

# U.S. War Objectors Seek Sanctuary In Canada: What Will Be Their Fate?

*by Gerry Condon*

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The best decision I ever made was to refuse orders to fight in Vietnam. I was a soldier who had the "premature morality" to say no to an illegal, immoral war. The second best decision I ever made was to flee into exile rather than to spend years in prison. My six years in Sweden and Canada were a breath of fresh air, a necessary escape from the ideological prison of U.S. chauvinism. So it is with a profound sense of déjà vu that I have spent the last few months in Canada, standing alongside another generation of U.S. war resisters and assessing their prospects. This is what I have found.

The presence of U.S. war resisters in Canada is being widely reported in the international media.

Just look on the websites of Jeremy Hinzman and Brandon Hughey, the first two U.S. soldiers to seek refugee status in Canada rather than go to war in Iraq ([www.jeremy-hinzman.net](http://www.jeremy-hinzman.net), [www.brandonhughey.org](http://www.brandonhughey.org).)

Hinzman, a 25-year-old from South Dakota, and Hughey, a 19-year-old from west Texas, have been interviewed by scores of media in Canada and around the globe. Increasingly, the U.S. media is acknowledging their presence in Canada, prompting others caught up in George Bush's war to look northward. But what is the reality facing war resisters who come to Canada? What would you advise a soldier who is looking at all his/her options?

During the Vietnam War, upwards of 50,000 U.S. draft resisters and military deserters found refuge in Canada. It wasn't only the unpopularity of the

war that made this possible. In the 60's and early 70's, Canada had perhaps the most open immigration policy in the world. You could show up at the Canadian border with a job offer and be granted "landed immigrant" status on the spot. Or you could decide to apply for immigrant status after arriving in Canada. In 1969, Pierre Trudeau, Prime Minister of Canada, instructed immigration authorities not to discriminate against applicants who may not have fulfilled their military obligations in other countries.

Much of this has changed. Due to a tightened job market, immigration to Canada is now much more restricted. Prospective immigrants must apply

from outside Canada and await an answer, a requirement not tailor-made for those on the run from the military.

But it is still possible for war objectors to come to Canada, as Jeremy Hinzman and Brandon Hughey are demonstrating. They each went AWOL from the U.S. Army after receiving orders for Iraq. Hinzman arrived in Canada in early January 2004 with his wife and 1-year-old son. Hughey arrived two months later, in March 2004. Both young men drove across the border as tourists, answering routine questions as to the purpose of their entry. Jeremy said he was visiting "friends," in part a reference to the Religious Society of Friends, or Quakers, with which Jeremy is associated. Brandon said he was coming to watch a professional basketball game. He watched it on TV after crossing the border.

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## **Applying for Refugee Status Brings Immediate Protections in Canada**

Unlike their Vietnam-era predecessors, Jeremy and Brandon cannot easily apply for immigration from within Canada (rare exceptions are made). Instead, both young men have applied for refugee status. Their claims are pending before Canada's Immigration and Refugee Board (IRB), which is semi-autonomous from the government. Upon applying for refugee status, they automatically came under the protections of Canada's refugee procedures. They are allowed to remain in Canada while it is determined if they would face persecution in the U.S. because of their religious or political beliefs. Refugee claimants who do not have financial resources may even be granted work permits.

It is virtually unprecedented for Canada to grant refugee status to someone from the United States, which it considers a democracy and its closest and most powerful ally.

"But this is an unprecedented case," answers Jeffry House, lawyer for Hinzman and Hughey. "Never before has a U.S. war resister applied for refugee status in Canada."

House came to Canada as a draft resister during the Vietnam War. He is a highly respected Toronto attorney, with 15 years of immigration law experience and 10 years as a judge on Ontario's Human Rights Court. He also practices criminal law.

Jeffry House and Jeremy Hinzman have put together a strong case for Jeremy's refugee claim. It is based, in part, on Jeremy's conscientious objection to fighting in war, and the U.S. Army's wrongful denial of Jeremy's request for non-combat status.

Hinzman's claim to refugee status is also based on the illegality of the U.S. war against Iraq. He points out that this was neither a defensive war nor approved by the United Nations. He cites the Geneva Conventions on War and the Nuremberg Principles, which maintain that it is a soldier's obligation to refuse illegal orders, and to refuse to participate in war crimes.

The UN Handbook on Refugees defines as "convention refugees," soldiers who refuse to fight in wars that are "condemned by the international community as contrary to the basic rules of human conduct." House and Hinzman point to some intriguing precedents in this regard. A Russian soldier was granted refugee status in Great Britain after refusing to fight in Chechnya. British law carries significant weight in Canada, part of the British Commonwealth.

## **Did a Deserter from Saddam's Army Pave the Way for U.S. War Resisters in Canada?**

Perhaps an even more poignant precedent was provided by a Yemeni soldier who deserted from Saddam Hussein's Iraqi army rather than join the invasion of Kuwait in 1990. He applied for refugee status in Canada and was initially denied by an often arbitrary Immigration and Refugee Board. But this denial was overturned by a Federal Court and he is now a political refugee in Canada.

A key question that the Immigration and Refugee Board will have to answer is whether the jail sentences surely awaiting war resisters in the U.S. would amount to "persecution for their political or religious beliefs," as outlined in the UN Handbook on Refugees. Jeffry House gives an unequivocal affirmative on this point.

"To imprison someone for doing the right thing, refusing to participate in war crimes, is persecution, pure and simple," says House.

Jeremy Hinzman's hearing before the Immigration and Refugee Board, which was scheduled for July 7, turned into a "pre-hearing conference" in which the presiding officer, Brian Goodman, carefully clarified the process, and decided issues raised by the many media requests to attend the hearing. The public and the media can attend the hearing, but no filming or photography will be allowed while the hearing is in session. The hearing was rescheduled for three full days, October 20-22, 2004. Brandon Hughey's hearing has been scheduled for November 17, 2004.



**Brandon Hughey**

## Will Iraq War Be Put on Trial in Canada?

The Canadian government has intervened in Jeremy Hinzman's refugee hearing, as they do in about 5% of refugee claim cases, usually to oppose them. Although the government has made no public statements about the U.S. war resisters, it appears to be carefully crafting a legalistic response. The Immigration and Refugee Board has asked lawyers for both Jeremy Hinzman and the government to submit arguments as to whether the legality of the war should be at issue. Hinzman, of course, maintains that this is absolutely central to his refugee claim.

The Canadian government, on the one hand, wants to remove the question of the legality of the war from the refugee hearing. Otherwise, they may argue that the occupation became legal in late 2003 when the UN Security Council passed a resolution taking responsibility for the reconstruction of Iraq. Hinzman and Hughey would have been deployed to Iraq after this proclamation. But it will be hard to argue that war crimes halted at that time.

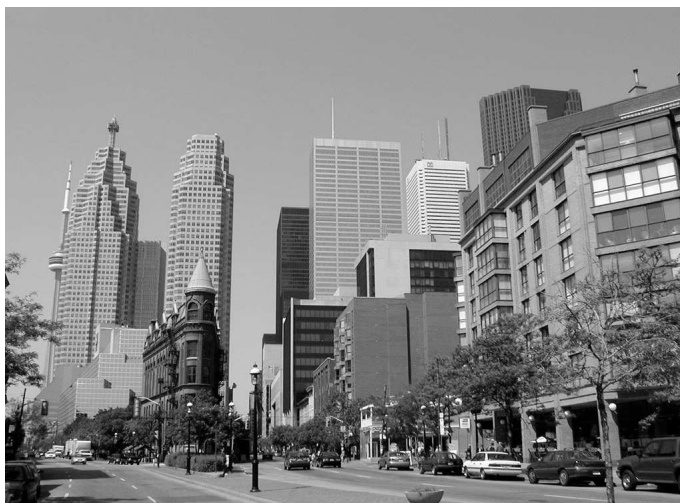
Canada did not send troops to Iraq, but does have troops in Afghanistan. The minority Liberal government of Prime Minister Paul Martin will want to walk a careful path between cultivating good relations with the U.S. and addressing concern Canadian concerns about sovereignty and independent foreign policy.

### Refugee Process Flawed

Immigration Minister Judy Sgro recently announced that she wants to "streamline" the refugee application process by eliminating alternative courses of action for those who are denied. She also called on Canadian churches to end their practice of providing sanctuary to refugees they believe are being wrongfully deported by the government. These moves have alarmed churches and refugee advocates, who are pushing for major reforms in a refugee system they consider broken. They want a merit-based appeal process and more professional hearing officers. Currently, refugee decisions are

made by one member of the Immigration and Refugee Board, all of whom are political appointees. Current appeals can be based only on procedural errors.

Jeremy Hinzman may have to wait several months beyond his October hearing before he will receive a decision from the Immigration and Refugee Board. If he is denied refugee status, he plans to appeal. Only



Canada was home to more than 50,000 US war resisters during the Vietnam era. 30,000 are now Canadians.

about 10% of denied claims are accepted for appeal, but lawyer Jeffry House feels confident that if Hinzman's refugee claim were denied, that the issues in this case would merit Federal appellate review. The appeal process could take as long as two years or more, during which time Jeremy would continue to enjoy the protections of Canadian refugee law, in effect, at least a temporary alternative to war or prison. This said, the

refugee and appeal processes can be stressful, given that the outcome is uncertain, and that it is therefore difficult to plan one's life and livelihood.

### Other Options Can Be Pursued If Refugee Status Is Not Granted

If Jeremy and/or Brandon are granted refugee status, a significant precedent will have been set. Even so, war resisters would be considered for refugee status on a case-by-case basis. A number of unions, peace groups and activists have initiated a national campaign on behalf of all war resisters. The War Resister Support Campaign is gearing up for a major lobbying effort in September and October, along with a war resister speaking tour. The Campaign is calling on the Canadian government to grant war objectors some form of sanctuary, whether or not they are granted refugee status. (See their online petition at [www.resisters.ca](http://www.resisters.ca).)

"Canadians do not want to send war objectors to prison in the U.S. for refusing to fight in a blatantly illegal war that has outraged the entire world," says Carolyn Egan, president of the Steelworker Toronto Area Council and a Vietnam-era immigrant from the U.S. The Canadian Labour Council, the equivalent of the AFL-CIO, has

endorsed the War Resister Support Campaign, as have many prominent Canadians. The Campaign is also organizing a network to provide housing and other practical needs for newly arrived war resisters.

If Hinzman and Hughey are ultimately denied refugee status in Canada, they will not have exhausted their legal bids to remain in Canada. They may still petition the government to remain in Canada on "humanitarian and compassionate" grounds. By this time they may be well established in Canada, one of the criteria for granting this type of residency. Or they could ask for permission to apply from within Canada for immigrant status, due to "special circumstances" (if they were to apply from the U.S., they could be arrested and imprisoned for desertion).

If all of his attempts to remain in Canada were ultimately rebuffed, a war objector with a valid U.S. passport would be able to travel to a third country, rather than be deported to the United States. Or, theoretically, he could decide to return to the United States and "face the music" in a different postwar political climate. But neither Jeremy nor Brandon appear anxious to return to the U.S. Like the 30,000 Vietnam War resisters who became Canadian citizens, they find Canada to be a kinder, gentler version of the American dream.

### **Get a Passport, Cross by Car**

It is strongly advised that before leaving the U.S., war resisters apply for a U.S. passport if they don't already have one. In 1969, this writer went AWOL from the U.S. Army after refusing orders to Vietnam. I secured a copy of my birth certificate, applied for a U.S. passport, and left for Canada the same day, lest I was somehow discovered in the process. But my passport was mailed to friends in New York City, who promptly mailed it to me in Montreal. That turned out to be a godsend. Exiled war objectors without passports often had difficulty traveling, needing exit and re-entry visas from the country where they were living, as well as visas to the countries they were hoping to visit.

If you are unable to get a passport, you should at least have proof of U.S. citizenship (a birth certificate is good) and a government-issued photo identification (such as a driver's license) when you arrive at the Canadian border. One recent war objector just showed his military identification. The least scrutiny will take

place when entering Canada by automobile at busy border crossings. Most people are just asked their citizenship, the purpose of their trip, and waved across.

Although it is possible to apply for refugee status at the Canadian border, there is always the danger at border crossings of arbitrary treatment by individual authorities. It would be preferable to enter Canada as a visitor and apply from within. In either case, war resisters should seek legal advice before attempting to cross the border. The law office of Jeffry House, who has the most current experience in representing U.S. war objectors in Canada, is located in downtown Toronto, Ontario. He can be reached by telephone at 416-926-9402 x152 or by email at [JeffryHouse@hotmail.com](mailto:JeffryHouse@hotmail.com). (Note spelling of "Jeffry.")

### ***In summary, it can be said:***

1. War objectors who come to Canada and apply for refugee status will automatically be granted protection under Canada's refugee claim process. They will be allowed to remain in Canada at least as long as their claim is being heard (months to years).
2. Jeremy Hinzman's and Brandon Hughey's long-term prospects for remaining in Canada are quite good, though not guaranteed. If they are denied refugee status, they can pursue other avenues to remain in Canada.
3. If ultimately denied residency in Canada, war objectors with US passports may travel to a third country, rather than be deported to the U.S.
4. There is considerable support in Canada for U.S. war objectors; a growing network of supporters is mobilizing politically and organizing to provide for housing and practical needs.
5. Canada is a safe haven from where U.S. war resisters can speak out against the war to an international community interested in hearing what they have to say.

## Stress of Exile Is Not for Everyone

U.S. soldiers looking for alternatives to war or prison should not expect that going to Canada will be an easy process, legally or personally. They may be leaving the U.S. for a long time, during which they will be unable to return for visits. (During the Vietnam War, it was common for FBI agents to haunt the funerals of family members of war resisters.) Ideally, they will have funds to support themselves, and to pay some legal expenses, at least for their first few months in Canada. It will take some time before they are able to receive work permits.

A nascent network is developing in Toronto and across Canada to help antiwar refugees find housing, food, and other forms of support, but some war resisters may find themselves accessing overburdened community services. As much as possible, war resisters need to think in advance about where in Canada they will "land" and what resources they can take with them to support themselves.

War resisters heading for Canada should also prepare themselves psychologically. They need to be serious, mature, and ready for a long, uncertain process. At this early stage of the legal and political struggle on their behalf, they should anticipate considerable media exposure and be able to show a positive, conscientious example to Canadians considering their fate.

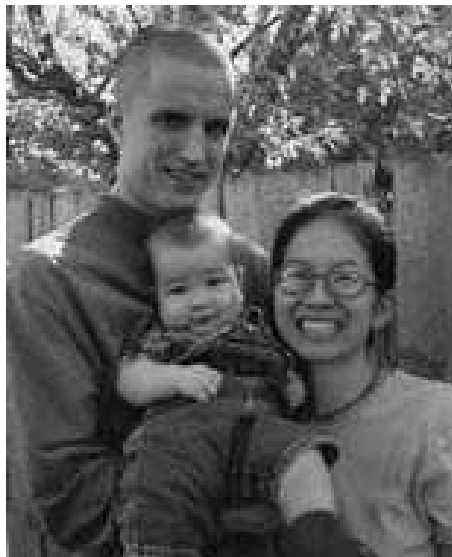
## There Are Many Ways to Resist an Unjust War

Seeking refugee status in Canada is only one among a number of options for U.S. war resisters. It is important that they learn all of their options and consider them carefully. Evidence that objectors have exhausted their legal options within the military and in the U.S. courts may also become a consideration in their refugee hearing in Canada.

Well-versed counselors are available at the GI Rights Hotline, a coalition of nonprofit, non-governmental organizations who provide information to members of the military about discharges, grievance and complaint procedures, and other civil rights. Counselors will inform war objectors of all their options and allow them

to make their own decisions. The GI Rights Hotline can be reached at their toll free number, 800-394-9544, or through their website, [www.girights.objector.org](http://www.girights.objector.org).

Going AWOL and "underground" in the United States or seeking sanctuary in other countries are time-honored traditions for peace-loving soldiers. But there are many ways to resist an immoral war. Staying out of the military in the first place is advisable, although there is a noble tradition of resistance from within the military itself. GI newspapers, coffeehouses, strikes and even mutinies helped to end the Vietnam War. Political and logistical support for resistance and safe havens for war resisters make the difficult job of organizing within the military more viable.



Jeremy Hinzman, Nga, and Liam

There are also a number of ways to seek a discharge from the military. A conscientious objector discharge, or even non-combat status within the military, can be difficult to achieve because it is often arbitrarily denied. Such arbitrary denials can be appealed to Federal courts, however, and have been successfully overturned there. Military discharges can also be sought on grounds of family hardship or for medical reasons, including mental health, among others.

Even going to prison, as did Marine Reservist Stephen Funk (6 months and a Bad Conduct Discharge) and Florida National Guardsman Camilo Mejia (1 year and a Bad Conduct Discharge), is an honorable alternative to killing or being killed in an unjust war. Their relatively mild sentences may be preferable to indefinite years in exile for some war objectors.

But heavier sentences are possible. A General Court Martial can hand down a maximum 5 years in prison and a Dishonorable Discharge for disobeying orders. (I was convicted of two counts of refusing orders to Vietnam and sentenced to 10 years.) The maximum sentence in a Special Court Martial is 1 year in prison and a Bad Conduct Discharge. A less-than-honorable discharge can mean a lifetime of job discrimination. The maximum sentence on the books for desertion during wartime is still the death penalty, but the last

soldier to receive this ultimate punishment was Pvt. Eddie Slovak during World War II.

Whoever said that fleeing from war or one's own country would be easy? Historically, though, many can attest that finding a new home, whether temporary or permanent, is preferable to going to war or to prison. Jeremy Hinzman is riding his bicycle around Toronto, with his son Liam, now two, on the back. He and his Vietnamese-American wife, Nga, frequently socialize with the many new friends they have made in Canada.

"We have a life here," he says.

War resisters who come to Canada can expect, at a minimum, to find a temporary safe haven, a viable alternative to fighting in an illegal, immoral war.

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*Gerry Condon deserted from the U.S. Army in 1969 after refusing orders to Vietnam. He lived for three years in Sweden and three years in Canada before returning to the U.S. in 1975, campaigning for amnesty for war resisters. He is director of Project Safe Haven and the Right to Resist network, "resisters of past wars standing with war resisters today." For more information, or to support his work with war resisters in Canada, email him at [SoldierSayNo@yahoo.com](mailto:SoldierSayNo@yahoo.com) or visit his website, [www.SoldierSayNo.org](http://www.SoldierSayNo.org).*



Stephen Funk chose to face court martial and jail rather than participate in an illegal war.

## Check Out These Websites to Find Out How to Support US War Resisters:

### ■ [www.SoldierSayNo.org](http://www.SoldierSayNo.org)

The purpose of this Website is to inform soldiers of their options, be it conscientious objection or total refusal to participate in what is a crime under international law.

### ■ [www.JeremyHinzman.net](http://www.JeremyHinzman.net)

Official source of news and updates on Jeremy Hinzman, US soldier, conscientious objector, and refugee claimant.

### ■ [www.BrandonHughey.org](http://www.BrandonHughey.org)

Brandon Huhgey is a former member of the U.S. Army who left his country rather than participate in an illegal act of aggression.

### ■ [www.objector.org/](http://www.objector.org/) 1-800-394-9544

Website of the Central Committee for Conscientious Objectors (CCCO). CCCO supports and promotes individual and collective resistance to war and preparations for war. The CCCO maintains the GI Rights Hotline: (800) 394-9544

### ■ [www.nlg.org/mltf](http://www.nlg.org/mltf)

The National Lawyers Guild Military Law Task Force assists those working on military law issues as well as military law counselors working directly with GIs. It trains and mentors counselors and beginning military law attorneys in all aspects of military law through training materials and direct communication. It updates changes in military law and policy.

### ■ [www.resisters.ca](http://www.resisters.ca)

War resisters support campaign in Canada.

### ■ [www.Join-SNAFU.org](http://www.Join-SNAFU.org)

SNAFU is an organization of veterans and activists who support military resisters.

For more information, or to get involved:

**[www.SoldierSayNo.org](http://www.SoldierSayNo.org)**

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