

THE MOAKLEY/ DECONCINI BILL

Q.

WHAT IS THE DIFFERENCE BETWEEN ASYLUM, EXTENDED VOLUNTARY DEPARTURE, AND THE MOAKLEY-DECONCINI BILL?

A.

Asylum, Extended Voluntary Departure (EVD), and the Moakley DeConcini bill are all different remedies for people or groups who fear return to their homelands.

Asylum can be granted to a national from another country who is present in the U.S. For a person to receive asylum he or she must prove a well-founded fear of persecution in his or her homeland because of race, nationality, religion, membership in a particular social group, or political opinion. This is a very high standard, difficult for any applicant to meet. Only 20 percent of all of the asylum applications for all nationalities reviewed in fiscal year 1984 were granted.

Extended Voluntary Departure (EVD) is granted by the Attorney General generally upon the recommendation of the Secretary of State. It has been granted 15 times in the past 25 years and currently applies to Poles, Ethiopians, Afghans, and Ugandans. Communications from the State Department and the Immigration and Naturalization Service concerning grants of EVD have stated the reasons for the grants as being a generalized condition of violence, instability in the homeland, or a concern for human rights violations in the country. EVD is merely a stay of deportation and confers upon the beneficiary no further benefits.

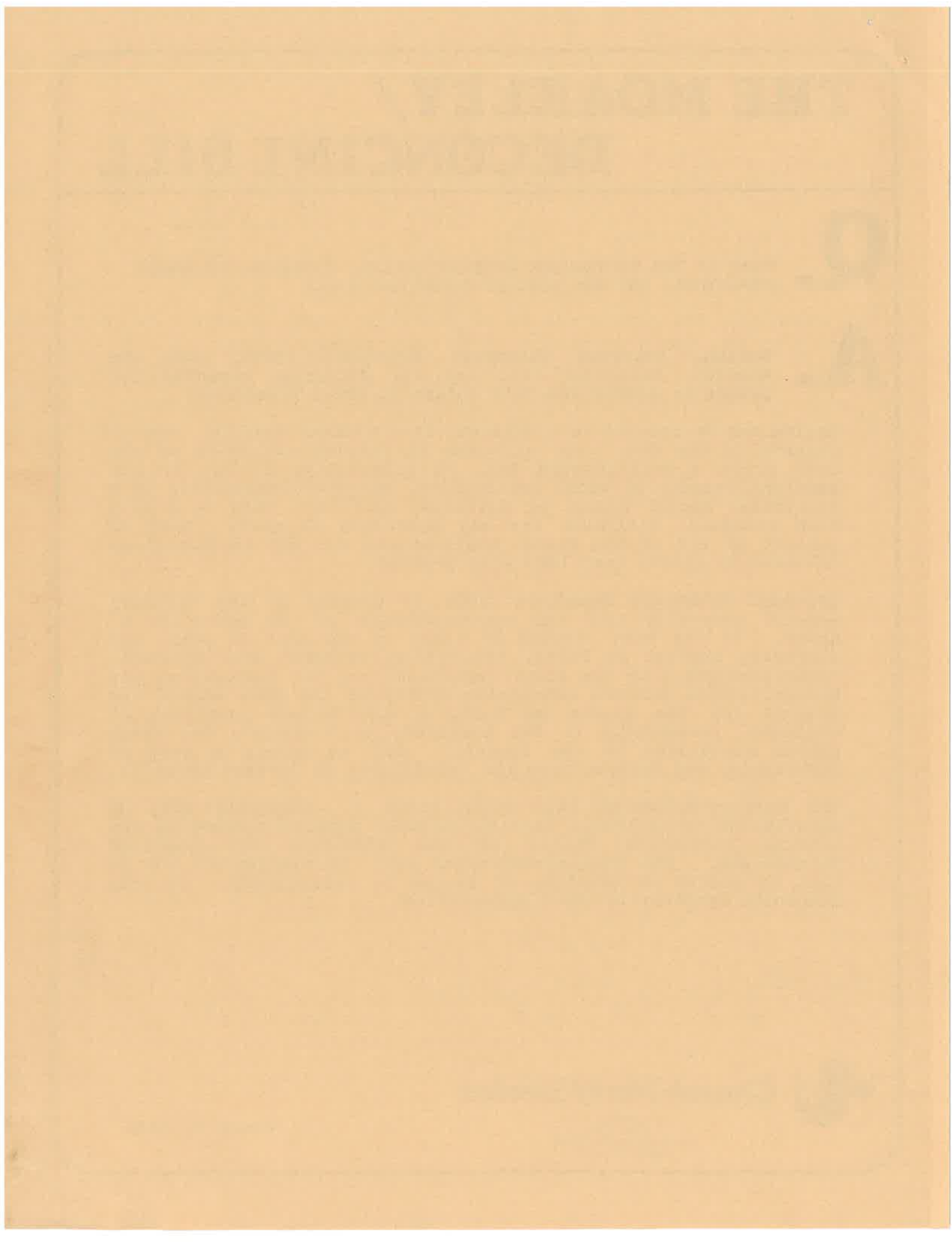
The Moakley-DeConcini bill would grant a temporary stay of deportation to nationals from El Salvador pending a study by the General Accounting Office of the situation of displaced Salvadorans. The Moakley-DeConcini bill is similar to EVD in that it grants no benefits or status to Salvadorans. It only prohibits temporarily their deportation.



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Q. IS SAFE HAVEN AVAILABLE IN CENTRAL AMERICA?

A. Safe haven for Salvadorans is not available for all of those who need it throughout the region. Attacks on refugees have occurred in Honduras. Few Salvadorans are recognized as refugees in Guatemala. And, in Mexico, Salvadorans are subject to deportation.

Guatemala

Little is known about Salvadoran refugees in Guatemala. The U. N. High Commissioner for Refugees (UNHCR) has no presence in that country, and therefore cannot assess the refugee population or protect the refugees who are there. The Guatemalan government estimates that there are 70,000 Salvadorans in that country, but generally does not recognize them as refugees. The refugee situation in that country is made all the more troubling by Guatemala's record of gross abuse of human rights.

Honduras

Honduras has about 21,000 Salvadorans residing there, of which about 19,000 are living in camps served by the UNHCR. The situation of the Salvadoran refugees in Honduras is well documented, and the record of refugee protection there is less than spotless. Tension has been great between the Honduran government and military and the Salvadoran refugees.

The Honduran military has been known to take action against the refugees. There have been a number of incidents in the past year in which Salvadorans were found dead outside of the camps. In one case a woman refugee was arrested outside of the camp and handed over to the Salvadoran military. She is now listed as disappeared in El Salvador by Amnesty International.

The Honduran government has now stated its interest in the repatriation of the refugees. Some 1,000 Salvadorans entered Honduras during October of 1984 in order to avoid renewed conflict in Northern El Salvador. A number of these had voluntarily repatriated to El Salvador in the past year.

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Mexico

Mexico estimates there to be about 120,000 Salvadorans living there. Only 3,500 of these refugees are assisted by the UNHCR. In Mexico, camps for Salvadorans do not exist and almost all Salvadorans are considered undocumented aliens. If apprehended in Mexico, Salvadorans face deportation.

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ARE SALVADORANS ELIGIBLE TO APPLY FOR POLITICAL ASYLUM?

A.

Yes, anyone in the U.S. can apply for political asylum. During fiscal year 1984 over 13,000 Salvadoran applications were reviewed, but only a minimal 2.5 percent of them were granted by INS District Directors. However, asylum does not address situ-

ations of generalized violence--such as the Salvadoran civil war--in which it would be inappropriate to return anyone for reasons of basic security and welfare.

Most Salvadorans who fear deportation have not been able to convince U.S. authorities that they meet the strict asylum definition. This definition requires the individual to prove a well-founded fear of persecution upon return to El Salvador. However, many Salvadorans do not bring with them documents that are needed to legally prove a well-founded fear, and simply living in an area of extreme conflict is not grounds for asylum. Thus, for the overwhelming majority of Salvadorans, asylum is in reality sadly not an option.

However, asylum, even if it were generously granted, would not obviate the need for other approaches. The asylum process generally caters to the needs of the special case--public figures from the Eastern Bloc, labor union leaders, opposition politicians, and more.

Other problems with the political asylum option also exist. For example, in at least one Immigration and Naturalization Service district office along the U.S.-Mexico border, affirmative applications for political asylum are not even accepted. Instead, if a person requests an application for political asylum they are first arrested, put into deportation proceedings, and then allowed to apply for asylum. For reasons such as this, many attorneys do not recommend that their clients apply affirmatively for political asylum.

The chance of a Salvadoran being granted political asylum with even the best case is very slim. The government is now appealing many of the few asylum cases granted to Salvadorans.

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Only about 20 percent of all asylum applications from all nationalities are granted.

Again, asylum does not address situations of generalized violence--such as the Salvadoran civil war--in which it would be inappropriate to return anyone for reasons of basic security and welfare. In such instances, remedies such as Extended Voluntary Departure or the Moakley-DeConcini bill are necessary.

THE MOAKLEY/ DECONCINI BILL

Q. WILL THE MOAKLEY-DECONCINI BILL ENCOURAGE MIGRATION, AND WILL SALVADORANS EVENTUALLY RETURN TO EL SALVADOR?

A. To prevent any encouragement of migration, the suspension of detention and deportation in the Moakley-DeConcini bill only applies to Salvadorans in the U.S. prior to the date of the bill's enactment. Also, there is no historical evidence to suggest that grants of extended voluntary departure (EVD) have increased migration to the U.S., or that other nationals granted EVD did not return to their homeland once the suspension of deportation was lifted.

The legislation allows a temporary suspension of deportation only for those Salvadorans who were in the U.S. prior to the bill's enactment. No future refugees would be covered by this legislation.

There is no historical evidence that any grants of EVD--a status very similar to this legislation--have increased migration from a country; nor is there evidence to determine to what extent grantees returned home after EVD was lifted.

The closest comparison to the proposed Salvadoran case might be the grant of EVD to Nicaraguans in 1979-1980. However, the Immigration and Naturalization Service did not compile the necessary statistics at that time by nationality.

Those familiar with the Nicaraguan community in the U.S. indicate that many returned after the suspension of deportation was lifted.

Another important consideration is that people benefitting from EVD are put under "docket control" by the INS, meaning that after the suspension of deportation is lifted, the Salvadorans would be "known" to the INS, easing the enforcement of their departure.



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ARE SALVADORANS WHO ARE RETURNED TO THEIR HOMELAND PERSECUTED?

A.

Documentation which has been verified by the State Department shows that at least seven persons who were returned to El Salvador faced varying forms of persecution. Other cases have also been documented. That evidence, but more importantly, the fact that all being returned face a general condition of violence, make it clear that it is against fundamental principles of American decency to return refugees to El Salvador at this time.

There are documented cases of returnees being persecuted upon their return to El Salvador. The American Civil Liberties Union Political Asylum Project has documented examples of Salvadorans deported from the U.S. who upon their return faced varying forms of persecution. At least seven cases have been verified by the State Department. Furthermore, any absence of information about returnees should not be considered a verification of their safety.

However, it is important to note that the asylum standard of individualized persecution upon return has never before been required of any national group for whom a status such as Extended Voluntary Departure (EVD) was being considered or granted. EVD has always been based upon the general conditions in the homeland. If a person is a potential target for persecution upon return, that person should be granted asylum, and not be given just a suspension of deportation.

When Salvadorans return to their homeland as deportees they do face dangers due to the general violence, a situation which Salvadoran President Jose Napoleon Duarte himself describes as a "culture of terror."

One problem, for example, is that many deportees no longer have identification cards, or "cedullas," which is also a problem with many of the internally displaced. Cedullas are often checked, especially if one is travelling through the country. Persons lacking this identification are often immediately suspect as guerrillas are said not to carry these documents.



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Q. HOW DOES THE REFUGEE ACT OF 1980 OR POLITICAL ASYLUM RELATE TO THIS BILL?

A. The Refugee Act of 1980 covers asylum and the treatment of refugees. Asylum is based on an individual well-founded fear of persecution which each refugee must prove. The Moakley DeConcini bill, on the other hand, mandates a temporary suspension of detention and deportation because of the generalized condition of violence to which Salvadorans are being returned, not because of any individualized fear of persecution.

The asylum process has not been responsive to Salvadorans. This is due in part to the fact that the Refugee Act does not address the plight of groups temporarily unable to return to their homeland because of generalized violence, as is the case with Salvadorans.

The situation of Salvadorans, other than those who establish on a case-by-case basis that they will be specific targets of persecution, clearly resembles that of other nationalities who have been granted Extended Voluntary Departure (EVD). EVD is a discretionary administrative measure which temporarily stays deportation for a nationality.

The need for temporary stays of deportation for nationals whose home countries have been experiencing serious turmoil has been recognized by the United States a number of times in the past. EVD has been granted 15 times in the past 24 years, and currently applies to Poles, Ethiopians, Afghans and Ugandans.

EVD, or the concept of a temporary stay of deportation as in the Moakley DeConcini bill, is therefore not new. It has been used since the passage of the Refugee Act and under this Administration. When granted to the four national groups mentioned above, EVD was seen as a compliment to the Refugee Act to protect temporarily persons in danger.



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ARE THE SALVADORANS POLITICAL REFUGEES OR ECONOMIC MIGRANTS?

A.

Most of the 300,000-500,000 Salvadorans currently in the U.S. arrived here after the beginning of the current conflict in El Salvador in 1980, and thus cannot be dismissed as merely economic migrants. Further, the original motives for a person's migration to the U.S. has never before been considered when Extended Voluntary Departure (EVD) was granted.

According to the U.S. Census Bureau, in 1980 there were only 94,000 Salvadorans--both legal and illegal--in the U.S. This would indicate that most of the 300,000-500,000 Salvadorans in the U.S. came to this country after 1980 and during the current conflict in El Salvador. This suggests a rather strong relationship between the conflict and the unprecedented flight of Salvadorans from their country.

In granting EVD in the past, the Attorney General and the Secretary of State have considered the conditions a group would face upon return, rather than their original motive for departure from their homeland. Deportees would be potential victims of the generalized violence in El Salvador whether they first came to the U.S. as a student, seeking a job, or fleeing the civil war. This same standard--general conditions upon return to El Salvador--is the basis of the Moakley-DeConcini bill.

There are many push factors that affect Salvadorans' decision to leave their homeland. President Jose Napoleon Duarte of El Salvador states of Salvadorans in the U.S. "that they were compelled to flee for many reasons. 'Most of the reason is the historical process of injustice in our country. Some are pinpointed as rebels or as communists, as I was.'" (L.A. Times, Nov. 2, 1984).



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