



Extrajudicial border enforcement against LGBTIQ+ asylum seekers

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Abstract

Recent scholarship has highlighted how states differentially restrict the movement of persons who are divergently racialized, gendered, sexualized, abled, and aged. This paper explores the phenomenon of *extrajudicial border enforcement*—instances where airline officials act on behalf of states to prevent the cross-border movement of marginalized persons. Based on a qualitative analysis of fifty-two cases of failed travel of at-risk lesbian, gay, bisexual, transgender, intersex, and queer (LGBTIQ+) persons attempting to cross an international border between April 2018 and April 2022, this paper offers an intersectional lens into how airline officials, whom the coauthors term *extended state agents*, deny boarding to individuals through an arbitrary and discretionary process, despite the individual's compliance with the entry requirements of transit and destination countries. Because state penalties incentivize these boarding denials, implementation of carrier sanctions should be understood as a byproduct of law rather than an exemption from it. These expulsions without due process are in sharp contrast to the LGBTIQ+ rights affirming rhetoric of the expelling states, which we characterize as a form of pinkwashing. In this analysis, coauthors question the responsibility of states in human rights violations consequent to denial of boarding under carrier sanctions regimes.

Keywords: border enforcement, carrier sanctions, LGBTIQ+, asylum, refugees, extraterritoriality

Introduction

In recent years, territorial borders have shown themselves to be intractably porous in a world increasingly integrated across human, economic, environmental, and epidemiological boundaries. The COVID-19 pandemic, accelerating global climate change, and the reality of more than 100 million forcibly displaced people on the move have accentuated the failure of ongoing attempts of sovereign states to seal the territorially 'inside' from those 'outside' (Mohamed *et al.* 2020; Jones 2016; Gonzalez 2020; Andersson 2016). According to the UN Refugee Agency, there are 114 million forcibly displaced people as of October 2023, of which more than 29 million are refugees and 62 million are internally displaced (UN 2023; UNHCR 2024). If approximately 5 per cent of

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those forcibly displaced identify as LGBTIQ+ (Jones 2022), there could be up to 5.7 million LGBTIQ+ displaced people worldwide.

Despite its cosmopolitan appeal, scholars since the late 1990s have pushed against the contention that we are moving toward a 'post-border' or 'post-territorial' world (Newman 2006; Diener and Hagen 2009; Tuathail 1999; Yeung 1998; Agnew 2003). Ongoing research highlights how shifting border regimes of sovereign states continue to differentially restrict the movement of people who are divergently racialized, gendered, sexualized, and abled (Walia 2021; Hon-Sing Wong 2011; Korac 2020; Tyszler 2019; Achiume 2021; Stachowitsch and Sachseder 2019). These border regimes extend both inward—that is, within traditional territorial borders—and outward to spatial domains beyond the territorial jurisdiction of a given state. Scholars have explored how external deterrence measures, such as carrier sanctions and turnbacks, disproportionately impact LGBTIQ+ people and people of colour, resulting in discrimination and increasing the risk of refoulement (Hall and Clapton 2021). Furthermore, states have increasingly outsourced migration control to private actors, such as airline carriers, to evade their obligations under international refugee law, creating the perception of a 'legal black hole' (Gammeltoft-Hansen 2014: 4–5, 15).

In this article, we explore the everyday experience of extrajudicial border enforcement, when airline officials, private security guards, and other nonstate agents act on behalf of states to prevent the cross-border movement of marginalized persons seeking access to asylum. Although states adopt legislation to outsource border enforcement to private entities, we agree with scholars who have found that, ultimately, states remain obligated to ensure respect for human rights in the enforcement of their borders, despite this delegation (Gammeltoft-Hansen 2014; Rodenhäuser 2014; Moreno-Lax 2017; Brouwer and Kumin 2003). To ground existing theoretical and doctrinal analysis in intersectional realities, we focus on the experiences of people relocated by Rainbow Railroad (RR), an international nongovernmental organization (INGO) that supports at-risk¹ LGBTIQ+ people to escape state-sponsored violence and persecution.

Based on an analysis of fifty-two cases of failed travel² of at-risk people relocated by RR attempting to cross an international border between April 2018 and January 2023, this article provides insight into how airline officials routinely deny boarding to LGBTIQ+ people suspected of having an intent to seek asylum, even when these individuals comply with the formal entry requirements of transit and destination countries. In doing so, we identify several intersectional axes of discrimination by airline officials against LGBTIQ+ people who experienced failed travel in an attempt to seek asylum in a safer country, including discrimination based on national, ethnic, or racial origin, as well as gender identity and expression.

At-risk LGBTIQ+ people fleeing persecution are impacted by the dynamics of *structural intersectionality*—that is, a multilayered experience of oppression emerging from the intersection of gender nonconformity with other axes of difference, including racial, ethnic, and religious difference (Crenshaw 1991). They are more likely to have experienced trauma, lack education, employment, travel history, and family support, and have limited access to traditional refugee resettlement and humanitarian assistance (Rainbow Railroad 2021). They are also affected by *political intersectionality*, which is the negative impact of ostensibly neutral or progressive government policies that fail to account for compounded forms of marginalization (Crenshaw 1991). As we elaborate below, some states that affirm LGBTIQ+ people's rights in rhetoric, policy, and practice simultaneously implement deterrence measures that disproportionately harm LGBTIQ+ people fleeing persecution. As LGBTIQ+ asylum seekers, the individuals in our analysis exist at the intersection of at least two marginalized groups, despite being excluded from both within the larger political discourse. In adopting the language of intersectionality throughout

¹ In using the term 'at-risk LGBTIQ+ people' throughout the article, we refer to Rainbow Railroad's understanding of those who are at heightened risk of being subjected to severe human rights violations in their local contexts due to their diverse SOGIESC. See Rainbow Railroad (2021) for a list of the 50 health, welfare, and safety concerns the organization tracks to determine individual and familial risk levels in its casework.

² In the context of this article, the term 'failed travel' is used specifically to describe an attempt by a fully documented and ticketed individual to board an international flight that was interdicted by an airline official at the departure airport.

this article, we position our argument within a broader methodological turn within refugee studies toward a 'critical framework that challenges homogenizing experiences and categories in the global refugee context' (Taha 2019).

Extrajudicial border enforcement against LGBTIQ+ asylum seekers illustrates the deep tensions between the progressive, inclusive, and rights-based rhetoric and policy of resettlement states internally—even, in some cases, on refugee issues—and the homophobic, transphobic, and racialized logic of exclusion that the same states exercise through private proxies at transit points. In labelling such interdiction extrajudicial, we do not mean to suggest that it takes place without the sanction of the law, but rather that it seeks to exist outside of the mechanisms of accountability in public law that limit state border enforcement. As we argue below, the emergence of carrier sanctions should be viewed in most cases as a byproduct of law rather than an exemption from it. Our analysis centres on the role of what we call extended state agents—operating on behalf of states but outside of accountability—in limiting access to the right to seek asylum for at-risk LGBTIQ+ people, in this case, airline officials. Understanding externalization through the experiences of LGBTIQ+ asylum seekers is particularly important for a population that is invisibilized due to discrimination (Shepherd and Sjoberg 2012).

These experiences of failed travel bring to the fore the contradictions between what we term the 'pinkwashing' of refugee admission policies by some states and the discretionary, gendered, and racialized exclusion of suspected asylum seekers by extended state agents extraterritorially. Adopting Russell's (2019) broader definition, we understand pinkwashing as 'the deployment of superficially sympathetic messages for [ends] having little or nothing to do with [LGBTIQ+] equality or inclusion' (p. 182). States that actively promote political rhetoric of inclusion and equality for LGBTIQ+ refugees while fostering extrajudicial border enforcement systems that harm those same refugees conceal their responsibility under the guise of administrative proceduralism.

In this article, we argue that carrier sanctions, and thus arbitrary denial of boarding by private actors, impede access to asylum and can result in human rights violations, creating a foreseeable risk of refoulement (Gammeltoft-Hansen 2014; Rodenhäuser 2014; Moreno-Lax 2017). As with other aspects of border externalization and deterrence, denials of boarding disproportionately affect LGBTIQ+ asylum seekers (Hall and Clapton 2021). This seemingly private conduct of commercial airline carriers is fundamentally sanctioned, and even mandated, by state legislation. Along with other scholars, we argue that states have responsibility for human rights violations subsequent to boarding denials because of the legislative link which forces private actors to exercise delegated authority on behalf of the state (Brouwer and Kumin 2003; Baird and Spijkerboer 2019; Cesarz 2019). For countries that have publicly adopted pro-LGBTIQ+ refugee policies, the evasion of state responsibility for the predictable consequences of boarding denials against at-risk LGBTIQ+ people is an instructive case study in the ongoing 'pinkwashing' of refugee policy.

We begin by briefly explaining the emergence of carrier sanctions and conducting an intersectional analysis of the parallel emergence of refugee law. We then move on to a methodological discussion to frame our qualitative and descriptive data analysis, reflecting on our position as humanitarian workers actively advocating for the resettlement of LGBTIQ+ people at-risk. For this study, we drew on a purposive, nonrandom, intensity sample of a difficult-to-reach and rarely studied group: at-risk LGBTIQ+ people who were denied boarding by airline officials despite having all necessary legal and travel documentation and transit visa requirements. Our thematic analysis walks the reader through the stages of an emergency travel journey, from planning the trip and communicating with airline personnel to facing the risk of human rights violations after failing to reach a safer destination. Based on our empirical findings, we then construct a legal and policy analysis to argue that states are responsible under international law for human rights violations that result from domestic legislation, despite attempts to avoid that responsibility through queer-friendly policies that 'pinkwash' their anti-asylum agenda. We use RR data as a case study to explore the tension between pro-LGBTIQ+ refugee policy in the

Netherlands and frequent boarding denials by KLM against RR-supported at-risk LGBTIQ+ people on Netherlands-bound flights at overseas origin points. The stark contrast between stated Dutch policy and the lived experiences of ticketed passengers denied travel to the Netherlands exemplifies the pinkwashing of refugee policy in action. Throughout the article, we engage existing academic literature to position the various facets of our argument in the context of broader discussions on carrier sanctions, intersectionality, state responsibility, and LGBTIQ+ refugee studies.

Building on recent scholarship, we show how the interplay of state sanction and corporate reaction has resulted in a transnational system of privatized border control that disproportionately affects the ability of at-risk LGBTIQ+ people from the Global South—particularly those who embody intersectional forms of racial and gender diversity—to seek refuge in the Global North. While this system operates with the authorization of the law and on behalf of the state, it is in part carried out by private proxies, such as airline carriers. In this context, our central claim is 2-fold: first, that the legislative link between carrier sanctions and airline policy means that states bear at least some responsibility for foreseeable human rights violations that occur after boarding denials by airline officials; and second, that this responsibility is especially pronounced for states that ‘pinkwash’ their refugee policy by espousing pro-queer refugee rhetoric domestically while facilitating the private interdiction of at-risk LGBTIQ+ persons extraterritorially.

Emergence of carrier sanctions

This section provides a brief overview of the introduction of carrier sanctions and the concurrent development of international refugee law to help readers understand the data analysis in the following discussion.

Carrier sanctions, or penalties imposed on airlines for transporting individuals without immigration authorization, first appeared less than forty years ago, decades after the establishment of the current refugee regime. In 1987, five European countries—the United Kingdom, Belgium, Denmark, Italy, and Germany—passed national legislation imposing liability on airline carriers for the arrival of ‘inadmissible’ passengers (UNHCR 1995). To clarify the legality of such carrier sanctions under the existing 1944 Chicago Convention on International Civil Aviation, which did not specifically impose liability on carriers, the treaty was amended in 1988. According to Annex 9 of the Chicago Convention (Zanetti 2018: 14; UNHCR 1995), operators should not be fined unless they are found negligent.

Soon after, states pressured airlines to limit travel for people without visas. In 1990, the Schengen Supplementary Agreement disregarded the Chicago Convention’s negligence provision, allowing domestic sanctions against airlines that transport ‘inadmissible’ passengers despite adequate prescreening for legal documentation (UNHCR 1995; King 1992: 9). Carrier sanctions range from EUR 3000 to EUR 5000 per ‘inadmissible’ person, with potential suspension of airline operating licenses (Baird 2017). Furthermore, carriers must pay for accommodation in transit countries and the removal or deportation of inadmissible individuals (Cruz 1994). The Agreement’s carrier sanctions system effectively coopts frontline airline employees into serving as extended state agents, allowing states to avoid responsibility by mandating airlines to perform a core state function, immigration screening, on the threat of a financial penalty and possible operational suspension.

According to UNHCR (1995), some states cancel airline fines and absolve them of liability if an asylum seeker is granted refugee status, while others continue to hold carriers liable; some states have no established guidelines on exceptions to fines. Without a clear standard, as our empirical analysis demonstrates below, airlines frequently exhibit excessively risk-averse behaviour, with employees making discretionary immigration decisions outside of their expertise and training to avoid penalties. Our qualitative data show that these decisions frequently reflect racial and gender bias, and they may also be influenced by discrimination based on real or perceived class and religion. This is especially true for LGBTIQ+ people from regions and countries deemed security risk zones, as demonstrated in the analysis below.

For our purposes, it is worth noting that the period between the ratification of the Chicago Convention and its reinterpretation in light of carrier sanctions, 1944–89, coincided with the establishment and bureaucratization of the current global refugee regime through the ratification of the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol (the Refugee Convention). The Refugee Convention defined the extent of state responsibility for those fleeing persecution. Originally designed to provide legal protection for the unprecedented flows of European refugees following World War II, the Refugee Convention provided virtually no protection for people of diverse SOGIESC given that same-sex intimacy and diverse gender expression continued to be criminalized in most European countries for decades afterward (Rokakis 2013). It is well documented, for example, that LGBTIQ+ people in postwar Europe in formerly Nazi-occupied territory were frequently reimprisoned after being liberated from concentration camps, extermination camps, and other Nazi detention centres (Carlo 2021), sometimes for decades.

In 1991, Canada became the first country to assign refugee status to an individual persecuted due to their diverse SOGIESC through an expansive interpretation of the Refugee Convention's 'membership of a particular social group' nexus (Kahn and Alessi 2018). Before this, in 1981, a consultative advisory body in the Netherlands recognized sexual orientation as a type of particular social group (Spijkerboer 2013: 219). This was followed by a wave of subsequent cases across Europe throughout the 1990s and early 2000s in which SOGIESC-based asylum claims were recognized (Ferreira 2018). These cases were hard-won, as it took UNHCR until 2008 to issue a guidance note elaborating its interpretation of the application of the Refugee Convention to claims of SOGIESC-based persecution. Scholars have emphasized how domestic decisions by state asylum authorities rely on mistaken notions of discretion, culturally limited and ungeneralizable assumptions about SOGIESC expression in credibility assessment, and inconsistent definitions of 'persecution' to deny the validity of SOGIESC-based claims (LaViolette 2010; Millbank 2005).

Ironically, it was at the very moment in the early 1990s, when people with diverse SOGIESC first started to gain access to gain access to asylum, that carrier sanctions in Europe and elsewhere tightened, imposing new restrictions on LGBTIQ+ people attempting to cross international borders in search of safety. After nearly four decades of recriminalization and legal persecution in the postwar period, people with various SOGIESC were once again barred from accessing refugee protection through the extrajudicial border enforcement mechanisms established by the Schengen Supplementary Agreement, just as LGBTIQ+ people were being recognized as worthy of protection in refugee law and practice.

In this broader context, RR was founded in 2006 as a global INGO headquartered in Canada to provide emergency relocation assistance to at-risk LGBTIQ+ individuals fleeing state-sponsored violence and persecution to reach safety (RR 2021). The organization identifies at-risk people through a network of operational partners, which includes underground LGBTIQ+ activist networks, community organizations, and human rights advocates. It also receives direct requests for assistance from at-risk individuals via its secure online portal (RR 2021).

Although the organization provides traditional resettlement assistance to recognized LGBTIQ+ refugees outside of their countries of origin,³ one distinguishing feature of its operational model is its Emergency Travel Support (ETS) program, which assists vulnerable LGBTIQ+ individuals and families in identifying safer locations where they can seek asylum upon arrival. Traditional resettlement takes years, is often too slow for those in immediate danger, and excludes many at-risk individuals (Yarwood et al. 2022; Chynoweth 2021; Amnesty 2023). Recognizing the dangers and risks faced by LGBTIQ+ people on the move, the ETS program aims to affirm refugee agency while also making their journeys safer and less traumatizing. RR has collected extensive data on LGBTIQ+ experiences navigating the international air travel system in search of safety over nearly two decades of operation. This article is the organization's first

³ In 2023, the Canadian government announced a partnership with RR to identify and refer at-risk LGBTIQ+ refugees through the Government-Assisted Refugees program: <https://www.rainbowrailroad.org/the-latest/major-announcement-getting-lgbtqi-people-to-safety-in-canada>.

major external research contribution to failed travel by LGBTIQ+ people at risk, utilizing original narrative testimonials and data.

Our analysis of failed travel attempts via ETS revealed that some of Europe's largest airlines, including KLM, Lufthansa, and Air France, have developed screening practices to deny boarding to passengers deemed potentially 'inadmissible' by destination countries. These practices frequently encode homophobic, transphobic, and racist heuristics to select those for boarding denial, as shown below. [Tables 1 and 2](#) provide demographic information to help the reader understand the data set by categorizing the fifty-two failed travel cases by year of attempted travel and traveller's country of origin.⁴

Case analysis Methodology

For this analysis, we drew on a nonrandom, intensive sample of at-risk LGBTIQ+ people who were denied boarding by airline officials despite meeting formal entry and transit requirements and having the necessary documentation. The cases in this dataset began on 1 April 2018, when the RR electronic case management system was updated to include 'travel failure' as a possible outcome of the case. Between 1 April 2018 and 14 August 2023, RR-facilitated travel for 1385 individuals, with sixty-eight individuals (forty-eight cases, including couples and families) experiencing failed travel (5 per cent) due to various factors, including airline officials' intervention. Subsequently, RR successfully relocated thirty-seven of these cases. The extracted data set includes demographic information, narrative testimony from people who were denied boarding, and caseworker notes on the circumstances surrounding the travel attempt or attempts. Although the formal collection of RR data on failed travel began in 2018, our current data set does not fully represent the longer pattern of carrier interdiction that the organization has observed since it began assisting people in reaching safety in 2006.

All coauthors reviewed the data set to inform our overall analytic approach. A coauthor performed an inductive content analysis on the data, producing descriptive statistics for the individuals' demographic and other characteristics and extracting themes from the caseworker narratives. Another coauthor, who is also an RR caseworker and has worked directly on many of these cases, thoroughly reviewed the original article, filling in gaps and correcting inaccuracies in the analysis. The other three coauthors also reviewed this analysis and requested additional data to develop themes from the literature review. We also conducted additional interviews with a subset of six individuals in February 2023 as part of a larger organizational posttravel debriefing process, the findings of which we have incorporated into our analysis here. During the article revision process, we examined cases of failed travel that occurred after the original manuscript was drafted.

The researchers are based in Toronto and New York, and they worked for RR when they wrote the original draft. As employees of a humanitarian services organization, we have firsthand knowledge and access to internal case materials, which gives us an insider perspective. Because of our dual role as researchers and humanitarian workers, we must filter details from our writing to avoid exposing people to additional risks. Our narrative data are the result of deep trust and relationships built over months and years of casework as individuals travelled to various countries in search of safety. However, our analysis is based on remote communication with forcibly displaced people rather than directly lived experiences of flight from persecution. All but one of the coauthors identify as LGBTIQ+, making the connection between LGBTIQ+ criminalization and persecution personal ([Michelis 2023](#)). Researchers increasingly highlight the lack

⁴ Our analysis does not address the location of travel failures (ie, whether they take place in country of origin or in transit). Travel interruptions can occur at all stages of the journey, whether at the country of origin or in a transit country; however, most travel failures take place to prevent boarding of a flight which will land in a European country. Larger Global North airlines tend to deny boarding more frequently than smaller regional airlines or operators, where the staff is less practiced in denial of boarding procedures.

Table 1. Failed travel cases by year of (first) attempted travel.

Year	#
2019	3
2020	1
2021	18
2022	12
2023	18
Total	52

Alt Text: [Table 1](#) displays the distribution of fifty-two failed travel attempts by LGBTIQ+ asylum seekers supported by Rainbow Railroad from April 2018 to December 2023, categorized by the year of the first attempted travel. While available data for 2019 to 2020 shows three or less cases per year, the data for 2021–2023 highlight an increase to 12–18 cases per year.

Table 2. Failed travel cases by country of nationality.^a

Country	#
Jamaica	23
Russia	9
Tunisia	2
Morocco	1
Kenya	3
Egypt	4
Tanzania	1
Lebanon	1
India	1
Guyana	1
Chad	1
Turkmenistan	1
Trinidad and Tobago	1
Colombia	1
Tajikistan	1
Burundi	1
Total	52

Alt Text: [Table 2](#) outlines the failed travel attempts of 52 LGBTIQ+ asylum seekers supported by Rainbow Railroad, organized by country of nationality. Jamaica leads with twenty-three cases, followed by Russia with 9, and lower incidences from countries like Tunisia, Morocco, Kenya, Egypt, and others, each contributing 1 to 4 cases.

^a The authors note that the number of failed travel cases from Jamaica is higher than those from other countries listed within the data set, since more than half of RR-supported relocations involve people from Jamaica. There are several reasons for this. Historically, RR has relocated a large proportion of cases from Jamaica due to the severe persecution of LGBTIQ+ people in the country and RR regional expertise. RR's relocation work in 2006 started in Jamaica, and Jamaican human rights defenders have been on staff at RR since the beginning. Jamaica was also the country with the highest number of requests for help to RR until 2021 and the Afghanistan crisis, because RR is widely known and well positioned in the Caribbean. Jamaican asylum seekers frequently experience intersectional forms of discrimination, as they are racialized and often excluded from educational and employment opportunities and thus more likely to be flagged by airlines.

of a clear distinction between insider and outsider roles in research, recognizing that researcher positionality is relative and on a spectrum ([Kirsletter 2012](#); [Mohammad 2001](#)).

We recognize that our position as humanitarian workers and queer activists has both benefits and the potential to introduce bias as we advocate for states to open additional pathways to safety for LGBTIQ+ people in need ([Milner et al. 2022](#)). We sought to ensure methodological rigour by situating our arguments within the larger academic literature, conducting empirical interviews with people who have lived experience, and engaging in member checking among coauthors at each stage of the investigation. We believe that our activism work for and with refugees, including relocation programmatic work, exemplifies an ethical commitment to ‘actively

contribut[e] time and labour to projects, activities, events or actions' which are undertaken by communities rather than driven by a research agenda (IASFM Code of Ethics 2018). Recognizing that the refugee protection industry frequently marginalizes LGBTIQ+ refugees and LGBTIQ+-led organizations and workers (Michelis 2023), we welcome this research's opportunity to reclaim our subject position as participatory researchers while remaining committed to academic rigour.

In the framework of Crenshaw, the programmatic work of RR is a type of intersectional praxis, a means of knowledge production that seeks to transform intersectional dynamics (Cho et al. 2013). This paper uses an intersectional frame of analysis to understand how the well-studied phenomenon of deterrence by nonstate actors affects those who are both LGBTIQ+ identified and forcibly displaced.

Through the analysis of fifty-two cases of failed travel (experienced by forty-two individuals), we trace a process of extrajudicial border enforcement carried out primarily by airline personnel acting as extended state agents, who exercise their delegated authority in an arbitrary and highly discretionary manner. Individuals describe their encounters with asymmetrical and differential treatment based on their ethnic or racial origin, religion, and gender identity and expression, despite meeting all formal requirements for travel. They reported that being singled out for denial of boarding triggered feelings of fear, sadness, and even trauma. In the worst-case scenario, denial of boarding increases the risks to LGBTIQ+ people and results in serious human rights violations.

The following subsections describe the empirical cases that we are aware of as a result of our casework, while the subsequent section discusses their implications for international refugee law. Our analysis covers several thematic areas, including travel preparation, the process of denying boarding by airline agents, and the experiences of individuals who have been denied boarding. Readers will notice that airline officials act primarily as extended state agents in this extrajudicial process, with almost no involvement from state actors.

Preparation for travel

RR assists individuals in preparing for their trip by ensuring that they meet all required travel formalities and have the necessary documentation to comply with all regulations in the countries on their itinerary. For example, a gender-nonconforming individual from India prepared bank account statements, hotel reservations, return tickets, and travel insurance. A cisgender lesbian woman stated that she had prepared an e-visa, a hotel reservation for the duration of the trip, a travel itinerary, and a return flight ticket. A transgender man from Tunisia had a hotel reservation, a health declaration form from the destination country, proof of malaria vaccination, and proof that he did not require a transit visit in the countries on his itinerary.

These preparations go beyond documentation and formalities to include preparing their personal appearance to conform to the social expectations of airline staff and avoid scrutiny. Several people stated that they took extra precautions to ensure their appearance did not raise unnecessary red flags, such as wearing new clothes and getting a haircut. One lesbian woman reported bringing a stuffed panda as a human touch, while another lesbian woman removed her hijab on her second trip to appear more like other travellers. These forms of preparation can be understood through the lens of respectability politics, a coercive process in which members of a marginalized group attempt to conform to norms of deservingness or worthiness to gain protective social privilege (Dazey 2021). Although this is a necessary survival strategy in many cases, it can have negative effects on LGBTIQ+ people because respectability politics can reinforce homophobia and exclusion (Doyle 2016).

Despite careful attention to travel formalities and immigration requirements, all of these individuals were subjected to extrajudicial border enforcement by airline personnel who refused to allow them to board their flights. Their meticulous travel preparations to comply with formal regulations stood in stark contrast to the airline personnel's informal procedures for denying them boarding. The gender-nonconforming individual in question had a confirmed and

approved tourist registration from the destination government, but the airline staff stated that the country was not 'open for tourism'. The cisgender lesbian woman with an e-visa was denied boarding because her return flight was on a different airline, and the airline staff refused to accept her explanation that she had a valid visa. Similarly, the airline staff informed the transgender man that he could not board and did not provide a written decision regarding the refusal to board. He reported that 'the airline staff just said "next" after they stopped speaking to me, so that the person behind me could step forward.'

Travel formalities become a moving target as a result of airline staff's misinformation and lack of knowledge, as well as a lack of transparency in these extrajudicial processes. For example, a gay Kenyan man told the airline staff that he had a hotel reservation, proof of the COVID vaccine, and USD 500 to cover his expenses during his trip. However, they insisted on a supposed 'OK to board letter' from immigration authorities in the destination country, even though he later confirmed with the destination government that such a letter does not exist. The next day, a representative from another airline informed him that he could travel to the same destination without any difficulties. The 'OK to board letter' information is not public or available to travelers. According to the RR caseworker's experience, the 'OK to board letters' appear to be issued by airlines rather than governments to reduce the risk of paying penalties if the passenger is denied entry into the destination country. RR caseworkers have documented the cases of seven airlines that provide 'OK to board' letters for entry into six destination countries.

Another example of misinformation occurred when a gender-nonconforming person from Egypt was denied boarding because they would be transiting in Colombia, even though a transit visa was not required in Colombia at the time for layovers lasting less than 24 hours and the passenger did not leave the airport. The airline customer service desk staff insisted that the individual needed a transit visa although they could show that they had already discussed the matter with the airline's customer service staff in Egypt.

Engaging with airline staff

The role of airline employees as influential frontline decision-makers on immigration formalities is a recurring theme in case notes and personal accounts. According to RR data, airline employees frequently exercise their delegated authority in an arbitrary and highly discretionary manner; this extrajudicial process lacks safeguards to prevent refolement and circumvents accountability for risks created for passengers.

Although RR encourages people to request written confirmation of denial of boarding decisions, these are rarely issued. In one case, an airline issued a 'Denied Boarding Certificate' to a gay man from Russia with the following options: (1) unavailability of seats on the flight, (2) arrival after the flight check-in time, (3) arrival after the flight boarding closing time, (4) transit/final destination or immigration risk, (5) unruly behaviour, and (6) other. The airline's staff supervisor checked off the fourth option on the printout with a pen. The document contains no specifics about the decision's content or basis, and there is no option to appeal other than the URL of the airline's website.

Passengers are frequently not given any justification. For example, a lesbian woman from Russia was denied boarding without being given clear reasons; airline staff stated that there were 'restrictions due to COVID,' but no documents were shown or further explanation was provided, and she was aggressively prevented from boarding.⁵ The persistence of boarding denials until the end of 2023 suggests that pandemic travel restrictions were not a significant driver of failed travel in our dataset, though COVID restrictions did reduce the overall number of people relocated via RR during the pandemic's peak. In any case, all RR-facilitated travel adhered to the applicable COVID restrictions at the time. Rather, airline rhetoric on COVID and denied boarding appears to be part of a larger trend in which states of emergency are used to justify restricting

⁵ A number of the cases analyzed in this dataset took place during the period when travel restrictions were imposed due to COVID. However, RR has continued to document cases of denial of boarding since April 2022, with 12 additional cases taking place from April to November of 2022 and seven further cases taking place during 2023.

queer migration (Lewis 2013). The gender-nonconforming individual from India, mentioned above, described being denied check-in to a final destination where they would not require a visa: a 5- to 10-minute process involving two airline staff members, a check-in agent, and a manager who did not contact any other colleagues or immigration authorities and provided no written decision. The airline staff acknowledged that they had all of the necessary documentation and that the destination country was open to tourists, but that their check-in was denied due to a lack of travel history. However, the individual observed that the airline agent wore a coloured 'protection thread' associated with a specific religion, commented on his name, which is associated with a different religion, and realized that other passengers who were not visible as members of the airline's staff's religion were also denied.

Other people noticed that they were singled out when they appeared different from the other passengers on the plane, even though they met all of the formal travel documentation requirements. For example, a gay Moroccan man noticed that he was denied boarding as the only Arab man in the queue; the airline claimed that he was denied boarding because he did not have a transit visa, even though a transit visa was not required. The gay Kenyan man asked for an 'OK to board' letter and noticed that he and his travelling companion were the only two Black men waiting to board the plane.

Individual debrief interviews revealed that airline staff appeared to pay less attention to travellers' answers—and, at times, their documents—and more to their behaviour and expressions. A lesbian woman recalled that airline personnel would frequently ask the same questions to observe her and her travel companion's facial expressions. Several people stated that they did their best to appear confident and unconcerned while being subjected to repeated and intensive questioning, as this was the only way to reassure airline personnel that they had already met all of the documentary requirements.

Airlines and airport authorities frequently become suspicious when individuals do not visually conform to heteronormative norms and expectations, particularly nonbinary and transgender expressions of gender and sexuality. A gay man and his Jamaican partner were denied boarding by an airline agent who asked why one was more feminine and not masculine, claiming they were likely to seek asylum and incur airline fees. A Guyanese transgender woman was denied boarding for no apparent reason; an airline attendant harshly questioned her. She believes she was denied boarding as a result of failing to present as masculine. In other cases, people took proactive steps to ensure that they would not face discrimination because of their SOGIESC. A nonconforming gender person from India stated that they controlled their gestures at the airport to ensure that they were not feminine and could pass as straight, skills honed through life experiences of being bullied for their mannerisms.

Human rights violations after failed travel

Those travelling with RR have survived human rights violations before their travel. The emotional toll of being denied boarding is a recurring theme in the narratives of failed travel cases and individual accounts, mirroring the repression experienced by the individuals in their home countries. An Egyptian woman admitted to having a panic attack and crying at the airport after being denied boarding; 'I felt lost, I lost all my money and felt like everything is black and that it is hopeless'. Feelings of fear after intensive questioning by airline staff are persistent; one woman stated, 'I cannot describe how I felt when we got into the plane. We were scared even when the plane was already moving'.

Travellers who do not understand which authorities are making these decisions may confuse airport authorities and state agents, which is yet another example of the state evading responsibility. A gay Jamaican man who had had traumatic encounters with the police in his home country, where same-sex intimacy is illegal, had a breakdown while being questioned by authorities (the individual was unsure whether they were airline or government officials), who locked him in a room for 3 hours before refusing to board and returning him to Jamaica, where people who

had attacked him with a machete were still waiting to harm him. RR then relocated him safely to another country.

Although airline employees, as extended state agents, primarily conduct extrajudicial border enforcement on their own, there is limited interaction with state agents, highlighting the state's hidden and coercive power. As we will discuss in the legal and policy section, the lack of evidence of any protective state action in these cases raises concerns about state responsibility, particularly in cases where some individuals have suffered serious human rights violations as a result of denial of boarding. In the most concerning case of denial of boarding, two Central African passengers were denied boarding in a Middle Eastern country, claiming that their passport had been flagged.⁶ Although the exact mechanism of the red flag in this case is unknown, it should be noted that Interpol's 'red notices' are a documented tool of transnational repression, according to [Freedom House \(2021\)](#). Airline personnel contacted local immigration authorities, police, and their home country's embassy. Officials from their embassy detained, tortured, and raped them before releasing them with a document requiring them to return to their home country within 90 days.⁷ When passengers question the airline's decision to prevent them from boarding, the airline may contact embassies or immigration liaison officers. In the cases we know of, immigration officials do not provide procedural safeguards for carrier sanctions policies to prevent refoulement or a right to appeal a denial of boarding in cases where the individual meets all formal travel requirements.

Other cases demonstrate this phenomenon. After a failed RR travel attempt, a Jamaican transgender woman was attacked and severely beaten; she is now homeless and lives in 'gullies', a mosquito-infested storm drain where LGBTIQ+ people hide for their own safety. Her brother died in early 2023, and she was unable to attend his funeral. She is suicidal. RR caseworkers continued to consider her future travel options. A gay man from Egypt was denied boarding and then violently attacked by his neighbours and cousins upon his return because of his sexual orientation. He was able to flee to another country with the help of his mother, but he is HIV-positive, which puts him at risk of deportation in this country because it does not accept HIV-positive immigrants.⁸ He has also run out of antiretroviral drugs and is unable to purchase more there. As of this writing, the individual has another RR-supported travel plan for which he has a visa and all necessary documents.

The analysis of RR cases paints a picture of extrajudicial border enforcement that airline staff carry out largely without justification or clear justification, and apply to travellers who meet all formal documentary requirements for their itinerary. Airline employees serve as extended state agents, denying travel through a discretionary process that is not subject to appeal. Despite being established by domestic carrier sanctions legislation, this extrajudicial process foreseeably results in human rights violations following the denial of travel and is well designed to absolve states of responsibility. Because these individuals are simply denied boarding by an airline, rather than admitted and formally deported by the state, they are deprived of the accountability and oversight that would occur through a formal government process, which is now relegated to a private commercial transaction.

Legal and policy implications

State responsibility

We now address the relevant legal framework that speaks to the state's responsibility vis-à-vis carrier sanctions. As stated in the introduction, it is important to situate our case analysis within the broader context of increasing state reliance on nonarrival policies to avoid explicitly violating

⁶ In many cases in this article, individuals are now safe and relocated, so we simply refer to their countries by name in the text. In this particular case, RR continues to advocate for their cases, so we leave out the specific country names.

⁷ As of writing, RR continues to support these individuals and their resettlement case.

⁸ HIV-positive forcibly displaced people often face additional discrimination and stigma. See McKay, F. H., Thomas, S. L., Holland, K., Blood, R. W., & Kneebone, S. (2011). "AIDS assassins": Australian media's portrayal of HIV-positive refugees who deliberately infect others. *Journal of Immigrant & Refugee Studies*, 9(1), 20-37.

their legal obligations against refoulement, including pre-entry clearance, interdictions, and turnbacks (Hall and Clapton 2021; Gammeltoft-Hansen 2014), all forms of what we have referred to as extrajudicial border enforcement. Carrier sanctions are one creative attempt among a slew of nonarrival tactics to delegate ad hoc authority to private actors to apply discriminatory heuristics to prevent territorial access and thus prevent the exercise of the right to seek asylum. The legality of such nonarrival tactics is, however, a matter of considerable debate.

Although alienage is a basic requirement for refugee status (Article 1A, Refugee Convention), the Refugee Convention is silent on admission procedures for destination states, leaving it to state discretion. Although nonrefoulement is prohibited except in cases of imminent national security risks (Article 33, Refugee Convention), the United Nations General Assembly has interpreted the prohibition on refoulement to begin when a refugee arrives at a border seeking protection, which includes both non-return and non-rejection at the border (Article 3(1) of the Declaration on Territorial Asylum). Non-rejection is especially important for refugees with intersecting identities who face additional risks at different stages of the displacement cycle, such as LGBTIQ+ refugees (UN Special Procedures 2022). Scholars have argued that LGBTIQ+ asylum seekers should be prioritized for admission due to the prevalence of ‘discrimination and disadvantage’ against them and the small number of countries that protect LGBTIQ+ rights (Lippert-Rasmussen and Vitikainen 2020).

While carrier interdiction of suspected asylum-seeking passengers is thus not cleanly refoulement, the UNHCR has stated that states should not impose sanctions on carriers who transport people with a ‘plausible claim for refugee status or otherwise [need] international protection,’ including those who lack entry documents (UNHCR 1995). Indeed, scholars have analysed how carrier sanctions cause violations of international human rights law, including violations by states, which should bear responsibility for returns resulting from their domestic legislation (Rodenhäuser 2014), and, although beyond the scope of this article, which focuses on state responsibility, by airline carriers for complicity in state violations and for failing to uphold the United Nations Guiding Principles on Business and Human Rights (Baird and Spijkerboer 2019: 8–9).

Understanding how state legislation compels private actors to impede territorial access to suspected asylum seekers on pain of penalty—refiguring them into what we have called extended state agents—provides an important lens into the question of state responsibility for human rights violations resulting from interdicted travel. We argue that, while such violations are carried out by private agents using informal and discretionary practices, liability should nonetheless be ethically and legally imputed, at least in part, to states themselves.

Analysis of the human rights implications of carrier sanctions frequently focuses on their impact on asylum seekers who lack sufficient or proper documentation and may therefore attempt to travel with falsified documents or via dangerous overland or sea routes (Erfani et al. 2021, ch. 1). Indeed, the nonpenalization requirement enshrined in Article 31 of the Refugee Convention balances sovereign control of borders with the recognition that refugees’ circumstances of flight may not meet the standard criteria for official migration channels. However, our previous section’s analysis of carrier-interdicted travel focused on fully documented individuals. In each case, RR confirmed that the passenger’s travel completely complied with all legal and airline regulations, including documentary requirements. In these cases, airline employees and even immigration officers for preclearance use a variety of justifications to deny boarding to those who have the necessary documentation, including lying or misinforming people about destination country entry requirements. As a result, these cases raise new questions about state responsibility, given that these individuals are legally ‘admissible’ from a documentary standpoint.

Although we are unaware of refugee rights litigation involving airline carrier sanctions in particular, the 2004 United Kingdom House of Lords case *R v Immigration Officer at Prague Airport* exemplifies the legal issues at stake when asylum seekers are profiled and denied boarding in a discriminatory manner despite meeting entry requirements (*R v Immigration Office*

2004).⁹ British immigration officials at Prague Airport interrogated Czech Roma passengers based on a stereotype that they were disadvantaged in the Czech Republic and would seek asylum in the UK rather than return home. The House of Lords acknowledged that the preclearance process, as implemented, was systemically discriminatory and violated domestic racial discrimination laws (*R v Immigration Office* 2004).

However, the judges ruled that the plaintiffs were not entitled to a remedy under domestic law, stating that the Refugee Convention Article 3 prohibition on discrimination only applies to people who have already been granted refugee status and that the nonrefoulement obligation does not apply at the origin airport. Lord Bingham wrote that the principle of nonrefoulement did not apply because the appellants had 'not left the Czech Republic nor presented themselves, save in a highly metaphorical sense, at the frontier of the United Kingdom' (*R v Immigration Office* 2004, para. 26). He referred to the airport boundary as a metaphorical border beyond the scope of the UK's judicial reach, although, as we previously argued, such 'metaphorical' borders are constructed and reified to a significant extent by national law and international treaties—in this case, the UK's carrier sanction law.

Although the Court acknowledged the discriminatory nature of this nonarrival policy implemented through racial profiling, it denied the state responsibility to uphold the prohibition on refoulement on the grounds that the Refugee Convention does not apply extraterritorially. The procedural obligation that flows from the substantive protection ensured by nonrefoulement is an individualized assessment of risk for the person being returned. In *R v Immigration Office*, there was no consideration of the risk to Roma people denied boarding or of the legality of an arbitrary and discretionary check-in and boarding process that does not require a meaningful review of those risks.

The cases presented here point to the importance of reassessing state liability for refoulement and human rights violations when travellers face irreparable harm as a result of being denied boarding. The most obvious example is the case of travellers from a Central African country discussed in the previous section who were denied boarding by KLM in a Middle Eastern country and then handed over to embassy officials from their home country, who beat and raped them.¹⁰ In this case, we argue that the Dutch government, which enacted and enforced the carrier sanctions, a system with insufficient safeguards for people at risk of persecution, bears some legal responsibility for the torture that occurred. Without the carrier sanctions that incentivize airlines to deny boarding without adequate oversight or safeguards, and without KLM's denial of boarding and actions by KLM staff to hand the individuals over to local authorities, this specific instance of torture would not have occurred, establishing a predictable causal link.

Before attempting to travel, people told RR about their experiences in their home countries, with more than half experiencing physical violence such as being beaten or attacked, some going into hiding after being publicly outed, and a few encountering police brutality, detention, or blackmail. The majority of respondents reported homelessness and suicidal ideation in their home countries. They fled their home countries after experiencing human rights violations and were likely to face them again if they returned. Their prior persecution and well-founded fear of persecution following deportation required evaluation by a qualified government official, not an airline agent.

Scholars have emphasized that carrier sanctions and pre-entry clearance do not absolve the state of its legal obligations because international law recognizes that influence and control can be exercised extraterritorially (Frelick et al. 2016). Article 5 of the International Law Commission's Articles on State Responsibility for Internationally Wrongful Acts states that

⁹ At the time of the judgment, December 2004, both the UK and the Czech Republic were members of the European Union, whereas the UK was never a member of the Schengen area. It is possible for an EU national to apply for asylum in another EU country. The judges noted that the European Convention on Human Rights does not directly address issues of immigration and denied that the facts amounted to exercise of effective control as per Bankovic; no violation of Articles 2 or 3 was alleged.

¹⁰ As mentioned earlier, RR continues to advocate for the relocation of these cases and is redacting the specific countries concerned for their safety.

the conduct of a person or entity which is not an organ of the State [...] but which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the State. (ILC Draft Articles 2001)

The commentary to the articles clarifies that if an entity is authorized by domestic law to 'exercise functions of a public character,' the entity's actions while exercising those public powers are attributable to the state (Materials on the Responsibility of States 2012: 51). Private airlines are specifically mentioned as entities to which 'certain powers in relation to immigration control or quarantine' may be delegated (Materials on the Responsibility of States 2012: 51). Although states may allow private airlines to handle certain aspects of immigration management, this delegation emphasizes the state's ultimate responsibility. We insist that states cannot delegate authority to an extended state agent without oversight while exempting themselves from accountability and liability.

The House of Lords correctly stated that discrimination is illegal regardless of motivation. The RR cases discussed earlier show that intersectional protected grounds of discrimination are threatened by extrajudicial border enforcement, including discrimination based on sexual orientation, gender identity and expression, race, ethnicity, and religion. Ironically, these prohibited grounds for discrimination mirror the protected grounds for asylum eligibility: race, religion, nationality, and membership in a particular social group.

States that impose carrier sanctions should determine whether the country in question is safe under the 2002 Lisbon Expert Roundtable standards. The standards specify that a safe country must ensure that there is no risk of persecution or onward refoulement, as well as adequate means of subsistence, access to refugee status determination, and due regard for vulnerabilities through substantive and procedural human rights guarantees (UNHCR Summary Conclusions 2003). Better yet, states should exempt refugees, including *prima facie* refugees and asylum seekers, from carrier sanctions and allow them to fly in order to reduce migrant deaths on unsafe transit routes and ensure safe and regular routes (Betts 2015). Airlines could commit to corporate civil disobedience by testing legal provisions that exempt carriers from penalties in cases where people require international protection (Baird and Spijkerboer 2019).

The plaintiffs in *R v Immigration Officer at Prague Airport* were able to bring their case because they had evidence of discriminatory practices by British immigration agents. In this article, we present testimonial data that speak to discrimination and the human rights violations that can result. Data-sharing partnerships between litigators and civil society actors supporting LGBTIQ+ refugees could be critical in uncovering the discrimination and refoulement perpetrated through carrier sanctions and the evasion of state responsibilities under the Refugee Convention.

Pinkwashing refugee policy: the Dutch example

The legal analysis we offered builds on the work of scholars such as Lauterpacht and Bethlehem (2003), who identified incompatibility with international law broadly, and Cruz (1991, 1994), who identified multiple points of incompatibility between carrier sanctions and the international legal obligations of several European countries. However, the particular tension between these resettlement states' extrajudicial border enforcement practices and their domestic rhetoric of inclusion and equality for LGBTIQ+ refugees, which we refer to as the 'pinkwashing' of refugee policy, is a new addition to our analysis.

The pinkwashing of refugee policy emerges in the context of neoliberal policies that have driven the outsourcing of migration management and human rights enforcement to private companies and invisibilized the exclusion of 'inadmissible' LGBTIQ+ people seeking safety (Menz 2011; Hall and Clapton 2021). Carrier sanctions can be viewed as a 'passive' form of nonarrival policy within the migration management apparatus (Dunstan 1998: 205), similar to visa regimes and pre-entry clearance, as opposed to 'active' nonentry policies like maritime interception (Goodwin-Gill and McAdam 2007). The use of carrier sanctions is an extension of what Zolberg (1999) refers to as migration management by 'remote control' and, according to Bloom and Risse (2014), constitutes a form of 'hidden coercion' by the state. These invisibilization

tactics, also known as ‘hidden coercion’, allow supposedly progressive European states, which are also among the most significant resettlement states, to appear to include LGBTIQ+ refugees in their official resettlement and humanitarian funding policies while quietly mandating the interdiction of at-risk LGBTIQ+ asylum seekers by private actors outside of the legal accountability mechanism.

In the context of RR’s travel support programming, the Netherlands is a particularly illustrative example of this contradiction. The Netherlands, France, and the United States are disproportionately represented as destination countries for people who experienced failed travel from overseas origin points, particularly on KLM Airlines. On the one hand, the Dutch government publicly claims to ‘provide[] protection to people who have to fear persecution in their country of origin because of their sexual orientation or gender identity’ and has codified specific protections for LGBTIQ+ refugees to that end (Immigratie en Naturalisatiedienst, n.d.). According to a 2018 government report on LGBTIQ+ equality, the Dutch Central Agency for the Reception of Asylum Seekers (COA) has measures in place to ‘tackle violence and discrimination against LGBTIQ+ asylum seekers at reception centres’ (Government of the Netherlands 2018b). The Netherlands scored 67 per cent on protecting ‘LGBTIQ+ asylum seekers’, almost 20 per cent higher than the OECD average of 48 per cent (OECD Directorate for Employment, Labor, and Social Affairs 2020). The Dutch national gender and LGBTI equality policy plan for 2018–21 also highlights the government’s collaboration with various NGOs to protect and assist LGBTIQ+ refugees and migrants as an example of ‘putting principles [of LGBTIQ+ protection] into practice’ (Government of the Netherlands 2018a). As previously stated, the Netherlands was also one of the first countries to recognize LGBTIQ+ people as members of a particular social group for claiming asylum.

However, since the late 1990s, the Netherlands has implemented a border management regime that denies boarding to passengers it considers potentially ‘inadmissible’ by imposing carrier sanctions and harshly punishing airlines for violations. According to Scholten and Minderhoud (2008), the Dutch Royal Constabulary received over 4000 reports against KLM for transporting undocumented passengers between 1 December 1997 and 12 April 1998. Consequently, in December 1997, the Dutch government imposed carrier sanctions for the first time, and in 2000, the Supreme Court of the Netherlands imposed a EUR 4.5 million fine on ninety-five carriers found to have transported ‘inadmissible’ asylum seekers. KLM received the most severe fine of any airline involved in the case. In addition to the fines, the Dutch government signed a memorandum of understanding with KLM requiring the airline to conduct due diligence, perform detailed identification document controls at boarding points, and accept annual decreasing quotas for ‘nonadmissibles’ (Scholten and Minderhoud 2008: 141). According to the legislation, KLM must check passengers’ travel documents prior to each flight and allow Dutch officials to notify KLM employees at airports of departure when checking documents. Scholars have also shown how the Netherlands, among other countries, denies asylum claims based on the allegation that the applicant’s stated sexual orientation is not credible, despite recent progress in discrediting the argument that queer asylum seekers can be safe in their home countries by remaining discreet and closeted (Lewis 2014).

RR’s case data show that decisions made in the late 1990s continue to impede at-risk LGBTIQ+ asylum seekers’ territorial access to the Netherlands. In our data set, more than 15 per cent (nine of fifty-two) of failed travel cases with proper travel documentation were bound for the Netherlands on KLM flights. In 2021, four people relocated by RR fleeing SOGIESC-based persecution were denied boarding on various Netherlands-bound KLM flights at various airports in the Middle East and North Africa region.¹¹ Two were nationals from Central Africa (the torture case mentioned in the previous two sections), another was from another MENA country, and the final two were from Europe.¹² In the same year, one person was denied boarding on three separate occasions while attempting to fly to the Netherlands. As stated in the previous section, the

¹¹ Transit and origin countries are deliberately not specified to avoid compromising the ongoing casework.

¹² Given the specificity of denial of boarding by KLM, we have chosen not to disclose the specific country of origin of this small group of passengers for their safety.

KLM supervisor issued a 'Denied Boarding Certificate' due to 'Formalities for transit/destination or immigration risk'.

Gammeltoft-Hansen (2014) and Baird (2017) discuss how carriers and states are reluctant to share carrier sanction statistics that could negatively impact their public image. Outside of RR's internal data, estimates for the number of LGBTIQ+ asylum seekers denied boarding are scarce. The complex interdependencies that result from extrajudicial border enforcement by airlines create third-party liability systems (Gilboy 1997), resulting in the non-disclosure of sanction statistics and the invisibilization of queer exclusion. This absolves the state from the potential repercussions of admitting responsibility for human rights violations committed against LGBTIQ+ asylum seekers as a result of nonarrival policies. In the Netherlands, these violations occur while the state engages in progressive rights-based rhetoric that reaffirms the state's commitment to safely welcoming LGBTIQ+ individuals fleeing persecution, a practice known as 'pinkwashing' refugee policy. As a result, carrier sanctions can trap LGBTIQ+ refugees in a double bind in which they cannot safely remain in their country of origin or transit while also lacking effective travel mechanisms to reach countries with 'progressive' policies for LGBTIQ+ asylum seekers.

Conclusion

For at-risk persons, approaching an international border to access their human right to seek asylum is a critical act of agency. For LGBTIQ+ asylum seekers, who are often forced underground due to compounded discrimination by families, communities, employers, service providers, and public institutions, boarding an airplane with the intent to seek asylum is a tremendous act of resistance against the myriad of forces working to keep them out of public view.

We have argued, however, that states have gradually established a new global border enforcement regime that coerces private actors, such as airline officials, into acting as extended state agents to interdict the travel of suspected asylum seekers. Although the carrier sanctions regime operates extrajudicially, as a private commercial transaction, with no avenues for appeal, justification, or consistent application for those denied travel, it is authorized by domestic legislation and international treaties.

Airline employees should not serve as immigration officers. The carrier sanctions system effectively authorizes airline staff to engage in discriminatory profiling tactics that disproportionately affect people with diverse SOGIESC, particularly those who visibly embody intersectional forms of racial and gender diversity. Because airlines may face sanctions even if they rigorously prescreen passengers for appropriate documentation, RR's case evidence suggests that airline personnel frequently rely on racist, transphobic, and homophobic personal judgements to summarize which passengers intend to seek asylum, resulting in a highly arbitrary pattern of boarding denials against primarily Black and brown queer asylum seekers. Racial and gender profiling of LGBTIQ+ people by airline officials, incentivized to do so by state sanctions, contradicts the LGBTIQ+-friendly policies that states claim to implement. States cannot pinkwash their rhetoric while abdicating responsibility.

Insofar as states continue to legislate and enforce carrier sanctions, they ought to be held at least partly liable for any harms that could have been reasonably foreseen in denying boarding to at-risk LGBTIQ+ asylum seekers abroad. For many LGBTIQ+ asylum seekers, boarding a flight is the difference between an opportunity for permanent safety and continuous persecution or death.

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Data availability

The data underlying this article cannot be made public due to safety concerns for people seeking to relocate. Anonymized and location-abstracted data underlying this article will be shared on reasonable request to the corresponding author.

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