The Central American Struggle
for amnesty and Residency:
The Nicaraguan, Salvadoran and Guatemalan
Experience in Comparative Perspective
The Chavez’s family relocation to the U.S. began in 1978 with Rosa, one of the daughters, looking for employment to pay for her mother’s costly operation. Back at home in Guatemala, Rosa’s father, Jose, became involved with the Christian Democratic Party where “he said that a lot of people knew him, and he was in a strong position to help mobilize the people in his village.” The party’s activism was seen as a threat and led to the murder and disappearance of several leaders. Under those conditions, another daughter was sent to the U.S. in 1979. Both daughters sent remittances home for the upkeep of family lands and their mother’s medical condition. Mr. Chavez stated that the situation only became worse in the 1980s as:

Government helicopters were burning and destroying neighboring villages and crops. Guerilleros and government soldiers were fighting. It was impossible to know who was who, so people suffered from fear and mistrust.

Massive crop burning and helicopter sweeps in their department of San Marcos destroyed the family’s farming plots, leaving them without an income. Due to increased violence and threats to the family, 7 more family members of the Chavez family entered the U.S from 1980-1982. Those already working in the San Francisco area helped the new arrivals transition into the U.S.

Like the Chavez family, the migration of many Central Americans to the U.S. was a direct response to the repression and brutality of the civil wars in their home countries.

From the 1970s-1990s hundreds of thousands of Central Americans—here defined as

---

2 Vlach 50.
3 Vlach 50.
4 Vlach 50.
5 Vlach 51.
6 Vlach 50.
7 See Undocumented in L.A. and The Quetzal in Flight.
Nicaraguans, Salvadorans and Guatemalans—sought to secure political asylum or relief from deportation. What evolved from the Cold War to the late 1990s was an asylum and immigration policy that favored immigrants leaving ‘communist’ countries, and one that refused asylum to individuals fleeing U.S.-friendly states. In the case of Central America, U.S. asylum and immigration practices have been inconsistent. They facilitated asylum relief and permanent legal residency for Nicaraguan nationals while only provided Salvadorans and Guatemalans with the promise of fair INS hearings and temporary legal status.

This essay begins with the observation that U.S. foreign policy interests, namely anti-communism, were involved when implementing asylum and immigration policy toward Central Americans. The U.S. had two reactions to Central American governments during the Cold War: reject them and bring about their downfall or support them and keep them in power. This enemy/ally approach would later serve as the deciding factor to which nationals would be granted asylum and residency.

**The U.S. Responds**

In Nicaragua, the Sandinista platform of agrarian reform did not correspond with the capitalist model Washington wanted to indoctrinate in Latin America. Unwilling to accept Nicaragua’s ‘fall’ to communism, the Reagan administration caused several problems for the Sandinista government by blocked loans, cutting off economic aid and recruiting ex-National Guardsmen who had previously worked under Somoza. At the same time the U.S. attempted to remove the Sandinistas, it was also very willing to accept

---

Nicaraguans nationals under the guise of protecting them from the evils of their communist state.

Quite the opposite scenario occurred with the governments of El Salvador and Guatemala. Here, the U.S. took an interest in conserving the civil war governments of these two states despite reports of human rights violations. U.S. policy makers saw the Salvadoran civil war as a very sensitive issue that required immediate attention. Washington would not approve another leftist government in Central America. In order to impede the FARN from outperforming the government forces, the Carter and Reagan administrations supplied more military aid to El Salvador from October 1979-FY 1982 than they had in all the years from 1950-1979. When Regan assumed the presidency, Guatemala was engaging in a war of extermination against its indigenous population known as a scorch earth policy. Nonetheless, Reagan vocalized his desire to resume military sales and assistance to the state. During Guatemala’s 36-year conflict, more than 200,000 Guatemalans were killed and over 40,000 were reported disappeared.

While American politicians tried to downplay their support for the repressive governments of El Salvador and Guatemala, they could not neglect the large numbers of Salvadoran and Guatemalan nationals that were fleeing to the U.S. seeking asylum. For instance, it is reported that El Salvador’s civil war caused one in six Salvadorans to flee to the U.S. Before Guatemalan peace accords were signed in 1996, approximately 1 million Guatemalans had been internally displaced and over 200,000 had fled the

---

10 McMahan 95. 
country. The arrival of Guatemalan and Salvadoran nationals escaping U.S.-backed governments became an extremely delicate subject. Issuing asylum relief to these two groups would admit a flawed foreign policy toward Central America. In response, policy makers took yet another simplistic approach. It became bad politics to grant asylum to those who fled countries the U.S. actively supported—countries like El Salvador and Guatemala—while it became good politics to harbor immigrants from communist governments it dislike—such as Nicaragua.

**The Politics of Asylum**

When conducting asylum interviews, INS agents are not supposed to take foreign policy interests into consideration. Instead, they are instructed to make decisions based on the merit of the applications. However, when foreign policy interests are taken into consideration, the opposite can occur. Here, the merits of the applicant’s story—whether there exists a justified fear of persecution—are subordinate to foreign policy concerns. Such has been the case for Guatemalans and Salvadorans. The U.S.’ refusal to abide by neutral standards—that is, not considering foreign policy issues—when reviewing asylum applications was the primary reason why Guatemalans and Salvadorans experienced extremely low asylum approval ratings from the 1980s through the 1990s.¹³

Conversely, asylees fleeing communist, leftist, or socialist governments have had more access to political asylum. Instead of looking at the merits of each story, applicants from ‘hostile’ countries have experienced relatively little hesitation in being approved for asylum. This is the experience of Nicaraguan nationals leaving the Sandinista government. The result is that a higher percentage of ‘hostile’ country applicants are

¹³ See *Formation and Failed Implementation of U.S. Political Asylum Policy in the 1980s*. 
granted approval ratings.\textsuperscript{14} Despite the implementation of the 1980 Refugee Act, which provided the legal framework for neutral procedures for refugee and asylees, the INS and State Department continued to operate an asylum and immigration system based on ‘hostile’-'non-hostile’ considerations.

\textit{Understanding the Data}

How is it that so many Nicaraguans were approved for asylum while many Salvadorans and Guatemalans were denied? In her book \textit{Refugees Without Refuge: Formation and Failed Implementation of U.S. Political Asylum in the 1980s}, Barbara Yarnold states that foreign policy goals were communicated through the INS and the State Department’s hierarchy.\textsuperscript{15} After an asylum interview was completed, the agent would send the application to the State Department for an advisory decision. This approved/denied decision would go unquestioned and serve as more than an advisory decision.\textsuperscript{16} In this manner, someone higher up in the bureaucracy made the decision, someone more knowledgeable of foreign policy interests than an uniformed asylum agent. This illustrates how political interests directly influenced asylum approvals or denials.

The data shows how state interests at the theoretical level played out on the practical level. In 1981, Salvadorans made 5,500 asylum requests; only two approvals were granted.\textsuperscript{17} In 1982 over 22,000 Salvadorans sought asylum, that year only 74 cases were approved.\textsuperscript{18} In 1984 the INS processed 13,000 asylum applications for Salvadorans;

\textsuperscript{14}See \textit{Formation and Failed Implementation of U.S. Political Asylum Policy in the 1980s}.
\textsuperscript{16}Yarnold 26.
\textsuperscript{17}Yarnold 202.
\textsuperscript{18}Yarnold 202.
only 2.5% were approved.\(^{19}\) This approval rate is considerably low when compared to the average approval rate of 30% for asylum applicants that same year.\(^{20}\) Nicaraguans who fled communism received preferential treatment compared to Salvadoran applicants; the Nicaraguan approval rating was 5 times greater than the Salvadoran.\(^{21}\) The success rate for Guatemalans was even lower than that of Salvadorans. From 1983 to 1985 Guatemalans received a 0.7% approval rating.\(^{22}\)

Table 1 (not available in this version\(^{23}\)) compares the approval ratings for all three groups from June 1983 through September 1989 during first-round interviews.\(^{24}\) Nicaraguan nationals clearly received the largest approval rating at over 27%. Hence, nearly 11,000 Nicaraguan asylum applicants were granted asylum, while Salvadorans and Guatemalans combined couldn’t even generate 1,500 approvals. In comparison to one another, we begin to see a trend. Nicaraguan nationals, from a ‘hostile’ country, were awarded higher approval ratings. Yet, Guatemalan and Salvadoran nationals fleeing U.S.-friendly states were systematically denied relief.

Apart from solely studying asylum application approvals, or first-round decisions, Yarnold also looked at appeal decisions. In studying appeals made to the Board of Immigration Appeals (BIA), Yarnold summarizes why a large number of Salvadorans were denied asylum:

Most aliens could not meet the burden of proof for asylum and withholding since they failed to show that they were likely to be singled out for persecution. In fact…they did not support a finding that the aliens themselves were subject to ‘particularized danger,’ or that they were more subject to persecution than the

\(^{19}\) Yarnold 202.  
\(^{20}\) Yarnold 25.  
\(^{21}\) Yarnold 25, 26.  
\(^{22}\) Yarnold 92.  
\(^{23}\) ILASSA’s website is not equipped to handle charts  
\(^{24}\) See Table 1.
general public. Both of these sections (burden of proof and individualized danger) were narrowly drawn, for the purpose of excluding all but the most active participants in a civil war conflict.  

These conclusions about Salvadoran appeals should not be overlooked. It is stated that Salvadorans were unable to meet the burden of proof criteria because they failed to connect it to individual persecution. In both Guatemala and El Salvador, raids and massacres were regularly issued on the population. The purpose of such terror was to spread fear among the general populace, warning them against supporting the guerilla movements. According to the INS, this type of brutal, widely employed state-terror did not merit asylum since no one in particular was targeted. Not able to specifically indicate that they were targets of state terror, Guatemalans and Salvadorans were routinely denied recognition of asylum. As Yarnold states, Salvadorans did not meet the burden of proof criteria, not because they weren’t being persecuted, but because of the U.S.’ interpretation of persecution. As such, the U.S. was unwilling to recognize that its Central American friends inflicted injury on their own countrymen.

By not issuing asylum approvals, the INS became complacent to U.S. foreign policy interests. Out of the 53 asylum-related appeals made to the BIA by Salvadorans, only 4 were successful, giving an 8% approval rating. Four approvals place the Salvadoran success rate at 8%, which was lower than the average appeal rate of 12%. Thus we see that, in both the first-round interviews and in the second-round appeals that the state’s interests were upheld.

For Guatemalans at the appeal courts level, we see a slight increase in the approval percentage. Out of the 6 appeals cases brought to the BIA from 1980-1987, one

---

25 Yarnold 113, 114.
26 Yarnold 114.
was successful. This one success pushes their appeal success rate to 17%, higher than the 12% average.\textsuperscript{27} Still, it cannot be forgotten that in the first-round, from 1983 to 1985 Guatemalans, were approved less than 1% of the time.\textsuperscript{28}

The case of Nicaraguan applicants reveals interesting results. The general assumption would be that since Nicaraguans were fleeing a ‘hostile’ state, they would receive preferential treatment. Yarnold’s conclusions about Nicaraguan appeals for asylum were that “Aliens from Nicaragua seem to have the best chance of winning these appeals since, unlike Haitians and Salvadorans, they were fleeing a hostile state.”\textsuperscript{29}

Although Nicaraguans had a greater chance at approval, Yarnold is quick to point out that “not every appeal brought by a Nicaraguan was successful. Rather only those aliens who were able to demonstrate that they were in great danger of persecution were likely to win their asylum-related appeals to the BIA.”\textsuperscript{30} Of the 13 appeals made by Nicaraguans from 1980-1987, three were successful giving them a 23% approval rating.\textsuperscript{31} This approval rating was much higher than the average appeal rate at 12%.

A few things must be taken into consideration when looking at the statistics derived from Central American appeals to the BIA. First, the BIA is part of the INS structure. Second, the low asylum appeal rates for Guatemalans and Salvadorans coupled with the above normal appeal rates for Nicaraguans suggest that as part of the INS bureaucracy, the BIA also took political issues into consideration when deciding the cases of Central American applicants.\textsuperscript{32} Third, asylum appeals are the second round of

\begin{flushright}
\textsuperscript{27} Yarnold 119.  \\
\textsuperscript{28} Yarnold 119.  \\
\textsuperscript{29} Yarnold 118.  \\
\textsuperscript{30} Yarnold 118.  \\
\textsuperscript{31} Yarnold 118.  \\
\textsuperscript{32} Department of Justice, BCIS “Refugees, Asylees, Fiscal Year 2001,” 76.
\end{flushright}
asylum applications. And lastly, note that Salvadorans represented the largest group of appealers.

Between 1980 and 1987, Salvadorans brought forth 53 appeal cases compared to 6 by Guatemalans and 13 by Nicaraguans. By bringing their case to the appeals court, we know that their claim had been denied once before. It makes sense that we see a large number of Salvadoran appeals being made but surprising that not many Guatemalan appeals were initiated. A low turn out of appeals by Guatemalans stands in contrast to the fact that Guatemalans had a higher than average level of organizational participation, such as legal clinics, in their appeals. It is also interesting that in the same time period, Nicaraguans surpassed the average approval rate by 11 percentage points with only 13 appeals brought forth, thus coinciding with the hypothesis that the BIA also engaged in state interest policy.

**Relief from Deportation**

After being systematically discriminated against during asylum interviews, Salvadorans and Guatemalans sought other ways of staying in the U.S. After residing in the U.S. for several years, it was possible for many to apply for residency.

An immigration judge at a removal hearing can grant relief from deportation or it can be petitioned for after several years of residency in the U.S. In 1986 Congress passed the Immigration Reform and Control Act (IRCA). IRCA enabled several millions of aliens to become permanent legal residents. It stipulated that immigrants living in the U.S. before 1982 could apply for adjustment of status and no longer be subject to deportation. Those Central Americans who relocated to the U.S. in the late 1970s were

---

33 Yarnold 119.
able to adjust, but many more that arrived after the 1982 deadline had to find other means by which to amend their status.

Suspension of deportation was the mechanism by which deportable aliens who resided in the U.S. for long periods of time and exhibited good conduct could adjust their status to permanent legal residents.\(^\text{35}\) The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) imposed harsher standards for immigrants looking to adjust their status. IIRIRA severely affected Central American communities since it restricted the availability of suspension of deportation. Under pre-IIRIRA terms, an illegal immigrant could apply for suspension of deportation after being physically present in the U.S. for 7 years. The immigrant could accumulate 7 years residency even if deportation hearings had commenced.\(^\text{36}\) The passage of IIRIRA increased the time an immigrant had to be physically present in the U.S. from 7 years to 10 years and also specified that a ‘stop-time’ would be issued once deportation proceedings had begun.\(^\text{37}\)

Furthermore, IIRIRA stipulated that the deportable alien had to demonstrate that removal would cause “exceptional and extremely unusual hardship” to a legal resident, spouse, or child, other than themselves.\(^\text{38}\) While placing greater restrictions on those immigrants who could be eligible for suspension of removal, IIRIRA also limited the


\(^{36}\) Administration Proposes Finetuning for 1996 Immigration Law to Mitigate Harsh Effects of Applying New Rules to Pending Cases.”

\(^{37}\) “Administration Proposes Finetuning for 1996 Immigration Law to Mitigate Harsh Effects of Applying New Rules to Pending Cases.”

\(^{38}\) “Administration Proposes Finetuning for 1996 Immigration Law to Mitigate Harsh Effects of Applying New Rules to Pending Cases.”
number of immigrants who could be granted suspension of deportation to 4,000 any given year.39

Relief for Nicaraguans

The passage of IIRIRA in 1996 brought fear and anxiety to long-time illegal residents since many hoped to adjust their status through suspension of deportation. Among the groups who were most visibly affected were Central Americans. By the time IIRIRA was passed, all three groups had already been provided with temporary relief from removal by legislative measures and court decisions. Shortly after IIRIRA came into effect, the effort to save Central Americans from deportation spurred Congressional discussion.

As indicated previously, Nicaraguan nationals received preferential treatment in their asylum interviews since it was in the state’s interest to grant asylum to those fleeing ‘hostile states.’ Still, since the Somoza regime in Nicaragua was arguably more repressive than the Sandinista government, some Nicaraguan asylum cases were denied on the applicant’s inability to prove persecution or fear of it. A denied asylum application would then require the applicant to be placed in removal hearings. In order to prevent anti-Sandinista immigrants from being deported, the Reagan administration created a second level of protection for Nicaraguans nationals if their asylum cases were denied.

In 1987, the Reagan administration, along with Attorney General Edwin Meese, established the Nicaraguan Review Program (NRP).40 Under NRP, Nicaraguans who had

been denied asylum and were subject to deportation were entitled to another round of review by the INS and the Office of the Deputy Attorney.\textsuperscript{41} During the review process, Nicaraguan nationals were exempt from deportation until a decision was reached on their case. In addition to having a greater rate of approval ratings among INS agents due to state interest, NRP provided Nicaraguan nationals with another safeguard assuring that they would not be deported. This procedure gave Nicaraguans yet another unfair advantage over Salvadorans and Guatemalans who received incredibly low approval rating in both asylum interviews and BIA appeals. In short, NRP sent the message that a denied Nicaraguan asylum application was unacceptable. Subsequent administrations continued to use NRP as a way of protecting those Nicaraguans fleeing communism.

Attorney General Janet Reno finally terminated the Nicaraguan Review Program on June 12, 1995, five years after the Violeta Chamorro government was democratically elected in Nicaragua.\textsuperscript{42} By keeping the NRP in operation even after Nicaragua’s cease-fire agreement in 1990, the Bush administration protected the Chamorro government and economy from a sudden influx of deported nationals. At the time of NPR’s termination, between 34,000-40,000 Nicaraguan nationals, no longer protected against removal, found themselves in deportation proceedings.\textsuperscript{43} With such a large population on the verge on removal, Attorney General Reno authorized a transitional program under which Nicaraguans with final orders of deportation and seven years of residency in the U.S. would be eligible to apply for suspension of deportation.\textsuperscript{44} Under the transitional

\textsuperscript{41} “In the Supreme Court of the United States Tefel v. Reno.”
\textsuperscript{42} “In the Supreme Court of the United States Tefel v. Reno.”
\textsuperscript{44} “In the Supreme Court of the United States Tefel v. Reno.”
program, Nicaraguans could remain and work in the U.S. until an immigration judge reviewed their suspension case.\textsuperscript{45}

On June 6, 1997, due to the uncertain situation tens of thousands of Nicaraguans found themselves in with the end of NRP and the passage of IIRIRA, Speaker of the House Newt Gingrich wrote to Attorney General Janet Reno specifically asking her to grant an extension to the NRP.\textsuperscript{46} In her response to the House Speaker’s letter, Attorney General Reno stated that she acknowledged the predicament of “Nicaraguans and others who have been living in this country for many years and are adversely affected by the new immigration law (IIRIRA).”\textsuperscript{47} It is important to note that in her response, Attorney General Reno mentioned that other long-time resident groups, such as Guatemalans and Salvadorans, not just Nicaraguans were affected by IIRIRA. Attorney General Reno proceeded by stating that she hoped Congress would implement and support legislation that would recognize “the special circumstances of certain immigrants who were present in the United States when the law was enacted.”\textsuperscript{48} She also stated that she was reviewing a decision by the BIA known as NJB, which would prevent immigrants who were in deportation hearings before April 1, 1997 from being governed by pre-IIRIRA terms.\textsuperscript{49} Attorney General Reno stated that if Congress did not take the initiative to implement a transitional program for long-time resident communities, she would “take immediate steps to protect against deportation, persons who might have been able to claim suspension but for the NJB decision.”\textsuperscript{50} In her conclusion, Reno suggested a proposal that

\textsuperscript{45} “In the Supreme Court of the United States Tefel v. Reno.”
\textsuperscript{47} “Letter from Attorney General to Speaker of the House.”
\textsuperscript{48} “Letter from Attorney General to Speaker of the House.”
\textsuperscript{49} “Letter from Attorney General to Speaker of the House.”
\textsuperscript{50} “Letter from Attorney General to Speaker of the House.”
would allow those cases already in the system or pipeline to seek suspension of
departure under pre-IIRIRA standards. Pipeline cases would not be subject to the stop-
time rule, would only have to prove “extreme hardship,” and would be exempt from the
4,000 cap on suspension-type relief.\textsuperscript{51} Within her proposal, she specifically mentioned
that Nicaraguans, under the NRP, along with Salvadorans and Guatemalans, were cases
that should be judged by the proposed transitional terms and not IIRIRA.\textsuperscript{52}

Shortly after Attorney General Reno’s response to Newt Gingrich, President
Clinton addressed the House to formally submit the “Immigration Reform Transition Act
of 1997.” He reiterated the Attorney General’s view that all three Central American
populations would be severely affected if their cases came under IIRIRA jurisdiction.\textsuperscript{53}
He stated that the proposal would, “prevent the unfairness of applying those rules to cases
pending before April 1, 1997,” and added that, “it would also recognize the special
circumstances of certain Central Americans who entered the United States in the 1980s in
response to civil war and political persecution.”\textsuperscript{54} In both requests to the House, Reno
and Clinton specifically acknowledge the long-time presence of all three Central
American groups and asked that transitional legislation be passed to provide them with
less stringent levels of seeking relief. In neither Clinton’s remarks nor Reno’s response is
one group’s situation addressed as more pertinent than the others. In addition, no other
long-time resident immigrant groups were specifically mentioned in the speeches.

\textsuperscript{51} “Letter from Attorney General to Speaker of the House.”
\textsuperscript{52} “Letter from Attorney General to Speaker of the House.”
\textsuperscript{53} United States, House of Representatives, “Message from the President of the U.S. Transmitting a
Legislative Proposal to Provide Relief to Certain Aliens who would Otherwise be Subject to Removal from
the United States” 24 July 1997.
\textsuperscript{54} “Message from the President of the U.S. Transmitting a Legislative Proposal to Provide Relief to Certain
Aliens who would Otherwise be Subject to Removal from the United States.”
The transitional legislation that President Clinton and Attorney General Reno proposed was not enacted. Instead on November 19, 1997, Congress passed the Nicaraguan Adjustment and Central American Relief Act (NACARA). NACARA addressed a variety of diaspora communities such as all three Central American groups, Cubans and Eastern Europeans. Yet, it did not grant the same amenities and privileges to all groups. NACARA was a two-tiered system under which Cubans and Nicaraguans were subject to lenient provisions while Guatemalans, Salvadorans, and Eastern Europeans were subject to harsher restrictions. The most controversial aspect of NACARA was that it only allowed two groups, Nicaraguans and Cubans, to adjust their current status to legal permanent residents. These two groups would be allowed to adjust status without having to prove that deportation would cause “extreme hardship” as pre-IIRIRA stipulated, or any hardship at all. The only threshold both groups had to meet was proof of residency in the U.S. continuously since December 1995.  

On the other hand, Salvadoran and Guatemalans were not automatically eligible for adjustment of status. To be considered for relief of deportation the two groups still had to claim that deportation would produce “extreme hardship” for the alien and family members as stipulated before IIRIRA. Under NACARA, Salvadorans and Guatemalans also had to prove a longer residency time than Nicaraguans or Cubans. The former had to have been living in the country since September 1990 and December 1990, respectively. Thus, the conditions placed on Nicaraguans whose status could be adjusted were extremely lenient. Instead of having to show 7 years residency in the U.S., as was dictated under pre-IIRIRA terms, some Nicaraguans only had to document over 2 years

of residency if they arrived as late as 1995. Oddly enough, the proposal advocated by
Clinton and Reno did not include any provisions on adjustment of status to any group nor
did they ever specifically mention the Cuban population. The proposal presented by the
Clinton administration merely attempted to keep pending deportation cases under pre-
IIRIRA terms and prevent the possibility of mass deportations. NACARA was not the
comprehensive solution to harsh IIRIRA stipulations as envisioned by the Clinton
administration. And once again, through NACARA, Nicaraguans received preferential
treatment over other Central American groups. 56

The Clinton administration showed its disapproval for NACARA’s preferential
treatment towards Nicaraguans and Cubans by submitting to the House the “Central
American and Haitian Parity Act of 1999.” 57 The administration came under criticism
from Salvadorans, Guatemalans and Haitians who felt discriminated against with the
passage of NACARA. Haitians were especially vocal as they contended that they were
not granted relief of deportation due to their African background. In response to the lack
of parity in NACARA, President Clinton stated that the proposed legislation would
amend NACARA, “as part of my Administration’s comprehensive effort to support the
process of democratization and stabilization now underway in Central America and Haiti
and to ensure equitable treatment for migrants from these countries.” 58 Evidently
Clinton’s administration recognized that the advantages given to Nicaraguans and Cubans
through NACARA were insufficient to conclude the discussion on cancellation of

56 “CRS Report for Congress. The Nicaraguans Adjustment and Central American Relief Act: Hardship
Relief and Long Term Illegal Aliens.”
57 United States, House of Representatives, “Message from the President of the U.S. Transmitting the
58 “Message from the President of the U.S. Transmitting the Central American and Haitian Parity Act of
1999.”
deportation. In his same speech to the House, Clinton reminded House members that, “The return of these migrants to these countries would place significant demands on their economic and political systems. By offering legal status to a number of nationals of these countries with long-standing ties in the United States, we can advance our commitment to peace and stability in the region.” Clinton’s advocacy for fair and even-handed treatment of a variety of long-time residents was not enough to pass the Parity Act of 1999. Currently under NACARA, Nicaraguans are still the only Central American group eligible for adjustment of status without having to claim hardship.

**Salvadorans and Guatemalan Seek Relief**

Due to the INS and the State Department’s inability to implement the Refugee Act of 1980 and the continued preferential treatment of refugees from ‘hostile’ countries, sympathetic organizations looked for other ways to help Guatemalans and Salvadorans. The Sanctuary Movement, headed primarily by U.S. religious organizations and congregations, began in the early 1980s and was a direct response to Guatemalans’ and Salvadorans’ inability to seek justice through legal means. The Movement strongly believed that the Salvadoran and Guatemalan experience constituted the need for political asylum.

By 1984, the Sanctuary Movement boasted that it had brought over 700 Central Americans into the U.S. and that there existed 448 sanctuary locations across the nation.

The frustration felt by the Sanctuary congregations against the state culminated in a class action lawsuit known as *American Baptist Churches vs. Thornburgh* (ABC). The class action suit was filed in a California U.S. District Court in 1985. The Plaintiffs,

---

59 “Message from the President of the U.S. Transmitting the Central American and Haitian Parity Act of 1999.”

60 Yarnold 209.
Salvadorans and Guatemalan nationals, claimed they suffered, “systemic challenges to the processing of asylum claims filed… pursuant to the Refugee Act of 1980…” at the hands of the defendants (United States Department of Justice, the Immigration and Naturalization Service [INS], and the Department of the State). 61

The Court ruled in favor the plaintiffs and concluded that:

Foreign policy… considerations are not relevant to the determination of whether an application for asylum has a well-founded fear of persecution; the fact that an individual is from a country whose government 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; whether or not the United States Government agrees with the political ideological beliefs of the individual is not relevant to the determination of whether an applicant for asylum has a well-founded fear of persecution; and the same standard for determining whether or not an applicant has a well-founded fear of persecution applies to Salvadorans and Guatemalans as applies to all other nationalities…62

The settlement made various claims about the manner in which U.S. asylum and immigration policy had been implemented. The most important was that various federal agencies, including the INS, the Department of State, and the Justice Department, were wrong for actively pursuing an asylum and immigration policy based on Cold War politics. The ruling explicitly stated that Salvadorans and Guatemalans were entitled to receive fair asylum hearing by the INS, just as any other group seeking asylum. As part of the settlement statement, all class members were given the right to another INS hearing, one that was neutral and free of foreign policy interests.

Before the final ruling on ABC, the 1990 Immigration Act was passed which created TPS, a new space, for qualified immigrants. Temporary Protected Status (TPS) is “a temporary immigration status granted to eligible nationals of designated countries.

61 BCIS. <http://www.immigration.gov/>
62 Department of Justice, BCIS. http://www.immigration.gov/.
TPS beneficiaries are granted a stay of removal and work authorization for the designated TPS period and for any extensions of the designation. *TPS does not lead to, and cannot be used to obtain, permanent resident status.*

When TPS is terminated, “the alien will return to the status he or she had prior to TPS or any other status they may have obtained while registered for TPS.”

It is interesting that Salvadorans were the first recipients of TPS. Since TPS is not recognition of political asylum, it can be granted for a variety of reasons such as natural disasters and political instability. It is up to the Attorney General to decide what groups are granted TPS and for what period of time. While TPS is renewable—to be decided by Attorney General—once it ends recipients are subject to deportation if they have not amended their status by other means. Temporary Protected Status represents the creation of a special space for immigrants who did not fit into the established categories. It suggests that the State Department did not know what to do with the influx of Salvadorans arriving in the U.S. By issuing TPS, the U.S. government only recognized that an emergency situation was present in El Salvador, not one that merited political asylum. This special space, however, is not an acceptable means in dealing with the Guatemalans and Salvadorans since it does not provide them with the means of acquiring legal permanent residency.

Salvadorans and Guatemalans are the two groups who have the longest history with TPS. This situation keeps them in a state of limbo. They either wait for TPS to expire, not knowing if it will be renewed, or for a deportation hearing to be scheduled.

---

63 Department of Justice, BCIS, “Temporary Protected Status (TPS) for Hondurans, Nicaraguans” <http://www.immigration.gov/>.
64 Department of Justice, BCIS “Extension of Temporary Protected Status (TPS) for Salvadorans” 9 July 2002 <http://www.immigration.gov/>.
TPS was first issued in 1990 and called to expire in 1992; since that time it has been extended a number of times with the most recent one, a 12-month period from September 2002 to September 2003. TPS, then, has been extended and retracted for 10 continuous years. The constant extension of TPS creates more complications for both Guatemalan and Salvadoran asylum seekers. Both groups must maintain informed of the terms laid out by Attorney General, have access to the required forms and afford to keep reapplying for work authorization.

The U.S. government’s interest-driven interventions in Central American along with biased asylum and relief policies have only prolonged the transition of Guatemalan and Salvadoran immigrants into the U.S. Instead of merely taking a defensive approach, U.S. policy makers must understand the connections between creating healthy relations in the region and fair immigration procedures at home. Overbearing relationships with our neighbors, intervention and implementation of our interests by force have led to mass migration of Central Americans to the U.S. Policy makers must also realize that it is irresponsible to create situations that produce refugees and subsequently deny those same refugees the protection they rightly deserve.
Works Cited


United States. House of Representatives, “Message from the President of the U.S. Transmitting a Legislative Proposal to Provide Relief to Certain Aliens who would Otherwise be Subject to Removal from the United States.” 24 July 1997.


