

U.S. POLICY TOWARDS UNDOCUMENTED SALVADORANS

MINI BRIEF NUMBER MB82223

Mini Brief



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ISSUE DEFINITION

The United States does not afford any special immigration benefits to undocumented Salvadorans in this country, and they are liable for deportation to El Salvador if apprehended. In light of the civil strife in that country, some feel that Salvadorans generally should be granted some temporary relief from deportation. The U.S. Government's position is that Salvadorans come to the United States illegally primarily for economic reasons, and that special protection by the United States delaying their return to El Salvador is not merited by conditions there.

BACKGROUND

By most estimates, several thousands of Salvadorans currently arrive in the United States undocumented each month, continuing a pattern of illegal immigration that has existed for a number of years. The U.S. Immigration and Naturalization Service (INS) currently apprehends over 1,000 undocumented Salvadorans monthly, but the agency believes that this may reflect only about a fourth of the total entries. Recently the Salvadoran flow has increased, and authorities believe the increase is directly related to the violence and economic dislocation resulting from civil unrest in El Salvador. The number of Salvadorans residing illegally in the United States is unknown, and estimates range from 100,000 to 500,000.

The undocumented Salvadorans, as with any alien who enters the United States without inspection and proper documents, are subject to deportation. Upon their apprehension by INS, the Salvadorans may choose to voluntarily return to El Salvador or, after proceedings before an immigration judge to determine deportability, may be forcibly returned there by the U.S. Government. Pending a decision on deportation, the Salvadorans are detained unless they can post a bond of \$5,000.

Controversy has grown over the current U.S. policy to return undocumented Salvadorans to El Salvador, considering the civil unrest and violence there. Critics believe that these aliens are being exposed to danger and possibly death, and deserve the temporary protection of the United States until conditions change.

Various forms of temporary relief from deportation can be granted in circumstances in which aliens would be threatened with persecution upon return to a certain country. As a signatory to the United Nations Convention and Protocol Relating to the Status of Refugees, the United States agrees to the principle of nonrefoulement, which means that it will not return an alien to a country where his life or freedom would be threatened because of persecution on account of race, religion, nationality, membership of a particular social group, or political opinion.

Nonrefoulement is embodied in U.S. immigration law, notably in provisions allowing individual aliens to apply for asylum in the United States (section 208 of the Immigration and Nationality Act; 8 U.S.C. 1158), and requiring the Attorney General to withhold the deportation of aliens to a country in which the alien's life or freedom would be threatened because of persecution (section 243(h) of the Immigration and Nationality Act; 8 U.S.C. 1253(h)). In order to benefit from these protections, an alien must prove to an INS

District Director or to an immigration judge during a deportation proceeding, that he or she would be persecuted upon return to a given country. In judging the merits of the asylum claim, the immigration authorities rely on an advisory opinion from the Department of State based on an analysis of conditions in the country in question.

Aliens could also receive other forms of discretionary relief to allow them to stay in this country temporarily because of conditions in their homelands. Discretionary relief could include a deferred action on the deportation, a stay of deportation, or an extension of a voluntary departure status. Upon the recommendation of the Department of State, currently, there is stay of deportation for Poles, who are unwilling to return to Poland because of conditions there, and who were in the United States as of Dec. 23, 1981; and a non-enforcement of departure for Ethiopians who arrived in the U.S. before June 30, 1980. Requests for extended voluntary departure for Afghans is being afforded a "sympathetic review."

The Reagan Administration does not support any general relief from deportation for undocumented Salvadorans on the grounds of the civil unrest in El Salvador. Individual Salvadorans may apply for asylum in the United States, and those requests are reviewed on a case-by-case basis. In FY82, 74 Salvadoran asylum requests were approved, and 1,067 were denied. Currently at least 22,000 Salvadoran asylum applications remain pending.

The U.S. Government's position on undocumented Salvadorans is based on the State Department's analysis of conditions in El Salvador and its determination as to whether any special consideration for Salvadoran emigres is justified. The Department believes that while civil strife and violence in El Salvador are at "distressing levels," there has not been the widespread fighting, destruction and breakdown of public services and order that had been present in other situations when the U.S. granted blanket voluntary departure. The Department concludes that most Salvadorans present in the United States were not involved in political or military activities prior to their departure from El Salvador, and "would not face, upon their return, any more danger than is faced by their compatriots who never left the country." (INS memorandum to Outreach Centers dated May 29, 1981, reprinted in Interpreter Releases, June 10, 1981.)

INS has explained that an asylum claim is only approved if an individual alien has a well-founded belief that if he or she returns to a country, he or she would be subject to persecution to which others in the country are not subjected.

The State Department believes that the primary motivation for the Salvadoran migration to the United States is economic. It points to the overpopulation and poverty in El Salvador, and the longstanding policy of that nation to encourage the emigration of their populace to relieve conditions. The department points to the fact that most Salvadorans have traveled through third countries before reaching the United States, and that other countries closer to El Salvador have made refuge available to Salvadorans fleeing the turmoil in their country.

Opponents of U.S. policy believe that the Salvadorans in the United States are bona fide refugees who deserve this country's protection under international law as well as under our own Refugee Act. Despite the initial motive for leaving El Salvador, they argue, the Salvadorans in the United States are likely to face real dangers upon return to their country. The widespread violence and indiscriminate killing of noncombatants in El

Salvador is well-publicized. Private agencies in that country contend that although specific documentation is lacking, the returnees' lives are in danger. These agencies point out that in a civil war situation, both sides are suspicious of a national who has sought refuge abroad for whatever reason.

The Office of the United Nations High Commissioner for Refugees (UNHCR) reportedly sent two memoranda to the Reagan Administration -- one in April, and one in June of 1981 -- requesting the U.S. Government to change its policy and grant some temporary refuge to undocumented Salvadorans. A recent UNHCR mission to monitor processing of Salvadorans in this country recommended that the UN agency,

...continue to express its concern to the U.S. Government that its apparent failure to grant asylum to any significant number of Salvadorans, coupled with continuing large-scale forcible and voluntary return to El Salvador, would appear to represent a negation of its responsibilities assumed upon its adherence to the [UN Refugee] Protocol.

(For a reprint of the UNHCR mission report, see Congressional Record, v. 128, Feb. 11, 1982: S827-S831.)

Critics of U.S. policy point out that this is the first time UNHCR has suggested the United States was failing to fulfill its international commitment to refugees.

Proponents of U.S. policy believe that the whole "refugee issue" is being manipulated by the leftists in El Salvador to embarrass the government.

Critics of the U.S. policy of not extending voluntary departure to Salvadorans believe that the policy is a result of U.S. support for the current government of El Salvador. They contend that were the United States to grant widespread temporary refuge to Salvadorans here, this country would be admitting that the regime in El Salvador cannot maintain order or protect its citizens. Critics also contend that the large number of Salvadorans who would be affected also discourages the U.S. from granting extended voluntary departure.

About 70% of the Salvadorans apprehended by INS return to El Salvador under a "voluntary departure" agreement rather than a deportation order. Supporters of U.S. policy could argue that this indicates that Salvadorans generally do not fear for their lives upon return or they would at least attempt applications for asylum.

Critics claim that INS systematically takes actions to encourage the expeditious voluntary return of Salvadorans, and to discourage asylum applications. For example, the aliens reportedly are not being advised of their right to apply for asylum; INS' tough enforcement policy including high bonds, limited work authorization for those released on bond, lengthy waits for decisions on asylum claims, and limited access to counsel, all act to discourage Salvadorans from attempting to remain in the United States.

The UNHCR mission concluded that,

...there is a systematic practice designed to

forcibly return Salvadorans, irrespective of the merits of their asylum claims. At the same time, it is equally fair to say that INS does not seem to be practicing a discriminatory program against Salvadorans. The unfortunate situation is that Salvadorans are being treated like all other illegal entrants without taking into account the conditions prevailing in their country.

On Apr. 30, 1982, a Los Angeles U.S. District Court judge issued a preliminary injunction against INS from certain practices against Salvadoran emigres and ordered INS to advise Salvadorans of their right to counsel, to a deportation hearing, and to apply for asylum.

In the 98th Congress, both the State Department authorization bill (H.R. 2915) and the major immigration reform bill (H.R. 1510) include a provision stating the "sense of the Congress" that Salvadorans in the U.S. be granted extended voluntary departure until conditions in El Salvador permit their safe return to that country.

LEGISLATION

H.R. 1510 (Mazzoli et al.)

Immigration Reform and Control Act of 1983. Title IV expresses the sense of the Congress that Salvadorans otherwise qualifying for voluntary departure under the Immigration and Nationality Act have the date of such departure extended to such time as the Secretary of State determines that the situation in El Salvador has changed sufficiently to permit their safe return. Introduced Feb. 17, 1983; referred to more than one committee. Reported by the House Judiciary Committee (H.R. 98-115 Part I) on May 13, 1983.

H.R. 2915 (Fascell et al.)

Sec. 118 expresses the sense of the Congress that the Secretary of State should recommend that extended voluntary departure be granted to nationals of El Salvador until the situation in El Salvador has changed sufficiently to permit their safely residing in that country. Introduced May 5, 1983; referred to Committee on Foreign Affairs. Reported (H.Rept. 98-130) May 15; passed House, amended, June 9, 1983.