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# SEEKING REFUGE

*Central American Migration  
to Mexico, the United States, and Canada*

María Cristina García

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## REFUGEES OR ECONOMIC MIGRANTS?

### *The Debate over Accountability in the United States*

The Reagan Administration doesn't want to accept us as refugees because it would be admitting that the military aid it sends to El Salvador does not help, rather destroys and creates refugees. I didn't come here because I wanted to. I had no economic need to come. I left my country because I had to.

SALVADORAN IMMIGRANT

Marta Ester Paniagua Vides was given a form. She asked the agents if the form was for voluntary departure and they assured her it was not. She signed the paper and it in fact turned out to be Form I-274A. . . . Juan Francisco Pérez-Cruz, arrested in 1980, did not request asylum even though informed of it, because the agent told him that asylum was only for people who were fleeing their country because they were an enemy of the government or an assassin. . . . Noe Castillo Núñez, apprehended in 1981, told the INS agents that he was afraid to go back to El Salvador because he had received death threats. The agents told Núñez the threats were his problem, that they did not care what happened to him, and that he should return because he would be deported anyway. Núñez was then given some forms and told to "sign here." The papers were quickly taken away and Núñez did not know what he signed. He told the agents that he wanted to apply for asylum, but they told him they did not know anything about it. . . . Dora Elia Estrada, arrested in 1980, refused to sign a voluntary departure form and asked for asylum. The agent who arrested her told her that political asylum "wasn't given" in the United States, and that if she did not sign for voluntary departure she was going to be in detention for a long time in a jail where there were "only men."

*"Evidence concerning INS interference  
with the right to apply for asylum"*

Like Mexico, the United States became a reluctant host to Central American refugees. By 1987, 88 percent of all Central Americans who chose external migration were either in Mexico or in the United States, and only a small fraction were granted asylum.<sup>1</sup> Between 500,000 and 750,000 Salvadorans, Guatemalans, and Nicaraguans were believed to be in Mexico, and over 1 million in the United States.<sup>2</sup> Migration to Mexico and the United States was not a new phenomenon; Central Americans had traveled to both countries as sojourners and immigrants since the nineteenth century, albeit in much smaller numbers.<sup>3</sup> As a result of the revolutions, their numbers increased exponentially. In the 1980s other factors encouraged migration to these two countries in particular: the relatively open borders; the low cost of an overland journey; and more important, significantly greater stability and economic opportunity than in other neighboring countries.<sup>4</sup>

Only a small percentage of the Central Americans who arrived in the United States came with immigrant visas or refugee status. Some entered with some type of temporary visa, such as a student or tourist visa, and simply stayed once their visas expired, but the majority arrived illegally across the United States–Mexico border. Mexico's refugee policy clearly affected who migrated to the United States and in what numbers. The Salvadorans and Nicaraguans migrated in much larger numbers than the Guatemalans, since unlike the last they had no opportunity to receive protected status in Mexico. The Central Americans who came to the United States were a cross-section of their societies: urban and rural dwellers, factory and agricultural workers, students and professionals, young and old. They included union leaders, former political prisoners, army deserters, and church catechists. Some traveled alone; others came as part of family units.<sup>5</sup> Some had been singled out for persecution in their homeland; others were trying to escape the generalized climate of violence. All were in need of safe haven.

Central Americans who made it to the United States encountered a society that was less than enthusiastic about their arrival. Since the passage of the 1965 Immigration Act, the United States had accommodated millions of immigrants and refugees from a variety of countries—the largest population of newcomers since the first decades of the twentieth century. Americans generally perceived the Central Americans as yet another drain on their fragile economy just barely recovering from the

recession of the late 1970s. As Senator Alan K. Simpson, R-Wyoming, the architect of several immigration reform bills, put it, the nation was suffering from “compassion fatigue.”<sup>6</sup> The influx of so many people from so many parts of the world contributed to an anti-immigrant backlash that led to the passage of four new pieces of legislation during the 1980s and 1990s to control their numbers.<sup>7</sup>

But for some Americans, the migration of Central Americans presented a moral dilemma. They believed that the United States had a responsibility to assist these displaced people given the role the US government had played in their displacement. Throughout the 1980s, members of one vocal segment of US society called for a reassessment of their country’s foreign and immigration policies. They demanded accountability from their government for their actions in Central America and on the United States–Mexico border. And they worked for change—first through protest and civil obedience, lobbying, and the shaping of public opinion, and ultimately through the courts.

#### ASYLUM OR DEPORTATION?

Economic development was a keystone of US foreign policy in Latin America in the 1980s, to foster geopolitical stability but also to discourage the migration of millions of “feet people” northward to the United States.<sup>8</sup> From 1984 to 1989 the United States committed over five billion dollars to development programs in five countries in Central America (Belize, Honduras, El Salvador, Guatemala, and Costa Rica) “to support the return of economic stability to the region, to establish the foundation for broad-based sustained growth, and to encourage the growth of democracy and democratic institutions.”<sup>9</sup> Policymakers also believed that economic development of emigrant-producing countries was the only realistic long-term solution to stemming the flow of migration, even if development might stimulate migration in the short term by raising people’s expectations and enhancing their ability to leave.

Officials of the Reagan administration argued that there was little need for Central Americans to travel all the way to the United States, since there were many opportunities for asylum or safe haven south of the United States–Mexico border. During the 1980s the United States contributed 105 million dollars to the UNHCR and the International Committee of

the Red Cross to assist refugees, repatriates, and displaced persons in general and in their resettlement elsewhere in the region.<sup>10</sup> Thus, many Central Americans' choice to come to the United States when there were ample opportunities for safe haven elsewhere suggested to administration officials that these migrants were economically rather than politically motivated, and thus were not true refugees. In a 1985 memorandum, for example, one US policymaker stated that Guatemalans did not need a protected status in the United States because Mexico offered sufficient protections: "We note that the UN High Commission for Refugees operates numerous settlements for Guatemalan refugees in southern Mexico, which most of the Guatemalans illegally in the US have chosen to bypass. Guatemalans do not face persecution in Mexico. Nevertheless some of them have decided not to avail themselves of this UN program specifically tailored for their needs, but rather have sought to enter the United States where no such program operates."<sup>11</sup>

The administration's assumption that it could discourage refugees from coming to the United States was as unrealistic as its belief that refugees' needs could be satisfactorily met in other countries or in UNHCR camps. As discussed in chapter 1, the criteria for asylum and safe haven varied across the region. Some countries granted safe haven to one specific national group, but not others. Some restricted the refugees to heavily guarded camps and settlements, while others allowed them to live among the general population. Living conditions varied, as did opportunities for employment, education, and general social welfare. And in countries where the UNHCR was allowed to participate, limited resources meant the commission was able to assist fewer than 10 percent of all those it estimated to be displaced within the region, and then principally in Honduras, Costa Rica, and Mexico.<sup>12</sup> The proximity of the United States, then, and the opportunities available in its society served as a powerful magnet encouraging thousands to risk it all and go to that country, even though their illegal status might subject them to exploitation.

The majority of Central Americans did not qualify for asylum in the United States under the terms of the recently passed 1980 Refugee Act. The 1980 act adopted the United Nations' definition of refugee expanded by the 1967 Protocol<sup>13</sup> in an attempt to standardize the process by which people were officially recognized as refugees and asylees.<sup>14</sup> Prior to 1980, US Cold War policies rewarded those fleeing communist nations. The fact

that a person came from Cuba or one of the Eastern bloc countries was often sufficient grounds for automatic entrance into the United States, while those that escaped right-wing authoritarian regimes (usually US allies) had more difficulty proving persecution. The 1980 act tried to make the selection process fairer and more consistent.<sup>15</sup>

Even after the passage of the 1980 act, the majority of those recognized as refugees continued to be from communist nations, but the law made admittance less automatic. A petitioner for asylum now had to prove certain conditions: a refugee was a person who, "owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, unwilling to avail himself to the protection of that country."<sup>16</sup> The challenge, then, was to provide evidence of a well-founded fear of persecution, and unfortunately the evaluation of that evidence continued to be politicized. By 1990, over 90 percent of the refugee admissions from abroad came from communist or communist-dominated countries.<sup>17</sup>

Members of the Reagan and Bush administrations clashed with UNHCR officials over this policy. The UNHCR generally favored a more lenient response to the so-called *nonconvention refugees*: those who did not meet the strict definition of the term but who had fled their homes, crossed an international border, and were living in refugee-like conditions. UNHCR officials readily admitted that the 1967 Protocol no longer addressed the realities of today's world. More realistic definitions were offered elsewhere. The Organization of African Unity, for example, defined refugees as "every person who, owing to external aggression, occupation, foreign domination, or events seriously disturbing the public order or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality."<sup>18</sup> And the Intergovernmental Committee for Migration acknowledged two types of refugees: "political refugees"—persons subjected to persecution and violence; and "displaced refugees"—indirect victims obliged to emigrate because of the destruction of their means of subsistence.<sup>19</sup> In May 1981, the UNHCR recommended that all Salvadorans who had left their country since the beginning of 1980 be considered refugees under a *prima facie* group determination because they had been displaced by political events and were likely to suffer if physically returned to their homeland.<sup>20</sup>



The United States advocated a tougher response during the 1980s. In a letter to the *New York Times*, a spokesperson for the State Department's political asylum division wrote: "It is not enough for the applicant to state that he faces the same conditions that every other citizen faces. [Under the terms of the 1980 Refugee Act we ask,] Why are you different from everyone else in your country? How have you been singled out, threatened, imprisoned, tortured, harassed?"<sup>21</sup> Thus, while in some countries, refugee status was extended simply by membership in a particular group or "class" of people, in the United States the burden of proof was placed on the individual applicant. Asylum applicants had to provide evidence of a "clear probability" of persecution, which was often impossible to prove. The Justice Department regularly rejected asylum petitions of individuals that UNHCR officials, church workers, and legal counsel commonly regarded and referred to as refugees.

In October 1981, the UNHCR charged that the United States was not living up to its responsibilities as a signatory to the UN Protocol, specifically its commitment to *non-refoulement*, or no forced return.<sup>22</sup> According to the UNHCR, the United States had failed to grant asylum to any significant number of Salvadorans and was engaged in a "systematic practice" of deporting Salvadorans to their country regardless of the merits of their claims to asylum.<sup>23</sup> UNHCR officials were fully aware of their financial dependence on large donor countries like the United States, so the public criticism was not made easily. Throughout the 1980s, the UNHCR urged the United States to legislate a temporary status other than asylum that would serve as a compromise, offering protection to a group of people who temporarily needed it while allowing the country to maintain its immigration priorities. Such a status would also protect Central Americans from deportation to a war zone and possible death.

Immigration legislation in the United States allowed for such a protected status. Extended Voluntary Departure, or EVD, is a discretionary status given to a group of people when the State Department determines that conditions in the sending country make it is dangerous for them to return. Since 1960, EVD has been granted to Cubans, Dominicans, Cambodians, Vietnamese, Hungarians, Romanians, Iranians, Lebanese, Ethiopians, Afghans, Czechs, Chileans, Ugandans, and Poles. But the Reagan administration resisted the idea of EVD for Central Americans on the grounds that the violence in El Salvador, Nicaragua, and Guatemala was

not sufficiently intense or widespread to warrant such an action. Reagan officials also claimed that existing adjudication procedures were sufficient recourse for any “deserving aliens,” and disputed the claims that the deportees faced certain death if returned to their homelands.<sup>24</sup> Of course, for the Reagan administration to admit otherwise was to acknowledge that the governments it supported with millions of tax dollars were despotic regimes that violated human rights. The sheer number of Salvadorans also made EVD impossible. According to administration officials, it was one thing to grant EVD to five thousand Poles when martial law was imposed in Poland in 1981; it was quite another to grant EVD to the half-million Salvadorans believed to be in the country by 1983.<sup>25</sup> State and Justice department officials also worried that the promise of EVD would lure even more people to the United States who would then find a way to remain permanently in this country.<sup>26</sup> Thus, while the United States publicly supported safe haven for nonconvention refugees in theory, the Reagan-Bush administrations excluded the Central Americans from any such consideration. From 1983 to 1990, only 2.6 percent of Salvadoran asylum applicants were successful, and only 1.8 percent of Guatemalan applications for the same period were granted.<sup>27</sup>

## CRACKDOWN

Immigration reform became a priority for the Reagan administration. The increasing number of undocumented aliens—mostly migrants of the multiracial developing world—signified that current laws and enforcement procedures were inadequate. On March 6, 1981, the administration created a task force to review existing practices, and it submitted its recommendations to Congress in a legislative package.<sup>28</sup> After extensive hearings, Senator Alan Simpson (R-Wyoming) and Representative Romano Mazzoli (D-Kentucky) introduced their own immigration reform bills in March 1983 (S 529, HR 1510), which incorporated many of the administration’s proposals. After years of debate and modifications, Congress passed the Immigration Reform and Control Act (IRCA) in 1986 in an attempt to reduce illegal immigration by increasing the border patrol and penalizing employers who knowingly hired undocumented workers.<sup>29</sup> A key provision in the law was an amnesty program that allowed undocumented workers to regularize their status if they could prove that they

had entered the country prior to January 1, 1982. Under IRCA's amnesty program: 277,642 Central Americans were able to legalize their status (60 percent of them Salvadorans; 25.4 percent, Guatemalans; and 6 percent, Nicaraguans, with the remaining numbers coming from other Central American countries).<sup>30</sup> However, the majority of Central Americans arrived in the United States after January 1982, making them ineligible.<sup>31</sup>

Long before IRCA was passed, the Justice Department instructed the Immigration and Naturalization Service (INS) and its Border Patrol to increase their surveillance of the United States–Mexico border and expedite the deportation of undocumented aliens.<sup>32</sup> Of particular concern to the Justice Department were the “frivolous” petitions for asylum that bureaucratically tied up the courts. Officials claimed that Central Americans apprehended by Border Patrol agents had little to lose by applying for asylum, since awaiting their hearing could delay their deportation for up to two years. And once the papers were filed and the legal process set in motion, many of them chose to disappear into US society.<sup>33</sup> The goal, then, was to expedite the deportation process. Bail bonds were gradually raised from a hundred dollars to as much as seventy-five hundred dollars per person in some INS districts to prevent their release into society.<sup>34</sup>

Detention centers along the United States–Mexico border filled to capacity with the people the Border Patrol called the OTMs (other than Mexicans). Immigration attorneys and representatives from religious and human rights groups reported a systematic violation of civil liberties on the part of some INS officials. In some detention centers the list of abuses was considerable: women and children were sexually abused; private correspondence was photocopied for government prosecutors; money and property were stolen; phone calls were taped; refugees were denied access to translated legal forms and documents; and many were denied access to legal counsel. Central Americans were regularly tricked into signing deportation papers. One common tactic was to separate family members and tell one spouse that the other had already signed a request for “voluntary departure.” Investigators found evidence that some refugees were drugged with tranquilizers and then coerced into signing the I-274A form that waived their right to counsel and a deportation hearing, and then immediately scheduled for voluntary departure. And in particularly tragic cases, information about the deportees was sent to security forces in the homeland, leading to the detention, torture, and murder of some of them.<sup>35</sup>

Abuses at detention centers in Texas and California, especially Port Isabel (popularly known as *el corralón*), Los Fresnos, and El Centro, prompted three lawsuits against the INS in the early 1980s: *Núñez, et al., v. Boldin et al.*; *El Rescate Legal Services, Inc., et al., v. Executive Office for Immigration Review, et al.*; and *Orantes-Hernández, et al., v. Smith, et al.* US judges hearing these cases ruled in favor of the plaintiffs, ordering the INS to inform detainees of their right to petition asylum, to meet with legal counsel, and to have their legal rights explained in Spanish and English. According to the courts, no one could be deported or coerced to sign voluntary departure forms without being informed of these rights.<sup>36</sup> But over the next few years, the injunctions were repeatedly violated.

## PUBLIC CHALLENGES TO US POLICY

Polls conducted during the 1980s revealed that, for most Americans, Central American refugees did not rank high on their list of concerns or priorities. A 1984 CBS News poll revealed that only 25 percent of those interviewed knew which faction the United States supported in El Salvador; and only 13 percent knew that the United States was supporting the Contra rebels in Nicaragua.<sup>37</sup> And even during the height of the Iran-Contra scandal in 1987, only 32 percent of Americans knew that Nicaragua was located in Central America.<sup>38</sup> However, a vocal segment of the US population, reminiscent of the anti-Vietnam War protesters,<sup>39</sup> kept Central America on the front pages of US newspapers. They challenged US refugee policy as a means of protesting US foreign policy in Central America. Indeed, one cannot separate the protests against deportation from the larger cultural protest against US involvement in the region. These Americans argued that the United States had a legal obligation to protect the refugees on the basis of domestic precedent and the international conventions to which it was a signatory, and a moral obligation to do so on the basis of its long history of economic exploitation of the region and the role it currently played in supporting the corrupt military regimes and death squads.

Safe haven for Central Americans was the only option, they argued, because forced return subjected the refugees to harassment, torture, and possibly death. The ACLU and the National Center for Immigrants' Rights, working with the Human Rights Commission in El Salvador, compiled a list of more than one hundred Salvadoran deportees who were

murdered after their return in 1981. The ACLU reported that during 1984 there were 119 cases of returnees who were imprisoned, tortured, or murdered.<sup>40</sup> Amnesty International also documented several cases of torture and/or death, including that of twenty-four-year-old Santana Chirino Amaya, deported from the United States to San Salvador and subsequently found tortured and decapitated.<sup>41</sup> While the number of documented murders of deportees seems to have dropped after 1984, thousands of people remained unaccounted for. Some may have returned to Mexico or the United States; others may have relocated to other parts of their country; still others may have met their death at the hands of security police. To refugee advocates, the uncertainty of the deportees' fate in their war-torn homelands was enough evidence that *refoulement* was inhumane. They criticized the Reagan administration for requesting continued aid for El Salvador, to supposedly end the violence, while denying safe haven to the victims of that violence.

During the 1980s, hundreds of articles, books, documentaries and feature films kept Central America in the public consciousness. Think tanks and foundations such as the Inter-American Dialogue and the Carnegie Endowment for Peace commissioned studies that challenged the conclusions of Reagan's National Bipartisan Commission on Central America (the 1984 Kissinger Report). Journalistic accounts such as Joan Didion's *Salvador* and scholarly works such as Walter LaFeber's *Inevitable Revolutions* offered analyses of the conflict for different types of audiences. Television news shows such as *60 Minutes* and *Frontline* aired sympathetic segments on Central America's refugees. Documentaries such as the Academy Award-winning *Americas in Transition*, as well as *Nicaragua: They Will Not Enter*, *El Salvador: Another Vietnam*, *They Speak of Hope*, and *In the Name of the People*, among others, portrayed the disastrous consequences of US policy. Hollywood contributed with feature films such as *Under Fire*, *Salvador*, *El Norte*, and *Romero* and tried to inform a mass—and generally apathetic—American audience that tended to favor commercial blockbusters like *Rambo* and *Back to the Future*. Even one of the television networks experimented with a Central American theme with its short-lived sitcom *I Married Dora*, which focused on an architect's marriage to an illegal Salvadoran housekeeper to help her avoid deportation.

Dozens of NGOs protested US foreign policy in the Central America, including the Committee in Solidarity with the People of El Salvador

(CISPES), the Washington Office on Latin America; Witness for Peace; the Lawyers' Committee against US Intervention in Central America; Nurses against US Aggression; and the National Central America Health Rights Network. These groups engaged in different types of activism: some collected and transported food and medical supplies for the people of Central America; others sponsored "fact-finding" trips for scholars, legislators, and journalists. They held meetings, rallies, and protests to disseminate information on the wars in Central America, and they organized letter-writing campaigns and testified before Congress. The Washington Office of Latin America, for example, sponsored speaking tours of human rights activists.<sup>42</sup> And the ecumenical Witness for Peace recruited over two thousand Americans to serve as "unarmed human shields" in Nicaragua: groups of volunteers stationed in towns on the Nicaragua-Honduras border to document, and hopefully deter, attacks by the US-funded Contras.<sup>43</sup> In 1984, more than a hundred NGOs participated in a mock trial of Reagan, Bush, Kirkpatrick, and Kissinger, at the UN's Dag Hammarskjold Plaza, to protest the administration's Central America and nuclear policies. They scheduled their protest to coincide with anti-US protests in London and Osaka, to maximize media attention and increase international pressure.<sup>44</sup>

Together with more established international NGOs such as Amnesty International and Americas Watch, these organizations presented a view of the Central American conflict that was quite different from that promoted by the Reagan and Bush administrations. The organizations came under the surveillance of the FBI and other law enforcement agencies, its members harassed and libeled. The FBI interrogated Americans who traveled to Central America; the Customs Department confiscated their diaries and other personal documents; and the IRS audited them or the low-budget advocacy groups they belonged to. On at least fifty occasions, in eleven different cities, the offices of legal aid groups and organizations that challenged administration policies were broken into, their files on refugees, volunteers, and financial donors stolen, their phones tapped and mail intercepted.<sup>45</sup> No one was ever arrested for these activities—indeed the FBI refused to even investigate—but the controversy eventually prompted a congressional investigation. Hearings and declassified documents eventually demonstrated that the CIA, the US State Department, and the FBI collaborated with the Salvadoran National Guard and US-based Salva-

doran right-wing activists and security forces to harass Central America activists.<sup>46</sup> In 1988, CISPES and four other organizations filed a class action lawsuit against the FBI, alleging that from March 1983 to June 1985, the FBI spread false information about their group, linking it to Cuban and Salvadoran communists and to assassination attempts and other forms of terrorism, in order to hurt its membership and fund-raising drives.<sup>47</sup>

Religious groups played a central role in the protests of the 1980s: at the grassroots level assisting the refugees; and nationally, as part of an ecumenical movement that lobbied to change policy. As early as 1980, the US Catholic Conference, of over ten thousand members, called on Congress to withhold military aid to El Salvador because its government was "an instrument of terror and repression."<sup>48</sup> Prominent theologians, peace activists, and religious leaders representing a variety of denominations wrote and spoke out against US policy, among them Daniel Berrigan, Elie Weisel, and William Sloane Coffin. Roman Catholic religious orders such as the Maryknolls, the Paulists, and the Jesuits underwrote films and documentaries about Central America, published biographies of church workers assassinated by the death squads, and used their newsletters and periodicals to provide alternative interpretations of events in the region. Religious groups organized petitions and letter-writing campaigns and sent representatives to testify before Congress. A letter to the Subcommittee on Immigration, Refugees, and International Law from the National Council of Churches of Christ stated this general consensus:

First we hold that the flow of war refugees and asylum-seekers into our country will not cease, no matter what measures are taken along our borders, until the root causes of the flight are addressed. Deep poverty, years of violence and human rights atrocities, political instability and civil war continue to force people to seek safety and stability in the United States. Second, until the root causes of the flow can be addressed, our country must find a way to offer safe haven to Central Americans. . . . Third we would ask that restrictive measures directed against Central American asylum-seekers and war refugees be halted. No person fleeing such conditions should be returned, nor should they be detained. Full due process in asylum adjudication should be observed. In addition, Central Americans should be authorized to work legally, so that they can support their families and themselves with dignity until the day when they can return to their homelands.<sup>49</sup>

Much of their energy focused on the campaign to win EVD status for Central Americans, especially for the Salvadorans, who were believed to be in the most desperate situation.<sup>50</sup> The National Council of Churches of Christ signed a resolution urging *non-refoulement*, temporary safe haven, and fair and expeditious consideration for all those requesting political asylum.<sup>51</sup> Religious groups successfully pressured Western Airlines, under contract with the INS, to end the “death flights” that transported Salvadoran and Guatemalan deportees (the INS turned to the Salvadoran airlines, TACA, instead).<sup>52</sup> Prominent religious leaders also made EVD a personal crusade. Roman Catholic archbishop Joseph Fitzpatrick of Brownsville publicly condemned the human rights violations in INS detention centers and called on President Reagan to grant amnesty to all Central American refugees.<sup>53</sup> William Sloane Coffin, of Manhattan’s Riverside Church, chastised the government and American apathy:

It is an evil thing forcibly to deport innocent civilians to possible detention, torture, and death. Were the US government forcibly returning Soviet Jews to the Soviet Union, or Poles to Poland, neither the Congress nor the American people would stand for it. Why then do so many sit idly by when innocent Salvadorans are being returned to a country whose death squads long ago would have killed Lech Walesa? Why do they tolerate the forceful repatriation of Guatemalans to a government widely viewed as the most brutal in the entire Western hemisphere?<sup>54</sup>

EVD had limited support in the US Congress. On April 7, 1981, the House passed a nonbinding resolution urging that EVD “be granted to El Salvadorans in the US whose safety would be endangered if they were required to return to El Salvador.”<sup>55</sup> Two more “sense of Congress” resolutions were passed by late 1983, and eighty-nine members of Congress signed a public letter to the secretary of state and the attorney general requesting that EVD be granted to Salvadoran nationals. In 1983, Senator Dennis DeConcini (D-Arizona) and Representative Joseph Moakley (D-Massachusetts) introduced the first safe haven legislation for Salvadorans, which was debated for the next seven years. The bill passed the House on five different occasions but did not reach the Senate floor until 1990.



Community groups along the United States–Mexico border were at the frontlines of the refugee assistance network and mobilized to provide the Central American refugees with shelter, medical attention, and legal and psychological counseling. The Border Association for Refugees from Central America provided food, shelter, and clothing to the refugees; raised funds to pay the bail bonds of detainees at Port Isabel and other detention centers; and located sponsor families for refugee children alone in this country.<sup>56</sup> Groups such as Proyecto Libertad, El Rescate, the Central American Refugee Center, the Rio Grande Defense Committee, Texas Rural Legal Aid, and the Immigrant and Refugee Rights Project provided free legal counseling and representation. With counsel, refugees could delay deportation for a year or more and, at times, secure release into US society with a work permit while they awaited their hearing. Without legal assistance, detainees were usually deported within a month.

Shelters for the refugees sprang up throughout the Southwest. In the border town of San Benito, Texas, just outside the Brownsville city limits, the Roman Catholic diocese operated Casa Oscar Romero, one of the most important symbols of popular resistance to INS policy. Founded in 1981 by the Missionaries of Jesus, Casa Oscar Romero was a four-room house that initially sheltered a handful of refugees a night, including some detainees who could not be accommodated at the Port Isabel detention center; by 1986, it housed up to six hundred people per night. The Diocese of Brownsville assumed financial responsibility for the shelter, committing an average of sixty thousand dollars a year for operational expenses. Employees and volunteers at Casa Oscar Romero played a key role in the legal battles against the Justice Department in the 1980s.<sup>57</sup> Like CISPES, most of these groups and shelters came under government surveillance. From 1983 to 1985, the FBI monitored their activities and photographed and investigated visitors, clients, office workers, volunteers, and financial donors.<sup>58</sup>

During the 1980s new NGOs emerged to assist the Central Americans who dispersed to towns and cities throughout the country: CASA in Tacoma Park, Maryland, VIVE in Lackawanna, New York, Casa Marianella in Austin, and Casa Juan Diego in Houston were just a handful of organizations that offered counseling, legal aid, job referrals, and other forms of emergency assistance.

By the mid-1980s, thousands of Americans were engaged in one of the most important acts of civil disobedience of the late twentieth century—the sanctuary movement—a grassroots resistance movement that protested US foreign policy through the harboring and transporting of refugees, in violation of immigration law.

The movement began, appropriately enough, along the United States–Mexico border. Beginning in 1980, the local press reported a growing number of Central Americans among those apprehended by the Border Patrol.<sup>59</sup> Community groups that assisted immigrants also noticed a steady increase in the number of Central Americans arriving at their offices, asking for help. Those fortunate enough to survive the border crossing told horrible tales of the wars in their homelands: aerial bombardments that destroyed their towns and villages; friends and relatives kidnapped by guerilla groups or murdered by government security forces; threats of rape, mutilation, and death if they challenged the existing order. Throughout the Southwest, churches, soup kitchens, shelters, and legal aid offices that assisted Mexicans, Chileans, Cubans, and other immigrants stretched already tight resources to assist the needs of the growing number of Central Americans who now arrived on their doorsteps.

It is out of this context that the movement called sanctuary emerged. During the summer of 1981, Jim Corbett, a Quaker goat rancher in Tucson, Arizona, began a personal campaign to assist the Central Americans detained in INS prisons. When his property could no longer accommodate the dozens of refugees he bonded out of prison, he appealed to his friends in the Tucson community for help. Corbett envisioned a network of “safe houses” for the refugees similar to the Underground Railroad that hid escaped slaves in the antebellum period. He traveled to Nogales and other cities in Mexico, and established contacts to assist with his secret network. They agreed to find ways to transport Central Americans across the border to the United States, where they had a slightly better chance of securing asylum. As a longtime resident of the borderlands and fluent in Spanish, Corbett was familiar with the terrain and the various INS checkpoints, and volunteered to direct refugees across the safest routes to sanctuary sites. By the fall of 1981, this new underground movement—the tucson refugee support group—was in place.<sup>60</sup>

As the safe houses filled up, Corbett asked his friend Rev. John Fife, of Southside Presbyterian Church, if the church might serve as a sanctuary site. Like so many churches in the borderlands, Southside was committed to social justice projects in Tucson, among them the bail bond project that raised funds for the Central Americans detained in US prisons. As a member of the Tucson Ecumenical Council Task Force on Central America, Southside church members met regularly to study and discuss the scriptures and liberation theology and to read and learn about the situation in Central America. They discussed the proper course of action for a people of faith, especially in light of the eventual deportation of so many of the refugees whom they bonded out of prison but who were unsuccessful in securing asylum. The congregation carefully debated Corbett's request. They studied the history of sanctuary, both in its Judeo-Christian and American civic forms, and debated the legal consequences of practicing this tradition if they made a commitment to house the refugees. In November 1981, the church session voted in favor of serving as a safe house for the Central American refugees.

Meanwhile, hundreds of miles away, in the San Francisco Bay area, several local church congregations were discussing the same issues and also debating the idea of sanctuary. They, too, voted to establish safe houses for Central American refugees. Some members proposed that they enlist the aid of the news media and make their activities public, both as a means of raising American consciousness about Central America and as a means of combating the INS discourse that labeled them as smugglers and law-breakers.<sup>61</sup> In January 1982, they voted to make a public declaration of sanctuary and contacted the Tucson volunteers to coordinate their actions. On March 24, 1982 (the second anniversary of Archbishop Romero's assassination), Southside Presbyterian and five churches in Berkeley, California, publicly declared themselves to be sanctuaries for Central American refugees. In an open letter to Attorney General William French Smith, the Reverend Fife explained their actions: "We take this action because we believe the current policy and practice of the US government with regard to Central American refugees is illegal and immoral. We believe our government is in violation of the 1980 Refugee Act and international law by continuing to arrest, detain, and forcibly return refugees to terror, persecution, and murder in El Salvador and Guatemala."<sup>62</sup>

During the next few years, over two hundred churches, temples, and

synagogues across the country followed suit, representing a variety of denominations: Baptists, Episcopalians, Roman Catholics, Lutherans, Mennonites, Methodists, Presbyterians, Quakers, Unitarians, and conservative and reform Jews. California was home to the largest number of church-declared sanctuaries (one hundred); in the San Francisco Bay area alone, over forty different groups provided legal and charitable assistance to the estimated eighty thousand Salvadorans living in the city.<sup>63</sup> The support network also encompassed hundreds of churches and religious groups in the United States, Mexico, and Canada that assisted the sanctuary sites in their work, either with volunteers or with financial and other material contributions. Thus, the movement was transnational in both composition and influence. Over twenty US religious bodies endorsed the sanctuary movement.<sup>64</sup> A resolution passed by the National Council of Churches of Christ urged member communities to “give serious consideration to the sanctuary movement as an expression and embodiment of the Christian’s duty to the suffering, and to afford affirmation and support to those persons and congregations who choose to pursue this difficult path.”<sup>65</sup>

For some sanctuary workers, the goal was to hide the refugees until US policy changed or until they were able to return to their countries of origin. For others, the goal was to transport them to Canada, which had a more liberal asylum policy. For those refugees who preferred the latter, Houston and Los Angeles served as “funnel” cities, where refugees congregated to await transport to Canada. It was financially impossible to pay their air fares to Toronto or Montreal (the cities with the largest Central American populations), so the refugees were transported to various safe houses across the country until they reached the United States–Canada border. There they crossed at the relatively unprotected stretches of border, such as the North Dakota–Manitoba boundary line, and were met by Canadian sanctuary workers; or they crossed at busy checkpoints and immediately filed for asylum. By the late 1980s, there were three principal routes to Canada: one route took refugees across the Midwest, with stops in Little Rock, St. Louis, and Chicago before they reached the border crossings at Detroit and Buffalo. Another well-traveled route had refugees fly from Houston to New York City, then take a bus to Plattsburgh, where they crossed the border at Lacolle, Quebec, and then on to Montreal. The third route, took refugees from Los Angeles through San Francisco and Seattle, ending in Vancouver.<sup>66</sup>

Beginning in 1982, the Chicago Religious Task Force on Central America served as coordinator and clearinghouse for much of this vast national network.<sup>67</sup> The CRTF (which eventually formed the National Sanctuary Alliance) distributed manuals (i.e., the *Organizer's Nuts and Bolts*) instructing churches on ways to assist the movement. The CRTF and its member groups organized activities that would guarantee media attention: They organized speaking tours for visiting activists from Central America, who gave eyewitness accounts of what was happening in their countries. They trained refugees for public speaking so that they could give *testimonios*. They organized ecumenical prayer services, candlelight vigils, processions, and caravans to honor the victims of war. They sponsored lectures, concerts, and festivals of Central American arts and crafts. These activities no doubt played a critical role in focusing attention on US policies, but it was the rank-and-file volunteers in individual communities—many of them housewives and retirees—who engaged in the riskiest activities: sheltering refugees or transporting them to safe houses or across the border into Canada.<sup>68</sup> And they worked anonymously and quietly, without the praise of sympathetic journalists—and oftentimes without the approval of the CRTF and other coordinating boards who wished to keep the movement closely supervised.

Those involved in the underground claimed to be following not only a Judeo-Christian tradition but also an American civic tradition. Examples of sanctuary could be found in the American Revolutionary War, the antebellum and Civil War periods, and more recently, during the Vietnam era, when dozens of churches hid conscientious objectors from arrest. Critics of sanctuary, however, claimed that this movement seemed more concerned with challenging US policy in Central America than with addressing the physical and emotional needs of the refugees. If the refugees were their primary consideration, they argued, they could do their work covertly, without the media hoopla and the open confrontation that risked the refugees' arrest by INS agents. One prominent religious leader explained his opposition:

I consider it immoral to practice confrontational civil disobedience where third parties are involved who will share in the punishment if the public authorities choose to act against the one who is practicing civil disobedience. If a priest or minister, after proclaiming publicly that

his church will harbor refugees illegally in this country, has his church raided by INS or other federal authorities, it will be the refugees themselves who will suffer the greatest penalty: deportation back to their country, where they may be killed. The priest or minister will likely escape with a light fine or probation.<sup>69</sup>

But as in liberation theology, sanctuary workers believed that the spiritual and the political were inseparable. One could serve the refugees while challenging the political order. The primary goal was to rouse an apathetic population who cared little about the world outside its national borders and who gave tacit support to immoral and illegal government actions.<sup>70</sup> This raising of consciousness, they argued, would ultimately lead to a change in policy.

As the movement expanded, sanctuary workers inevitably disagreed over the organization of the underground and its strategies. Two separate streams emerged within the movement (each with its own set of dissenters). One stream, represented by the Tucson contingent, favored localized consensus, while the other stream, represented by the CRTE, favored a top-down approach, with an elected board setting national goals and policy. One scholar of the movement attributed the divergent views to the Quaker/Congregationalist origins of the Tucson group versus the largely Catholic orientation of the CRTE.<sup>71</sup> Sanctuary workers also disagreed about fundamental questions, such as whether their work was civil disobedience or civil initiative.<sup>72</sup> And they disagreed on which refugees to assist through the underground. Some sanctuary workers, for example, felt that refugees who had lived in Mexico for a period of time before moving to the United States should be automatically disqualified from the underground because they had already found safe haven elsewhere. Others wanted to restrict the underground to those individuals fleeing violence, not the perpetrators (army deserters, for example, who might have played a role in killing their compatriots).<sup>73</sup> And some opposed assisting Nicaraguans for ideological reasons or because they incorrectly assumed that Nicaraguans were either Somozistas or did not need assistance because immigration law favored them.<sup>74</sup> Many sanctuary workers, however, vehemently opposed any litmus test or screening procedures, because in designating some groups as “worthier” than others they would be as guilty as the US government. The disagreements over these various issues were fractious enough to force

some groups to sever association with a member group or with national coordinating groups such as the CRTF.<sup>75</sup>

Church groups and other non-governmental organizations offered their own guidelines on sanctuary for those who disagreed with the CRTF's philosophy and/or strategy. The American Friends Service Committee, the Church World Service Immigration and Refugee Program, the Inter-Religious Task Force on El Salvador and Central America, and the Lutheran Immigration and Refugee Service jointly published a manual entitled *Seeking Safe Haven: A Congregational Guide to Helping Central American Refugees in the United States*. It offered practical advice on topics such as organizing a house meeting, releasing refugees from detention centers, legal rights, and the individual and institutional sponsorship of refugees. For those interested in shaping policy, the manual offered advice on lobbying, media work, and public education.

Officials of the Reagan administration tried to discourage the growth of the sanctuary movement by dismissing this civic tradition and reminding activists that the principle of sanctuary was not recognized in common or statutory law. Whenever a church congregation wrote to inquire about the legality of the movement, a Justice Department official emphatically warned that clergy and church workers were not exempt from prosecution. Section 274(a) of the Immigration and Nationality Act identified as a violator anyone who "willfully or knowingly conceals, harbors, or shields from detection . . . any alien . . . not duly admitted by an immigration officer or not lawfully entitled to enter or reside in the United States."<sup>76</sup> Violators faced fines of up to two thousand dollars and/or imprisonment for up to five years for harboring or smuggling, and fines of ten thousand dollars and/or five years imprisonment for conspiracy to harbor. A letter drafted specifically in response to such questions included this reminder:

We are a nation of law. There is an existing statute under which a person can claim and be granted asylum if the individual can prove personal persecution. The statute provides a right to counsel and a hearing in an immigration court, as well as a right to appeal in the Federal courts. We believe that individuals who wish to aid persons from Central America can serve them best by encouraging and assisting them to submit their claims for review within the existing system for asylum adjudications. All claims submitted in accordance with the law receive a full and fair adjudication within the system established for that purpose.<sup>77</sup>

During the 1980s, the work of these religious groups and the influence they held over public opinion posed a serious threat to US policy, and not surprisingly the administration tried to undermine their influence. Just as Kirkpatrick, Haig, and others portrayed some of the assassinated clergy of Central America as guerrilla sympathizers who got what they deserved, Justice Department officials portrayed sanctuary workers and other peace activists as naive and misguided at best, political extremists and terrorists at worst. The conservative Institute for Religion and Democracy branded liberation theology a Marxist plot to undermine capitalism and the geopolitical order. It criticized sanctuary workers for using religion to manipulate the public to support their political agenda, and pressured US churches to sever ties to socially active church groups in Latin America and at home.<sup>78</sup> In Los Angeles and other cities, tax assessors warned churches that they would be stripped of their tax-exempt status if they provided shelter to Central Americans.<sup>79</sup> In congressional testimony, the Center for Constitutional Rights reported a “growing number of . . . FBI visits, IRS audits, customs difficulties, mail tamperings, and break-ins, directed against . . . people involved in the sanctuary movement.”<sup>80</sup>

But sanctuary workers were willing to risk their freedom because they believed that they were answering a higher call. When Father Thomas Davis was arrested by the Border Patrol for transporting seven Nicaraguans and six Guatemalans from Laredo to Corpus Christi, Texas, he responded: “I felt we had a special obligation to these people. You have to do something as a Christian. We were caught between the laws of man and the laws of God. I chose the laws of God.”<sup>81</sup> The chairperson of the Wellington Avenue Church in Chicago responded to the threats of fines and imprisonment: “Dangerous times call for risky responses. The consequences that may happen to Wellington are minimal in comparison to the pain that happens every day to the people of El Salvador and Guatemala.”<sup>82</sup> Sister Darlene Nicgorski, convicted for her sanctuary work in Arizona said: “When all is said and done, I would rather be judged for having helped a refugee than for having defined what one is.”<sup>83</sup>

The issue of sanctuary did divide religious congregations, however, as members debated the moral, theological, and legal implications of challenging the government.<sup>84</sup> When clergy took a more liberal stance than their congregations were willing to accept, members defected, which brought the inevitable reprimand from superiors—and in some cases,



expulsion—for neglecting their pastoral duties.<sup>85</sup> People of faith looking to the church for guidance were often frustrated, since many churches chose not to speak out on the issue of sanctuary on the advice of their attorneys. As the largest Christian denomination in the border states, and in the country, Roman Catholics found sanctuary particularly confusing and divisive. Governing bodies such as the US Catholic Conference and the National Council of Catholic Bishops condemned US actions in Central America but chose to remain silent on sanctuary—a response some interpreted as tacit approval of the movement.<sup>86</sup> Even Pope John Paul II gave mixed signals to Catholics. During a 1987 visit to the United States, he praised the “great courage and generosity” of those who protected illegal Central Americans from deportation, but when the press interpreted his statement as an endorsement of sanctuary, some church leaders asked him to clarify that he did not endorse lawbreaking.<sup>87</sup> Individual nuns and priests, especially members of the more liberal Maryknoll, Franciscan, and Jesuit orders, were more likely to take a public position on sanctuary, often risking censure from bishops more concerned with protecting the church’s uneasy ties with the state.<sup>88</sup>

The Justice Department began its surveillance of the sanctuary movement in 1982, and a number of individuals were indicted soon after. Their penalties varied, depending on the location of the trial and the sympathies of the judge and jury. In 1984, in Brownsville, Texas, Stacey Lynn Merkt, an employee at Casa Oscar Romero, was sentenced to 269 days in prison. She became the first sanctuary worker to be imprisoned (Amnesty International declared her a prisoner of conscience). Jack Elder, the director of Casa Oscar Romero, was convicted on six counts of conspiracy and transporting illegal aliens through south Texas. He served 150 days in a halfway house for parolees. In 1985, Elder’s successor at Casa Oscar Romero, Lorry Thomas, was sentenced to two years in prison for transporting a Nicaraguan refugee. The arrests did not stop sanctuary activities, however, and like Merkt and Elder, many of those imprisoned were repeat “offenders.”<sup>89</sup>

Refugee workers complained that they were singled out for prosecution because they questioned Reagan’s policies on Central America, while the coyotes who smuggled illegal aliens from Mexico for wealthy US ranchers to employ were rarely harassed—a charge that was, of course, denied by the Border Patrol.<sup>90</sup> “It seems strange that with all the illegal

aliens coming through the valley every day that the authorities would put the finger on my people and no one else," remarked Bishop Joseph Fitzpatrick of Brownsville.<sup>91</sup> As sanctuary workers were arrested, others emerged to take their place. The Rio Grande Defense Committee and the Chicago Religious Task Force established the Border Witness Program, small groups of volunteers who worked for two-week stretches guiding refugees to the appropriate agencies, volunteering at shelters like Casa Oscar Romero, and monitoring Border Patrol activities at bus stations, airports, and highway checkpoints.<sup>92</sup>

The biggest sting against the sanctuary movement occurred in Tucson, Arizona, in 1984–85 in the covert Operation Sojourner, which led to the indictment of sixteen sanctuary workers. The FBI infiltrated four men, two paid informants and two INS officers, into various sanctuary sites, including Southside Presbyterian Church. The two paid informants, Jesús Cruz and Salomón Delgado, had been previously arrested for smuggling illegal immigrants for a Florida rancher.<sup>93</sup> Posing as concerned volunteers, they gained the trust of the sanctuary workers and attended their meetings, where they taped the conversations. With the one hundred tape recordings gathered over a ten-month period, the Justice Department charged sixteen people, including Corbett and Fife, with seventy-one counts of conspiracy and transporting/harboring illegal aliens.<sup>94</sup> (Charges against five were eventually dropped.) Over eighty other people—refugees and the church workers who had transported them—were arrested as coconspirators.<sup>95</sup>

At the pretrial hearings, US prosecutor Donald Reno introduced a motion to block any evidence relating to the defendants' religious and humanitarian motives, US foreign policy in Central America, human rights abuses in the region, as well as any information on the asylum process—to strengthen the government's case that sanctuary workers were simply smugglers using religion as a cover-up for their criminal actions.<sup>96</sup> (Indeed, the prosecution argued that the defense should not even be allowed to refer to the Central Americans as refugees.) The defense counsel, in turn, introduced a motion to dismiss all charges on the basis of the defendants' constitutionally protected religious beliefs and the illegal infiltration of church activities that violated the separation between church and state.<sup>97</sup> The judge ruled in favor of the prosecution, and the trial began. After six months of evidence and testimonies, the jury found eight of the eleven

defendants guilty of various charges, including conspiracy. While deliberating on the sentences, Judge E. H. Carroll received hundreds of letters urging leniency, including one signed by forty-seven members of Congress.<sup>98</sup> In the end, all were given suspended sentences of three to five years probation. (Three years later, a federal appeals court upheld their conviction.)<sup>99</sup>

The Justice Department claimed success. In an interview, INS commissioner Alan Nelson remarked, "Above all, this case has demonstrated that no group, no matter how well-meaning or highly-motivated, can arbitrarily violate the laws of the United States."<sup>100</sup> Prosecutor Reno called the verdict "the death knell for the sanctuary movement."<sup>101</sup> However, if the Justice Department hoped to intimidate sanctuary workers into silence, the plan backfired. The arrests and trial dominated television, radio, and the printed press. Radio networks such as Pacifica and NPR covered the trial, as did international networks such as the BBC. Dozens of magazines, newspapers, and television stations covered the story. Even newspapers like the *Los Angeles Times*, which generally favored tougher immigration controls, criticized the government's infiltration of the movement. One editorial cartoon showed a Border Patrol agent arresting Jesus Christ and his apostles.

The public outcry against Operation Sojourner was significant. "The trial did us a lot of good," said one Arizona sanctuary worker.<sup>102</sup> Over two hundred new sanctuaries emerged during the trial of the eleven activists. By December 1987, the number of sanctuaries had reached 450, including two states that made official pronouncements, twenty-eight cities, 430 distinct religious bodies in thirty-nine states, and over 70,000 active participants.<sup>103</sup> Among the most visible of the new participants was the Reverend Richard Sinner, brother of George Sinner, governor of North Dakota at the time, who felt "called" to transport refugees across the North Dakota–Manitoba border to his contacts in Canada.<sup>104</sup> The Inter-American Symposium on Sanctuary, held in Tucson a week after the arrests, drew over fifteen hundred people rather than the expected two or three hundred.<sup>105</sup> Two hundred representatives from Christian and Jewish congregations traveled to Washington to demand a congressional investigation of the Justice Department's surveillance and intimidation practices; and eighty religious groups filed a lawsuit against the US government. In the years after the trial, no other workers of the sanctuary

movement were arrested, partly because members became more savvy about their activities, and partly because the Reagan and Bush administrations could not afford more negative publicity about their Central American policy.<sup>106</sup>

The fallout of Operation Sojourner was felt for years to come and even had a transnational effect. International attention on the Tucson trial revived the sanctuary debate all over Europe, especially as refugees in various countries there appealed for sanctuary to avoid deportation.<sup>107</sup> Sanctuary workers received a number of honors. In December 1986, former president Jimmy Carter and South African bishop Desmond Tutu presented Reverend John Fife the Rothko Chapel Award for Commitment to Truth and Freedom (and six years later, Fife was elected the national leader of the Presbyterian Church USA). Sister Darlene Nicgorski, one of the eight convicted, was named one of *Ms.* magazine's women of the year. In May 1988, four hundred church delegates from forty-two countries met in France and passed a resolution supporting those convicted in Tucson.<sup>108</sup>

In the end, the sanctuary sites of the 1980s assisted only a small percentage of the hundreds of thousands of Central Americans who crossed over to the United States (one source estimated two thousand were assisted),<sup>109</sup> in large part because word spread through the informal immigrant networks that media attention brought government surveillance.<sup>110</sup> But the public debates that resulted from sanctuary ultimately facilitated the legal changes that gave Central Americans certain protections in US society. The sanctuary movement also served Americans, albeit in a very different fashion, by focusing attention on constitutional and philosophical issues important to a democratic society.

## THE LEGAL BATTLE FOR ASYLUM

State policies toward the Central American refugees inspired a staggering number of lawsuits during the 1980s and early 1990s. The first lawsuits filed on behalf of the refugees were those trying to address the civil rights violations of detainees in INS prisons. *Noe Castillo Núñez, et al., v. Hal Boldin, et al.*, was a class action suit filed in 1981 on behalf of Salvadorans and Guatemalans detained at the INS facility at Los Fresnos, Texas, who had been denied basic rights, including the right to meet with legal coun-

sel prior to and during all legal proceedings. The court issued an injunction in January 1982 prohibiting the INS from denying detainees their rights.<sup>111</sup>

In the lawsuit *Orantes-Hernández, et al., v. Smith, et al.*, the Salvadoran plaintiffs, representing detainees at INS detention centers at El Centro and Chula Vista, California, issued a nationwide challenge to the adjudication process. These plaintiffs claimed that they had fled political persecution, torture, and death in El Salvador in hopes of finding refuge in the United States, and instead met with “a summary removal process . . . carried out with little or no regard for the procedural or substantive rights of aliens under United States immigration law.” They charged the INS with failing to advise detainees of their rights to counsel, to apply for asylum, and to have a hearing before deportation, as well as using coercive tactics to force them to accept “voluntary departure.” On April 30, 1982, the court granted the motion for provisional class certification and issued a preliminary injunction against the INS.<sup>112</sup> A permanent injunction was issued in 1988 and upheld in 1990.<sup>113</sup> However, the INS continued to violate the detainees’ rights to due process.<sup>114</sup> As late as 1989, attorneys filed class action suits on behalf of Central American refugees. In *El Rescate Legal Services, Inc., et al., v. Executive Office for Immigration Review, et al.*, the plaintiffs charged the Executive Office with failing to provide defendants with full Spanish interpretation of court proceedings, thus depriving them of due process. In November 1989, the court ruled in favor of the plaintiffs.<sup>115</sup>

A 1987 Supreme Court decision in *Immigration and Naturalization Service v. Cardoza-Fonseca* also revised the adjudication process and reinterpreted the 1980 Refugee Act. The case involved a Nicaraguan citizen who entered the country illegally in 1979. The plaintiff testified that her brother, with whom she had fled Nicaragua, had been tortured and imprisoned there because of his political beliefs. Even though she had not been politically active herself, she petitioned for asylum on the grounds that her brother’s status and her own opposition to the Sandinista government would cause her to be tortured if she were forced to return. An immigration judge found that she was not entitled to relief because she had failed to establish a “clear probability of persecution.” The Board of Immigration Appeals upheld the decision, but the US Court of Appeals, Ninth Circuit, reversed it. Upholding the decision by the appeals court, the Supreme Court ruled that the “well-founded fear” standard of proof for refugee

status (section 208[a] of the 1980 Refugee Act) was not equivalent to the “more likely than not” standard required for the withholding of deportation under section 243(h). Congress had used a broader language to determine the category of refugee than it used to define the class of aliens who had a right to relief from deportation.<sup>116</sup> Asylum officers were henceforth advised to evaluate applications in light of general conditions in the country of origin to see if “there is a pattern or practice of persecuting the group of persons similarly situated.”<sup>117</sup> To assist in these efforts, the INS established the Resource Information Center to provide adjudicators with information from a wide variety of sources, not just the traditional Department of State bulletins.

None of these lawsuits, however, halted the deportation of Central Americans; they just delayed the inevitable. As one official from the Asylum Policy and Review Unit stated, the avoidance of guerrilla activities did not serve as grounds for asylum.<sup>118</sup> As many as half of all asylum applicants (regardless of country) were unable to retain their own counsel, which made it three times more likely that they would be denied asylum.<sup>119</sup> Salvadorans were regularly deported despite pleas from Salvadoran government officials that accommodating the returnees would destabilize the country. In May 1987, President José Napoleón Duarte personally wrote Ronald Reagan listing several reasons why a stay in deportations was necessary, among them that El Salvador’s fragile, war-torn economy had become dependent on the 350–600 million dollars in annual remittances that expatriates sent relatives back home.<sup>120</sup> However, US policymakers remained unmoved. During the Bush administration, the Justice Department announced it was streamlining the adjudication process to expedite deportations. The goal was to interview as many as four hundred asylum applicants a day and decide 95 percent of the cases within three hours of completion of the interview.

At the Harlingen, Texas, office, one of the busiest in the country, at least four INS examiners evaluated the same batch of petitions each day to avoid irregularities that might tie up the courts. In addition, the government terminated its policy of granting one-year work permits to asylum applicants and ordered them to remain in the INS district in which they had originally petitioned for asylum. Those individuals whose petitions were denied were immediately detained until deportation was possible. Detention centers were expanded to accommodate the overflow: at Port Isabel, tents were

erected within the prison compound to increase the holding capacity to ten thousand. Of the 617 Central Americans who applied voluntarily for asylum at the Harlingen office between February 21 and April 5, 1989, only 58 were granted asylum.<sup>121</sup> However, this more rigorous enforcement of policy did not discourage Central Americans from crossing the border; it only discouraged them from voluntarily applying for asylum. Between January and May 1989, voluntary asylum applications had dropped from as many as five hundred a day to fewer than ten a day.<sup>122</sup>

The decisions handed down in the various lawsuits against the INS did serve to buttress a larger class action lawsuit against the United States government filed by eighty religious and refugee assistance groups in 1985, with the goal of securing asylum for Salvadorans and Guatemalans. *American Baptist Churches in the USA, et al., v. Edwin Meese III and Alan Nelson* (popularly known as the ABC lawsuit) combined the suits of two separate groups of plaintiffs. The first group represented sanctuary workers who sought an injunction against government interference with their First Amendment right to the free exercise of religion. The second group, the refugee service organizations, sought an injunction against the deportation of Salvadorans and Guatemalans, as well as a "declaratory judgement that persons fleeing war, persecution, and widespread human rights violations in Guatemala and El Salvador are entitled to temporary refuge within the United States until such time as those conditions no longer exist in those countries."<sup>123</sup> The government's motion to dismiss the case was denied in 1987, and the case proceeded through the courts.

In January 1991, a settlement agreement was reached in the ABC lawsuit that further assisted Salvadorans and Guatemalans in their efforts to remain in the United States.<sup>124</sup> Among the requirements of the settlement were: (a) Salvadorans and Guatemalans still in the United States, whether previous petitioners for asylum or not, were entitled to a new adjudication process to be overseen by a newly trained corps of asylum officers; (b) petitioners were entitled to work authorization while they awaited a decision in their case; and (c) asylum officers were not allowed to consider prior denial of asylum in their deliberations, or the petitioner's country of origin, or the State Department's opinions and recommendations, but *were* allowed to consider human rights reports from non-governmental agencies such as Amnesty International. The settlement agreement stipulated that "the fact that an individual is from a country whose govern-

ment the United States supports or with which it has favorable relations is not relevant to the determination of whether an applicant for asylum [has] a well-founded fear of persecution.”<sup>125</sup> The ABC settlement overturned more than 150,000 cases, granting new trials to Salvadorans who had entered the United States before September 19, 1990 and all Guatemalans who had entered before October 1, 1990.

As a parallel development, Congress passed the omnibus Immigration Act of 1990, which included the statutory basis for safe haven through a *temporary protected status*. Over two hundred thousand Salvadorans living in the United States registered for TPS.<sup>126</sup> One month before their TPS was set to expire on June 20, 1992, Salvadoran president Alfredo Cristiani contacted the Bush administration and requested that the policy be extended until the country was better prepared to deal with the tens of thousands of its countrymen scheduled to return. However, on the expiration of TPS, Salvadorans became eligible for a new status, Deferred Enforced Departure (DED), which delayed deportation for one year. In 1993, DED was once again extended—first to December 1994, and then to March 1996. Under the terms of the ABC settlement, Salvadorans were eligible to apply for asylum once their DED status expired.

With TPS, DED, and the new asylum adjudication process, Salvadorans now had more vehicles through which to negotiate their legal stay in the United States. For sanctuary workers, legal counsel, and all those involved in the protests of the 1980s, these developments were a significant victory. Few newspaper articles and editorials focused on the fact that the Nicaraguans and Guatemalans had fewer options. For most Americans, the term *Central American refugee* was synonymous with Salvadorans, who were by far the largest Central American group in the United States and the group believed to be in greatest need of safe haven. That this became the dominant discourse in policy debates demonstrates the importance of lobbying, political patronage, and the media. The next section examines one group's struggles to remain in the United States.

#### CENTRAL AMERICANS AS PAWNS—AND INSTRUMENTS— OF POLICYMAKING: NICARAGUANS AS A CASE STUDY

During the 1980s, the US government was not as accommodating of the Nicaraguans as has been generally assumed. This was surprising given the



Reagan administration's obsession with overthrowing the Sandinistas, who they claimed were oppressing the Nicaraguan people. It was also surprising given US asylum preference for those fleeing communist regimes, and the US government, and the Nicaraguans refugees themselves, claimed that they were fleeing an oppressive Marxist regime.

By the end of the decade, close to two hundred thousand Nicaraguans, or 40 percent of their total number in the United States, resided in Dade County, Florida, specifically in the city of Sweetwater, regarded as the heart of "Little Managua."<sup>127</sup> Tens of thousands more settled in Los Angeles, San Francisco, Houston, New York, and other cities. Although the wealthy and upper middle class comprised the earlier arrivals, the majority of those who migrated from Nicaragua were working class, and they represented a wide political spectrum. Existing side by side in the Nicaraguan exile population were members of the Somoza government and the National Guard, the Sandinistas and the Contras, as well as those victimized and uprooted by their policies. Like their fellow Central Americans, the majority of Nicaraguans arrived illegally, or became illegal once their visas expired, and depended on powerful allies to defend their interests.

The principal characteristic that differentiated the Nicaraguan experience in the United States from that of other Central Americans was that Nicaraguans were slightly more successful in securing asylum. From June 1983 to September 1990, not more than 3 percent of Salvadoran and Guatemalan asylum applications were successful (2.6 percent for Salvadorans and 1.8 percent for Guatemalans).<sup>128</sup> In turn, the Nicaraguans had a composite approval rate of 25.2 percent during the period 1983–90. (Those coming from the USSR, in comparison, had an asylum rate of 76.7 percent).<sup>129</sup>

Immediately after the success of the Sandinista revolution, the Carter administration granted Extended Voluntary Departure to Nicaraguans already in the United States, which protected them from immediate deportation and gave them temporary work permits, renewable every six months. Between July 3, 1979, and September 28, 1980, the Nicaraguans qualified for EVD status. However, in 1983, Nicaraguans began receiving notices revoking their work permits. More often than not, those who applied for asylum found their claims rejected.<sup>130</sup> In fiscal year 1984, only 12 percent of asylum applications were approved; and in 1985, 9 percent.<sup>131</sup>

This surprised immigration lawyers, who believed that the Nicaraguans would be allowed to remain in the United States if only because they had so much in common with the Cuban exiles, a group that the US government had legally accommodated in so many ways.<sup>132</sup>

The number of illegal immigrants arriving in the United States during the 1980s increased with each year; in south Florida alone an estimated six hundred new Nicaraguans arrived each week during 1985, traveling on Greyhound buses from Harlingen and Brownsville, Texas.<sup>133</sup> There they hoped to find employment in the large and successful Cuban enclave that had accommodated thousands of legal and illegal immigrants from Latin America and the Caribbean since the 1960s. In Miami, the Nicaraguans organized to protest what they considered to be an unfair policy. "There is a total incongruency between what President Reagan says and what the State Department does," said the cochair of the Nicaraguan Humanitarian Coalition. "Mr. Reagan says that Nicaragua has a dictatorial Communist regime which oppresses our people, and the State Department and the INS say to thousands of Nicaraguans that they were not persecuted at all." In June 1987, a Miami group called the Committee of Poor Nicaraguans in Exile sponsored a trip for over a hundred Nicaraguan children to Washington, D.C., so that the administration "could see exactly who it was they were deporting."<sup>134</sup>

Powerful allies pressured the US government to change its asylum policy. For the Nicaraguans, one ally was found in Perry Rivkind, the district director of the INS in south Florida, who announced in 1986 that he would no longer deport Nicaraguans. "For me it is agonizing to have to reject their applications," he said, "because their asylum claims under present regulations are very hard to prove. Nicaraguans are fleeing Communism. They are a decent, hard-working people who have not given our authorities here any problems."<sup>135</sup>

After the *INS v. Cardoza-Fonseca* decision, Attorney General Edwin Meese initiated the Nicaraguan Review Program: Nicaraguans denied asylum were allowed to reapply for asylum and acquire work authorization pending the review of their cases.<sup>136</sup> Not coincidentally, his announcement came just as the Reagan administration was negotiating with Congress for increased aid to the Contras. Assisting the Nicaraguans in securing asylum reflected and reinforced the general discourse that the Sandinista government was repressive and needed to be overthrown.

According to the US Committee for Refugees, few Nicaraguans whose cases went up for review during this period were deported. By the end of fiscal year 1987, the Nicaraguans' asylum approval rate had shot up to 84 percent.<sup>137</sup> (By 1989, however, when Congress cut off aid to the administration's protégés, asylum approval rates dropped again, this time to 26 percent; and from 1991 to 1993, only 10.7 percent of asylum petitions were approved.)<sup>138</sup>

However, this brief reversal in policy served as a green light urging others to come to the United States. In 1988 the number of Central Americans asking for asylum at border entry points like Harlingen tripled, reflecting the hopes that the United States was becoming more accepting of Central American migration as a whole.<sup>139</sup> Nicaraguan migration into Dade County increased: an estimated fifty thousand new undocumented workers arrived in south Florida from 1988 to 1990.<sup>140</sup> Over four hundred Nicaraguan children enrolled in Dade County public schools each month, enough to fill up six new elementary schools, and they became the largest group of foreign-born children in that school system.<sup>141</sup> In Florida, Nicaraguans received little assistance from the state and local governments, who were reluctant to assist the refugees for fear of attracting even more of them to south Florida. Public school and health service systems were already strained by the thousands of immigrants that arrived each year from all over the Americas. In 1989 in a desperate response to the growing number of homeless refugees, the Miami City government began housing them in Bobby Maduro Stadium, only to shut the stadium down a month later because of overcrowding.<sup>142</sup>

Members of the Nicaraguan community in south Florida were active in asserting their political rights. Imitating the Cuban American lobby, their local role models, the Nicaraguans created dozens of organizations to lobby for their migratory and foreign policy concerns. Members of the Committee of Poor Nicaraguans in Exile demonstrated in front of the White House; the Nicaraguan Solidarity Union staged a hunger strike to demand work authorization; the Coalition for Nicaraguan Civil Rights lobbied the Justice Department for an end to deportations; the Committee of the Nicaraguan Community paid the bail bonds and attorneys of thousands of compatriots held in detention centers along the United States–Mexico border; and the Nicaraguan American National Foundation initiated a letter-writing campaign demanding safe haven.<sup>143</sup> In a commu-

nity as politically divided as the Nicaraguans, the struggle to acquire a legal status in the United States became one of the few unifying issues. Issues such as the logic or morality of US aid to the Contras were more heatedly contested.

In 1990, many in the Nicaraguan exile population celebrated the news of the Sandinistas' electoral defeat. On the streets of Miami, tens of thousands of Nicaraguans celebrated the victory of Violeta Barrios de Chamorro and her UNO coalition. At a rally at the Orange Bowl, Arnoldo Alemán, the mayor-elect of Managua, enthusiastically told the crowd: "We are waiting for you with open arms. We are going to change Nicaragua, we are going to fulfill the dreams that for years and years we have dreamed."<sup>144</sup> Soon afterward, direct flights were established between Miami and Managua, anticipating the return of the exiles.<sup>145</sup> Representatives of the Chamorro government visited the various exile communities throughout the United States to urge professionals, entrepreneurs, and skilled workers to return, appealing to their nationalism. Aware that the exiles were afraid to forfeit their safety in the United States to face an unknown future in their homeland, the Chamorro government asked the Bush administration to allow exiles to return to Nicaragua without forfeiting the option of one day returning to live and work in the United States.<sup>146</sup>

According to the Nicaraguan Task Force in Miami, some four thousand Nicaraguans returned to their homeland within months of Violeta Barrios de Chamorro's victory. Exiles living elsewhere in the region repatriated in larger numbers: twenty-five thousand Nicaraguans in Honduras and Costa Rica repatriated in the last six months of 1990, and by 1993, seventy-one thousand had returned from those two countries.<sup>147</sup> But the majority of the Nicaraguan exiles in the United States remained doubtful. "We don't know for sure what will really happen," said one man, "and we can't afford to lose what we have here."<sup>148</sup> Exile periodicals expressed concern over the number of Sandinistas in high positions in the Chamorro government; and one Spanish-language weekly regularly warned that civil war still loomed on the horizon.<sup>149</sup> Exiles understandably worried about their safety, especially with the news that many Nicaraguans were assassinated when they tried to reclaim their properties. The assassination of former Contra leader Enrique Bermúdez in Managua and seventy other former Contras over the next year sent a chill through the community,

regardless of one's politics.<sup>150</sup> And although the Bush administration pledged forty-seven million dollars to assist the reintegration of the Contra soldiers, no funds were pledged to assist noncombatants in returning home. The UNHCR provided small grants to assist refugees who returned to Nicaragua (fifty dollars for adults and twenty-five dollars for children) if their applications were approved by the government, but the Chamorro government itself was unable to provide any additional assistance. "You have to understand the situation in Nicaragua," said one representative from the Nicaraguan Task Force. "The country is broke. The only people likely to get their fares to Nicaragua paid are those deported by the Immigration and Naturalization Service." Consequently, the Nicaraguan Task Force predicted that only 25 percent of the approximately two hundred thousand Nicaraguans in Miami would ever return home.<sup>151</sup>

By January 1990, 22,167 Nicaraguan asylum applications remained pending, and now that the Sandinistas were out of office, those applications were unlikely to be successful. If Nicaraguans continued with the process and were denied asylum, they would be prevented from reapplying for a period of up to five years. And those who had been granted asylum but who had not adjusted their status to permanent resident were now subject to a revocation of their asylum.<sup>152</sup> Thus, many opted for voluntary departure, which would at least allow them to apply for an immigrant visa one day, if needed.

In 1995, the Clinton administration announced the phasing out of the Nicaraguan Review Program. Those now facing deportation were urged to file for a suspension of deportation if they had lived in the country more than seven years and "were of good moral character"; eight out of every ten applicants who met these conditions won their case. But shortly thereafter, Congress passed the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which, among many other provisions for immigration reform, revamped existing deportation and exclusion proceedings and allowed deportation without judicial oversight. To receive cancellation of deportation, applicants now had to demonstrate ten years of continuous residence rather than seven, and provide evidence of "extreme and exceptional hardship" if deported. Not more than four thousand cases could be approved annually.

In response, forty thousand Nicaraguans sued the US government, claiming that they were unfairly deprived of their promised suspension-

of-deportation hearings. Once again, a series of allies came to their rescue. A district judge in south Florida ordered an injunction against deportations until a full trial was heard; and later that summer Attorney General Janet Reno froze all deportations in order to give Nicaraguans opportunities to plead their cases.<sup>153</sup> Finally, in 1997, after much lobbying from Cuban-born congressmen Lincoln Díaz-Balart and Ileana Ros-Lehtinen, and other members of the Florida delegation, Congress passed the Nicaraguan Adjustment and Central American Relief Act, which allowed Nicaraguans present in the United States as of December 1, 1995, to adjust their status to that of legal permanent resident. Although the law primarily benefited Nicaraguans, Cubans, and nationals of the former Soviet bloc countries, Salvadorans and Guatemalans benefited to some extent as well: they qualified for “cancellation of removal” under the pre-IIRIRA rules: if they could prove seven years of continual residence in the United States, good moral character, and that deportation would cause extreme hardship to them or a spouse or child who is a US resident.

But, ultimately, the Nicaraguans’ success in legalizing their status lay in their ability to manipulate public perceptions of their situation. The US government manipulated the plight of the Nicaraguan exiles to promote and justify a particular foreign policy, but the exiles used that discourse to their benefit. Officials of the Reagan and Bush administrations pointed to the Nicaraguan entrants as proof of the need for US intervention in the region. These were a people fleeing a despotic Marxist government, they argued. The Nicaraguans then used that line of reasoning to demand accommodation from a government reluctant to offer them even temporary protected status. Sympathetic Americans allied themselves to their cause, either because of lingering Cold War sentiments or because they opposed US policy in Central America. It did not matter that their illegal status was a violation of US law. Perceptions became as important as facts. The Salvadorans and the Guatemalans also relied on the circulation of a particular discourse to facilitate the legalization of their status. In the end, the Nicaraguan case study proved that while the Cold War was over and the criteria for acquiring refugee status or asylum had changed somewhat, migration continued to be both a consequence and a tool of foreign policy. And persons wishing to enter the United States must manipulate state discourses in order to pry the door open.