removed him into a space located outside the normative order of society. In this context, a representational border, or wedge, was produced between his existence and his actual ability to appear before the law and maintain a legal status in Canada. Not only were human actors implicated in constituting Harkat’s status in Canada, but non-human actors and objects equally evoked the nature of his status in Canada. The physical instruments of confinement were entered into the networks as potential actants. The shackles and cuffs at his wrist and feet physically bounded him within closed, secluded quarters until he “was made to feel like an animal” (Larsen, Harkat, & Harkat, 2008: 4). These instruments of confinement were used as devices of interestement to advance the government’s problematization of Harkat as a dangerous, unwanted “other.” As such, Harkat was forcibly enrolled, or intéressé, into the prison system and compelled to accept his role as a prisoner. In addition, the shackles and cuffs were used to continually produce his status as a dangerous criminal since only the most hardened criminals required forcible bodily restrictions. His placement in these suspended zones of existence, marked by ambiguous rules of governance, eventually pushed him down towards a vulnerable state of being where he was slowly rendered invisible in plain sight.

The spatial aspects of bordering do not just materialize in a single space; rather, it emerges across multiple sites in the interactions between multiple actors. Similar to Harkat, Budlakoti was also spatially bordered through a detention regime in which various actors, dispersed across time and space, constituted his status in Canada. Detention can be understood beyond spaces of confinement where it also involves “processes of transition, in which political subjectivities are made and unmade, with the implications for a person’s ability to access, social, political and economic rights” (Rygiel, 2012: 219). While serving pre-trial detention at OCDC and his federal sentence at Joyceville Institution and Millhaven, Budlakoti’s spatial segregation was inextricably tied to administering punishment for criminal wrongdoings (Dimmock, 2012). However, that distinction quickly shifted once he was entered into the regime of administrative detention (Dimmock, 2012). Suddenly, this new form of spatial segregation had the effect of altering his status and regarded him as a different kind of unwanted subject – one that was deemed inadmissible as a non-citizen and rendered stateless by a set of legal technicalities.

Once Budlakoti was due to be released from federal prison after serving a two-year sentence for his criminal convictions, he was transferred to Toronto West Detention Center and detained under immigration law instead of being released (Dimmock, 2012). Toronto West Detention Centre was a maximum security remand facility designed to hold adult males who were awaiting trial or sentencing, serving short sentences, or awaiting transfer to federal or provincial correctional facilities. Though not explicitly regarded as an immigration holding center, it acted as a transient space where administrative detention was entangled with the penal regime designed to administer punishment. Although the physical aspects associated with Budlakoti’s spatial confinement emulated Harkat’s situation, it was still markedly different in some respects. While Harkat was isolated from the convict population, which evoked the notion that the subjects of security certificates were somehow different when compared to ordinary criminals, Budlakoti was not. This was affirmed by Budlakoti when he said that he was placed in detention with individuals “mixed with immigration and guys on criminal charges” (Budlakoti, 2013). This is a distinction worth exploring since Harkat’s spatial confinement not only bracketed him away from society, but also physically bounded him in a space separated from the inmate population. Although both Budlakoti and Harkat were both bounded within institutional perimeters, they were bordered in similar, but also vastly different ways. The spatial bordering in Budlakoti’s case carried little regard towards separating immigration detainees from those who

were criminally charged. The co-existence between immigration detainees and inmates in a single unified space suggested that perhaps non-citizens were no different than criminals and were equally expendable. Even more, the increased reliance on criminal justice definitions, practices, and decisions in guiding immigration law and policy to detain non-citizens signified society's complicity in these exclusionary practices that were intended to create boundaries between certain classes or groups of people (Pratt, 2012: 283). These discursive elements had the effect of creating differential spatial realities for different kinds of non-citizens. These spaces, and the subjects located within them, pointed to how non-citizens did not experience bordering in the same way. While spatial forms of bordering traverse through all three case studies in the form of administrative detention and institutional confinement, it is practiced and applied according to contextually specific circumstances.

The Tamil migrants were placed in similar spaces of detention and equally removed from the polity like Harkat and Budlakoti. The Tamil migrants of the MV Ocean Lady and MV Sun Sea found themselves in "transitory spaces and states of circulation in which people [found] themselves in limbo and endless states of waiting while they [were] prevented from settlement" (Rygiel, 2012: 212). Upon their arrival, the Tamil migrants were held in correctional facilities that were not originally designed to accommodate immigration detainees. In the case of the MV Ocean Lady, the Tamil migrants were placed in Fraser Regional Correctional Center, an institution specifically designed to house inmates (Mercer, 2009). For the migrants of the MV Sun Sea, a makeshift, temporary detention area was set up at various correctional institutions to make room for the men, women, and children (Poynter, 2012). These spaces of confinement were unified by the fact that they acted as transient spaces where administrative detention was increasingly entangled with a penal regime designed to administer punishment. These alternate forms of processing rendered the non-citizens' presence increasingly precarious where their ability to make claims to a better life was significantly undermined (Rygiel, 2012: 239). While detained, these asylum seekers were unable to secure housing and employment to stabilize their presence in Canada and build a future for themselves. Instead, they were isolated into confined spaces as a strategy to restrict their ability to "engage and act as political beings with rights" (Rygiel, 2012: 239). Budlakoti was faced with a similar predicament where, upon being released on bail, he was unable to secure employment for a significant period of time by virtue of being stateless (Justice for Deepan, 2013c; Justice for Deepan, 2013d). In fact, the heterogeneous

arrangement of Budlakoti's status demonstrated how even the permanence associated with full citizenship status could be permeated by pressures from other actors within the network. Budlakoti once held secure jurisdictional presence by virtue of being a Canadian citizen, and by extension he possessed the rights to make claims within Canada. However, these rights were immediately revoked upon the court rulings that dismissed his citizenship and declared him stateless, and therefore inadmissible to Canada (*Budlakoti v. Citizenship and Immigration*, 2014 FC 855). His various forms of spatial segregation, both criminal and immigration, dispossessed him of his rights and relegated his status down towards a vulnerable state of being. These extraordinary measures raise serious concerns about systemic and individual forms of discrimination that rely on bordering practices to exclude unwanted subjects from the polity.

In a similar fashion, holding pregnant Tamil women in custody also evoked a sense that detention was being employed as an exclusionary measure intended to contain, segregate, and ultimately, expel unwanted non-citizens who threatened the social fabric of Canada. According to Krishnamurti (2013), "these women [were] the symbolic representation of Tamil bodies encroaching on the territory, rights and services available to legitimate Canadians" (p. 140). Their detention, therefore, represented a way to contain the potential terrorist and its breeder (Krishnamurti, 2013: 140). Placing them in impermanent, temporary institutional arrangements that were merely added to more permanent structures of confinement suggested that their very existence was regarded as temporary. In addition, the rhetoric of "bogus" refugee claims that governed the political climate at the time was also used as a mechanism to justify the spatial confinement of these migrants (Armstrong, 2009; Government of Canada, 2012). The Tamil migrants were constructed in opposition to the "legitimate refugees" who used lawful means to enter and make claims in a country; these "illegitimate" entrants were regarded as "bogus refugees" who were encroaching upon the land of legitimate Canadian citizens to exploit the material benefits available in Canada (Government of Canada, 2012). Therefore, these articulations were used to parenthetically situate them in alternate spaces of governance characterized by liminality, precarity, and uncertain jurisdictional presence where differential laws of governance were applicable exclusively to non-citizens.

Those subjected to the forces this spatial border are equally able to exercise their own will and resist the pressures of other actors trying to push them down towards chutes of vulnerability. In this networked assemblage, these non-citizens act as active agents who engage

in relational practices to alter the nature of their status to secure more permanent presence in Canada. We see how this is possible because these non-citizens were able to halt their deportation and remain present in Canada. Harkat and Budlakoti were able to challenge the legal determinations of their cases and gained the right to be released back into the community, even if they were living under strict bail conditions (Dimmock, 2013; Appendix C; CTV News, 2006; CBC News, 2006a). The primary perpetrators accused of human smuggling in the MV Ocean Lady and MV Sun Sea have either been released on bail or acquitted due to unfounded accusations (Mulgew, 2015; The Canadian Press, 2017; Omand, 2017). Only a few handfuls of Tamil migrants have been deported on the grounds of having connections to the Tamil Tigers; the remaining migrants were able to make claims as refugees in Canada and were eventually released from custody (Quan, 2015). These non-citizens were effectively able to elevate their status and gain increased recognition in Canada despite the limited avenues available to them to make claims. The border is also reconfigured in accordance to these changing circumstances. While these non-citizens were detained, the border asserted itself as a spatial divider intended to hold people in physically confined spaces. The perimeters of the alternate detention areas acted as a symbolic representation of the border itself and its ability to restrict movement, bracket people out of society, and hold them in secluded spaces against their own will. Now that these non-citizens were released from the physically restraining detention areas, the border has acquired a set of expanded functions that have spilled over into the everyday, mundane activities of the non-citizens' lives.

4.2 Surveillant Bordering

Unlike the spatial border whose perimeters are apparent in the physical structure of the institutional holding facilities, the surveillant border is dispersed across time and space. Its boundaries are not readily identifiable and have been articulated through an assemblage of technological manifestations, human interactions, and contextual circumstances. As such, the border has been projected as a collection of surveillance practices that have been dispersed and diffused across the homes and communities of non-citizens. In this regard, the border is more than a rigid territorial marker used to differentiate insiders and outsiders; instead, the border is rearticulated as a fluid entity, able to insert and exert itself in dynamic contexts, spaces, and places. These diversified adaptations of the border encapsulate how it has been profoundly altered and acquired a new level of spatiality that extends beyond the limits of territorial

boundaries and physical demarcations. The diffused and dispersed nature of the border has the effect of producing new forms of spatial and social realities for non-citizens living in Canada. The very vagueness, ambiguity, and shapelessness associated with the surveillant border reinforces the idea of borders as malleable entities made up of heterogeneous assemblages of human and non-human objects, interactions, and relations.

Haggerty and Ericson (2000) conceptualize the border as emitting a surveillant gaze that is inextricably linked to “abstracting human bodies from their territorial settings and separating them into a series of discrete flows. These flows are then reassembled into distinct ‘data doubles’ which can be scrutinized and targeted for intervention” (p. 606). In addition to the electronic forms of monitoring that Haggerty and Ericson (2000) make reference to, a multi-level network composed of variously located actors can equally be inserted into this surveillant assemblage to expand the gaze of observation. This expanded frame of analysis “requires us to recognize the combination of machines/equipment, techniques, procedures (all potentially actants), individuals, institutions, training, traditions and even cultures, as forming part of the assembly of constituent actors and factors structuring the way in which interpretive practices are performed, incorporated and understood” (Edmond & Roque, 2013: 266). As such, the reach of the border has been extended into more “diffused sources including the health care systems, employment, and access to social services” (Villegas, 2015: 231). It involves a network of “diverse and intersecting state and non-state authorities, technologies, forms of knowledge, and a regime of rules” (Pratt, 2012: 276). Through ubiquitous forms of surveillance, these actors and technologies are able to impact the ongoing presence of non-citizens in a given territory while simultaneously governing their mobility. These other sites of operation offer an examination into how the border has been displaced and its prescribed functions have been significantly altered. Non-citizens are increasingly entangled in the practices of surveillant bordering wherein a blend of both subtle and blatant forms of surveillance techniques are used to repress their existence and render their presence and membership precarious. However, non-citizens are able to simultaneously escape and resist the forcefulness of the surveillant gaze in creative ways, whereby they are able to rearticulate their status in Canada to secure their presence.

The underlying implication of an ever-expanding surveillant gaze draws our attention towards the rapid growth of immigration governance and control that have been facilitated by a technology-driven enterprise (Kalhan, 2014: 6). Surveillance techniques, practices, and

mechanisms have hastened immigration enforcement and control in a variety of ways where intensified forms of monitoring of non-citizens are deployed at virtually every stage of the process from the initial entry to post-entry (Kalhan, 2014: 6). These techniques and technologies of immigration enforcement are so deeply entrenched and normalized based on security related imperatives that it becomes increasingly impossible to detect their deep seated operations (Kalhan, 2014: 7). While its unimpeded expansion and swift proliferation across the social body has the effect of structuring immigration control on a massive, unending scale, it is still possible to resist and escape the clutches of the immigration surveillance regime (Kalhan, 2014: 7). The intersections of immigration enforcement with surveillance technologies are part of broader conversations related to the proliferation border control mechanisms and bordering practices that increasingly operate without geographical bounds.

Historically, immigration officials did not take any substantial steps to oversee the presence of non-citizens or investigate grounds for potential deportation once they had entered the country (Kalhan, 2014: 18). In recent years, however, post-entry regulation by immigration officers and border control agents has turned into a routine practice and has served as an extension of territorial border and migration control, “intended to apprehend noncitizens who are unlawfully present” (Kalhan, 2014: 18). Under this “extended border control” model of enforcement, non-citizens are placed under extensive scrutiny in the form of stringent release conditions post-administrative detention (Kalhan, 2014: 18). Harkat along with the Tamil migrants and Budlakoti were all subjected to some form of scrutiny, at differing degrees, where the border made itself apparent in the form of routinized control mechanisms and insidious surveillance techniques that governed the most mundane activities of their lives. Manifestations of surveillance under these conditions appear in both direct and indirect immigration enforcement practices.

The more direct forms of surveillance have been enabled by technical objects where an array of actors, located in various spaces and places, were able to monitor non-citizens through advanced lighting technologies, motion sensors, remote cameras, and mobile surveillance systems. These technologies were inserted into the non-citizens’ networks to control their mobility and render them hyper-visible to the surveillant gaze. Harkat’s GPS ankle monitor, the surveillance cameras installed in his home, and the electronic interception of all of his outgoing and incoming telecommunications served as real manifestations of how Harkat’s immigration

network involved a constellation of non-human actors along with human actors (Larsen, Harkat, & Harkat, 2008; Duffy, 2008; *Harkat v. Canada* [CIC], 2008 FC 595).

As one of the pre-conditions of his release from administrative detention, Harkat was mandated by the court to wear a GPS monitoring device at all times and CBSA agents were granted the right to install security cameras around the perimeters of his home to conduct 24 hour surveillance (Duffy, 2008). These devices enabled CBSA agents to remotely monitor Harkat from a distance. Human actors, such as the CBSA agents, in tandem with technical objects possessed the authority to restrict Harkat's movements. These actors concurrently impeded and facilitated Harkat's movement within Canada. The surveillance technologies, as potential actants, possessed the ability to make subjects act accordingly. For example, Harkat's GPS ankle monitor and other surveillance technologies were able to routinely obstruct access to rights, health care, employment, housing, and other taken for granted structural aspects of our lives. Adhering to the ANT framework, technical objects acquire the agency to assert themselves and influence the actions and movements of other actors located within the network. By the same token, the surveillance technologies used to monitor Harkat played an active role in his network. In terms of housing, these technical objects acquired the agency to dictate Harkat's living arrangements and place of residency. In 2008 Harkat filed a motion to the court seeking a change in residency; however, this motion permitting Harkat to move to a new residence was dismissed (*Harkat v. Canada* [CIC], 2008 FC 595). The Federal Court judge deemed that Harkat's proposed residence would not allow CBSA's concerns to be met (*Harkat v. Canada* [CIC], 2008 FC 595). In addition, the condominium corporation of the proposed residence "declined to consent to the installation of surveillance cameras" on the premises (*Harkat v. Canada* [CIC], 2008 FC 595, para. 24). At his current residence, the CBSA agents were able to monitor Harkat's activities in the front and backyards through surveillance cameras (*Harkat v. Canada* [CIC], 2008 FC 595). Furthermore, the ample amounts of street parking in front of that residence afforded CBSA agents "an unobstructed view of the front of the residence. Neither of those conditions existed at the proposed residence (*Harkat v. Canada* [CIC], 2008 FC 595, para. 26).

In this context, we are able to see how technical objects gained the ability to influence the outcomes of a situation. The surveillance cameras and other monitoring devices were active participatory agents of change in Harkat's network that were able to act and alter the outcome of a situation as much as their human counterparts. The necessity of having surveillance cameras

installed at Harkat's residence effectively overrode his personal needs. In this situation, the technical objects were able to assert themselves in Harkat's network by structuring his living arrangements according to the needs and demand of the technologies. The judge was steered by the technologies, which resulted in a ruling that ultimately weighed in favor of accommodating the surveillance devices at the expense of Harkat's request to move. As potential actants, these objects were afforded a considerable amount of power in that they were able to dictate their subject's place across space and time. The surveillance cameras, GPS ankle monitor, and other such devices were able to meticulously articulate Harkat's most mundane movements to the point that he was restricted from changing his place of residence, something that is commonly done without deep thought or reflection.

In terms of employment, Harkat's security certificate and his GPS ankle monitor prevented him from seeking employment to make an adequate livelihood. These objects have been diffused throughout Harkat's network and were able to insidiously direct his actions and influence his day-to-day life choices. While it is true that some technologies can be used to grant access to rights, mobility, and privileges, I would like to stress that these specific case studies illustrate otherwise. Not only do these technological entities have a direct impact on Harkat, but they also impose themselves on other actors, namely, Sophie Harkat, his wife. Because Harkat required a 24/7 supervising surety, by extension, Sophie was compelled to resign from her position as an art gallery fundraiser and monitor Harkat throughout her day (Freeze, 2007). On numerous occasions, Sophie admitted that her husband's house arrest and his subsequent enrollment in an intrusive surveillance network removed all the normalcy from their lives (Larsen, Harkat, & Harkat, 2008). Along with her husband, Sophie expressed feeling like "prisoners in [their] own home" while living "under a bubble of surveillance" (Larsen, Harkat, & Harkat, 2008: 8). These conditions meticulously governed every minute aspect of their lives to the point where Harkat was required to be accompanied at all times by a supervising surety, even while using public washrooms during their scheduled outings (Duffy, 2008). Whether he was inside or outside the home, Harkat was never allowed to remain unsupervised (Duffy, 2008). During the week, he was permitted up to three four-hour excursions where all the locations, along with meetings and visitors, were required to be pre-approved by CBSA (Duffy, 2008). In addition to being followed by CBSA officers with bulletproof vests and guns, Harkat was obliged to call an agent before and after each outing (Chong, 2016). Even more, these officers

had the right to enter their home at any time if they suspected any suspicious activity or a breach of conditions (Harkat [Re], 2009 FC 659). In some ways, these conditions have come to define and control every aspect of Harkat's life, and by extension, his wife's as well. The level of surveillance and control, according to Sophie, is

humiliating and degrading, and there is no escaping it; for example, because he cannot be left alone, Moe [Harkat] has attended my physicals and other 'woman' appointments, where he sits in the corner. We have no privacy, no potential for spontaneity (Larsen, Harkat, & Harkat, 2008: 9).

This situation demonstrates the interactive influence of human and non-human actors in governing the day-to-day activities of Harkat. The networked formulations enable different actors, both human and non-human, located at various levels and scales to assert themselves in Harkat's network and influence his presence and status in Canada. His GPS ankle bracelet, in combination with the demands of the CBSA agents, simultaneously dictated his associations with other actors. For example, as a condition of his release, Harkat was banned from communicating with people he met in prison and he was told to avoid mosques because he could not be associated with anyone who might believe in violent jihad (Freeze, 2007). Since the GPS provides CBSA agents with his real-time location, this technology acted by reorienting Harkat's associations. This technical object also demands other connections since the supervision techniques were enforced by the courts and CBSA agents.

The connection between material and social relations structured every aspect of Harkat's life. This demonstrated how immigration enforcement materialized beyond the walls of the detention centers and holding facilities. The absence of formal membership, in this case, has exposed Harkat to a lifetime of formal and informal social controls in the form of constant supervision. When direct forms of supervision are combined with indirect, and seemingly unobtrusive, techniques of surveillance, the scope and power of the surveillant gaze is significantly expanded. The routine interactions between physical objects worn by or implanted in individuals, such as Harkat's GPS ankle monitor, and the agents of the gaze, such as CBSA officers, were enrolled in his network to erase his agency, compelling him to accept the role ascribed to him by the technologies of surveillance. These conditions fed the notion that non-citizens were increasingly bordered by the surveillant gaze. The surveillant border has the capacity to bound non-citizens across space and time by projecting its omniscient presence. These conditions compelled non-citizens, both consciously and subconsciously, to structure their

lives, mobility, and schedules according to the demands of the gaze. The series of connections between these socio-technical arrangements, or assemblages, had the effect of tying him to a specific border. That being said, the subjects of the surveillant border are not entirely dispossessed; they are able to mobilize unique resources to subvert and resist the influence of the gaze to some extent and alter the nature of their status in Canada, even if it is only momentarily.

Budlakoti underwent a similar trajectory when compared to Harkat, but in a less intensified form. Nonetheless, the conditions that governed Budlakoti's post-release term significantly impacted his life chances. These regulations subjected Budlakoti to a 9am to 9pm curfew, except under the supervision of his parents, in conjunction with being mandated to live with them (Dimmock, 2013). He was compelled to report to the CBSA on a bi-weekly basis and was prevented from gaining employment unless he managed to legally obtain a work permit (Dimmock, 2013; Appendix C). Even more, with the loss in status came the loss of his SIN card as well, which posed additional barriers in reintegrating back into Canadian society and returning to work (Parasram, 2013). When he did try and legally obtain a work permit, he was faced with inexplicable delays due to bureaucratic regulations (Justice for Deepan, 2013c). These more indirect techniques of governance that suppress the presence and membership of non-citizens and render their existence precarious allow the gaze to remain omniscient and exert its power over people at a distance. This seemingly renders the surveillant gaze impermeable to outside forces where its actions start to have far-reaching implications for non-citizens and their capacity to appear and remain present in a given state.

Budlakoti's capacity to appear in Canada was further diminished by the forces of the surveillant gaze. The surveillance regime was able to structure the time of these non-citizens through the imposition of curfews and consequently bound them in isolated spaces that ran parallel to the "free" spaces in which they were technically located in. Despite being technically "free," Harkat and Budlakoti were both bounded by the restrictions of their post-release conditions where increasing techniques of management were used to govern their mobility and suppress their status in Canada. Restricted by these conditions, Budlakoti and Harkat became the targets of intense regulation, control, and eventually, expulsion. The meticulous governing strategies employed by this surveillance regime have prevented them from fully participating in political life, and therefore making themselves present in the state.

Typically, individuals assert themselves in a state through their political, economic, and social contributions; however, the lack of formal membership has prevented Budlakoti, Harkat, and the Tamil migrants from using conventional avenues to appear in Canada. For instance, not only were Harkat and Budlakoti restricted from securing regular employment, their existence was slowly entered into an apparatus of disappearance through techniques and technologies of surveillance. Budlakoti's status and presence in Canada was increasingly rendered precarious and uncertain where the rights and privileges associated with full membership were slowly eradicated. In addition to being unable to secure a stable income, Budlakoti was also barred from other avenues of sustaining a living. Since he was declared stateless, he was unable to apply for social assistance and secure financial stability. By virtue of losing his citizenship, his social insurance number (SIN card) was also revoked (Dimmock, 2013; Appendix, C; Parasram, 2013). As a result he was compelled to apply for a work permit to be able to secure employment in Canada (Dimmock, 2013; Appendix, C; Parasram, 2013).

In Budlakoti's case, the work permit and official government issued identification such as his SIN card were entered into his network as actants with the ability to influence the outcome of his status in Canada. These ordinary, inanimate objects were endowed with the capacity to act under an actor-network framework where they were treated as one of the sources of being able to appear in a particular state. If these documents and identification cards were stripped away from an individual, he or she was left in a precarious situation unable to make him or herself present within the state. In Canada, a SIN card is a nine-digit number that is required to be able to work within Canada or to have access to government programs and benefits (Government of Canada, 2016a). This identification card is a source of appearing as an eligible member within Canadian society who is able to contribute to its social, political, and economic landscapes. In addition, the work permit is another legal document that grants non-citizens, such as permanent residents, the right to be employed in Canada. Together, these documents play a crucial role as actants that were endowed with the capacity to ascribe individuals with a legally recognized identity or status within Canada. Without these documents, it becomes virtually impossible for individuals to appear within a state. Technically speaking, Budlakoti had no identity in Canada without these government issued documents. This attests to how non-human objects, such as a documents or identification cards, acted concurrently with human actors to shift and alter the nature of Budlakoti's status in Canada. After the federal court approved his work permit, he was legally

permitted to seek employment in Canada, which slightly increased and stabilized his presence in Canada. This further confirms how non-human objects can equally confer and deny rights and privileges to other human actors. Like to Harkat, the looming presence of the gaze diffused throughout Budlakoti's network where various human and non-human actors were able to penetrate deeply into his network to regulate the most ordinary and take for granted aspects of his life.

Due to the sparsely available data on the Tamil migrants' post-release trajectories, I have structured the following discussion around how their pre-detention circumstances reflected the practices and processes associated with the surveillant border. In this context, information gathering systems and techniques were used to insert the migrants into a surveillance regime. Rather than using wearable monitoring devices, cameras, or other methods of direct surveillance, the Tamil migrants were surveilled through the constant demand for proof of status (Amnesty International Canada, 2011). Once the migrants reached Canadian territorial waters, they were taken to processing centers to determine if they were eligible to remain in Canada according to the regulations stipulated under the *IRPA*. Vigorous background checks were conducted by CBSA agents to ascertain the identities of the migrants and determine if they had any connections to the Tamil Tigers (CBC News, 2010). With the rapidly growing number of incoming migrants in recent times, border control and enforcement is increasingly conducted through the electronic mining of information and demanding a series of additional proofs to verify and establish migrant identities (Pötzsch, 2015: 106). This was evident in the government's strong preoccupation with authenticating the identities of each and every migrant by demanding additional proofs of identity (Amnesty International Canada, 2011). The IRB even accused the government of holding the issue of identity at a higher standard than usual (Amnesty International Canada, 2011). The purpose of this targeted search was to expand the gaze of analysis and produce actionable information on potentially threatening subjects (Pötzsch, 2015: 107). Consequently, the government invested

significant energy and resources in the search for adverse information about the passengers, advance[ed] weak arguments for inadmissibility based on tenuous alleged connections with the LTTE, vigorously oppos[ed] release by the Immigration and Refugee Board, and contest[ed] orders of release in the Federal Court, even in cases involving children (Amnesty International Canada, 2011).

While the majority of entering Tamil migrants were undocumented, some possessed valid birth certificates along with national identity cards to verify and authenticate their identity. These documents, which acted as “state-approved tokens of identity,” were translated into disparate pieces of information used to make discriminating judgments about their identities, associations, and networks (Aas, 2006: 153). The information about their identities were subsequently stored in interoperable databases accessible by a wide range of institutional personnel and security officials (Aas, 2006: 153). In this process, individuals acquired a “data double” that became virtually inseparable from their actual self. The information and the narrative attached to the data doubles were highly adhesive and nearly impossible to detach oneself from it (Aas, 2006: 153; Haggerty & Ericson, 2000: 606). Through the surveillant assemblage, the informationalized subjects were rendered more mobile, comparable, and assessable (Haggerty & Ericson, 2000: 613). In this network, the limited documents that some of the Tamil migrants possessed were enrolled in a network of information and equated against CBSA records and background checks. Until the documents and their identities could be confirmed by CBSA, all the migrants, including men, women, and children, were made to wait in custody. This informationalized surveillance network virtually enabled institutional actors and interoperable databases to push Tamil migrants into spaces of vulnerability and restricted mobility by forcing them into detention (Poynter, 2012). Together, these human agents (institutional actors, government officials, IRB personnel, etc.) and technical actors (databases, documents, etc.) mutually constituted the status of the Tamil migrants. In terms of the border, the different surveillance practices deployed across all three cases “enlist individual subjects as both target and source in bordering processes that disperse locally as well as across transnational space” (Pötzsch, 2015: 111).

Regardless of the ubiquitous nature of surveillance, Harkat, Budlakoti, and the Tamil migrants have all been successful in either delaying or overturning their deportation orders. Despite their unstable status in Canada, they have been able to secure momentary permanence within Canadian society. Through countless court appeals, legal advocacy, and lobbying politicians, Harkat was eventually able to alter the nature of his release conditions. The Federal Court judge ordered the release conditions on Harkat to be loosened, allowing him to remain at home without Sophie’s presence (Harkat [Re], 2009 FC 241). Additionally, he was granted longer weekly outings, relieving the pressure and fears of overstaying his allotted time; he was permitted to attend political and academic events as long as it satisfied CBSA’s security

measures; the boundaries of the city were readjusted, permitting him to travel between Ottawa and Gatineau; finally, a notice was no longer required to be given to the CBSA agent or his supervising surety to accompany him to a restroom facility (Harkat [Re], 2009 FC 241). Albeit being bound by some restrictions, these adjustments nonetheless represented a significant advancement for Harkat in being able to rearticulate his status in Canada. These loosened conditions were a potential medium through which he could make himself present in Canada again and rebuild his life to resemble some form of normalcy. While the surveillant gaze carried a seemingly repressive rhetoric that stripped its subjects of their agency, a closer analysis reveals that the subjects of the gaze are not passive recipients of surveillance; they are able to mobilize the resources at their disposal to readjust their formal and informal presence in Canada.

Similar to Harkat, Budlakoti was also able to subvert the gaze through extensive lobbying and political pressures. Although he remains stateless in Canada, he was eventually able to obtain a work permit and suspend his deportation order through other avenues of reobtaining citizenship, allowing him to slightly improve his conditions (Justice for Deepan, 2013d).

As for the Tamil migrants, they were also able to subvert the rigorous efforts of the gaze to contain them in restricted spaces of confinement. Although the Tamil migrants were held in detention for prolonged periods of time, many of their IRB hearings produced fruitful results. Their legal network composed of immigration lawyers and advocates were able to disprove some of the government's unsupported terrorist allegations. This pressured the tribunals and courts to either drop the charges against the migrants all together, release them on strict bail conditions, or grant them legitimate refugee status in Canada.

Taken together, we have a tendency to attach negative connotations to these surveillant regimes and apparatuses where we characterize them as violent, repressive regimes that are oriented towards stripping individuals of opportunities, rights, and their voice. However, in this unidirectional analysis we lose sight of how the subjects of these seemingly repressive techniques of governance, and bordering practices in general, are active participants in a networked assemblage of humans and non-human objects, able to dynamically challenge and alter the nature of their status. By this logic, they are able to participate in relocating and shifting the border alongside institutional authorities, police, immigration officers, databases, cameras, monitoring devices, and so forth. This multiscalar assemblage produces the border through the

dynamic interactions between a wide range of actors who are involved in the constant process of locating and relocating it across time, space, and social contexts.

4.3 Corporeal Bordering

Thus far, I have explored how the border takes on different appearances when analyzed from an actor-network approach. This perspective regards the border as a set of ongoing processes composed of an arrangement of material and immaterial objects that bring the border to life. In this vein, the border is always an emergent entity that appears through relationally assembled interactions. It has the capacity to adopt a variety of shapes and forms, some of which are drastically distinct from one another and others which carry various intersecting elements. In certain contexts, the aspects of spatial bordering and surveillant bordering have been indispensably entwined with one another, while in other contexts they appeared as two distinct entities. In a similar fashion, corporeal bordering can be regarded as an extension of the surveillant border since both techniques carry a number of intersecting elements.

This version of bordering allows the border to be transmitted through the body. In this complex assemblage, the body mirrors a system that is encoded with multiple borders. The border appears when information is extracted from the body for the purposes of facilitating or impeding its entry into a state. This challenges the notion of the border as a fixed entity used solely for the purposes of territorial demarcation. In this context, machines and technical objects are deployed to mine the body for pertinent information and carry the capacity to translate its actions and interactions. This process of translation can either have adverse or favorable consequences depending on the circumstances. A simple photograph printed on a passport can abstract the body and relay specific information about the subject in question (Adey, 2009: 277). Both Budlakoti and Harkat's passports were encoded with different realms of truth and knowledge that subsequently governed their presence and status in Canada. As an actant in the network, the passport possessed the capacity to break the body down into a series of discrete flows. This decorporealization process began with the seemingly ordinary passport photo. The unity and the wholeness of the body were undone by presenting a partial representation of the body in the photo itself where only the upper part was visible (Adey, 2009: 277). Instead of a passport, some of the Tamil migrants presented national identity cards and birth certificates to verify and authenticate their identity (Mercer, 2009). Information is typically coded into

identifying documents and once it is dissected, it can reveal individuals' hidden intents and either facilitate or impede access into a state.

In all three cases, these documents were entered into a network of information that separated the body from its information to create a “data double”. In this context, the representation of the body was further broken down in the network of people and things who interpreted and reinterpreted the images and the information about the body that have been retrieved from passports and other identifying documents. In other words, information was abstracted from its prescribed setting and reassembled in different spaces where “individuals [became] objects of governance to be analyzed and assessed” in order to map out their associations (Pötzsch, 2015: 111). For example, in Harkat's network, CSIS agents, judges, and lawyers – all human agents – were involved in interpreting the information embedded in his passport. At the same time, his passport itself – a material object – spoke certain truths about his identity, integrity, whereabouts, and associations. These actors concurrently (re)interpreted, (re)analyzed, and (re)assembled disparate pieces of information to piece together various narratives about Harkat's status. In the government's problematization, Harkat's fake Saudi passport acted as an active agent to support the contention that he was an Al-Qaeda sleeper agent and, by extension, lending more proof in upholding his security certificate. Despite explaining that he would be unable to enter Canada with his own Algerian passport since Canada required Algerians to obtain visas, a litany of government lawyers discounted his justification and claimed that fake Saudi passports were the “document of choice for Islamic extremists wishing to enter Canada” (Shephard, 2004). As a potential actant in Harkat's network, this interpretation would impinge on his rights in Canada and render his presence vulnerable. Due to the adversarial nature of the court system, Harkat's defense team insisted that it was a routine occurrence that refugees were known to use fake documents in extenuating circumstances to flee violence that originated in their home countries (Shephard, 2004). In this situation, his passport would act with other actors to lift the barriers surrounding the questions regarding his status in Canada. Ultimately, it is the legal ruling that officially determines the specific role of each actor, human and non-human, enrolled in Harkat's network. As such, Harkat's false Saudi passport had the effect of tagging his body as an alleged terrorist and projected him as an undesirable subject, thereby justifying his social, political, and territorial exclusion. This case makes it evident that passports – as material objects – grant uneven levels of access and privilege to its holders as much as their

human counterparts. Depending on the originating country, the passport carries the capacity to tag the human body with positive or negative reinforcements that either facilitate or impede its mobility, respectively.

Notably enough, the meaning embedded in Budlakoti's passport initially confirmed his status as a Canadian citizen, but upon situating it within his criminal network, the passport was reinterpreted as being invalid and accidentally produced. By this logic, the passport was endowed with a new role once it was enrolled in his criminal network. While in normal circumstances passports are used as valid documentation to confirm citizenship, in Budlakoti's network, this role was reversed – his passport was used to disprove his citizenship status in Canada. The invalidation process of Budlakoti's passport presupposed that his body was somehow also invalid and untruthful. Disparate pieces of information that are typically embedded within passports were essentially rearranged to represent a whole identity that was completely different from the original. In this case, his original passport previously validated his status and membership as a Canadian citizen; however, this connection between his status and his passport was ruptured by the investigations by CIC that ensued after his criminal convictions. This investigation invalidated his passport and triggered a chain of events that rendered him stateless and completely revoked his rights to make any claims within the state. When enrolled in a network, these material objects can speak for the body and relay certain truths about it. Once Budlakoti's passport was invalidated, it continued to act within his network and conveyed that its accidental production meant that Budlakoti's body was illegally present in Canada.

Moreover, within the courtroom setting, confessions and testimonies are typically extracted from the body and dissected and reassembled in search for the truth. Under these circumstances, the body is capable of revealing “itself as an entity from which order, certainty, and essence can be extracted, so long as the gaze is ‘objective,’ ‘expert,’ or ‘unimpeded’” (Amoore & Hall, 2009: 457). Even if the words of body are relaying an alternate narrative about the truth through confessions and testimonies, the information that is extracted from the body is held as the uncontestable, objective truth. The rearrangement of these abstract pieces of information reconstructs the person who occupies the body and reframes their associations, interactions, and actions. These behaviors and associations are further dissected to reveal the individual's hidden intent (Amoore & Hall, 2009: 448).

Through Harkat's legal proceedings, his associations were reconstructed and read as suspicious. When weighed against his own testimony, the court typically ruled in favor of the Crown prosecutors who were preoccupied with rearranging the confessions solicited from his body to point out its inherent inconsistencies. During his years in Pakistan, Harkat travelled to Afghanistan and formed an association with Abu Zubaydah. Zubaydah was believed to be one of Osama bin Laden's top lieutenants and one of the former leaders of Al-Qaeda training camps in Afghanistan (Duffy, 2008a). In a series of cross-examinations, Harkat was questioned about whether he ever aided Islamic extremists, travelled to Afghanistan, knew bin Laden or associated with Zubaydah. Harkat responded no to each question, but despite this, the confessions told by his body did not match the information derived from his body (Shephard, 2004a). Briefing notes outlined that some of Harkat's answers contained flaws in logic and were contradicted by his testimony (Shephard, 2004a). On top of that, CSIS presented the court with information that directly linked Harkat to Zubaydah during the closed hearings. They claimed that during his interrogation, Zubaydah identified Harkat in a photograph presented before him (Duffy, 2004d; Harkat [Re], 2005 FC 393). Therefore, based on Harkat's status location and relational information prior to entering Canada, combined with the cross-checking of the intelligence information, Harkat's body was abstracted into separate pieces of information by the surveillant gaze to present an alternate version of the truth. These pieces were subsequently reassembled to project a different version of him – one that was associated with terrorism and deemed him inadmissible. In other words, the informationalized body acted as an extension of oneself and was encoded with various versions of the truth, where only one version could ultimately prevail. As explained in earlier sections, this extended self appears in the form of a data double (Haggerty & Ericson, 2000).

While experts, authorities, and material objects were enrolled to relentlessly interpret information in their favor, the subjects of the gaze were constantly engaging in a process of negotiation to secure their presence and rid themselves of the adhesive labels associated with their data doubles. Under Harkat's circumstances, he was able to contest the "truths" embedded in his data double. As an active agent in his network, Harkat challenged the sources of information that linked him to Zubaydah and the Al-Qaeda. Contesting on his behalf, Harkat's legal team emphasized how Zubaydah's confessions were unreliable, based on speculation, and elicited through torture (Duffy, 2004d; Steinbachs, 2005; MacLeod, 2007). After hearing all the

evidence, the Federal Court judge ruled in favor of Harkat claiming that too many questions about Zubaydah's treatment and the photograph he identified were left unanswered (Harkat [Re], 2005 FC 393). Without recourse to cross-examination, it was impossible to determine whether Zubaydah volunteered or was coerced to verify Harkat's identity in the photograph. Therefore, contrary to the interpretations that regarded the body as a site to be mined for indisputable and objective truths (Amoore & Hall, 2009), Harkat's case revealed an alternate interpretation. Harkat's case demonstrated that although the labels projected by the data double and the truths embedded in the body were highly adhesive, it was still possible to separate the two. Budlakoti was also able to subvert the pressures of his data double that branded him as a stateless non-citizen inadmissible on the grounds of serious criminality. Although, technically speaking, Budlakoti remained formally stateless, he was nonetheless able to argue the technicalities of his case through appeals and various forms of lobbying to pressure political actors to ease his restrictions. In this regard, he was able to alter his conditional presence in Canada to secure a more permanent form of presence. Some of the Tamil migrants were also able to similarly evade the techniques of corporeal bordering by rearticulating the essence of their status and gaining admittance as refugees.

These cases demonstrated the interactive processes of negotiation between a constellation of human and non-human actors that came to relationally define the nature of the status of non-citizens in Canada. By extension, the corporeal approach to bordering practices denoted how borders are diverse in shape and form. The multiscalar approach to bordering was intended to illuminate how the relations between material and immaterial objects contribute to shifting and relocating the border according to contextually specific circumstances.

Chapter 5: Towards Multiscalar Borderwork and Fluid Membership

This thesis has intended to illuminate how borders are constantly negotiated and reconfigured by undertaking an actor-network analysis regarding questions of state membership, and how they too are reconstructed and deconstructed through an assemblage of relational interactions and discursive practices enacted by different actors at different levels. To recapitulate, the goal of this thesis was to explore how the notion of borders and bordering practices – as examined through the case studies of Harkat, the Tamil migrants, and Budlakoti – articulated an arrangement between a series of disparate socio-technical relations. The solidity of Harkat's, the Tamil migrants', and Budlakoti's network were correlated with the strength of the translation processes of the various heterogeneous elements that made up each network. While some of the networks were locked into place, others were constantly moving, and finally, some were so weak that they eventually crumbled.

Budlakoti's network was among the ones that were locked and solidified across time and space. The connection between the various heterogeneous elements that made up his network were cemented together in such a way that it was made increasingly difficult for outside forces to rupture the network. The network was primarily held together by the government's problematization of Budlakoti's status in Canada. The government problematized Budlakoti as a non-citizen inadmissible on the grounds of serious criminality. They were successful in convincing other actors in the network, such as the courts, judges, and appeal divisions, regarding their problematization. These actors built and advanced their problematization further by drawing doubt in Budlakoti's case and his claims to Canadian citizenship.

Budlakoti's stance involved connecting disparately located human actors and material objects to form a logical narrative that supported his claims to citizenship. This entailed making convincing statements regarding his status in Canada with the support of material objects, such as his birth certificate, passport, and signed affidavits, which in turn had to be corroborated by the testimonies of human actors enrolled in the network, such as his parents and their employer at the time of his birth. However, the connection between these entities was ruptured by the government's problematization regarding his status in Canada as an inadmissible non-citizen who was rendered stateless. In other words, the weak hold of his narrative allowed the government's problematization to prevail. For example, the various documents such as the signed affidavits, his passport, and his birth certificate were invalidated along with the

testimonies provided by his parents and their employer. This phase of translation is what Callon (1986) refers to as *interessement*. At this point, the lawyers representing the federal government ascribed an alternate identity and role to the other actors located within Budlakoti's network that were used to support their contentions. For example, rather than articulating his passport and birth certificate as valid proofs of citizenship, the federal government transformed the role of these objects and translated them according to match their own problematization of Budlakoti as an inadmissible non-citizen. These documents were enrolled in the network, given a new meaning and definition, which were eventually used to fulfill new goals and motivations (Callon, 1986). For that reason, these documents were translated by the government as invalid and produced due to an administrative error. By this logic, Budlakoti was ineligible to receive any benefits, rights, or privileges associated with full citizenship. In according a new identity, role, and definition to certain actors, the government was able to ultimately solidify their problematization of Budlakoti and lock it in place in comparison to Budlakoti's arguments regarding his status in Canada.

While Budlakoti's network was solidified in time and space, Harkat's network was more malleable and constantly in movement. Throughout the translation phase, the government of Canada problematized Harkat's status by articulating his dangerousness as an Al-Qaeda sleeper agent. They used several devices of *interessement* to convince other actors into accepting their ascribed roles and identities in an attempt to stabilize their problematization. For example, federal prosecutors supported their claims by relying on CSIS briefings, diagrams, and pictures to translate Harkat's status as a terrorist. These documents played an active role in that they attached a prescribed meaning to his actions and inclinations and articulated his assumed role within the Al-Qaeda, which were ultimately used to define his identity in Canada. In addition, to support the contention of Harkat as a terrorist, the federal government relied on several human agents to lend support to their claims. As such, the government used several testimonies from CSIS agents along with interviews from other high profile Al-Qaeda leaders to corroborate Harkat's terrorist associations. In essence, these devices of *interessement* were heavily relied upon by the government of Canada to convince other actors, namely the federal and Supreme Court judges, in accepting their problematization.

However, the government was not entirely successful in articulating the importance of their problematization. Rather than accepting the ascribed role attached by the government,

Harkat actively challenged it, thus rendering his network fluid and always in flux. Through successive court appeals, Harkat was able to cast doubt on the allegations placed against him, and therefore challenge his security certificate. His success in resisting his prescribed role under the government's problematization involved enrolling an array of additional human and non-human actors into his network to rupture the connections between the chain of events and actors created by the government that were used to support his exclusion. For instance, Harkat was able to break the links between the government's problematization by introducing his own narrative and ascribing new meanings, roles, and identities to a variety of actors located in his network. He altered the role of the CSIS's evidence by disproving their allegations and casting doubt upon their dubious evidentiary practices. This was evident in his ability to convince the judge to reject Abu Zubaydah's testimony against Harkat. In doing so, Harkat was able to momentarily secure more stable presence in Canada, which represented the first step in gaining recognition as a legitimate member of the Canadian society. The constant negotiations between other actors, human and non-human, enabled Harkat's network to remain in constant movement. Interestingly, these examples show how the same entity/actant can be articulated in different manners through divergent problematizations. It highlights how the meaning of, for example a piece of paper, a picture, or an official document, is dependent upon its relations with other pieces of papers, documents, and social actors. In other words, entities, human and non-human, are relational – they are made up of their relations to one another.

Alternatively, the strength of the Tamil migrants' network was starkly different from both Budlakoti and Harkat. While Budlakoti's network was solidified in time and space and Harkat's was in constant movement, the Tamil migrants' network had the weakest hold. In this case, the government problematized the migrants as having potentially dangerous affiliations with a terrorist organization, namely the Tamil Tigers. They vaguely associated their relations with terrorism and human smuggling without fully connecting the disparate elements in the network. For instance, when the government first introduced Bill C-4 (formerly Bill C-49), the *Preventing Human Smugglers from Abusing Canada's Immigration System Act*, it failed due to public pressures from human rights advocates who regarded it as overbroad and widening the net of its indefinite detention. The revised bill, Bill C-31, *Protecting Canada's Immigration System Act*, also carried similar flaws in that it broadly characterized the act of human smuggling so as to capture humanitarian workers assisting people seek asylum. Eventually, enough inconsistencies

were brought to light regarding the government's problematization of the Tamil migrants as terrorists and human smugglers. The vagueness in clearly defining and articulating the roles and status of the Tamil migrants in Canada ultimately led the government's problematization to crumble. As a result, the Supreme Court ruled in favor of the migrants claiming that the main perpetrators accused of human smuggling, such as the engineers, cook, and captain, could not be held liable for smuggling hundreds of illegal migrants via a marine vessel. Moreover, the majority of the migrants were eventually granted refugee status by the IRB and released from custody. Those who were suspected to be affiliated with the Tamil Tigers were deported based on substantial proofs that connected them to the terrorist organization. This case demonstrates that despite the government's efforts to problematize the Tamil migrants as dangerous, unwanted subjects, they were unable to convince other actors, such as Supreme Court judges and IRB officials, of the necessity and importance of their position. The weak problematization by the government of the irregular arrival of the Tamil migrants resulted in unsuccessful interessement and enrolment as the actants did not accept their ascribed roles as terrorists and human smugglers.

These distinctions between the strength and hold of each network maintain considerable relevance in terms of borders and bordering practices. These articulations represent how various types of non-citizens – whether permanent residents, stateless persons, or irregular migrants – are bordered beyond the conventional sense of state boundaries and territorial demarcations. The spatial, surveillant, and corporeal aspects of bordering were intended to illuminate three distinct, yet interrelated, processes of translation. These three typologies represent Callon's (1986) moments of translation in that they signify three enactments through which the border and bordering practices are enacted. Each type of bordering problematized Harkat, the Tamil migrants, and Budlakoti according to its own practices, definitions, goals, and orientations. The spatial, surveillant, and corporeal articulations of bordering practices are only three among a number of bordering practices that exist well beyond the scope of this analysis. The literature review was used to lend support to the claim of the border as a fluid entity composed of a series of material and social relations. In doing so, I suggested a move away from the binary distinctions that we tend to fall prey to. Some of these authors alluded to the border as a fixed and definitive entity that produced fixed categories of state membership. With the support of other scholarly materials, I suggested that these fixed, immutable categories were in fact much

more fluid than attributed to be. In turn, this meant that the border itself was unfixed, heterogeneous, and composed of a series of articulations and relational practices.

In the end, this analysis has demonstrated how the border has acquired an expanded scope of practices compelling us to understand it as a complex, multiscalar, and multidimensional entity composed of dynamic actants, that come in various symbolic, material, and social forms. This was illustrated through the various technologies and practices that were used to alter the status and presence of Harkat, the Tamil migrants, and Budlakoti in Canada. The border can be presented, discussed, and conveyed as an idea, a technology, or even a fence, as it is often the case, and it can be equally thought of as a binary process. As we have seen, many actors are inclined to articulate the border as a binary object that creates strict categories of insiders and outsiders. But these ways of referring to the border are manifestations of more complex socio-material networks. I argued that the fact that each network carried its own distinct characteristics and strength attests to how the border is enacted and activated in a variety of different spaces, by different practices, with multiple functions, that produce a dynamic range of membership, which exceed beyond the simplistic, dichotomous renditions of inclusion/exclusion. I intended to demonstrate how the border is a shapeless entity and adapts and changes according to contextually specific circumstances (De Genova, 2013; Dijstelbloem & Broeders, 2015; Goldring & Landolt, 2013; Laine, 2016; Landolt & Goldring, 2016; Pötzsch, 2015; Rumford, 2008; Rumford, 2006; Stasiulis, 2017; Valverde, 2009). Given this, socio-material borders are constantly being molded and (re)molded by variously located actors.

Conclusion

This research project contributes to the growing literature that examines the management, proliferation, and articulation of borders through an actor-network lens. In tracing the networks of Harkat, the Tamil migrants, and Budlakoti, I intended to demonstrate the variability of border configurations where dispersedly located actants, operating at different levels, appeared alongside the state to negotiate the reach and extent of the territorial border. On a more conceptual level, these ideas allow us to broaden our scope of analysis and reinterpret the taken for granted spatial formations around us. In situating state membership through various degrees, we were able to understand and appreciate how borders were enacted and projected differentially based on specific circumstances. This contributes to the expanding literature that situates the border as a fluid and malleable entity that is made up of interwoven socio-technical practices, discourses, symbols, institutions, and networks through which power is dispersed and the binary distinctions between dichotomous categories increasingly become layered concepts (Dijstelbloem & Broeders, 2015: 23; Rumford, 2008: 3).

The scope of this study is limited by a variety of elements that can potentially be remedied by further scholarly input. In tracing the network of the Tamil migrants, drawing precise examples became difficult in that there was not enough publicly available data. This limitation could potentially be solved by combining more than two similar case studies to delve into a deeper analysis on bordering practices related to irregular migrants. Unfortunately, this task was beyond the scope of this study. A second limitation was encountered in analyzing the material objects described in each case study. Due to time constraints and difficulty in gaining access, I was primarily relying on the description of these material objects through secondary sources. For example, I did not have access to analyze the specific databases used to store and analyze the Tamil migrants' identities, or the closed briefings and summaries provided to the courts in Harkat's case, or Budlakoti's passport and birth certificate. For this reason, I encourage other researchers to fill these gaps with their own research endeavours and further contribute to the growing literature on the actor-network formulations of borders and bordering practices.

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Appendix A

The following cases are not explicitly cited in the body of the text, but have been used to inform my data collection and analysis sections. This appendix is meant for readers who are interested in further exploring the court cases I have used to inform my research.

Canada (Citizenship and Immigration) v. Harkat, [2014] SCR 2, 2014 SCC 37

Harkat v. Canada (Citizenship and Immigration), 2013 FC 795

Harkat v. Canada (Citizenship and Immigration), 2012 FCA 122

Harkat (Re), 2010 FC 1241

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Harkat (Re), 2009 FC 59

Harkat (Re), 2008 FC 1288

Harkat v. Canada (Citizenship and Immigration), 2008 FC 595

Harkat v. Canada (Citizenship and Immigration), 2007 FC 416

Charkaoui v. Canada (Citizenship and Immigration), 2007 SCC 9.

Harkat (Re), 2005 FC 393

Harkat (Re), 2004 FC 1717

Harkat (Re), 2003 FC 918

Appendix B

Court File Number: T-1564-13

FEDERAL COURT

BETWEEN:

DEEPAN BUDLAKOTI

Applicant

-and-

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

NOTICE OF APPLICATION

(Pursuant to sections 18 and 18.1 of the *Federal Courts Act*)

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the Applicant. The relief claimed by the Applicant appears on the following pages.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of the hearing will be as requested by the Applicant. The Applicant requests that this application be heard at Ottawa.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicant's solicitor, or where the Applicant is self-represented, on the Applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

APPLICATION

This is an application pursuant to sections 18 and 18.1 of the *Federal Courts Act* for a declaration pursuant to section 24(1) of the *Charter of Rights and Freedoms* that the Applicant, Deepan Budlakoti, is a citizen of Canada. The Applicant states and it is the fact that the Respondent has rendered him stateless thereby violating his *Charter* protected rights.

The Applicant was born in Ottawa, Canada to Indian parents in October 1989. He has a Canadian birth certificate and was issued a Canadian passport. The Applicant has lived his entire life in Canada and is not a citizen of India. In or about May 2010, the Respondent unilaterally decided that the Applicant was not a Canadian citizen and that his passport was issued in error because, according to the Respondent, the Applicant's parents were working as employees of a diplomatic or consular officer of India at the time of his birth. To date, the Respondent has obtained no evidence from India that the Applicant is Indian, while the Indian government maintains that the Applicant is not an Indian national and has refused to issue the Applicant an Indian travel document.

In or about December 2010, the Applicant was convicted of certain offenses under the *Criminal Code*. The Applicant completed his prison sentence on or about December 12, 2012. His detention was subsequently maintained, pursuant to the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, ("*IRPA*"), until his release on April 16, 2013 under several strict conditions, including a daily curfew and the requirement to obtain maintain bail sureties pursuant to the *IRPA*.

In or about May 2011, the Respondent provided the Applicant with notice of a Report pursuant to section 44 of *IRPA* in which it was reported that the Applicant was inadmissible to Canada, as a non-citizen, for reason of serious criminality. On or about October 24, 2011, an admissibility hearing was held in which the Immigration and Refugee Board

decided that the Applicant was inadmissible to Canada due to serious criminality, pursuant to the *IRPA*, and issued a removal order against him. To date, the Government of Canada has been unable to deport the Applicant to India because he is not a citizen of that country. During a detention review hearing that took place on April 10, 2013, the Respondent and Minister of Public Safety took the position that the Applicant was not a Canadian citizen and sought that any release be limited by strict conditions. However, in September 2013, through disclosure obtained under a *Privacy Act* request, the Applicant discovered that on March 18, 2013 Canada Border Services Agency (CBSA) was specifically informed by the Indian High Commission that the Applicant is not an Indian citizen.

On September 18, 2013, the Applicant publicly disclosed a letter from the former High Commissioner of India in Canada with a copy to the Respondent the following day. This letter confirms that neither of the Applicant's parents was employed by the Indian High Commission in Ottawa at the time of the Applicant's birth.

Since April 2013 to date, the Respondent has maintained and publicly expressed its position to the media that the Applicant "has never been a Canadian citizen." The Respondent has intentionally and in bad faith concealed information from the Applicant regarding his case and has misled the Canadian public about the Applicant's status in Canada while conspiring with the Minister of Public Safety to remove the Applicant from Canada. The Applicant is not at liberty to travel within Canada or to leave Canada and has been denied the right to access consular services of Canada abroad. As a result of the Respondent's actions, the Applicant's liberty within Canada has been impaired and he finds himself in a state of indefinite detention.

The actions of the Respondent have made the Applicant stateless, contrary to the *Charter of Rights and Freedoms* and principles of International law.

The Applicant makes application for:

- (a) A declaration that the Applicant is a Canadian citizen and that the provisions of the *Immigration and Refugee Protection Act*, 2001, c. 27, ("IRPA") do not apply to him;
- (b) The costs of this application on a substantial indemnity basis; and
- (c) Such further and other relief as counsel may request and this Honourable Court may permit.

The grounds for the application are:

- (a) Sections 18 and 18.1 of the *Federal Courts Act*;
- (b) The Applicant was born in Canada and is a Canadian citizen;
- (c) The Applicant has been rendered stateless in a manner contrary to law by the actions of Canada, which have deprived him of his Canadian citizenship;
- (d) The Applicant is not a national of any country other than Canada and has never been a national of any other country;
- (e) The Respondent has been informed by India that the Applicant is not a national of India and has received no information that the Applicant is a citizen of any country other than Canada;
- (f) Neither of the Applicant's parents was working for the Indian High Commission at the time of the Applicant's birth;

- (g) The Respondent publicly maintains its position in bad faith that the Applicant is not and has never been a Canadian citizen and, in concert with the Minister of Public Safety, is taking steps to attempt to remove the Applicant from Canada;
- (h) India has refused to provide the Applicant with Indian identity and/or travel documents because the Applicant is not an Indian citizen;
- (i) The Respondent has intentionally concealed information from the Applicant that states India's position that the Applicant is not an Indian citizen contrary to the Respondent's duty of fairness and section 7 of the *Charter of Rights and Freedoms* ("the Charter");
- (j) The revocation of the Applicant's Canadian citizenship has relegated him to conditions of indefinite detention which continue to be exercised against the Applicant, depriving him of his mobility rights within Canada and his ability to leave and re-enter Canada contrary to sections 6 and 9 of the *Charter*;
- (k) The current bail conditions imposed upon the Applicant are unlawful and as such he is entitled to immediate release pursuant to *habeas corpus* and section 10 of the *Charter*;
- (l) The Applicant has been rendered stateless contrary to the *Charter of Rights and Freedoms* and contrary to International Law;
- (m) As a stateless person, the Applicant lives in a highly precarious situation; he is in legal limbo, at the mercy of the Respondent and has been deprived of all rights and privileges that attach to Canadian citizens, permanent residents and protected persons which affects his eligibility to seek assistance from Canada and from all foreign states including access to subsidized education, access to healthcare and