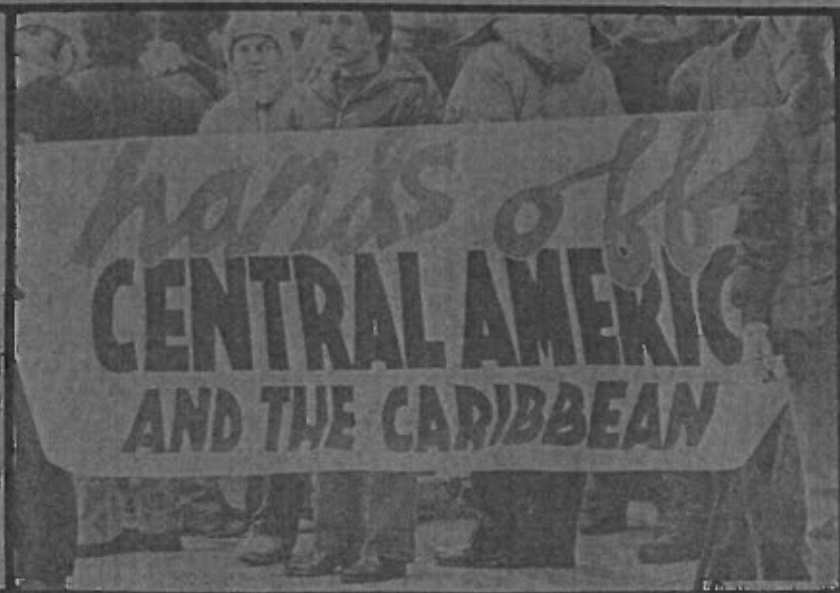


SANCTUARY AND THE LAW: A GUIDE FOR CONGREGATIONS



A project of the Chicago Religious Task Force on Central America,
the National Lawyers Guild, Proyecto Resistencia (Chicago) of A.F.S.C.
and Travelers and Immigrants Aid Society (Chicago)

Introduction

All across the United States religious people of every denomination are struggling to embody a faithful response to the cry of the suffering peoples of Central America. How do we stop US intervention in Central America? How do we stop the deportation of Salvadoran and Guatemalan refugees? Since March 24, 1982 over one hundred congregations, out of a deep faith commitment and sense of justice, have decided that in order to remain faithful they can do no less than provide sanctuary for these refugees. Over one thousand congregations are publicly supporting these sanctuary sites, and congregations from coast to coast are discussing how they will participate in the sanctuary movement.

How we respond to the cry of the people of Central America and the refugees in our midst, is a faith decision and a political choice. If our faith and our political beliefs call us to stand with the poor and oppressed of Central America and the refugees in our midst, then we must steadfastly face the reality that the US administration brands these refugees as "undocumented aliens" and has the power to fine and/or imprison those who offer them refuge.

This is the same situation that Americans faced in the 1800's when people in both the North and South took it upon themselves to defy the infamous Fugitive Slave Acts to bring hundreds of slaves to freedom via the "underground railroad". These courageous people, black and white, violated the laws for sixty years until Congress finally abolished slavery. They were arrested, convicted and jailed. This civil disobedience and a bloody civil war were necessary before the law finally caught up with morality and human dignity.

Policies and laws are difficult to change but they do change. What must happen first is the truth must be revealed; not the partial "truth" of those with vested interests in a particular outcome or policy, but the truth which comes from the refugees' own lives.

This booklet, it is hoped, will provide religious groups with a practical guide to the legal issues involved in sanctuary. It is not intended as an argument for sanctuary - that is a faith decision, and a political decision not a legal decision. Nor is it intended to take the place of legal counsel for either refugees or congregations. The laws which affect Central Americans here are highly technical. However it is important that non-lawyers familiarize themselves with the laws in order to best protect the refugees and themselves. We urge you to read the laws and significant cases yourselves, as well as to talk with immigration and civil rights attorneys in your area.

This booklet was written by Erika Kreider and Scott Pollock, NLG summer interns and edited by Susan Gzesh, Mary Ann Corley, Darlene Gramigna and Dan Dale.

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Part I: Legal Liabilities for Congregations

A. INTRODUCTION

The Sanctuary movement developed out of moral necessity - the obligation of persons of faith to stand with the persecuted. Though morally motivated, the protective response of the community of faith, to offer food, shelter and warm clothing is protected by the U.S. Constitution and international law.

The 1st Amendment of the U.S. Constitution guarantees freedom of religious expression. To be faithful to scripture, believers are obligated to protect the defenseless and the stranger.

When an alien resides in your land, do not molest him.
You shall treat the alien who resides with you no differently than the natives born among you; have the same love for them as for yourselves; for you too were once aliens in the land of Egypt. Leviticus 19:33-34

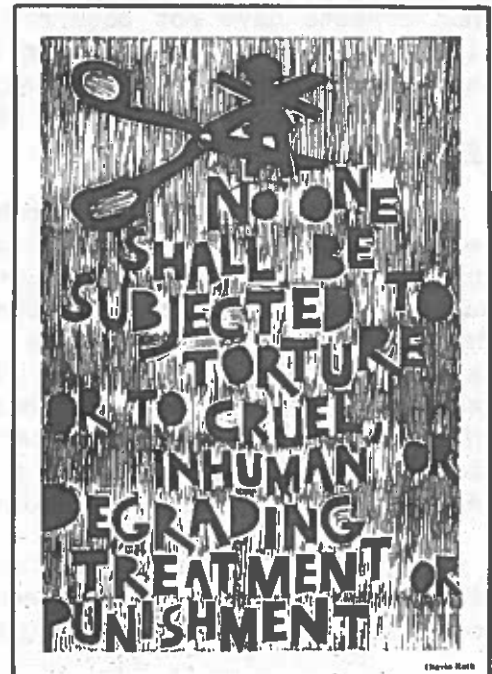
According to the gospel of Matthew, God is encountered in persons "who are the least among the brethren." The sign of one's faithfulness is directly measured by treatment of these forgotten ones...

for when I was hungry you gave me to eat, when I was thirsty you gave me to drink, I was a stranger and you welcomed me, I was in prison and you came to me. Matthew 25: 31-46

Accordingly, religious workers assisting refugees are acting within their constitutional rights by responding to the biblical requirement to aid and assist refugees fleeing terror. The Bill of Rights protects the free exercise of religion. Prosecution of a member of the faith community for undertaking such an action which they are duty bound to perform, would directly violate the first amendment right of freedom of religion.

The Immigration and Nationality Act at 8 U.S.C. 1324 (see appendix for full text) states that it is unlawful for an individual to knowingly assist a person unlawfully present in the United States. It is clear that refugees fleeing violence in El Salvador and Guatemala are lawfully present in the U.S. According to 8 U.S.C. 1101 (a) (42), a refugee qualifies for political asylum in the U.S. if it can be established that he or she:

"owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is unwilling to avail himself of the protection of that country."



The U.S. law is based on the United Nations Protocol for the Treatment of Refugees.

For we who are aware, that more than 40,000 civilians have been killed in the civil strife in El Salvador in the last three years, it is obvious that Salvadorans have fled their homeland because they fear that their lives are at risk there. In a letter of May 29, 1981 the United Nations High Commission on Refugees specifically stated that El Salvadoran refugees, as a group, meet the requirements for refugee status.

Under both the U.S. Refugee Act and the United Nations Protocol, Central Americans fleeing persecution are lawfully present in the U.S. The refusal of the current U.S. administration to recognize the legitimacy of their claims to refugee status under U.S. and international law **does not** render their presence unlawful. Those who assist these refugees are not committing illegal acts.

B. CRIMINAL PENALTIES

Persons who provide aid to Salvadoran and Guatemalan refugees who are in this country without permission of the INS may be prosecuted under Section 274 of the Immigration and Nationality Act of 1952, 8 USC 1324. Sanctuary groups should be aware of the law and the possible penalties.

The laws on "harboring" undocumented refugees should be viewed within a political context. They have not been tested in regard to churches providing sanctuary, so there is a certain degree of speculation as to the legal consequences and extent of liability for sanctuary congregations. The law is a political creature, and is enforced -- or not enforced -- within the context of the political arena. As of this writing no sanctuary congregation or member thereof has been arrested or indicted, nor have any refugees given sanctuary been arrested, although some local prosecutors have threatened prosecution.

The INS oft-stated policy has been one of not entering sanctuary churches to arrest persons being given sanctuary. Probably the most compelling reason such arrests have not occurred is that the political liabilities of prosecuting a religious congregation are believed to be too steep. As Bill Joyce, Assistant Counsel to the INS said, "We're not about to send investigators into a church and start dragging people out in front of TV cameras." Christian Science Monitor, 8/27/82.

The concept of the church as sanctuary was used most recently in this country during the Vietnam War. In a few instances, deserters from the Armed Services were given public sanctuary as a religious protest against the Vietnam War. Although the police did enter such proclaimed sanctuaries for the purpose of arresting those men given sanctuary, neither the churches nor the congregations were charged with harboring deserters under 18 USC 1381. However, individuals not claiming to act as part of a religious body were prosecuted for harboring deserters during the same period.



Although criminal liability is a legal question, and should be discussed within the sanctuary congregation, the possibility of prosecution is a political question which should be evaluated in light of the law, practice,

and -- most importantly -- religious and political conviction. The willingness to risk possible prosecution is a question of conviction, not a matter of law. Sanctuary is not the furtive act of the criminal, nor is it motivated by gain. It is a political and religious act by congregations. (See legal text of 8 U.S.C 1324 "Transporting" in Appendix)

The most vulnerable link in the sanctuary network are the underground railroad and the "evasion services" which include border crossing. On February 17, 1984 a Roman Catholic nun and lay worker were arrested in the Rio Grande valley of Texas along with three Salvadoran refugees bound for sanctuary in a Baptist Church in Massachusetts. As of this writing the religious women have been charged with: transporting, aiding and abetting and conspiracy. They pleaded not guilty on the grounds put forward in the introduction to this section. The potential liabilities they face are discussed later in this section. You may obtain updated information as this proceeds from the CRTFCA.

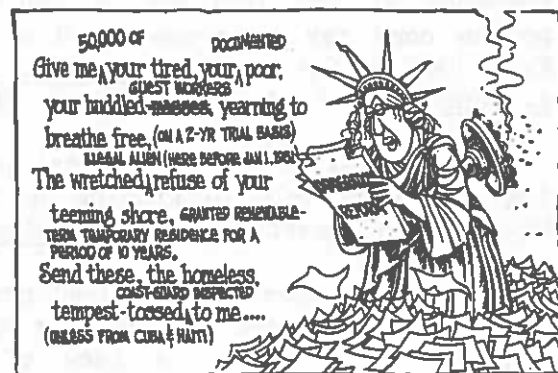
The Harboring Statute

Several offenses are contained within 8 USC 1324. The statute does not differentiate between the seriousness of the various offenses. Conviction under any of the provisions is a felony punishable by up to 5 years in prison and/or a fine of \$2,000 for each person harbored. Any person, citizen or non-citizen, may be indicted and convicted under any portion of this statute even if he or she merely makes an unsuccessful attempt to commit any of the proscribed acts. An essential element of these crimes is that the alleged violation must be "knowing." That is, the defendant knew, or had reason to believe, that the person harbored (or transported) was a person unlawfully within the United States. People involved in the sanctuary movement knowingly help, assist, aid, transport, feed, cloth, people who are refugees and have a legal right to be in the U.S.

Purely humanitarian motivation has not been a successful defense against the charge of harboring. See U.S. v. Acosta DeEvans, 531 F.2d 423 (9 Cir., 1976). A defense of religious conviction to a charge of harboring has not been tested but it is being tested to the charge of transporting and aiding and abetting in the Texas case.

Transporting Undocumented Refugees

Subsection 1324(a)(1) pertains to the crime of transporting across the border anyone not duly admitted or lawfully entitled to reside in the United States. A conviction under (a)(1) requires "active conduct" on the part of the defendant. U.S. v. Washington, 471 F.2d 402 (5 Cir., 1973). Smuggling for financial gain is not a factor in determining liability under this provision, although the element of gain may well come into play at the time of sentencing. The courts have held that subsection (a)(1) contains an implicit requirement of guilty knowledge, notwithstanding the fact that the literal



text does not specify the requisite that a person act knowingly. U.S. v. Zayas-Morales, 685 F.2d 1272 (11 Cir., 1982); U.S. v. Boerner, 508 F.2d 1064 (5 Cir., 1975).

Subsection (a)(2) prohibits the transportation of illegal aliens within the U.S. if a person knows or has reasonable grounds to believe that the illegal person's last entry occurred less than 3 years ago and any such transportation was "in furtherance of such violation of the law." To obtain a conviction under (a)(2), the government must show a substantial relationship between the transportation and its furtherance of the refugee's unlawful presence. U.S. v. Moreno, 561 F.2d 1321 (9 Cir. 1977).

The statute further provides that any vehicle which is used to transport illegal aliens is subject to seizure and forfeiture. 8 USC 1324(b). The burden of proof lies on the claimant whose vehicle has been seized that it was not used in violation of the statute. That is, if an illegal alien has been found in a vehicle, the government may presume that the owner knew the individual was illegal unless the owner is able to prove otherwise.

Harboring Undocumented Refugees

Subsection (a)(3) prohibits any person from willfully or knowingly concealing, harboring, or shielding from detection, any alien unlawfully present in the U.S. This applies "in any place, including any building or by any means of transportation." Violations under (a)(3) are by far the most complex because several elements are contained within the provision and because of judicial interpretation of the breadth of the statute.

It is well-settled law that a conviction under this provision need not be as part of a chain of smuggling, as the statute is aimed both at preventing persons from making an unauthorized entry into the United States (a)(1) and from remaining in the country unlawfully. The crime of harboring is not limited to the provision of clandestine shelter or "safe houses." Public "harboring" is also proscribed by the statute. U.S. v. Acosta DeEvans, 531 F.2d 423 (9 Cir. 1976). And since 1953 the courts have held that harboring includes any activity tending to substantially facilitate an illegal person remaining in the U.S. illegally. Herrera v. U.S., 208 F.2d 215 (9 Cir., 1953); U.S. v. Cantu, 557 F.2d 1173 (5 Cir. 1977).

Providing shelter to an illegal person can be prosecuted "harboring" if the person providing shelter is cognizant of the person's unlawful status. U.S. v. Lopez, 521 F.2d 437 (2 Cir., 1975). Warning an illegal person of the presence of INS officers or devising an "escape route" should the INS or police come may be prosecuted as "harboring". U.S. v. Rubio-Gonzales, 674 F.2d 1067 (5 Cir., 1982); U.S. v. Herrera, 584 F.2d 1137 (2 Cir., 1978); U.S. v. Cantu, 557 F.2d 1173 (5 Cir., 1977).

Other assistance to illegal persons which may be prosecuted as "harboring" includes help in finding jobs, filling out applications, transportation to work, and apartment rental. U.S. v. Lopez, 521 F.2d 137 (2 Cir., 1975).

Finally, subsection (a)(4) prohibits persons from willfully or knowingly encouraging, "either directly or indirectly," unlawful entry into the United States. Here again, a lack of financial compensation will not relieve liability.

Aiding and Abetting

Persons might conceivably be prosecuted under 18 USC 2, which provides that whoever wilfully aids in the commission of an offense against the United States is punishable as a principal (the person who actually commits the unlawful act). Violation of the immigration laws constitutes a crime against the United States.

Additionally, under 18 USC 3, any person who, knowing that an offense against the United States has been committed, assists the offender in order to prevent his apprehension, may be imprisoned and/or fined for not more than 1/2 the maximum penalty for the specified offense.

Conspiracy

During the Vietnam anti-war movement and the civil rights movement, multiple conspiracy charges were lodged against prominent activists in an attempt to frighten the U.S. public. It is possible that sanctuary activists will face conspiracy charges.

Congregations and/or individuals may be charged with conspiracy to commit an offense against the United States, the penalty for which is a term of imprisonment of not more than 5 years and/or a \$10,000 fine. 18 USC 1371.

Conspiracy charges have been lodged against individuals who have violated the INA, particularly the provisions against harboring and concealing. Conspiracy charges have been threatened against persons in the sanctuary movement.



C. SPECIAL CONCERNS

1. Is the Church Hierarchy Liable?

Religious societies (churches and synagogues) operate under either congregational or hierarchical policy. In a congregational structure, the local church is not subject to the control of a higher ecclesiastical judicature, and ownership of the church building is usually vested in the local congregation. In hierarchical polity, the local congregation is subject to the control of a larger religious organization, and ownership of the building is usually vested in the national body. A sanctuary congregation should know its own structure and consider possible legal ramifications in light of that. It is slightly more possible that the governing body of a hierarchical church would be held liable if a local congregation declared sanctuary. However there is no precedent for such liability in case law.

If a sanctuary group is concerned with these questions, it should consult with a local attorney. But it is highly improbable that any church hierarchy would be criminally prosecuted -- much less convicted -- because of the political liabilities such an action would entail for the government.

2. Congregations Which "Urge" Sanctuary

To some extent, the possible liability of congregations which "support" or "urge" sanctuary but do not declare sanctuary themselves is dependent on the phrasing of the resolution. It is morally inconceivable that a congregation or higher ecclesiastical body which merely exercised its First Amendment rights by urging sanctuary could be found criminally liable.

The declaration of an ecumenical body in support of sanctuary would not render the individual congregations which are members of that body criminally liable as the ecumenical group has no control over the member congregations.

3. Criminal Penalties for non-US citizens lawfully residing in the U.S.

Although the criminal penalties are the same for U.S. citizens and for non-citizens who violate the immigration laws, violation of the law could have more far-reaching consequences for a non-citizen who is a lawful permanent resident ("green card" holder).

Non-citizens who knowingly assisted smugglers for gain prior to or within 5 years after any entry into the United States may be deported under 8 USC 1251(a)(13). A conviction is not required.

Similarly, a conviction for smuggling undocumented persons under 8 USC 1324(a)(1) does not render a lawful permanent resident deportable unless the illegal acts were for gain. A non-citizen who transports, harbors, or shields from detection an undocumented refugee does not automatically come within the provision authorizing deportation, although he or she may be sent to prison for violation of the INA.

D. EXTRA-LEGAL HARRASSMENT ATTACKS

The arrests in Texas have been the most direct governmental attack on the sanctuary movement to date. However, government harrassment can take many forms as can non-governmental involvement i.e. Klu Klux Klan etc.

In one case, the INS went to a church where refugees had been and told the Pastor that they came to help the refugees fill out their political asylum papers. The Pastor said that the refugees did not need the kind of 'help' the INS was offering, and cited the number of refugees deported every year.

The FBI had been active in Texas a few days prior to the



Adrian Rocaids, Victoria Times-Colonist, Canada.

arrests. The FBI has questioned people in Milwaukee about Central America Solidarity work and about sanctuary.

If approached by the FBI, you should not say anything. Be courteous, but you do not even have to identify yourself

unless there is a warrant with your name or the place where you are. It is a federal offense to give false information to the FBI, but it is not an offense to not talk. If you are contacted by the FBI let the CRTFCA know.

In October of 1983, the Senate Subcommittee on Security and Terrorism held hearings on "Marxism and Christianity in Revolutionary Central America". The inquiry was about 'liberation theology' and was the first time the government launched an investigation into theology. Michael Shultheis, a Jesuit from the Center of Concern, labeled the hearings a "witch-hunt". Senator Denton, chairman of the subcommittee, used McCarthy tactics by repeatedly asking for names of church figures involved in Central America solidarity work.

A slanderous "60 Minutes" piece on the World Council of Churches which portrayed that institution as supporting revolutionary organizations with money while hiding that fact from its constituency.

The so-called Institute for Religion and Democracy (IRD) has sponsored trips and lectures tours by Central Americans who are sympathetic to the US government point of view. The "60 Minutes" segment on the World Council of Churches was based on information from the IRD. The IRD had been funded with thousands of dollars from conservative foundations. A staff person of the IRD joined a Methodist Church and three months later was at the UMC Convention submitting a resolution which "authorizes the executive board of the committee to raise funds and seek staff assistance from the IRD and other institutions to gather, analyze and distribute information about UMC agency expenditure for political causes". The IRD has published on the Episcopalians and Lutherans as well. It is clearly working to stop church support of social justice.

On two occasions, sanctuary churches have received threatening anonymous phone calls. One was called and told that the church would be burned down for harboring 'spiks', the other that the KKK was watching. Harrassment of this type should be reported to the CRTFCA, who will pass it on to the appropriate monitoring organizations. Also, threats of violence or bodily injury should be reported to the police. You want these threats on record.

There appears to be a systematic plan to prevent the religious community from following their faith in any kind of active way, whether it comes directly from the FBI or arrests, from manipulation of public opinion as with "60 Minutes", intimidating witchhunts like the Denton hearings, or from the vigilante tactics of the KKK, Posse Comitatus or others. These attacks should be taken seriously. Their intent is to stop you from doing the important work you are doing. This is what you can not allow them to do.

Part II: Refugee Rights

A. PROTECTIONS AND BENEFITS FOR REFUGEES

Refugees in sanctuary are undocumented. They do have many rights protected by federal and local laws, as do all undocumented aliens. It is a good idea for congregations to learn what protections and benefits undocumented aliens are entitled to and which they are not.

WORKERS PROTECTION - Undocumented Refugees:

1. may work (no federal law prohibits their employment);
2. are entitled to the minimum wage and overtime;
3. are protected by Occupational Safety and Health Act (OSHA) regulations;
4. can organize and join unions;
5. are entitled to workers compensation for on-the-job injuries
6. are probably entitled to receive disability benefits (check local laws)
7. are NOT entitled to unemployment benefits- (unless they present themselves to INS and are granted work authorization)
8. are entitled to request work authorization during the pendency of a political asylum application.

PUBLIC BENEFITS - Undocumented Refugees:

1. May NOT legally obtain a social security card unless granted work authorization by INS;
2. Are NOT entitled to receive Supplemental Security Income (SSI) available to limited income for blind, aged, or disabled persons, unless they are here "under color of law."
3. Are NOT eligible to receive Aid To Families with Dependant Children (AFDC) funds.
4. ARE eligible for Maternal and Child Health and Crippled Children's Services for low income women, mothers, infants, and children.
5. Are NOT eligible for Food Stamps. However, the U.S. born children of undocumented immigrants may receive both AFDC and food stamps.

Undocumented refugees need not, nor should they, answer questions from any public benefits employee regarding their immigration status or the status of a member of their household.

HEALTH CARE SERVICES - Undocumented Refugees:

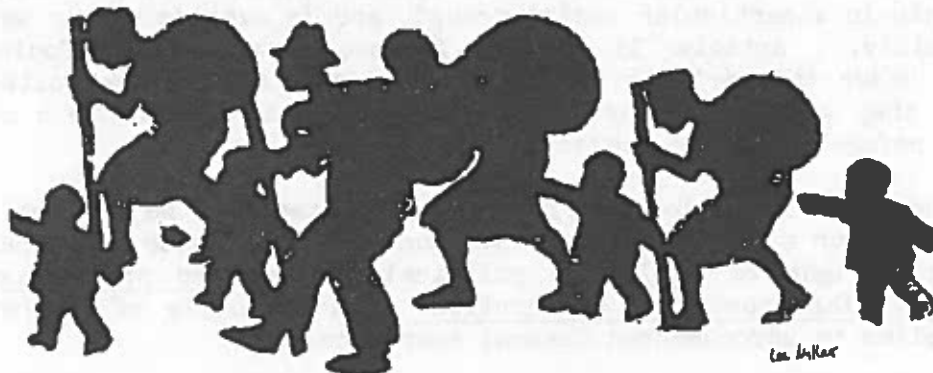
1. ARE entitled to receive emergency health care.
2. May or may not be entitled to government-subsidized non-emergency health care. Check local laws.

It is not necessary to respond to any questions regarding citizenship or immigration status in order to receive emergency treatment. We suggest the sanctuary congregation establish contacts with health care workers and dentists to provide non-emergency assistance as needed.

EDUCATION - Undocumented Refugees:

1. have the right to free public schooling through the primary and secondary grades;

2. are probably eligible for special education such as assistance to handicapped children or bilingual education for non-English speaking students;
3. usually are denied in-state residence status for purposes of tuition for institutions of higher education.
4. are not eligible for most federal or state scholarship programs or loans. Refugees who have lied about their status to receive scholarships have been criminally prosecuted for fraud in some jurisdictions.



B. BRIEF HISTORY OF U.S. REFUGEE POLICY

Refugee Policy Before 1980

The United States was developed and urbanized by an immigrant population, both slave and free -- after the Native American peoples had been pushed aside. Despite this heritage there is a history in the United States of anti-immigrant sentiment, largely based on racist values and class prejudice. Immigrants, including political refugees, are convenient scapegoats for economic recession, with the implication that an end to immigration would result in economic prosperity. This view, having no basis in fact, blames the most powerless members of our society for unemployment and the recession.

The first racist immigration law passed was the Chinese Exclusion Act of 1882, followed by the Immigration Act of 1924, which codified a quota system, for the admission of immigrants designed to preserve the United States as a country of predominantly Western European immigrants. The quota system remained the law until 1965.

The massive refugee population generated by World War II led to the first laws in the United States dealing with refugees, including the Displaced Persons Act of 1948, and the Refugee Relief Act of 1953, granting admission to "displaced persons," "refugees," or persons who fled certain areas of the world because of "persecution on account of race, religion, or political opinion."

Prior to the Refugee Act of 1980, U.S. law granted refugee status only to persons fleeing communist governments or from certain areas in the Middle East, in addition to some persons uprooted by natural catastrophies. 8 USC 1153(a)(7). In other words, refugee policy was dictated by the foreign policy of the Cold War period until....

The United Nations Protocol

In 1968 the United States signed the United Nations Protocol Relating to the Status of Refugees, requiring our government to offer protection to any person who fled his or her homeland because of a fear of persecution. U.S. law and practice, however, continued to follow the dictates of Cold War ideology.

Under the Protocol, a "refugee" is one who has a "well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership in a particular social group", and is outside his or her country of nationality. Article 33 of the Protocol bans the "refoulement" of refugees. Under this Article, signatory nations (such as the United States) agree that they will not deport persons within their borders to a country in which that refugee would be subject to persecution.

Neither the Refugee Act of 1980 nor the United Nations Protocol grants a right to asylum or a right to enter any country. What these two agreements do grant is the right to apply for political asylum, and protection against deportation to the country of persecution. The principle of non-refoulement clearly applies to undocumented Central Americans.

The Refugee Act of 1980

The contradiction between U.S. and international law was rectified, at least on paper, by the Refugee Act of 1980. Although the Immigration and Nationality Act of 1952 (INA), 8 USC 1101 (a)(42)(A et seq., is now facially neutral, and the Refugee Act of 1980 is ideologically neutral, both racial and ideological considerations enter into the enforcement of immigration law, especially as it pertains to refugees.

Under the 1980 Act, the asylum applicant or refugee must demonstrate a "well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." A plain reading of the statute suggests that an asylum applicant's subjective fear of persecution as well as reasonable objective evidence which sustains that fear ought to be sufficient to meet the standard. The Act does not require that asylum applicants show that they have been previously persecuted -- only that their fear of persecution is reasonable.

The Act incorporated some features of the Protocol and created a statutory basis for a claim of political asylum. Relief from deportation was made mandatory under the 1980 Act for asylum applicants with a well-founded fear of persecution. (Section 243(h))

Under the 1980 Act, refugees and asylum applicants must both demonstrate the same "well-founded fear of persecution". Technically defined, a refugee is a person applying from outside the U.S. to enter. An applicant for asylum is a person already within or at the borders of the U.S. Of course, the term "refugee" is commonly used to denote all person fleeing persecution regardless.

Refugee Admissions

Under the 1980 Refugee Act, the President determines on an annual basis the number of refugees to be admitted to the U.S. and their country of origin. The figures for Fiscal Year 1983-84 reflect the ideological bias of the Refugee allocations. The Administration recommends that the U.S. admit 72,000 refugees in 1984. In 1983, 90,000 were authorized to enter but actually only 60,000 refugees entered.

Of the 72,000 proposed for 1984, 50,000 would be from Indochina (Vietnam "boat people", Cambodia etc.) 12,000 from the Soviet Union or other Eastern European countries (Poland), 6,000 from the Middle East and South Asia (mostly Afghanistan and Iran), 3,000 from Africa and 1000 from Latin America.

The U.S.'s commitment to military aid over human rights is highlighted by the fact that it is the only country who signed the U.N. Protocol on Refugees that deports Salvadoran and Guatemalan refugees.

Canada's Refugee Policy

Canada's immigration policy contrasts dramatically with our own. On their face the Canadian and U.S. laws are identical both based on the language of the UN Protocol. But since 1981, Canada has accepted several thousand refugees from Central America. The Canadian government -- which has no military advisers in El Salvador -- recognized that certain classes of persons would be in particular danger should they be deported. Among them, according to the Canadian Consulate General, are persons who have participated in legitimate political and labor activities and in efforts to achieve social progress, teachers, and young men of military age.

Unfortunately, despite its realistic and humanistic policies, Canada simply cannot accommodate large numbers of refugees. It would be arrogant to ask any third government to accept responsibility for an exodus that U.S. foreign policy has created. The fairer solution would be for our government, like Canada, to recognize the refugees' claims of persecution, and grant them safe refuge.

C. EXTENDED VOLUNTARY DEPARTURE: A TEMPORARY JUST SOLUTION

As of February, 1984, both Houses of Congress have passed sense of the Congress resolutions urging "extended voluntary departure" for Salvadorans. Similar resolutions have passed or are pending before various state and local legislative bodies throughout the U.S. What is "extended voluntary departure?" What would it do for Salvadorans and Guatemalans? Who has the power to grant this status?

What is extended voluntary departure? What would it do for Salvadorans and Guatemalans?

"Extended voluntary departure" means that nationals of the designated country, no matter what their legal status in the U.S., do not have to return to their home country.

Deportation orders will not be enforced against them. They can be granted employment authorization by the INS which enables them to lawfully obtain social security.

One need not apply for political asylum in order to qualify for "extended voluntary departure." Therefore, Salvadorans and Guatemalans who fear that the U.S. government would pass information from their asylum applications to the Salvadorans or Guatemalan government need not worry about that if "extended voluntary departure" is granted.


Who has the power to grant "extended voluntary departure?"

Only the Attorney General, as head of the Department of Justice, may grant "extended voluntary departure" to any particular group. There are no laws, regulations or guidelines which the Attorney General must follow in making his decision, which he makes in consultation with the State Department.

In the past, extended voluntary departure has been granted to nationals of Nicaragua (just after the revolution), to Lebanese, Ethiopians, and Ugandans. Polish nationals have been under "extended voluntary departure" since the institution of martial law in Poland because the State Department's concern for the deprivation of human rights suffered by the Polish people. However, the State Department's "concern" apparently does not extend to Salvadorans and Guatemalans who face far more serious deprivations of human rights.

How does the U.S. justify its position in not granting EVD?

Eliot Abrams, Assistant Secretary of State for Human Rights and Humanitarian Affairs alleges that for economic reasons, El Salvador exported its population to the U.S. in the 60's and 70's. Department of Justice-Immigration statistics indicated that over $\frac{1}{2}$ of the 300,000 to 500,000 Salvadorans presently in this country entered after the onset of the civil war in 1979. During this period of 1979-1983 over 45,000 people have been killed in El Salvador. At Christmas, 1983, Monsignor Rivera y Damas of San Salvador stated that one has a greater chance of dying in El Salvador as a victim of a death squad than of natural causes.



"To be a Salvadorean refugee is to have daily viewed a holocaust so pervasive that 85% of Salvadorean families have had a member murdered. There is no time for grief, no time for childhood, only the immediacy of survival. Among the peasant population, the men and single women will fight. For mothers, children and the elderly it is a daily struggle to escape, to stay alive, to avoid starvation."

D. RIGHTS ON ARREST

Sanctuary congregations should be informed about the legal rights of the refugee, if apprehended by INS.

An important principle to remember is that all persons in the U.S., regardless of immigration status, are protected by the guarantees of the Bill of Rights. Of special import is the Fourth Amendment (the right to be free from unreasonable searches and seizures) and the Fifth Amendment (no deprivation of liberty without due process of law.)

TUS DERECHOS FRENTE A LA MIGRA

- Es ilegal que la Migra o la policia detenga, interroge o revise los documento de personas solo porque son de aspecto latino o hablan español.
- Todas las personas, con o sin documentos, tiene el derecho a mantener silencio y negarse a contestar preguntas de agentes de inmigración.
- Si la Migra te arresta tienes el derecho a salir en libertad bajo fianza.
- Tienes derecho a consultar con un abogado para cualquier diligencia de la Migra contra ti.
- Si te quieren deportar, tienes derecho a una audiencia donde puedes ser representado por un abogado o representante.

Si tienes miedo de regresar a El Salvador o Guatemala porque tu vida corre peligro tienes derecho a solicitar asilo politico.

QUE DEBES HACER SI LA MIGRA TE DETIENE Y TRATA DE ENTERROGARTE

- No contestes preguntas, infórmale al agente que tú rehusas a responder.
- Demanda oportunidad de consultar con un abogado.

QUE DEBES HACER SI LA MIGRA TE ARRESTA

- Bajo ninguna circunstancia firmes nada especialmente la salida voluntaria sin consultar con un abogado.
- Si tienes miedo de regresar a tu país pide asilo político y demanda que se te permita hablar con un abogado inmediatamente. Rehusate a contestar otras preguntas de la migra.
- Si no piensas pedir asilo politico, rehusate a contestar preguntas. Cualquier información que les des será usada para deportarte. No les diga donde naciste, por donde entraste o si tienes documentos.

- La practica de la policia es reportar a los arrestados a la Migra si saben que no tienen documentos. No respondas a sus preguntas sobre tu estatus de inmigración o lugar de nacimiento.
- Si el juez decide que seas deportado, apefa la decisión. En muchos casos el proceso dura por lo menos un año, y mientras tanto tienes derecho a permanecer en el país sin temor a ser deportado.

Remaining silent

The importance of silence:

To deport anyone, the INS has to prove that;

1. A person is not a citizen of the U.S. and,
2. That person does not have permission to stay in the U.S.

If INS sees papers or is given information, it can and will use that information to expedite deportation proceedings. If one remains silent INS may not possess enough information to deport. Even if one is arrested, it is important to remain silent until he or she has been able to talk with a lawyer.

Rules of Security: Central American refugees are advised to follow these rules:

1. Don't tell anyone about your immigration status.
2. Don't carry identification that shows your nationality.
3. Don't open your door to people you don't know.
4. Don't drive without a license.
5. Don't drink liquor in public; don't involve yourself in unnecessary problems that might call attention to yourself; pay your bills.
6. If you have problems at work contact a lawyer or labor specialist; don't argue with or threaten your boss or co-workers.
7. If the police or INS detains you don't try to escape or resist captures. Don't allow them to intimidate you - give your name, remain silent until you talk to a lawyer.

Who Can Arrest Undocumented Refugees?

City workers, such as building inspectors, have no authority whatsoever to arrest and detain persons they suspect are in the country without papers. The same is true for drivers' license examiners or other officials with whom the refugees may come into contact.

Can INS Enter a Church Building, a synogogue or home?

The INS may be denied entrance to a church building, a synogogue or home if they come without a warrant. However, if the INS officials do have a search warrant, they cannot be legally denied entrance.

Members of the sanctuary congregation have the same legal rights as does the refugee who has been granted sanctuary. Members of the congregation should refuse to answer questions, insist on the right to contact and be represented by an attorney, and not sign any papers. Moreover, any person who knowingly "falsifies, conceals or covers up ... a material fact" or makes a false statement to U.S. government officials may be imprisoned for not more than 5 years and/or fined up to \$10,000 under 18 USC 1001.

If INS agents arrest refugees granted sanctuary, the congregation should have the refugees' attorney contact INS immediately to alert INS to the fact that the refugees have counsel and outside support.

What if the Congregations Resists INS Entry?

Assuming that the INS has a proper warrant, members of a sanctuary congregation may not deny entry into a church building, synogogue or home. Congregations planning nonviolent resistance to INS officers should know they may be subject to arrest and prosecution in the federal courts. The same would be true should persons attempt to prevent a refugee's arrest on the street.

INS Arrests Outside the Church Building, synogogue or home

INS must either have a warrant or the permission of the owner to come into a workplace. If INS does raid, the undocumented refugee has the right to remain silent. He or she should not give the agent his or her name, address,

or any information about himself or herself. It is also important that the refugee not tell the INS agent any lies.

INS officials may stop an undocumented refugee on the street if they have a reasonable suspicion, based on factors other than Latin appearance, to believe the person is present in the U.S. illegally.

Since a refugee may be picked up in a raid away from the sanctuary, he or she should have the telephone number of a member of the congregation and/or a lawyer who can be reached on a 24 hour basis.

Police Stops

Local police officials may permissibly stop anyone on the street or in a car for brief questioning on suspicion of criminal activity. Although it is illegal for police or the INS to detain persons solely because they appear Latino or "foreign," that does happen. Should a refugee be stopped by the police, he or she should not respond to any questions regarding nationality or immigration status. The sole violation of the immigration laws which non-INS law enforcement officers are statutorily authorized to enforce is the harboring statute, 8 USC 1324(c). Persons arrested under this statute are those who have allegedly harbored undocumented persons, not the refugees themselves.

If a refugee is arrested and detained by the police for a crime, he or she should insist on the right to see a lawyer before responding to police questioning. Again, the police have no authority to arrest and detain persons solely because they suspect they might be undocumented, nor have they statutory authority to enforce the INA. Nonetheless, if the police suspect that an individual is undocumented, they may call INS officials. The detained refugee may assert his/her right to remain silent. When undocumented refugees are in custody, they have the same constitutional rights as does any other person.

If a refugee is already under deportation proceedings, he or she may not be rearrested by the INS. It is important that the refugee carry papers indicating this status in case he or she is stopped by immigration officers.

Policy Guidelines on Local Police

In 1978 U.S. Attorney General Griffin Bell issued guidelines to state and local police in which police were told to not detain persons solely on the ground that they might be undocumented. Police were also advised to notify the INS upon arresting suspected persons alien so that the INS might place an "immigration hold" on that person. However, a person may not be held by local authorities under an immigration hold for more than 24 hours.

But in Gonzales v. City of Peoria, 537 F.Supp. 793 (D.Az. 1982), the court held that "state and local law enforcement officials may arrest people for violations of federal immigration laws." And in 1983, Reagan's Attorney General William French Smith approved new guidelines encouraging state and local police to become more actively involved in the enforcement of immigration laws.

E. REFUGEES AND IMMIGRATION PROCEDURE:

1. DETENTION

Refugees' Rights in Detention

All refugees, with or without papers, have constitutional rights. All refugees offered sanctuary should be briefed on their rights. Many refugees from fascist police states do not understand that our legal system provides them with some protections against arbitrary authority.

Two 1982 federal cases highlight this point. Throughout the U.S., INS officers had been using intimidation and coercion to force Central Americans into signing a "voluntary departure" (I-274) form. The signed form acts as a waiver of their right to a hearing or to make a political asylum claim. At the same time INS restricted attorney access to the detainees, so that they were arrested, interrogated, and flown back to their country "all in a matter of hours".

The federal courts in Nunez v. Boldin and Orantes-Hernandez v. Smith issued injunctions which articulate the scope of Central Americans' rights in detention (see appendix for citations). The coercive tactics used by INS to procure the "voluntary departure" were prohibited since they infringed on the rights created by the Refugee Act and the Protocol. Restrictions placed on refugees' ability to consult with attorneys were found to be unconstitutional. Since a prepared refugee will be his or her own best lawyer, he or she should know this (continuing) history of abuses and what rights have already been secured. Among the most important rights are:

1. The right to remain silent.
2. The right to contact and be represented by a lawyer (at the refugee's own expense).
3. The right to a hearing before an immigration judge.
4. The right to refuse to sign a "voluntary departure" form, and to retract it if one has been signed. (The revocation should be confirmed in writing by an attorney immediately.)
5. The right to apply for political asylum.
6. The right to be released from INS custody under a reasonable bond.

BONDS

Any detainee able to assert their rights and not be intimidated into 'agreeing' to leave immediately under the so-called "voluntary departure" program, will have a bond set for him or her. If the bond is high, (i.e. \$5,000) the detainee may request a hearing before an immigration judge to lower the bond. The detainee should have a lawyer at the hearing and may present witnesses who can testify on his/her behalf.

Bond amounts vary between regions of the U.S. INS demands that 100% of the bond amount be posted. In some areas, commercial bond agencies will post the bond for a percentage fee. Check with local immigration lawyers about bond amounts and bond agencies in your area. Sanctuary churches should have a plan for bond.

Deportation Proceedings & Applying for Asylum

When a refugee is released on bond, INS will set deportation hearing date. If the refugee states his/her intent to apply for asylum and does so, the deportation hearing will be continued until the INS has received a recommendation from the State Department. In the case of most Central American refugees, the BHRHA will issue a form letter recommending denial of asylum. The refugee then has the right to a full hearing before an immigration judge, as well as the right to appeal an adverse decision. Regional variations in INS practices are such that a refugee may have anywhere from 4 weeks to 3 years between the date of arrest and the full hearing. If the refugee is denied asylum by the Immigration Judge, he/she may appeal to the Board Of Immigration Appeals and then to the federal courts.

Some refugees may be eligible to apply for lawful permanent residence through close relatives who are U.S. citizens or permanent residents. The "relative preference" categories are complex and some waiting lists are long. An attorney or legal services center which specializes in immigration law should be consulted if a congregation needs information.)

HOW DO THE COURTS TREAT CENTRAL AMERICANS' ASYLUM APPLICATIONS?

What happens to a political asylum application once it is filed has been the subject of much litigation. The Supreme Court has pending a case on what constitutes a "well-founded fear of persecution" under the Refugee Act of 1980. The INS as well as many immigration and some federal judges read the law to mean that the applicant must demonstrate a "clear probability" that he or she will be singled out for persecution if returned to his/her country. However, several courts have held that such a strict standard of proof is no longer applicable; that "well founded fear of persecution" does not mean that the applicant will be targeted for persecution, but rather that , under the circumstances, the applicant reasonably fears persecution.

In the cases of Central Americans, many immigration judges have been predisposed to see them as "economic migrants", and the refugees reasonable fears have been ignored. Even scars from torture or evidence that the applicant's name appeared on a death-list have failed to persuade some judges of the seriousness of the fears. Several cases have attempted to show that the applicants fear persecution based on membership in a particular social group, but as of this writing the administrative judges have refused to acknowledge that either "students" or "Salvadoran young men of military age" belong to persecuted social groups. The immigration judges apparently feel that if they ruled favorably on these claims a large percentage of the Salvadoran population would be able to remain in the United States.

El Salvador Human Rights Progress



Although the U.N. has stated that the numbers of refugees should not be considered in deciding whether or not the applicant has a well-founded fear of persecution, nor does the Refugee Act state that numbers should be an issue, judges continue viewing the law in terms of numbers.

Asylum Decisions and State Department

Given a facially neutral law and the 1980 Congress' intent to conform to internationally-recognized standards, any true political refugee would be granted asylum on the merits of his or her case. Unfortunately this does not happen because of the role of the State Department in the asylum process.

Before rendering a decision on a case, the INS must submit asylum claims to the State Department's Bureau of Human Rights and Humanitarian Affairs (BHRHA) for its recommendation. The BHRHA in turn passes the asylum applications to the "country desk" which is also in charge of foreign policy formulation for the asylee's home country. The State Department, responsible for formulating this country's foreign policy, will perforce bias its recommendations in favor of the current foreign policy goals. Evidently, from its use of form letters and its routine recommendations that Salvadorans' applications be denied, it is clear that the State Department views the asylum process and the international law principle of non-refoulement as political weapons to be used against communist countries or to be diffused so as not to prejudice relations with non-communist, "friendly" nations.

What should be dealt with on a legal and humanitarian level -- the plight of individual refugees and their fears of persecution -- is entangled in political judgments as to the effect asylum would have on U.S. foreign policy. According to a State Department Desk Officer in a 1975 interview, "There is no question that when we grant asylum to a refugee from a government ... with which we are friendly, that government feels that its reputation is slighted. ... This can only lead to resentment against the United States and both governments lose out." (Note, "Behind the paper curtain: asylum policy versus asylum practice." 7 NYU Rev. L. & Soc. Ch. 107 (1978))

The result of this procedure is a highly politicized asylum process. In fiscal years 1981 and 1982, 67 Salvadorans were granted asylum while 1,132 were denied. During the same period 11,637 were deported or accepted "voluntary departure" (Source: Statistics Office, U.S. Immigration and Naturalization Service, January 1983).

While the State Department technically does no more than issue a recommendation that asylum be granted or denied, that recommendation carries great weight with INS judges. Almost without exception, INS judges follow State Department recommendations.

The Hotel & Restaurant Employees Union, Local 25, with many Salvadoran members has sued to challenge the State Department's practices, claiming that the recommendations actually determine the outcome of Salvadorans' asylum applications. Because the applications are denied without a consideration of the merits of the refugee's claim of persecution, the State Department practice violates the refugees' Fifth Amendment due process rights as well as their rights under the U.N. Protocol and the Refugee Act.

The United Nations High Commissioner for Refugees (UNHCR) stated on May 29, 1981 "that in view of the conditions prevailing in the country of origin, all members of the group should, in the absence of clear indications to the contrary, be regarded as refugees. As regards persons who left El Salvador after the outbreak of the Civil War in 1980, we consider that the above-mentioned conditions are indeed fulfilled." The UNHCR also suggested that Salvadorans who left prior to the 1980 Civil War might also be considered refugees. In fact, the UNHCR has charged that this country is failing to fulfill its international obligations to refugees. This 1981 report became public in 1982 when it was read into the Congressional Record. (S826, February 11, 1982) The INS has chosen to ignore both the advisory opinion and warning of the UNHCR, as has the vast majority of the U.S. media.

F. WHAT HAPPENS WHEN ALL LEGAL RECOURSE IS EXHAUSTED?

Until we are able to force the US government to stop its intervention in Central America and to stop the deportation of the refugees created by the US government policy in Central America, more and more Salvadoran and Guatemalan refugees will be, and are being, faced with this question. The people of faith who stand with the refugees must also face this question.

Until the US government grants "extended voluntary departure" to all Salvadorans and Guatemalans many religious people believe a primary task is to help the refugees evade capture. If a refugee is captured then s/he must be ransomed (bailed out) from the US government and every available legal maneuver should be employed to attempt to prevent deportation or delay it as long as possible. However, at some point the appeals may run out, and INS will seek to enforce a warrant for deportation.

Once all appeals have been exhausted, a refugee will be given the option to leave the US under voluntary departure by a fixed date. If the refugee fails to depart, he/she will then be subject to immediate deportation. A "bag and baggage" letter will be issued by INS ordering the refugee to report to the INS for deportation. If he/she fails to appear, INS agents will attempt to arrest the refugee. Once a "bag and baggage" letter has been issued, INS

Eli Reed/San Francisco Examiner



considers the bond forfeitable (i.e. they keep the money), because the refugee has refused to comply with the INS order to leave.

Refugees arrested by INS after all appeals are exhausted are subject to immediate deportation. A congregation may consider trying to depay the deportation by a habeas corpus action, but the likelihood of success is small.

It is important to note, however, that refugees who have never applied for asylum may move to reopen their deportation cases to file for asylum even after the issuance of a "bag and baggage" letter. Congregations meeting refugees in this situation should consult a lawyer immediately.

Any refugee who chooses to participate in the very public role which is involved in sanctuary when they are facing a final deportation order is taking a quantum leap in terms of risk. The refugee(s) must be prepared to be 'martyred' if they are apprehended by INS. For this reason, the number of refugees who would ask for this type of sanctuary is very small. Also, a congregation which decides to offer refuge of this kind must make clear exactly what they (the congregation) is prepared to do to defend the refugee(s). Is the congregation prepared to physically defend the refugee(s)?

As of this writing, there is only one case in which a refugee family has asked to participate in sanctuary in this situation. In this case, a woman had received a "bag and baggage" order and had her appeal to reopen her case denied. Through the five month publicity of the refugee in sanctuary, the INS finally did reopen the case. The INS did attempt to capture the refugees. The refugees could not leave the church buildings and a sense of being confined and locked-up was very real and problematic for both the church and the refugees. Temporary sanctuary for publicity might be used more frequently in the future. The issues of the risk to the refugees if they are taken by INS remains the same. The decision concerning physical defense for the congregation is the same. It is important for the refugees and the congregation to have worked out a plan so the refugees can know how to react to certain situations and how to deal with their confinement. For instance, at what point they might apply for Canadian Asylum; at what point they would be helped clandestinely into Canada, or moved underground in another part of the US.



Part III: Appendix

A GLOSSARY OF IMMIGRATION TERMS

ALIEN - A person who is not a citizen of the United States.

ASYLEE - An individual who has been granted ASYLUM. Asylees are those who are already in the U.S., legally or illegally, and subsequently applied for ASYLUM and were found to fit the REFUGEE definition.

ASYLUM - The granting of permission to reside in the U.S. to a person fleeing persecution in another country. Under current U.S. law, to receive asylum a person must qualify for the definition of REFUGEE status. Under the REFUGEE ACT OF 1980, persons whose asylum claims are granted may apply to become LEGAL PERMANENT RESIDENTS after one year.

B.H.R.H.A. - The Bureau of Human Rights and Humanitarian Affairs, the office of the State Department responsible for recommending a grant or denial of asylum.

B.I.A. - The Board of Immigration Appeals, the highest administrative court which rules on DEPORTATION, EXCLUSION and ASYLUM cases. Located in Washington, D.C.

DEPORTATION - Forcing an alien to leave the U.S. after he or she has entered. U.S. citizens are not subject to either deportation or EXCLUSION. Grounds for deportation include illegal or fraudulent entry, committing a crime in the U.S., or becoming a public charge. Deportation is at government expense, so aliens are encouraged to choose VOLUNTARY DEPARTURE if they are eligible. An alien deported from the U.S. must either remain outside the country for 5 years before reentering or secure prior permission from the INS to reenter.

EXCLUSION - A list of reasons for not admitting a person to the U.S. These are set out in the IMMIGRATION & NATIONALITY ACT and include reasons of health, criminal conduct, and political grounds, as well as those believed by the U.S. Attorney General likely to engage in activities harmful to national security.

EXTENDED VOLUNTARY DEPARTURE - A special measure under INS operating procedures by which persons (sometimes all citizens) of a specified country who are present in the U.S. and subject to DEPORTATION are granted temporary permission to remain. This measure is implemented to avoid deporting persons to conditions of natural disaster or civil strife which would place them in unusual danger. The INS has only implemented it upon recommendation of the Secretary of State. In recent years extended voluntary departure has been granted to Ugandans, Lebanese, Iranians, Nicaraguans, Poles, and Ethiopians. See VOLUNTARY DEPARTURE.

F.SUPP. - The Federal Supplement, official report of all U.S. district court decisions.

F.2d - The Federal Reporter 2d, official report of all U.S. courts of appeals decisions.

I.N.A. - The Immigration & Nationality Act. This Act was passed by Congress in 1952 and has been amended several times since. The proposed Simpson-Mazzoli Immigration Reform Bill would be the first major revision of U.S. immigration law in over 30 years.

I.N.S. - The Immigration & Naturalization Service, the agency responsible for enforcing and administering the I.N.A. It is a division of the Department of Justice.

LEGAL PERMANENT RESIDENT - A person who has been granted permission to live in the U.S. but is not a citizen. Many legal permanent residents become U.S. citizens.

NON-REFOULEMENT - A French term used in the United Nations PROTOCOL meaning "not return." Under the PROTOCOL each country agrees to not forceably return any person to a country where he or she would be persecuted.

PROTOCOL - The United Nations Protocol on the Status of Refugees, an international treaty, which defines the term "refugee" and sets standards of treatment for refugees. The U.S. ratified the Protocol in 1968. The Protocol definition of REFUGEE has been incorporated into the U.S. REFUGEE ACT OF 1980.

REFUGEE - Under U.S. and international law, a person who has a well-founded fear of persecution in her or her country of nationality on account of race, religion, nationality, membership in a particular social group, or political opinion.

REFUGEE ACT OF 1980 - The U.S. law which defines "refugee" and sets out rules for selecting and resettling refugees in the U.S. The Refugee Act is part of the INA. It provides for government aid in the resettlement of lawfully admitted refugees. Under the Refugee Act, a "refugee" is a person fitting the above definition who has been screened, accepted, and lawfully admitted from points outside the U.S. See ASYLUM.

U.N.H.C.R. - The United Nations High Commissioner on Refugees and his office, the U.N. agency which responds to refugee protection and material needs worldwide through support provided by U.N. member governments. By definition, the U.N.H.C.R. responds to refugees outside their country of origin. As with other U.N. agencies, it can only operate by invitation of and subject to the limitations imposed by the host country's government.

U.S.C. - United States Code, the statutes of the United States.

UNDOCUMENTED REFUGEE - Any person who entered the U.S. without proper documents (an "illegal alien" or undocumented worker), or, having received permission to enter temporarily, stayed longer than permitted.

VOLUNTARY DEPARTURE - Granting permission to leave the U.S. "voluntarily" to an alien who has overstayed a temporary visa or who has entered illegally, without facing legal deportation proceedings and penalties. The INS often encourages undocumented persons to accept voluntary departure by signing a form in order to avoid the costly and time-consuming legal DEPORTATION proceedings. (If a refugee is granted voluntary departure by an immigration judge, he or she must pay for the trip in almost all cases.)

CASES

Due Process Rights Litigation

Nunez v. Boldin 537 F.Supp. 578 (S.D. Texas 1982)

Orantes-Hernandez v. Smith 541 F.Supp. 351 (C.D. Cal. 1982)

The Standard of Proof in Asylum Claims

Stevic v. Sava 678 F.2d 401 (2nd Cir. 1982) ("well-founded fear" standard)

Rejaie v. INS 691 F.2d 139 (3rd Cir. 1982) ("clear probability" standard)

Reyes v. INS 693 F.2d 597 (6th Cir. 1982) (follows Stevic)

Marroquin-Manriquez v. INS 699 F.2d 129 (3rd Cir. 1983) (rejects Stevic)

plus cases contained therein

"Social-Group" Litigation

Matter of Martinez-Romero BIA I.D. 2872, 692 F.2d 595 (9th Cir. 1982)

Matter of Sanchez & Escobar (Salvadoran Young Man case), see Interpreter Releases, Vol 59, No. 39, October 8, 1982, p.659

Matter of A (Nicaraguan granted asylum), see Interpreter Releases, Vol. 60, No. 2, January 14, 1983, pp.26-29.

Challenge to U.S. Asylum Practice

Hotel & Restaurant Employees Union Local 25 v. Smith et al F.Supp. _____ (D.D.C., CA No. 82 2203, April 28, 1983), see Interpreter Releases, May 12, 1983.

TEXT OF SEC. 274 - (8 U.S.C. 1324)

Sec. 274 (8 U.S.C. 1324) (a) Any person, including the owner, operator, pilot, master, commanding officer, agent or consignee of any means of transportation who -

(1) brings into or lands in the United States, by any means of transportation or otherwise, or attempts by himself or through another, to bring into or land in the United States, by any means of transportation or otherwise;

(2) knowing that he is in the United States in violation of law, and knowing or having reasonable grounds to believe that his last entry into the United States occurred less than three years prior thereto, transports, or moves, or attempts to transport or move, within the United States by means of transportation or otherwise, in furtherance of such violation of law;

(3) willfully or knowingly conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, in any place, including any building or any means of transportation; or

(4) willfully or knowingly encourages or induces, or attempts to encourage or induce, either directly or indirectly, the entry into the United States of - any alien, including an alien crewman, not duly admitted by an immigration officer or not lawfully entitled to enter or reside within the United States under the terms of this Act or any other law relating to the immigration or expulsion of aliens, shall be law relating to the immigration or expulsion of aliens, shall be punished by a fine not exceeding \$2,000 or by imprisonment for a term not exceeding five years, or both, for each alien in respect to whom any violation of this subsection occurs: **Provided, however,** That for the purposes of this section, employment (including the usual and normal practices incident to employment) shall not be deemed to constitute harboring.

(b) (1) Any vessel, vehicle, or aircraft which is used in the commission of a violation of subsection (a) shall be subject to seizure and forfeiture, except

(A) the owner, master, or other person in charge of such vessel, vehicle, or aircraft, was not, at the time of the alleged illegal act, a consenting party or privy thereto; or

(B) the alleged illegal act occurred while such vessel, vehicle, or aircraft was in the illegal possession of any person other than the owner, as established by the criminal laws of the United States, or of any States

(2) The Attorney General shall, within one hundred and eighty days from the date of enactment of this Act, promulgate regulations setting forth procedures for the expeditious return to the owner, master, or other person in charge of any vessel, vehicle, or aircraft seized in violation of paragraph (1). In any such case, the owner, master, or other person in charge of such vessel, vehicle, or aircraft shall not incur any expenses, including costs of transportation, storage, damage, and attorney fees, associated with such seizure and forfeiture. In the case of a vehicle seized and forfeited pursuant to paragraph (1) subject to a valid lien or other third party interest, the regulations shall provide for satisfaction of the third party interest without expense to the interestholder.

(3) Any conveyance subject to seizure under this section may be seized without a warrant if there is probable cause to believe that conveyance has been used in violation of subsection (a) and circumstances exist where a warrant is not constitutionally required.

(4) All provisions of law relating to the seizure, forfeiture, and disposition of vessels, vehicles, and aircraft for violations of customs law shall apply to violations of the provisions of this chapter:

Provided, That -

(A) duties imposed on customs officers or other persons regarding the seizure of such conveyances under customs law shall apply to seizures carried out under the provisions of this section by such officers or persons authorized for that purpose by the Attorney General; and

(B) proceedings instituted under this subsection respecting vessels shall be subject to the Supplemental Rules of Certain Admiralty and Maritime Claims.

(c) No officer or person shall have authority to make any arrest for a violation of any provision of this section except officers and employees of the Service designated by the Attorney General, either individually or as a member of a class, and all other officers whose duty it is to enforce criminal laws.

SOURCES

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