

**Should U.S. Military Evaders
Be Extradited From Canada?
Pro and Con Arguments**

By Dave Olson, August 2004

Yes. Military service evaders are in violation of U.S. laws, as well as personally breaching their contract and oath. Alternative programs exist for legitimate conscientious objectors to fulfill their duties in a responsible manner. Harboring cowardly deserters strains International relations and also drains the resources of the host country.

No. AWOL personnel would be prosecuted, and possibly persecuted or executed, if repatriated to the United States. Military personnel, who oppose war for moral, ethical, or political reasons, should be recognized as political refugees and granted asylum if requested. No one should be forced to put their life at risk for an illegal war or be obliged to obey immoral orders.

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1) Military personnel have a legal responsibility to fulfil their required military service period.

Deserters must be extradited to ensure critical military discipline lest soldiers flee in time of war leaving their country vulnerable. Any country that harbors deserters against extradition requests is complicit with this law-breaking activity which infringes on a sovereign nation's ability to make war.

Once a soldier has entered into a military contract, the agreement is considered binding-unless it's changed from the top down, as in the stop-loss orders.ⁱ This is the case with recent U.S. military deserters currently in Canada, Privates Jeremy Hinzman, 25, and Brandon Hughley, 18. Hughley had been discharged but, as specified in his contract, his unit was subject to recall. The day before he was due to report to duty in the U.S. war in Iraq, he deserted to Canada rather fulfill the terms of his contract.ⁱⁱ In Hinzman's case, he deserted with his family to Canada while on leave from active duty in Afghanistan.ⁱⁱⁱ These soldiers are illegally breaking their contract to the

volunteer U.S. military and do not have grounds for protection from extradition after having collected military benefits and compensation for their service.

2) Individuals have a moral responsibility to serve their country regardless of personal feelings. Dissent is unpatriotic, cowardly and not a valid reason for avoiding punishment.

Soldiers' political beliefs are not a valid reason to avoid service, nor is it the soldier's right to refuse to fight because of their personal feelings about the legality or justness of a war.

Selective objectors or non-cooperators who do not follow the prescribed processes for alternative service, are breaking the law and the oath they took upon enlisting in which they promise to obey the orders of the President and appointed officers.^{iv}

Popular opinion suggests that, "Soldiers who run away from service are cowards, plain and simple. ... they should be returned to the United States to face trial as deserters and failing to honor their commitment to serve their country."^v

Members of Pvt. Hinzman's own family suggest this point, "his grandfather, a former US Navy man and the father figure in his life, expressed

disappointment that Hinzman had not fulfilled his four-year commitment to the military.”^{vi}

Serving in the military is a moral commitment essential to the fiber of a country, and deserting soldiers should not be protected from extradition as a result of desertion because of personal feelings which lead to desertion.

3) Programs exist for alternative service for legitimate conscientious objectors applicants. Those who do not follow the prescribed process do not deserve protection from prosecution.

The U.S. offers a defined process for obtaining Conscientious Objector status, as well as provisions for alternative service, for those who have a documentable history of activism against war or combat.

Appropriate status is available both for Conscientious Objectors – those who oppose any participation in war by reason of religious, ethical or moral belief – as well as Non-combatant Conscientious Objectors, who reject killing but will serve in an alternate capacity without weapons (i.e. medical work, supply work).^{vii}

Extradition is appropriate for active-duty enlistees who apply for Conscientious Objector status while on active-duty and refuse to serve when their claim is denied. Often these soldiers apply without providing the essential documented evidence to legitimately claim for status such as

participation in a peace/non-violence advocating church or organization. In Pte. Hinzman's case, he applied for conscientious objector status and became a religious Quaker only after heading into combat.^{viii}

The CO process provides for alternative service to legitimate applicants who can document a long-standing moral position on war. Pte. Hughley served his initial period and only declared to be opposed to war after being recalled and he offered primarily political and psychological reasons for his objections.^{ix}

The American Friends Service Committee – the activist organization of Quakers recognize the importance of documentation, "... registering as a CO and documenting one's position as a CO at the time of registration is crucial. In the event of a draft, if one claims to be a CO but has not documented their position as a CO, they may not be taken seriously."^x

The CO program adequately protects legitimate objectors, and opportunistic deserters who do not qualify for status do not deserve additional protection from extradition.

4) The U.S. does not unduly punish repatriated deserters, nor are persecution or execution common, therefore soldiers do not deserve another country's protection against the U.S.

In order to legitimately claim refugee status in a country, the deserting soldier must prove that they would face not just prosecution, but also persecution, if returned to their home country. This burden of proof falls to soldiers fleeing from a volunteer army from a democratic country such as US, where persecution is unlikely, as well as soldiers who would be executed if repatriated.

Audrey Macklin, law professor at University of Toronto puts forth that because the U.S. has forms of alternative service and a process for applying for conscientious objector status, military service evaders will have a hard time convincing Canadian judges that they are indeed refugees.^{xi} Last year, the Canadian Immigration and Refugee Board received 317 American applications for refugee status and accepted none.^{xii}

U.S. Army law details their maximum punishment for desertion:

Completed or attempted desertion with intent to avoid hazardous duty or to shirk important service. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years. Completed or attempted desertion with intent to avoid hazardous duty or to shirk important service. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

This five-year maximum punishment for desertion in the U.S. does not constitute persecution as required for refugee status so, deserters falsely claiming refugee status should be extradited to face the prescribed punishment.

5) Harboring military service evaders is a violation of International extradition treaties.

A law firm specializing in international prisoner matters refers to extradition as, "the formal process by which an individual is delivered from the country where he is located, the requested country, to the requesting country in order to face prosecution, or if already convicted, to serve a sentence."^{xiii}

However, Vancouver immigration lawyer Phil Rankin puts forth that deserters are likely to be deported even before extradition proceedings because of a lack of immigration status. "Desertion is not one of the grounds for refugee status. During the Vietnam War, nobody got refugee status, even though they had a political opinion." Since the U.S/Canada extradition treaty doesn't apply to deserters, he says, "they pretty much just deport you across the border and take you to the brig."

The federal government has entered into border accords with the U.S. that could make the situation of those seeking refuge, especially deserters, more difficult than in the past.^{xiv} These International agreements are essential to diplomacy and must be honored including returning deserters to a jurisdiction to face charges.

6) Harboring deserters strains foreign relations with the host country.

Harboring deserters causes strain and tension both in popular culture and the political and commercial realms.

In the case of U.S. deserters in seeking asylum in Canada during the war in Afghanistan and Iraq, American media pundits may exact retaliation for non-extradition in the commercial world with economic boycotts, "Naturally, veterans' groups and the US media have been outspoken in their criticism. The Fox Television personality Bill O'Reilly has called for a boycott of Canadian goods until Hinzman and another deserter living in Canada are returned to face courts martial."^{xv}

A Canadian journalist points out the tension resultant from the recent refugee claims, "O'Reilly (and others) can't understand why some Canadians regard these guys as heroic for running. I suspect Canadians who aren't lib-left, or pathologically anti-American, or with the CBC, view them with some contempt. Personally, I'll be surprised if these two deserters are kicked out of Canada. Our authorities are unlikely to want the leftish protests, even though Prime Minister Paul Martin is anxious to restore cordial relations with the U.S. We shall see."^{xvi}

A policy of non-extradition may appear sympathetic at first in the host country but popular opinion may quickly change to frustration. In Canada, there may be a feeling of resentment towards the drain on social services and employment opportunities denied legitimate citizens and also by those

who do not agree with the political stance of harboring criminals and the reflection it shows about their country as soft on crime.^{xvii}

To avoid International tension and unwanted conflicts in political and popular culture, criminals should not be harbored but rather, expediently extradited to face charges.

No

Deserting military personnel who conscientiously object to war for moral, ethical or political reasons should be granted asylum as political refugees and not extradited, for the following reasons:

- 1) Military service evaders would be prosecuted, and possibly persecuted or executed, if repatriated.**

Fugitive American soldiers, Jeremy Hinzman and Brandon Hughley, will argue to Canada's Immigration and Refugee Board that they face persecution in the U.S. because of their refusal to fight in Iraq based on their strong political beliefs and therefore should be granted political asylum status in Canada.^{xviii} Canada granting their requests would opine that deserters are likely to be persecuted not just prosecuted, if returned to the U.S.

Jeffrey House, Hughley's attorney – incidentally a draft resister who fled to Canada himself - describes their case for refugee status which points out that the illegality of the war makes prosecution for non-participation, persecution. "Canada evaluates refugee claimants based on the Geneva Convention on refugees and in the case of soldiers it says that soldiers who refuse to participate in a war considered illegal by the international community, and face prosecution for that refusal, amounts to persecution on the basis of political opinion."

According to U.S. military law, a soldier who fails to report for duty within 30 days is AWOL, with a maximum penalty of five years confinement, forfeiture of all pay and allowances, and a dishonorable discharge. After 30 days, he or she is technically a deserter. The maximum penalty for desertion in time of war is death, although no U.S. soldier has been executed for desertion since World War II.^{xix}

The E.U.'s Charter of Fundamental Right, article 19, paragraph 2 states, "No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.^{xx}" However proving exactly what is meant by "serious risk" or "degrading treatment" can prove difficult for a court of law to determine.

This (albeit slight) chance of the death penalty may constitutionally prevent some countries (examples European Union, East Timor, Portugal) from extraditing deserters to the US though has not be tested in International courts in the case of the recent U.S.-led war in Middle East.

With this in mind, no country should agree to extradite fugitive military personnel unless the U.S. abolishes the death penalty for deserters and takes measure to prevent persecution.

2) No one, regardless of contract or oath, should be obliged to obey immoral orders or punished by their refusal to do so, including refusing to kill or to put their life at risk for an illegal war.

While many soldiers may join the military willing to fight, they find themselves in a moral conundrum when they object to an illegal war, or are given orders which violate their conscience. Indeed, recent high profile war crimes trials show no one is above criminal or moral laws, even in times of war.

David Held, puts forth in an essay, "Law and Justice in a Global Age" that, "The refusal to serve in national armies triggers a claim to a 'higher moral court' of rights and duties. Such claims are exemplified as well in the changing legal position of those who are willing to go to war. The recognition in international law of the offences of war crimes, genocide and crimes against humanity makes clear that acquiescence to the commands of national leaders will not be considered sufficient grounds for absolving individual guilt in these cases."^{xxi}

In other words, one must be true to his or her self and take responsibility for their own actions or face consequences. Therefore, soldiers should have a right to recant themselves from duty if they are morally opposed to orders.

In this sense, the Hinzman and Hughley cases are akin to a successful case argued before the Canadian refugee board involving a deserting Iranian

soldier who refused to use to poison gas on Kurds during the Iran-Iraq war despite the threat of punishment for disobeying orders. ^{xxii}

Despite a verdict that would require Canada pronouncing that the US-led war in Iraq is illegal, Private Hughley is confident that Canada would allow him to stay due to because of the nature of the war. He states, "The essential key to the case is to prove the war in Iraq is illegal under international law and represents a violation of human rights."^{xxiii}

If the war is indeed illegal, and protests by avoidance legal, then countries should not extradite those who are legitimately exercising their moral right of non- participation.

3) Military volunteers may not understand the lifestyle they are committing to, or their moral values may change during their period of service. Effectuation of such moral changes (including desertion) should not be grounds for extradition and subsequent prosecution.

The aforementioned Private Hinzman, in an interview on Democracy Now, acknowledges volunteering for the military but accounts for the change in his feelings, saying, "I choose the infantry. I wasn't assigned to it. ... (but) what I wasn't quite aware of was what an inhibition I would have to the taking of a life."^{xxiv}

Hinzman also pointed out practical reasons for choosing the military citing health insurance, subsidized housing and groceries, an admitted “romantic view of the army.” This changed for him after witnessing the “continuous chanting about blood and killing” and “dehumanizing of the enemy.”^{xxv} Such lifestyle encouraged an ethical change as he became a practicing Quaker and disavowed all violence and, “decided to come to Canada because I was given an order to participate in a war that I believe to be illegal and a violation of human rights and International law.”^{xxvi}

Although today’s military is made up of volunteers, some believe that desertion or suicide is an alternative to fighting in the Iraq debacle.^{xxvii} Members of a volunteer military should not have to flee to a foreign country (and risk extradition) when their ethical stance prevents them from continuing on with military service.

4) Besides desertion (with risk of extradition), no viable means exists for some types of conscientious objectors to avoid military service. Additionally, the process has shown to be discriminatory, inconsiderate and degrading.

The Selective Service’s website describes the process for obtaining status as a CO and qualifying for Alternative Programs however, some types of objectors are not recognized by Federal Law including: 1) War Tax Objectors; 2) Selective Objectors (Object to wars considered “unjust”); 3) Nuclear Pacifists; 4) Non-Cooperators with the Draft.^{xxviii} Additionally, “a man’s

reasons for not wanting to participate in a war must not be based on politics, expediency, or self-interest.”

This eliminates many types of claims leaving legitimate conscientious objectors no choice but to abandon their units illegally despite the potential consequences. A lawyer specializing in military matters says, “When they brought them home for vacation in the US, about 15-20% simply never went back. They stayed with their families.”

While the CO process is available to active serving personnel, the application procedure has ranged from inconsiderate to punitive to applicants. The Selective Service continues their guidelines saying, “Beliefs may be moral or ethical; however, In general, the man's lifestyle prior to making his claim must reflect his current claims.”^{xxix}

A US National Guardsman (who is a Nicaraguan and Costa Rican citizen) left his military unit after serving in Iraq because of moral objections after witnessing the shooting of civilians.^{xxx} His application for Conscientious Objector status was denied, but rather than leave the country and risk extradition, he went into hiding for six months before standing trial and being sentenced to a year in jail, demoted to the lowest rank and had pay reduced.^{xxxi}

The US soldier in Canada, Hinzman, points out that after he applied for conscientious objector status, his duties were gradually reduced from soldier

to cook to dish washer to floor scrubber to toilet cleaner^{xxxii} and his application was "lost^{xxxiii}."

These discriminatory procedures and degrading punishments are grounds for Canada (or other countries harboring US deserters) to not repatriate conscientious objectors to face punitive measures.

5) Extraditing political prisoners will strain foreign relations as well as creating negative International attention and potential embarrassment for the U.S.

Historical precedent suggests that Canada, who harbored hundreds of thousands of conscription evaders during the Vietnam-era, would not extradite "draft dodgers" since draft resistance is not an extraditable offense.

^{xxxiv} However active service deserters from a volunteer army such as Hughley and Hinzman, do not have the protection of that status.

If the U.S. does seek extradition of deserters, the Canadian Prime Minister may refuse to surrender the subjects. The situations must show that, "b) the conduct in respect of which extradition is sought is a military offence that is not also an offence under criminal law; or (c) the conduct in respect of which extradition is sought is a political offence or an offence of a political character."^{xxxv}

Such extradition feud might spark a flood of deserters, as well as producing a controversial judgement about the U.S. military policy further straining relations between these neighboring countries. With this in mind, the U.S. should not seek extradition of military deserters, or in the event of conscription draft resisters, at the risk of creating a multi-national incident.

Endnotes

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