

A Crisis Transformed: Refugees, Activists and Government Officials
in the United States and Canada during the Central American Refugee Crisis

by

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ABSTRACT

During the 1980s hundreds of thousands of Central American refugees streamed into the United States and Canada in the Central American Refugee Crisis (CARC). Fleeing homelands torn apart by civil war, millions of Guatemalans, Nicaraguans and Salvadorans fled northward seeking a safer and more secure life. This dissertation takes a "bottom-up" approach to policy history by focusing on the ways that "ground-level" actors transformed and were transformed by the CARC in Canada and the United States. At the Mexico-US and US-Canada borders Central American refugees encountered border patrol agents, immigration officials, and religious activists, all of whom had a powerful effect on the CARC and were deeply affected by their participation at the crisis. Using government archives, news media articles, legal filings and oral history this study examines a series of events during the CARC. Highlighting the role of "ground level" actors, this dissertation uses three specific case studies to look at how individuals, small groups, and a border town transformed and were transformed by the Central American Refugee Crisis. It argues that (#1) the CARC deeply affected the lives of those who participated in it, and (#2) the actors' interpretation and negotiation of, as well as resistance to, refugee policy changed the shape and outcomes of the Central American Refugee Crisis.

For her love and support throughout this process, without which this dissertation never would have appeared, I dedicate this dissertation to my dearest companion, best friend and wife, Heather Lynn Rosinbum.

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CHAPTER 1

A CRISIS EMERGENT

“America perceives itself as a nation of immigrants and refugees and as a country where those who flee persecution elsewhere can find safety and opportunity. In recent years, this self image has been increasingly challenged...” – Reverend Theodore Hesburgh, former chair of the United State’s Select Commission on Immigration and Refugee Policy, 1987¹

“We are in the middle of two great powers, the U.S. and Canada. The U.S. doesn’t want us here. Canada doesn’t want us – now anyway. I can’t go back to Salvador. So we wait here.”

– “Carlos,” March 1, 1987²

1.1 Introduction

Surveying the growing conflicts in Central America, Southeast Asia, the Middle East, and South America, analysts began asking early in the 1980s if they were witnessing the “decade of the refugees.”³ Twenty years later post-colonial theorist Trinh T. Minh-Ha wrote of the 1980s as “the decade of refugees, and the homeless masses.”⁴ The most surprising part for western countries of the “decade of the refugees” lay in the changing destinations of the refugee flows. For years they had treated refugee crises as localized issues that remained geographically contained in the region generating the refugees. During most of the Cold War, the United States focused its refugee relief efforts on Communist countries. By offering refuge to people fleeing Communist countries the United States made a political statement, condemning the conditions in, among others,

¹ Theodore Hesburgh in Norman L. Zucker and Naomi Flink Zucker, *The Guarded Gate: The Reality of American Refugee Policy* (New York: Harcourt Brace Jovanovich, 1987), ix.

² “Carlos” (pseudonym) Quoted in Howard Witt, (Chicago Tribune) “Canada’s about face on immigration puts hundreds in limbo” *The Orange County Register*, 3/1/1987

³ David E. Anderson, “1980s Could Become ‘Decade of Refugees’” *Hartford Courant* 3/9/1981. Anderson is referencing a study released that year by Kathleen Newland of the World Watch Institute entitled “Refugees: the new international politics of displacement.”

⁴ Trinh T. Minh-Ha, *Elsewhere, Within Here: Immigration, Refugeeism and the Boundary Event*, (New York: Taylor & Francis, 2011), 45.

Hungary, Vietnam and Cuba. Most refugees who applied for status were screened and selected abroad by US government officials who then pushed their application through the appropriate channels.⁵ This changed dramatically in the 1980s. Gil Loescher, one of the leading scholars of refugee studies, identified this paradigmatic shift in an influential 1994 article entitled, “The International Refugee Regime: Stretched to the limit?”. Internal wars in Southeast Asia, Afghanistan, Central America, and Africa during the 1970s and 1980s pushed refugees out of localized camps in or near the affected regions into countries far from the conflicts, creating what Loescher calls a “globalized refugee relief situation.”⁶

This study examines the ways that refugees, social and religious activists, and low-level government officials in Canada and the United States transformed and were transformed by their nations’ policies concerning one of the decade’s largest refugee crises in the Western Hemisphere, the Central American Refugee Crisis (CARC).⁷ Discussed in detail in section 1.2.2, the CARC grew out of a series of horrific civil wars in Guatemala, Nicaragua and El Salvador. These wars displaced millions of Central Americans, hundreds of thousands of which fled the country in fear of their lives and immigrated to the United States and Canada.

The United States and Canada had dealt with smaller refugee crises before with displaced people after World War II, and refugees from Vietnam, Chile and Uganda during the 1960s and 1970s, but these crises emerged thousands of miles from North

⁵ John Crewdson, *The Tarnished Door: The New Immigrants and the Transformation of America* (New York: Times Books, 1983), 71, 81.

⁶ Gil Loescher, “The International Refugee Regime: Stretched to the Limit?,” *Journal of International Affairs* 47:2 (Winter 1994), 363.

⁷ For this term I am indebted to Maria Cristina Garcia, whose invaluable work, *Seeking Refuge: Central American Migration to Mexico, the United States and Canada* (Berkeley: University of California Press, 2006) is discussed further below.

America, granting the two countries the ability to exert a significant amount of control over the character and number of refugees they welcomed. The only exceptions came from the United States' response to refugees from the Caribbean, as Haitians and Cubans during the 1960s and 1970s made their way to the US via makeshift boats. For the most part, the US government welcomed Cubans fleeing Castro and communism, while rejecting Haitian refugees for racial and political reasons. In spite of the occasional influx of refugees from the Caribbean isles, the presence of a sizeable body of water separating them from the United States gave American officials some measure of control over which refugees to admit. This changed substantially during the 1980s as refugees from war torn Central America began streaming overland across the largely unregulated land borders between the United States and Mexico, and then the United States and Canada.

Throughout this dissertation I repeatedly use the term “ground level actors” when referring to those most immediately involved in the Central American Refugee Crisis. This includes activists working directly with Central American migrants, government officials tasked with policing immigration, lawyers working on asylum cases, and religious activists lobbying for migrants. Highlighting the role of “ground level” actors, this dissertation uses three specific case studies to look at how individuals, small groups, and a border town transformed and were transformed by the Central American Refugee Crisis. It argues that **(#1)** the CARC deeply affected the lives of those who participated in it, and **(#2)** the actors' interpretation and negotiation of, as well as resistance to, refugee policy changed the shape and outcomes of the Central American Refugee Crisis.

1.2.1 Background

Any extended analysis of refugee issues must begin by defining exactly what the word “refugee” means as it is, depending on the context, loaded with a variety of political, social and legal meanings. Etymologically, the word comes from the French word *refugié*, referring to the Huguenots expelled from France following Louis XIV’s revocation of the Edict of Nantes in 1685. The Oxford English Dictionary’s (OED) definition of a refugee as “(a) person who has been forced to leave his or her home and seek refuge elsewhere, esp. in a foreign country, from war, religious persecution, political troubles, the effects of a natural disaster, etc.,”⁸ is strikingly similar, though less specific than the definition codified by the United Nations in its 1951 Convention Relating to the Status of Refugees. In the 1951 Convention the United Nations defined a refugee as someone who, prior to 1951, had a, “*well-founded fear* of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion is outside the country of his nationality or, owing to such a fear, is unwilling to avail himself of the protection of that country... [emphasis added].”⁹ A protocol passed by the United Nations’ general assembly, signed on January 31, 1967, extended this definition to those who became refugees (as defined by the 1951 Convention) as a result of events that transpired after 1951. Both Canada and the United States signed the 1967 protocol within a few years of its passage but neither codified the refugee provisions in domestic law until 1976 (Canada) and 1980 (United States). These laws use the narrower United

⁸ "Refugee." Merriam-Webster.com. Accessed March 27, 2013. <http://www.merriam-webster.com/dictionary/refugee>.

⁹ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 152, available at: <http://www.unhcr.org/refworld/docid/3be01b964.html> [accessed 28 March 2013]

Nations standard that does not recognize natural disasters or war, rather than the OED definition cited above.

The omission of natural disasters and war from the UN definition is significant as it indicates a difference between who the public generally understands to be a refugee, and who the law understands to be a refugee. The opening quotation from Reverend Hesburgh reveals, in part, the consequences of this tension between public belief and established law. Under the UN definition it is not enough to be fleeing war, natural disasters or political troubles; one must have a “well-founded fear” of persecution. This short phrase is the bedrock upon which the international refugee regime rests. Yet, who determines whether a potential refugee has a “well-founded fear,” and, more importantly, what exactly is a “well founded fear”?

Since the codification of the United Nations’ 1951 Convention and 1967 Protocol into US and Canadian law, a variety of officials in the United States and Canada have been tasked with adjudicating whether someone is a “legitimate” refugee and has a “well-founded fear.” These adjudicators have included immigration judges, asylum officers, consuls, specially created panels and high-level government dignitaries. Scholars from the growing field of refugee studies have demonstrated that in the United States and Canada, adjudicators’ definition of “well-founded fear,” so crucial to the success of a refugee application, has and continues to vary widely. Adjudicators based their definitions on everything from a prospective refugee’s country of origin, marriage status, level of documentation to his or her gender. One telling example regarding the importance of an applicant’s country of origin is that between 1983 and 1986 potential refugees in the United States fleeing communist Eastern Europe were over 1000 times

more likely to receive refugee status than those fleeing similar situations in right wing Guatemala.¹⁰

Scholars have demonstrated that the success of a refugee's application often does not rest on the merit of his or her application, but rather is determined by the location of the adjudicator's office, adjudicator's gender and adjudicator's previous legal career.¹¹ Detailed statistical analysis of asylum decisions over a seven-year period at the turn of the 21st century by Jaya Ramji-Nogales, Andrew Ian Schoenholtz and Philip G. Schrag demonstrates that a seemingly unbiased system was heavily contingent on the judges tasked with administering it. Female immigration judges were 44% more likely to grant refugee status to applicants than their male counterparts. They found similar variations based on the judge's previous career and place of work.¹² There is no reason to believe that the roulette-like nature of asylum decisions in the late 1990s differs from those of the 1980s and early 1990s.

The decision to award or refuse "refugee status" carries tremendous import. As the 1951 Convention makes clear, absent a felony conviction or national security risk, "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or

¹⁰ Sharon Erickson Nepstad, *Convictions of the Soul: Religion, Culture, and Agency in the Central America Solidarity Movement* (New York: Oxford University Press, 2004), 130.

¹¹ The most notable examination of the chaotic nature of refugee adjudication worldwide is Jaya Ramji-Nogales, Andrew Ian Schoenholtz, and Philip G. Schrag. *Refugee Roulette: Disparities in Asylum Adjudication and Proposals for Reform*. (New York: New York University Press, 2009). Others include Susan Bibler Coutin's *Legalizing Moves: Salvadoran Immigrants' Struggle for U.S. Residency*. (Ann Arbor: University of Michigan Press, 2000); Gerald E. Dirks *Controversy and Complexity: Canadian Immigration Policy During the 1980s* (Montreal: McGill University Press, 1995); and Carl Bon Tempo, *Americans at the Gate: The United States and Refugees during the Cold War* (Princeton: Princeton University Press, 2008).

¹² Nogales, Schoenholtz, and Schrag. *Refugee Roulette*, 44.

political opinion...”¹³ Therefore any signatory is legally bound to not deport individuals found to be refugees to their “home” countries. This principle of *non-refoulement* is enormously important for the Central American Refugee Crisis. During the 1980s and 1990s hundreds of thousands of Guatemalans and Salvadorans migrated to the United States and Canada, many of whom believed that they possessed a “well-founded fear” of persecution back in their countries of birth. Most of these migrants crossed the border without the state-required documentation, making them, in the eyes of the law, illegal. If apprehended they were in danger of being deported back to their home countries. Once apprehended many Central Americans applied for refugee status. An overwhelming majority of them never received refugee status and were, instead, labeled as illegal economic immigrants and subject to deportation.

1.2.2 Background in Central America

Central American migrants’ fears stemmed from the massive violence and government repression brought on by the civil wars in Guatemala and El Salvador. For decades, economic inequality, sham elections and military control characterized social and political life in the two countries. El Salvador’s oligarchical “Fourteen Families” had controlled the vast majority of land and capital in the country since independence. The country’s brief experiment with democracy begun in 1927 ended bloodily in 1931 when the military, spurred on by the “Fourteen Families,” overthrew democratically elected Arturo Araujo. In the next year they consolidated their power with the bloody massacre of tens of thousands of Salvadoran peasants in an event known as La Matanza. Among

¹³ *Convention Relating to the Status of Refugees*, 176.

the victims was Augustín Farabundo Martí, a charismatic figure whose name became a symbol for the guerillas of the 1980s.¹⁴

Between 1932 and 1972 El Salvador enjoyed relatively stable governments dominated by military regimes with close links to the “Fourteen Families.” Growing urbanization in the 1950s and 60s led to the formation of a new political party, the Christian Democratic Party (PDC), whose base lay primarily among urban industrial workers. Its strength grew throughout the 60s until by 1972 its party leader, and presidential candidate, José Napoleon Duarte, seemed poised to win the election. Massive fraud awarded the presidency to the army’s candidate, Colonel Arturo Molina. Junior military officers, frustrated by the blatant fraud and jealous of the senior officers’ power, launched a military coup that Molina brutally put down. Going beyond the military conspiracy, Molina’s forces kidnapped, tortured and exiled Duarte, and attempted to eliminate the PDC through repression. Molina’s actions, coupled with a growing economic crisis, convinced many Salvadorans to join various guerilla groups scattered around the country.¹⁵

In response, Molina launched a wave of repression enabled in part by US military advisers and foreign aid. Government soldiers met protests in support of workers’ rights or on wasteful government spending with violence. The paramilitary group Organización Democrática Nacionalista (National Democratic Organization or ORDEN) contributed to the wave by “disappearing” (kidnapping and murdering) hundreds of teachers, priests, and peasants suspected to be dissidents. Human rights abuses became so bad that the

¹⁴ Walter LaFeber, *Inevitable Revolutions: The United States in Central America*, (New York: W.W. Norton, 1993), 73-75.

¹⁵ LaFeber, *Inevitable Revolutions*, 242-243.

Ford administration cut off US military aid. The “election” of General Carlos Humberto Romero in 1977 initially brought some changes as Romero halted the worse of the atrocities after the new Carter administration began to pressure El Salvador on its human rights records. Yet by 1978 the growing power of leftist guerillas in Nicaragua prompted the United States’ government to deemphasize human rights in Central America, and place its focus on terrorism and revolutionaries.¹⁶ Romero followed course, renewing his suppression of leftist groups, including any members of the Catholic Church who dared question him. Between 1978 and 1979 more than 720 people died at the hands of death squads and government forces.

In 1979 the civil war in El Salvador drew even more attention as the leftist Sandinistas overthrew the hard-right Somoza government in neighboring Nicaragua. For decades the Somoza regime had ruthlessly ruled Nicaragua while cooperating fully with the United States’ foreign policy. American officials worried that the success of the Sandinistas, who they believed to be deeply committed Communists, would lead to a “domino” effect in Central America, turning the region into an ally of the Soviet Union. Vociferously opposed to guerilla warfare against the hard-right government in El Salvador, the US government willingly provided military and financial aid to the guerillas in Nicaragua, known as “Contras,” fighting the left-leaning Nicaraguan government.¹⁷

Carter sent envoys to El Salvador to try and discover a way to follow his stated human rights policy, while providing the necessary military aid to the government to stop the guerillas, and isolate the radical left and right wings. He hoped that this would keep

¹⁶ LaFeber, *Inevitable Revolutions*, 244-245.

¹⁷ LaFeber, *Inevitable Revolutions*, 11.

El Salvador from following the Nicaraguan route where the government's failure to exorcise the far right contributed to its downfall. Romero resisted the United States' pressure to tone down the killing and hold new elections. On October 15, 1979 a collection of young officers eager for US military assistance, unhappy with Romero's association with ORDEN, and worried about the country's economic conditions successfully overthrew the government.¹⁸

Initially more liberal than their predecessor, the officers formed a ruling junta of two military officers (Colonel Jaime Gutiérrez and Colonel Adolfo Majano) and three civilians (Román Mayorga, Guillermo Ungo and Mario Andino). They promised to shut down ORDEN, free political prisoners, institute land reform, and more. For some members of the military the junta promised too much too soon. Gutiérrez, Majano and Andino listened to their complaints and slowed down the reforms. Soon any semblance of moderation disappeared. ORDEN reappeared in different guises as a variety of different death squads and soldiers resumed their paramilitary activity with even less direction from officers. Salvadoran Archbishop Oscar Romero publicly begged the government to rein in the death squads. While he was giving mass on March 24, 1980 off-duty soldiers stormed the chapel and shot him through the heart. The army's killing continued unabated. The Salvadoran government received even more US support, \$5.7 million more in military aid. That same spring Salvadoran guerillas saw the growing political power of Ronald Reagan, and worried over his promise to increase US military support to the Salvadoran government. As a result various factions joined together to form the Revolutionary Democratic Front (FDM) to coordinate the political activities of sixteen

¹⁸ William M. LeoGrande, *Our Own Backyard: the United States in Central America* (Chapel Hill: University of North Carolina Press, 1998), 38-40.

revolutionary organizations. In October five guerilla groups founded the Farabundo Martí National Liberation Front (FMLN) to coordinate military activities. Two months later the FMLN launched what it believed was the “final offensive,” a multi-pronged military attack that they hoped would convince soon-to-be-inaugurated President Reagan to push the Salvadoran military to the bargaining table. Their offensive failed as peasants did not join them, bought off by the government’s promises of better land reform and intimidated by the military’s violence. Nevertheless, the FMLN survived. For the rest of the 1980s the guerillas and military continued their civil war.¹⁹

The remainder of the decade was a nightmare for El Salvador. Weakened by the failure of its “final offensive,” the FMLN was ready to negotiate, but Reagan and the Salvadoran military forbade the government from negotiating, preferring to crush the guerillas and provide an example for other resistance movements throughout the region. More economic aid poured into the country, coupled with US military advisers, helicopters and C-47 gunships. In spite of US money and supplies, the government was unable to reverse the country’s economic slide and destroy the guerilla movement. All it seemed to be doing was killing its own people, 300 to 500 a week in 1981. In hopes of siphoning off support from the guerillas, as well as silencing domestic dissent against its foreign policy, the Reagan government pushed the Salvadoran military to hold elections to replace the ruling junta. \$10 million dollars in foreign aid bought the moderate Jose Napoleon Duarte the presidency in 1984. Duarte unsuccessfully tried to break with the United States by proposing peace negotiations with the FMLN but received little support

¹⁹ LaFeber, *Inevitable Revolutions*, 248-254.

from the military. The talks collapsed and the bloodshed continued.²⁰ The civil war suppressed economic development to the point that one of the country's primary sources of income during the 1980s was the remittances immigrants sent back from the United States.

By the late 1980s, out of a population of less than 6 million over 75,000 Salvadorans had been murdered or "disappeared." The civil war in El Salvador had taken the life of 1 out of every 80 Salvadorans. A renewed push for negotiations fell apart in 1988 when Duarte was unable to convince the rest of his government to prosecute members of the death squads. Instead the government passed legislation that forbade their prosecution.²¹ In 1989 politically untested Alfredo Cristiani won the presidency but did little to calm the violence. The FMLN launched a second "final offensive," that conquered about half the country but failed to overwhelm the government. With both guerilla and government forces at a stalemate, the military finally permitted the government to approach the bargaining table. Negotiations took nearly two years, but on January 1, 1992 the FMLN and the government finally agreed to a settlement that promised peace.²²

For the majority of the 20th century Guatemala endured a series of governments either completely in the hands of the military or heavily influenced by it. The one exception came in a brief 10 year interlude between 1944 and 1954. Known as the "10 Years of Spring," the period began with a coup that overthrew dictator Jorge Ubico. The ruling junta immediately agreed to hold a free and open election. Former university

²⁰ LaFeber, *Inevitable Revolutions*, 313-318.

²¹ LaFeber, *Inevitable Revolutions*, 354-358.

²² LaFeber, *Inevitable Revolutions*, 356-358,

professor Juan José Arévalo won the presidency and instituted a series of reforms designed to open up the government and loosen the grasp of the large landholders who had dominated the country's economy and politics for over a century. His successor, Jacobo Arbenz, continued many of Arévalo's programs, but fatefully decided to go further with a land reform that expropriated unused land from large corporations, many of them owned by US citizens. In the United States well-connected lobbyists and influential publicists portrayed land reform to the Eisenhower administration, and a gullible US public, as the first step towards communism, and morally, economically and politically wrong.²³ The massive agrarian reform, led first by Arévalo, and then broadened by Arbenz, nationalized hundreds of thousands of acres, and then redistributed them to the peasants in small plots. The government issued bonds to repay the original land owners according to the value the companies had placed on the land for tax purposes in the year before.

The US-owned United Fruit Company (UFCO), one of the world's largest banana producers, quickly decried the plan. For decades it had been consistently undervaluing its land to escape a high tax burden, and now did not feel that it was getting fair market value for its land. The UFCO, owner of approximately two-thirds of the first 337,000 expropriated acres, did not acknowledge that this policy was less radical than the Mexican agrarian reform that had taken place more than a decade earlier. In fact, the Arbenz land reform would have fallen well within the limits outlined by the American

²³Peter H. Smith. *Talons of the Eagle: Dynamics of U.S.-Latin American Relations*. (New York: Oxford University Press, 1996), 135.

Alliance for Progress that John F. Kennedy established less than ten years later.²⁴

Arbenz's legalization of the Guatemalan Communist party in 1952 only helped UFCO publicists convince the American government and public that Guatemala was headed towards communism, and its government was worthy of overthrow. From 1951-1954 the CIA funded and trained Guatemalan rebels led by Castillo Armas. On June 18, 1954 the Armas forces invaded Guatemala from Honduras with the support of US forces. On June 27th Arbenz resigned, and Armas took power. An assassin's bullet ended Armas' rule three years later. Shortly thereafter General Ydígoras Fuentes took power.

The next two decades saw a return to the economic futility and political repression Guatemalans had been familiar with since the colonial era. The Guatemalan government continued to be financially and politically supported by the United States, even while it used torture, death squads and other types of repression to suppress dissent. In 1960 a group of young military officers attempted a coup d'état, and went into hiding shortly after its failure. They, along with other dissidents, organized a series of guerilla groups that fought a civil war against the official government from 1960-1996. The government's response was brutal, particularly during the late 1970s and 1980s when violence reached its height. In six years, 1978-1984, more than 140,000 Guatemalans were either murdered or "disappeared" out of a population of less than 8 million in 1985.²⁵ These waves of violence, coupled with an oligarchic and post-colonial economic

²⁴ Stephen C. Schlesinger, Stephen Kinzer, and John H. Coatsworth. *Bitter Fruit :The Story of the American Coup in Guatemala*. (David Rockefeller Center Series on Latin American Studies, Harvard University. 2 David Rockefeller Center for Latin American Studies ed. Vol. 3. Cambridge, Mass.: Harvard University, David Rockefeller Center for Latin American Studies, 2005), 55.

²⁵ Garcia, *Seeking Refuge*, 27.

system made development almost impossible, and most Guatemalans, particularly rural Maya, remained mired in desperate poverty throughout the decade.

Much of the government's ire focused on impoverished Mayan villages. The Guatemalan government saw the rural highlands as the center of the guerilla movement and its primary source of support. In a desperate attempt to suppress dissent the Guatemalan government engaged in "relocation" campaigns, airborne assaults, and village "re-education" in what the United Nations eventually deemed a genocide against the rural indigenous people.²⁶ In the cities death squads targeted "dissidents" who dared to speak out against the government, join a trade union or express sympathy for the guerillas. Those picked up by the death squads often "disappeared" into mysterious prisons where they were tortured and killed, and their bodies dumped in the ocean or somewhere within the city to serve as an example. The total human cost of Guatemala's civil war is impossible to pinpoint, but low estimates place the total at 190,000.²⁷

Spurred north by government sponsored death squads, a UN recognized genocide in the Guatemalan highlands, massive human rights violations, and economic strife hundreds of thousands of Guatemalans, and Salvadorans fled to the United States, and Canada during the 1980s. This massive exodus, known academically in the United States as the Central American Refugee Crisis (CARC), meant that by 1987 approximately 600,000 to 1.1 million Guatemalans, and Salvadorans lived in the United States and 29,000 in Canada.²⁸ Thousands more followed throughout the rest of the decade. Upon

²⁶ Cecilia Menjivar and Néstor Rodríguez. *When States Kill: Latin America, the U.S., and Technologies of Terror*. (1st ed. Austin: University of Texas Press, 2005), 335.

²⁷ LaFeber, *Inevitable Revolutions*, 359.

²⁸ Alan B. Simmons, "Latin American migration to Canada: New Linkages in the Hemispheric Migration and Refugee Flow System" *International Journal* 48:2 (Spring, 1993): 291.

arrival in North America, Central Americans found that their presence highlighted foreign, and domestic policy tensions in their new homes.

1.2.3 Background in North America

In the United States, the Reagan administration's foreign policy in Central America had become a symbol of how it intended to approach the Cold War. Reagan's influential foreign policy adviser Jeane Kirkpatrick believed Central America to be "the most important place in the world for the United States."²⁹ Geographically close to the United States, many Cold War warriors feared a domino effect that would turn the region, and then Mexico, communist. Kirkpatrick, and the rest of the Reagan administration, were particularly irked at President Carter's perceived weakness exemplified through his government's "failed" response to the Nicaraguan revolution, signature of the Panama Canal Treaties, and general emphasis on human rights at the expense of hard right governments.³⁰ The Reagan administration loudly proclaimed that this failure had resulted in an increasingly threatening Soviet presence in Central America. Less than a month following Ronald Reagan's inauguration the State Department released a white paper that enumerated the ways that the Soviet Union and "Sandinista" Nicaragua funneled arms to the guerillas in El Salvador.³¹ Almost immediately journalists and former State Department officials attacked the paper, accusing its authors of creating a

²⁹ Quoted in LaFeber, *Inevitable Revolutions*, 34.

³⁰ Jeane Kirkpatrick, "U.S. Security and Latin America (January 1981)," in *The Central American Crisis Reader*, ed. Robert S. Leiken and Barry Rubin (New York: Summit Books, 1987), 509.

³¹ U.S. Department of State, Special Report No. 80, "Communist Interference in El Salvador."

reality that justified the government's preconceptions about El Salvador, and its hoped-for approach to solve Salvador's "problems."³²

While Reagan's foreign policy team focused on the need to prevent further Soviet encroachment into America's "backyard," they also saw another opportunity in the civil wars in Central America. Still experiencing the aftershocks of the Vietnam War, the public remained opposed to military interventions that were not driven by crisis.³³ Thus, members of the Reagan administration hoped to use Central America as an opportunity to restore the American public's faith in a robust and militarily active foreign policy.³⁴ They firmly believed that the United States was obligated to actively and unapologetically use its power to advance its interests. Unwilling to acknowledge that the hard right Central American governments funded by the US government were generating refugees, the Reagan administration dismissed the stories of Central American migrants. Appealing to nativist sentiment, they labeled Central Americans in the United States as undeserving migrants who sought American jobs and the American safety net.

In spite of the strength and reach of the Reagan message machine, it did not provide the only view of Central America to the US public. Social and religious activists, as well as Democratic politicians, offered a different perspective. Activists condemned Reagan as a warmonger, ignorer of human rights, and hypocrite. Many worried that El Salvador was simply a repeat of Vietnam, as they saw patterns between the introductory stages of Vietnam and US involvement in El Salvador. Religious groups emphasized the

³² Robert P. Hager, Jr., "Soviet Bloc Involvement in the Salvadoran Civil War: the US State Department's 1981 'White Paper' Reconsidered," *Communist and Post-Communist Studies* 28:4 (1995): 437-438.

³³ E.J. Dionne Jr. "Survey Finds Crises Stir Militant Mood," *New York Times*, February 5, 1980, B14.

³⁴ George C. Herring, "Vietnam, El Salvador, and the Uses of History," in *Understanding the Central American Crisis: Sources of Conflict and the Failure of U.S. Policy*, ed. by Kenneth M. Coleman and George C. Herring (Wilmington, DE: Scholarly Resources Inc., 1985), 97-98.

immorality of Reagan's foreign policy. The most famous came in the form of the Sanctuary Movement, further discussed below, and in detail in chapter 2. Churches, synagogues, and private individuals from across the country banded together to house, shelter, and provide public platforms to Central American refugees. By bringing the moral authority of religion to the support of Central Americans, members of the Sanctuary Movement staked their credibility on the fact that the refugees were not mere economic migrants.

Other religious organizations sent observers to Central American countries to bring back reports of human rights violations. Still others placed American citizens in Central American villages as "living shields" against governmental violence. The widespread involvement of religious organizations as the leaders of opposition to the United States' foreign policy was novel as the leaders of previous anti-war movements had often been secular.³⁵ Left-wing churches and synagogues provided a counterbalance to the growing ascendancy of the religious right. In addition to their public and private protests, left-leaning social and religious activists pressured politicians, particularly those of the Democratic Party, through telephone and letter-writing campaigns to oppose the administration's approach to Central America.

Throughout the 1980s Congressional Democrats strove to place a variety of checks on Reagan's foreign policy. Unable to secure a mandate for active military intervention in Central America, the Reagan administration funneled economic and military aid towards the governments in Guatemala and El Salvador, and Contras in Nicaragua during the 1980s. Though Congress threatened to use its "power of the purse"

³⁵ Christian Smith, *Resisting Reagan: The U.S. Central America Peace Movement* (Chicago: The University of Chicago Press, 1996), xvi-xviii.

to cut off Central American aid, the Reagan administration was able to cajole, manipulate or simply steamroll over most opposition. Nonetheless, Congress' hesitance to provide sufficient military aid to the Contras did lead to several years during the 1980s where the US government could not provide them with military aid. This resulted in the administration's greatest scandal, the Iran-Contra affair. In 1986 the US Attorney General uncovered evidence that US officials had used the profits from illegal arms sales to Iran to purchase weapons for the Contras. On a legal technicality a federal judge dismissed the charges against the primary forces behind the arms sales, Admiral John Poindexter and Lieutenant Colonel Oliver North. Nonetheless, Congress' investigation of the scandal had revealed that the administration had been, at the very least, partially involved. In spite of the clear illegality of the arms sales and the fact that the architects of the Iran-Contra Affair had violated their direct order, Congress was unable to successfully prosecute them or the upper echelons of the Reagan administration.³⁶

As William LeoGrande observes in regard to Central America "Congress largely failed in its institutional responsibility to serve as a check on executive behavior."³⁷ The most successful resistance to Reagan's foreign policy came through social and religious activists, where "(s)ignificant organized grassroots opposition to Reagan's policy from the religious community and the peace movement foreshadowed what might happen if direct involvement produced significant U.S. casualties."³⁸ US social and political activists concerned about Reagan's ruthless anti-communism saw in Central Americans'

³⁶ LaFeber, *Inevitable Revolutions*, 333-338.

³⁷ LeoGrande, *Our Own Backyard*, 588.

³⁸ LeoGrande, *Our Own Backyard*, 588-589.

tortured bodies living proof of the immorality of the administration's foreign policy, and felt the moral obligation to oppose it.

The debate over Central American migration in Canada played out in a markedly different context than that of the United States. Buffered by the United States and Mexico, Canada did not see large levels of Central American migration until the mid 1980s, and even then it was nowhere near the numbers of the other two North American countries. Therefore for much of the decade the Canadian public and government viewed Central American refugees similar to the Tamils, Refuseniks (Soviet Jews), and Vietnamese. In addition, the Canadian government had less ties to the right-wing Central American dictatorships than its US counterpart. During the early 1980s successive Canadian governments tried to initiate negotiations between the belligerent groups in Central America, using their foreign policy towards the varying crises in Central America as a chance to differentiate themselves from the United States. Much to the chagrin of the Reagan administration, they encouraged conversations between leftist guerillas and hard right governments.³⁹ This meant that the government's response to Guatemalan and Salvadoran refugees was driven by domestic, rather than foreign concerns. Therefore the Canadian conversation regarding Central American migration centered on the larger ongoing debates over immigration, and refugee policy, rather than being sidetracked by foreign policy concerns. The debate in Canada over refugee and asylum policy during the 1980s is discussed in detail in chapter 4.

In sum, the concept of "refugee," and the legal complexities it engendered, remained largely in dispute leading up to and during the Central American Refugee

³⁹ Jonathan Lemco, *Canada and the Crisis in Central America*. (Westport, CT: Praeger: 1991), 7.

Crisis. Ongoing chaos in Central America generated massive waves of refugees to North America in numbers that the receiving countries were unprepared for. In the United States, Central Americans were, for varying political constituencies, either “undeserving” economic migrants breaking immigration laws, or living proof of the immorality of the Republican government’s foreign policy. Most Canadians viewed the situation differently, seeing the CARC as a chance for Canada to distinguish itself from its southern neighbor.

1.3 Research Goals

This dissertation will use three case studies to examine the ways that the Central American Refugee Crisis, and the North American response to it, transformed and was transformed by individual and small groups of “ground-level” actors. I argue that the political actions of “ground-level” actors intentionally and unintentionally transformed the crisis and themselves. Here I use Susan Bibler Coutin’s definition of political action during the CARC. She contends that:

Religious activists formed the sanctuary movement and filed the ABC [American Baptist Churches] lawsuit, attorneys represented individual asylum applicants and worked on class-action suits, refugees sought political asylum, activists worked to counter U.S. foreign and refugee policy while supporting political struggles in Central America, immigrants opted to come to the United States despite laws forbidding their presence...Like everyone else, attorneys and political activists must maneuver within particular sets of conditions. Such maneuverings occasionally result in social change or transformative visions of social existence.⁴⁰

I aim to further demonstrate that the “ground-level” actors Coutin addresses found ways to dramatically affect asylum policy while operating within a system that constrained their ability to make wholesale changes. To do this I focus on how these “ground-level”

⁴⁰ Coutin, *Legalizing Moves*, 173.

actors brought varying amounts of public pressure on their respective governments, and how that pressure affected their governments' refugee/asylum policies.

1.4 Significance of Dissertation and Historiographical Context

During the Central American Refugee Crisis a significant number of sociologists, cultural anthropologists and ethnographers studied the CARC and the Sanctuary Movement. Simultaneously, the late 1970s and early 1980s saw the formalization of refugee studies as an academic field dedicated to the documentation and analysis of various refugee crises. Thus over the past twenty-five years, academics, government officials, and NGOs have expended an enormous amount of energy on refugee crises.⁴¹ This dissertation builds on these studies by using the CARC, a significant refugee crisis, to stress the role of “ground-level” actors and placing them in historical perspective.

The best holistic study of the CARC is Maria Cristina Garcia's 2006 monograph *Seeking Refuge: Central American Migration to Mexico, the United States, and Canada*. Garcia traces the evolution of the crisis, highlighting the interactions between the three North American countries. Outside of her work and Susan Bibler Coutin's *Legalizing Moves* (2000) the three primary groups of actors in the CARC (migrants, activists and the government) have largely been analyzed in isolation. Some important studies of Central Americans are Cecilia Menjivar's *Fragmented Ties* (2000), James Loucky and Marilyn Moors' edited collection *The Maya Diaspora* (2000) and Jacqueline Hagan's *Deciding to*

⁴¹ In his 2001 review of the evolution of refugee studies, “Fifty Years of Refugee Studies from Theory to Policy,” *International Migration Review* 35:1 (Spring, 2001), 57-78, Richard Black notes that refugee studies has a long history. For decades research of refugee issues has been related to policy and received substantial governmental support. Interdisciplinary since its inception, refugee studies incorporates methodologies developed in political science, sociology, ethnology, history, and anthropology. The establishment of what is now known as the Centre for Refugee Studies at York University in 1981 and Refugee Studies Programme at Oxford in 1983, coupled with the inauguration of academic journals dedicated to refugee studies such as *Forced Migration Review* and *Journal of Refugee Studies*, demonstrated that refugee studies had become a rigorous sub-field of academic inquiry.

be Legal (1994). These studies, authored by sociologists and anthropologists, focus on the interaction between migrants within their communities, and the relationship between Central Americans and the government. Their fine-grained examination of migrants' lives shines a revealing light on migrants' experiences, illuminating the effects of a confusing refugee policy on their lives. My research adds to these studies by emphasizing the powerful and interdependent relationship between migrants, activists and government. I combine an analysis of the ways that migrants' actions transformed the CARC while the crisis transformed them.

During the late 1980s and early 1990s a variety of sociologists and anthropologists authored a number of studies on the Sanctuary Movement. Hilary Cunningham's *God and Caesar at the Rio Grande* (1995) focuses on Sanctuary work in Tucson, AZ. Susan Bibler Coutin's *Culture of Protest* (1993) examines the Movement in San Francisco and Tucson. In *Women in the Sanctuary Movement* (1993) Robin Lorentzen analyzes women's activism in the Sanctuary Movement in Tucson and Chicago. Both Christian Smith's *Resisting Reagan* (1996), and Sharon Erickson Nepstad's *Convictions of the Soul* (2004) expanded the study of activists during the CARC by looking at a variety of national movements against US asylum and foreign policy regarding Central America. Randy Lippert's *Sanctuary, Sovereignty and Sacrifice* (2005) traces the development of the idea of Sanctuary in Canada with a particular focus on Ontario. The majority of these works are heavily informed by fieldwork and interviews with the activists studied. Valuable for their discussion on the effects of activism on their subjects, few examine the consequences of activism on US asylum and foreign policy. None of these studies place activist activity in an international context that

involves all three groups of “ground-level” actors discussed in this study. They either focus exclusively on activists or activists and one of the two other groups.

While scholars have separately examined the actions of Central American migrants and social justice activists in detail, the actions of low-level government officials in the CARC remain largely unstudied. To date there is no study exclusively on the experiences and effect of government officials of any level during the CARC. Studies on government policies concerning immigration and refugees are largely confined to the upper levels of the federal government. Examples include Daniel Tichenor’s *Dividing Lines* (2002), Valerie Knowles’ *Strangers at Our Gate* (2007), Gil Loescher’s and John Scanlon’s *Calculated Kindness* (1998), and Naomi and Norman Zucker’s *The Guarded Gate* (1987).

A few studies deviate from this top down approach. *Americans at the Gate* (2008) by Carl Bon Tempo and *The Uneasy Alliance* (1988) by J. Bruce Nichols focus on mid-level bureaucrats in the US and Canada. Recently scholars have begun to examine the lives and work of the US Border Patrol. Kelly Lytle Hernandez’s *Migra!* (2010) is the first comprehensive history of the United State Border Patrol’s first fifty years of existence. An important look at the ways that the Border Patrol fashioned American perceptions of race along the US-Mexico border, most of her analysis ends prior to the Central American Refugee Crisis at the Border Patrol’s fifty year anniversary in 1974.⁴² Timothy Dunn’s *The Militarization of the US-Mexico Border, 1978-1992: Low Intensity Conflict Doctrine Comes Home* (1996) documents the evolution of the policing of the

⁴² Kelly Lytle Hernandez, *Migra! A History of the U.S. Border Patrol*, (Berkeley: University of California Press, 2010), 2.

US-Mexico border, but he is more concerned with the macro-changes in border policy, rather than those specifically related to the CARC.

My analysis of government activity joins with this growing examination of ground-level government actors by emphasizing how Immigration and Naturalization officers shaped the Sanctuary Movement investigation, the decisive role a federal judge played in the American Baptist Churches case, and the individual agency of US and Canadian immigration officers along the US/Canada border. Through their actions, this disparate group of government officials played a large part in determining the effect of the CARC on thousands of Central Americans. At the same time, many were deeply affected by their participation in the crisis. Unrest over the extra workload, and uneasiness concerning the ethics of Central American refugee policy are just two of the ways that participation in the CARC affected government officials.

Finally, two of my three case studies fill important gaps in the study of the Central American Refugee Crisis. Since the conclusion of the American Baptist Churches court case in 1991 scholars have extensively studied the *ABC* settlement and its effects. Susan Bibler Coutin has been at the forefront of research into the ways that Central Americans negotiated the legal complexities of the *ABC* settlement. Coutin and other scholars reveal the immense effect that the *ABC* settlement had on the asylum policy of the United States.⁴³ Comparatively little scholarly analysis has been done on the evolution of the case itself. Carolyn Patty Blum, a lawyer for the plaintiffs, wrote a short law review

⁴³ Susan Bibler Coutin, *Nations of Emigrants: Shifting Boundaries of Citizenship in El Salvador and the United States* (Ithaca: Cornell University Press, 2007); Coutin: *Legalizing Moves: Cecilia Menjivar, Fragmented Ties: Salvadoran Immigrant Networks in America*, (Berkeley: University of California Press, 2000); Menjivar, "Liminal Legality: Salvadoran and Guatemalan Immigrants' Lives in the United States," *American Journal of Sociology* 11:4 (January 2006), 999-1037.

article, while Coutin and Menjivar's discussion of the case is mainly to set up their examination of the settlement.⁴⁴ Using legal filings and oral histories, chapter 3 provides a step-by-step analysis of the court case, revealing the critical role of the overseeing judge and a small cadre of lawyers on the case's result.

While lawyers argued the ABC case, changes in US and Canadian asylum policy in 1986 and 1987 created the Plattsburgh Border Crisis. A comparative analysis of North American asylum policies and the short-term crisis management needed to cope with their consequences, further reveals the transformative effect of individuals on the CARC. The Plattsburgh Border Crisis grew out of the Canadian government's abrupt decision in February 1987 to change its refugee admission policy. Responding to public and private concern over its overwhelmed refugee and immigration system, the Canadian government ended its policy of allowing refugee applicants from a select group of countries into Canada while their applications were being processed.

This decision took thousands of prospective refugees, fleeing the United States' newly passed Immigration Reform and Control Act (IRCA), by surprise. Fearing IRCA's strict new immigration enforcement policies, undocumented prospective refugees streamed towards the US/Canada border in early 1987. Most expected to enter the country and claim asylum. Unaware of Canada's change in policy they were turned away at the border, and told to wait just south of the line until their asylum case could be heard. Those making their way from New York to Montreal were stranded in the tiny border town of Plattsburgh, NY, where they quickly overwhelmed the area's social services.

This case study traces the lead up and aftermath of this refugee influx, which prompted

⁴⁴ Carolyn Patty Blum, "The Settlement of 'American Baptist Churches v. Thornburgh:' Landmark Victory for Central American Asylum-Seekers," *International Journal of Refugee Law* 3:2 (1991), 347-356.

the formation of a wide variety of local, regional and transnational private/public partnerships, and dramatically transformed Plattsburgh.

Therefore, my dissertation will serve as an important but currently missing part of our understanding of the CARC. Drawing on the rich body of research on religious activists in the Sanctuary Movement and Central Americans in the United States, while breaking new ground with its detailed examination of the ABC case and the Plattsburgh Border Crisis, it will examine the ways that refugees, activists, and government officials affected each other, and the outcome of the CARC.

1.5 Methodology

This dissertation's examination of "ground-level" actors' experiences during the CARC as a "whole way of life in family networks and community relationships, embedded in hierarchically structured power relationships and in the complex unifying institutions of many-cultured states" stems from Dirk Hoerder's formulation of a new approach to area studies known as Transcultural Societal Studies (TSS).⁴⁵ The CARC, as experienced by government officials, migrants, and religious activists, was a complex and ever shifting crisis that they shaped extensively with their actions. The inclusive model outlined by Hoerder necessitates an analytical approach that takes into mind both the historical evolution of the crisis and the individual specificity of actors' experiences.

Like refugee studies, this dissertation uses a multi-disciplinary approach that incorporates methodologies from anthropology, sociology and history. It privileges the voice of "ground-level" actors in a manner consistent with my firm belief that the experiences of ordinary people, regardless of their social status, have a powerful effect on

⁴⁵ Dirk Hoerder, *To Know Our Many Selves: From the Study of Canada to Canadian Studies* (Edmonton, AB: Athabaska University Press, 2010), 375.

history. A technique common in anthropology and sociology, while growing much more common in history, oral interviews add context by giving “ground-level” actors the ability to speak for themselves. Over the course of my research I interviewed over 20 different ground-level actors, many of which are cited in the following pages. I conducted these oral interviews in Toronto, Tucson, Phoenix and Plattsburgh, with phone interviews reaching out to Los Angeles, San Francisco, New York City, Philadelphia and El Paso.

In addition, I use a wide variety of traditional historical sources. The heavy newspaper coverage of the Sanctuary Movement Trial and the Plattsburgh Border Crisis generated an abundance of articles from local and national newspapers. The Refugee Research Library at York University’s Centre for Refugee Studies archived many Canadian governmental reports, as well as activists’ papers. University of Arizona’s Special Collections holds the papers of John Fife, a prominent activist in the Sanctuary Movement. Over 63 cubic feet of documents, the holdings include transcripts of activist meetings, interviews with Sanctuary Movement activists, court filings and more. I worked with the court clerk at the Northern District Court of California to obtain copies of most of the filings in the American Baptist Church case (or *ABC*). A research trip to Montreal and Plattsburgh opened up new archives, and put me in contact with CARC activists in Quebec and northern New York. I believe that, taken together, these sources and methodologies allow me to explore the CARC in ways that have not been done in the past, contributing a unique perspective emphasizing the importance of “ground-level” actors while highlighting some important, but understudied, parts of the crisis.

1.6 Assumptions and Limitations

This dissertation is subject to a number of assumptions and limitations. In addition, I have, out of necessity, limited its scope. I will address each in turn. My first assumption is that case studies of specific events of the Central American Refugee Crisis are important to the study of the Crisis itself. I do not make the claim that each of the experiences of the “ground-level” actors studied here and their effects on the CARC are identical to everyone involved in the CARC. Rather, I believe that their study can reveal larger patterns within the Crisis. I use the multiple case studies approach outlined by Pamela Baxter and Susan Jack to analyze the Central American Crisis “within each setting and across settings.”⁴⁶

My second assumption stems from my belief in the validity of oral history to providing a fuller account of the past. As discussed above, oral interviews CARC participants conducted decades after the crisis are a crucial set of sources for my dissertation. I use them to add context and extra detail to my writing, while pairing them with the more traditional archival and secondary sources that are fundamental to a historian’s trade.

The main limitation surrounding my dissertation lies in sourcing difficulties. A number of governmental archives remain closed, particularly those regarding the *American Baptist Churches* case and the INS’s covert investigation into the Sanctuary Movement known as “Operation Sojourner.” Exacerbating these is the general reluctance by government officials, particularly government lawyers, to discuss their experiences during the Central American Refugee Crisis. I have sought to overcome these difficulties

⁴⁶ Pamela Baxter and Susan Jack, “Qualitative Case Study Methodology: Study Design and Implementation for Novice Researchers,” *The Qualitative Report* 13:4 (December 2008), 550.

through Freedom of Information Act Requests, use of governmental quotes from newspaper articles, and a few interviews with responsive governmental participants. Refugee interviewees have proved similarly difficult to locate. Many of the refugees involved used, out of fear for their and their families' lives, pseudonyms during the CARC. Locating them has proved enormously difficult. Much like governmental officials, I have relied on published interviews conducted during the CARC and accounts from activists I have interviewed.

The other limitation lies in my lack of fluency in French. My fourth chapter examines the border crisis along the New York/Quebec border and a knowledge of French would have been useful when in the archives at the Bibliothèque et Archives du Québec. Therefore I relied on Quebec's English-language newspapers, Canadian governmental reports generated in English and translations of other archival sources.

When selecting my case studies I was careful to operate within the scope of my dissertation. All three of my case studies deal with the Central American Refugee Crisis in North America. They focus on the formation, effects, and reactions to asylum policy during the 1980s and early 1990s in Canada and the United States. I made a conscious decision to focus on the asylum policies of the North American countries of Canada and the United States at the expense of Mexico. Mexico's immediate border and cultural ties with Guatemala, and close geographic proximity to El Salvador, meant that its asylum policy was formulated in response to very different social, economic and political realities than Canada and the United States.

My case studies take a social approach to policy history, emphasizing the ways that policy could be transformed from the "bottom-up." I did not attempt a social history

of the Central American Refugee Crisis. Therefore my examination of the ways that the Central American Crisis transformed individuals and groups largely takes place within the confines of my case studies. Proceeding within the scope laid out and with these assumptions and limitations, I am able demonstrate that during the 1980s and early 1990s individuals and small groups in Canada and the United States were able to transform, and were transformed by, asylum policy during the Central American Refugee Crisis.

1.7 Summary and Preview

The following chapters of this dissertation examines the Central American Refugee Crisis through three different case studies, discussing the ways that “ground-level” actors transformed and were transformed by the CARC. Two of the case studies examine court cases in the US that sprung from the government’s response to the Sanctuary Movement, a collection of churches and synagogues that offered sanctuary to undocumented Central American migrants. The US government’s decision to infiltrate the Movement and bring felony immigration charges against 13 priests, nuns, pastors and lay workers backfired. The case generated enormous amounts of publicity for Central American refugees, and prompted a number of countersuits against the government. Chapter 2 looks at the main court case (*United States v. Aguilar et. al.*) brought against Sanctuary Movement workers, while chapter 3 analyzes the countersuit of over 70 different religious and refugee aid organizations (*American Baptist Churches et al v. Thornburgh*). It began largely as a suit brought against the government for its violation of 1st and 5th amendment rights and evolved into an equal protection case that resulted in a groundbreaking settlement that changed US asylum policy forever. My final case study, chapter 4, goes beyond the Sanctuary Movement to look at the immediate effects of the

dramatic changes in Canadian asylum policy in February 1987 on “ground-level” actors in the US, highlighting the ways that Canada’s policies affected and were affected by the United States. It then uses the consequences of these changes on the small border town of Plattsburgh, New York to demonstrate the short and long-term effects of asylum policy on individuals and the Plattsburgh community.

Together, these three case studies reveal the importance of “ground-level” actors in the CARC, and how they experienced and affected the crisis and the policies surrounding it. Finally, in my conclusion I summarize my findings and discuss directions for future research. In this chapter’s second quotation, “Carlos,” a refugee from El Salvador, is trapped along the US-Canada border in February 1987. He observes that he is “stuck between two great powers.” This study is an analysis of how refugees, activists and government officials resisted, negotiated and implemented the asylum and refugee policies of the “great powers.”

CHAPTER 2

SANCTUARY ON TRIAL

"The drafters of the Constitution (and) the law of this land do not permit people to engage in criminal acts and then say it was a religious exercise... " – Donald M. Reno Jr., U.S. Assistant Attorney General⁴⁷

"No, I have no regrets. There have been other cases in history where people had to stand up to be a Christian." Sister Darlene Nicgorski, Sanctuary defendant⁴⁸

2.1 Introduction:

Harold Ezell was furious. The newly minted commissioner of the western region for the Immigration and Naturalization Services (INS) had just watched a re-run of an old episode of *60 Minutes* that vividly demonstrated that for years a group of religious activists had publicly and proudly flouted the immigration laws of the United States. The program explained that a diverse array of Protestants, Catholics and Jewish clergy and laity had come together to form a nationwide organization of houses of worship, known as the Sanctuary Movement. For the better half of the decade they had smuggled hundreds of Guatemalans and Salvadorans across the border. During that time they provided shelter to thousands, hid them from government agents, and encouraged many to make asylum claims. Sanctuary Movement activists claimed that civil wars and genocides in their home countries forced Central Americans to flee northward, and by breaking immigration laws activists chose to obey the commandments of God rather than man. Ezell, a deeply religious man, thought the Movement's rationale blasphemous and blatantly partisan, and he vowed to do something about it. Gathering his staff in San Pedro, California in early 1984, Ezell demanded action. Ezell's demand took the form of

⁴⁷ Bill Curry, "Sanctuary Movement Just Smugglers, U.S. Says," *Los Angeles Times* April 2, 1986.

⁴⁸ Bill Curry, "8 of 11 Activists Guilty in Alien Sanctuary Case," *Los Angeles Times*, May 2, 1986.

a nine-month covert investigation codenamed “Operation Sojourner.”⁴⁹ Implemented under the auspices of the Phoenix office’s anti-smuggling division, the investigation culminated in felony immigration charges for sixteen clergy and lay workers. The government either dropped the charges or settled with five of the defendants. The trial of the remaining eleven defendants, popularly known as the “Sanctuary Trial,” became one of the INS’ most high profile cases of the decade. Begun October 22, 1985, the trial lasted nearly eight months and went on appeal throughout the rest of the decade. After the 9th Circuit Court of Appeals upheld the conviction of eight of the defendants Ezell declared that the ruling “vindicates the government’s position that no one is above the law.”⁵⁰

Mary Espinosa, one of the eleven defendants in the Sanctuary Trial, felt differently about her aid to Central Americans. As she recalls, "I didn't know I was in the Sanctuary Movement until I became indicted. Then I was told so by INS. What I thought I was doing was what any Christian would do."⁵¹ Unaware that her pursuit of the religious imperative conflicted with the law, Espinoza thought she was simply following her conscience. While she was one of the three exonerated defendants, her participation in the Movement did not escape public notice. Shortly after the Trial, someone set fire to her home. The police never solved the crime, but they suspected arson. Espinosa was convinced that it was due to her Sanctuary activities, noting that she received 17

⁴⁹ Ann Crittenden, *Sanctuary: A Story of American Law and Conscience in Collision* (New York: Weinfeld and Nicholson, 1988), 114-116.

⁵⁰ Quoted in Kim Murphy, “Conviction of 8 Sanctuary Workers Upheld,” *Los Angeles Times* March 31, 1989.

⁵¹ Interview with Mary K. Espinoza in Rita Bresnahan Michalak, “The Ethic of Care as Empowerment: The Sanctuary Movement Women,” (Master’s Thesis, Arizona State University, 1986), 67

threatening phone calls and letters after her acquittal.⁵² Looking back on the Sanctuary Trial, she called it legally confusing and religiously clarifying.

Elba Lopez found the situation even more confusing. The widow of a Salvadoran union organizer, Sanctuary Movement activists helped her cross the border in October 1984 with her son, daughter, niece and nephew. She and the children moved to Seattle and joined her sister, Pilar Martinez, in sanctuary at University Baptist Church. Unbeknownst to her or any of the members of the Sanctuary Movement, her border crossing had been the final chapter in Operation Sojourner, for it provided the crucial “smoking gun” to incriminate Jim Corbett in the Sanctuary Movement’s illegal activity. Less than three months after she crossed the border, INS agents arrested Elba Teresa on January of 1985 and named her an unindicted co-conspirator in the Sanctuary Trial. Her refusal to take the stand and testify of her border crossing denied the government of the crucial evidence it needed to convict defendant Peggy Hutchinson on the charges of transporting an illegal alien.⁵³

These three individuals, a government official, a religious activist, and a Central American refugee are representative of the three different groups involved in the Sanctuary Trial. Their participation in the Trial dramatically affected its outcome and the Trial dramatically affected their lives. One of the most public spectacles of the Central American Refugee Crisis, the Trial introduced millions to the Sanctuary Movement and the Central American Refugee Crisis. This chapter argues that the actions of individuals

⁵² Dennis Bernstein and Connie Blitt, “Arson Suspected at Home of AZ Sanctuary Activist,” *Philadelphia Inquirer*, August, 2, 1986.

⁵³ Crittenden, *Sanctuary*, 172-176, 264; Hilary Cunningham, *God and Caesar at the Rio Grande: Sanctuary and the Politics of Religion* (Minneapolis: University of Minnesota Press, 1995), 275 note 27. Hutchinson was convicted of conspiracy but exonerated of any material acts.

and small groups had a range of effects on the investigation of the Sanctuary Movement and the Trial, and that the two, as an investigation, court case and public spectacle, had dramatic effects on the CARC in Canada and the United States.

2.2 Sources and Historiographical Context:

A contemporary and fascinating example of the confrontation between church and state, the Sanctuary Trial has been the subject of an impressive array of academic and journalistic studies from a variety of different angles over the past twenty-five years. These include in-depth media coverage of the Trial's events,⁵⁴ legal discourse analyses,⁵⁵ examinations of social movement activism,⁵⁶ and law articles on the struggle between church and state.⁵⁷ I draw on this sizeable body of work, but differentiate myself by focusing on a range of individuals, from government official to activist to migrant, who transformed and were transformed by the Trial. My primary sources come from archives at the University of Arizona, University of Washington and Claremont Theological Union, oral interviews conducted by myself and others, a variety of newspaper and magazine articles, and court transcripts. This rich collection of primary and secondary sources offers me the opportunity to probe the personal and public motivations for participants' actions. Also, it helps me explore the ways that their actions affected each other and the crisis.

⁵⁴ See Crittenden, *Sanctuary*; and David Matas, *The Sanctuary Trial* (Winnipeg: University of Manitoba Press, 1989).

⁵⁵ Teresa Godwin Phelps, "No Place to Go, No Story to Tell: The Missing Narratives of the Sanctuary Movement," *Washington and Lee Law Review* 48:123 (1991), 123-138.

⁵⁶ Nepstad, *Convictions of the Soul*; and Cunningham, *God and Caesar*.

⁵⁷ Charles Stastny, "Sanctuary and the State," *Contemporary Crises* 11 (1987), 279-301.

2.3 Outline:

The remainder of this chapter will be divided into five sections. The first three will chronologically cover the formation of the Sanctuary Movement and Operation Sojourner (2.4), the six-month period between the indictments and the Trial (2.5) and the Trial itself (2.6). Each of these sections will highlight how one or two migrants, activists or government officials affected the Sanctuary Movement and the Sanctuary Trial. The next section (2.7) examines the ways that the Sanctuary Trial affected the lives of defendant Darlene Nicgorski, government prosecutor Donald Reno and Alejandro Gomez,⁵⁸ one of the Central American witnesses. The next section (2.8) analyzes how Operation Sojourner, the Trial, and its aftermath affected the CARC locally and nationally. Finally, the conclusion (2.9) brings together the material discussed in the chapter and looks at the event's effects on the CARC internationally.

2.4 The Movement and the Operation:

The traditional narrative on the beginnings of the Sanctuary Movement relies on two pivotal figures from southern Arizona, Jim Corbett and John Fife. Corbett, a Quaker goat herder and Fife, a Presbyterian minister, had extensive backgrounds in activism. An avid believer in social justice, Corbett's first brush with activism came at the age of 13. Working as a store clerk in Yellowstone during the summer of 1947, Corbett objected to the unjust firing of a fellow camp worker and threatened to quit unless his coworker's job was restored. Initially the rest of the staff joined him, but they ultimately decided to stay quiet and resume work. Corbett did not. His activism cost him his job, revealing a

⁵⁸ For the duration of the trial he and his wife, Leticia, went under the pseudonym Rodriguez.

stubbornness that manifested itself decades later in the Sanctuary Movement.⁵⁹ Fife, who had assumed the ministry of Tucson's Southside Presbyterian in 1970, had marched with Dr. Martin Luther King Jr. in Selma and after moving to Tucson quickly became a fixture in the social justice community.⁶⁰ Most accounts of the Sanctuary Movement privilege the growing awareness of these two individuals over the course of the first two years of the 1980s and place the Movement's start on March 24, 1982, the date of Southside's formal declaration of Sanctuary.⁶¹ While Fife and Corbett worked closely together to create the Movement, these accounts gloss over the centrality of Central Americans to the creation and endurance of the Movement. It was not until Fife and Corbett had come into close and repeated contact with Central Americans during the early 1980s and heard their horror stories, that they began to think of a nationwide Movement. William Westerman in his "Life Histories in the Sanctuary Movement" states that the Sanctuary Movement's success "in converting the skeptical and the 'apolitical' to a politicized stance... was largely due to the strength of a few individuals who learnt to speak out, to bear witness to the injustice they had known and were committed to end."⁶² Whether it was the few Central Americans whose recounting of their lives prompted Corbett, Fife and others to formally commence the Movement, or the many Central Americans testimonies during the Movement's operation prompted action, it is clear that individual migrants had an enormous effect on the Movement. The Movement, in turn, had an enormous effect on US practice and policy towards refugees during the CARC.

⁵⁹ Crittenden, *Sanctuary*, 34-38.

⁶⁰ Crittenden, *Sanctuary*, 7-9.

⁶¹ Nepstad, *Convictions of the Soul*, 128-135.

⁶² William Westerman, "Central American Refugee Testimonies and Performed Life Histories in the Sanctuary Movement" in *The Oral History Reader*, Robert Perks and Alistair Thomson eds. (New York: Routledge, 1998), 227.

In addition, recent scholarship on the Movement has uncovered the contributions of Central Americans to the very idea of cooperation between North American churches and Central American organizations. Susan Bibler Coutin and Hector Perla Jr.'s article "Legacies and Origins of the 1980s US-Central American Sanctuary Movement" examines the ways that differing Central American organizations in Los Angeles and San Francisco "pioneered the strategy of immigrants approaching members of religious organizations to collaborate with them in an effort to mobilize the religious communities."⁶³ By the middle of the 1970s, years before Southside Presbyterian declared Sanctuary, Central Americans across the country formed organizations like Casa El Salvador-Farabundo Martí, Central American Resource Center (CARECEN) and Committee in Solidarity with the People of El Salvador (CISPES). Some of these organizations began giving shelter to recently arrived migrants and encouraging them to give public testimonials about the torture, assassinations and genocide in El Salvador and Guatemala. This method proved enormously successful in mobilizing support, particularly from progressive and religious individuals.

Following Tucson's declaration of Sanctuary, many of these Central American organizations partnered with interfaith coalitions to encourage more churches to enter the Movement. Central American organizations saw the value in working through churches to affect change. They knew that because of their economic, social and political status, white middle-class organizations had more influence with policy makers than the oft-impooverished and sometimes undocumented Salvadorans living in the United States.⁶⁴

⁶³ Hector Perla Jr. and Susan Bibler Coutin "Legacies and Origins of the 1980s US-Central American Sanctuary Movement", *Refuge*, 26:1 (2009), 11.

⁶⁴ Perla and Coutin, "Legacies and Origins," 11-12.

The Movement's growth included churches, synagogues and individuals of all political persuasions. The ideological and regional diversity of the Movement brought a new set of problems as participants debated the Movement's character, purpose and goals. In late 1984 the Movement began to split into two factions, identified with the cities of Tucson and Chicago.⁶⁵ Home to the first church to formally declare sanctuary and less than seventy miles from the U.S.-Mexico border, many people, especially those in the national media, saw Tucson as the epicenter of the Movement. On the front lines of the refugee crisis, activists in Tucson smuggled countless numbers of refugees across the border and sent them to Canada and other parts of the United States. Also, Tucson activists certainly received the most media attention from national and international journalists interested in the Movement.

Yet Chicago, while far from the border, had become another important center of Sanctuary activity. Shortly after the Movement's founding in 1982 the Tucson Ecumenical Council that had taken a leading role in establishing the Sanctuary Movement, asked the more politically oriented Chicago Religious Task Force on Central America (CRTF) to take over coordination of the Movement. The CRTF approached the task with gusto, throwing their well-coordinated political and organizational infrastructure behind the task of coordinating hundreds of churches, synagogues, cities and private homes across the country. Consistent with its political outlook, Chicago's approach to Sanctuary emphasized the Movement's potential to influence U.S. foreign policy in Central America. When receiving refugees into sanctuary they looked for

⁶⁵ For a fuller discussion of the differing visions of sanctuary see Appendix D in Elna Otter and Dorothy Pine eds., *The Sanctuary Experience: Voices of the Community* (San Diego: Aventine Press, 2004), 373-377, drawn from a regional meeting of Sanctuary Providers in Portland, OR December 7-8, 1984.

“politically useful” refugees who could demonstrate the inhumanity of the United States’ foreign policy. They believed that only opposition leading to an end of US funding of oppressive Central American governments could end the refugee crisis. During the fall and winter of 1984 a bitter exchange of letters between leaders in Tucson and Chicago were made public, and it seemed that the Movement was on the verge of a permanent rupture. Against this background of tension sixteen Sanctuary activists received indictments in January 1985. The government hoped that the indictments would stifle the Movement, but they actually had the opposite effect. Months before the indictments Movement leaders called for a national symposium in Tucson to discuss the theological underpinnings of Sanctuary and “to have a ‘come-to-Jesus’ meeting with the Chicago Religious Task Force about the deep divisions between [Tucson and Chicago] about the very essence of sanctuary.”⁶⁶ The meeting, set to begin on January 23rd, promised to be divisive. The government’s indictments, handed down in early January, changed the symposium’s purpose. With the Movement under attack from the outside, the various sides rallied together and the symposium transformed into a revival. Originally conceived as a small gathering of less than 150 Sanctuary leaders, the symposium ended up hosting more than 1200 members. Sanctuary activists from around the country came together to lay aside divisions and face the government’s challenge.⁶⁷

Few outsiders knew of the ideological tensions within the Movement. A religious community defying the government as a matter of conscience, combined with the riveting testimonials given by Central Americans during Sanctuary declarations, proved to be an intoxicating mix for reporters from local and national media outlets like *The Arizona*

⁶⁶ John Fife, Quoted in Otter and Pine *The Sanctuary Experience*, 128.

⁶⁷ Crittenden, *Sanctuary*, 205.

Daily Star, *The Arizona Republic*, *The New York Times* and *60 Minutes*. Following the indictments in January 1985, the Movement received even more publicity. This will be discussed in section 2.7.

As mentioned in the opening vignette, INS District Director Harold Ezell learned of the Movement in 1984 after viewing a re-run of a *60 Minutes* segment on Corbett and the Movement. While Ezell remained unaware of Sanctuary's existence until 1984, Border Patrol Agent James Rayburn had observed the Movement's activities since 1982. A highly accomplished investigator and Vietnam War veteran, Rayburn started working for the Border Patrol in 1969 and in the anti-smuggling division since 1978. By the mid-1980s he was a legend and his coworkers were in awe of him. Lee Morgan, an operative who was also involved in Operation Sojourner, wrote in his memoir, that "Jim Rayburn taught me more about undercover and criminal investigations than I would ever learn in all of the combined federal law enforcement academies I attended over the next twenty years."⁶⁸ In a June 1983 memorandum to the Phoenix INS District Director, Rayburn presciently predicted that, "It is now clear that they plan to force U.S. Immigration to take them to Court on either harboring charges or transportation charges. The [Sanctuary Movement] will then use the trial as their stage to challenge both U.S. policy on Central America and Immigration's policy."⁶⁹ Rayburn next sketched out the potential outline of an investigation. The memo met with little response, and Rayburn decided to wait for more institutional support. Experience had taught him that long-term support for

⁶⁸ Lee Morgan, *The Reaper's Line: Life and Death on the Mexican Border* (Tucson, AZ: Rio Nuevo Publishers, 2006), 49; Crittenden, *Sanctuary*, 106.

⁶⁹ Criminal Investigator James Rayburn. Memorandum on "El Salvadorian Underground Railroad," June 10, 1983. Sanctuary Movement Trial Papers, 1982-1988 MS 362, Box 2, Folder 28, University of Arizona Library, Tucson, AZ

politically sensitive investigations was a fleeting thing without documented requests for investigation from highly-placed individuals. Thus while Rayburn kept an eye on the Movement and thought of possible strategies to infiltrate it, he busied himself with other anti-smuggling cases until Harold Ezell demanded that the INS take action regarding the Sanctuary Movement.

Ezell's demand came during a weekly INS staff meeting in late January or early February 1984. At that meeting, attended by Harold Ezell, Associate Regional Commissioner for Operations Robert Moschorak, Assistant Regional Commissioner for Anti-Smuggling, and others, the group resolved to give the go-ahead to Rayburn's investigation.⁷⁰ A few days later Reed called Robert S. Coffin, the Phoenix area supervisor of criminal investigation of alien smuggling. Coffin told Rayburn to find someone to infiltrate the Movement. Rayburn already had a man in mind, Jesus Cruz, a Mexican citizen and former smuggler, who, after becoming an informant rather than being deported, had proved useful to Rayburn in the past. Cruz began his infiltration of the Movement in March of 1984 by approaching Father Ramón Quinones of Sacred Heart Church in Nogales, Mexico and offering his assistance in any way possible. Initially Cruz was only authorized to meet with members of the Movement and establish a relationship. It was not until Rayburn received formal authorization under the new undercover investigative rules in April 1984 that he granted Cruz permission to further infiltrate the Movement, wear a body bug and participate in the border runs that brought Central Americans from Mexico to the United States. Also, Rayburn explicitly forbade Cruz from recording any religious meetings. In spite of these warnings, Cruz recorded a

⁷⁰ "Pre-Trial Interview with Mark Reed," 15. Sanctuary Movement Trial Papers, 1982-1988 MS 362, Box 1 Folder 26, University of Arizona Library, Tucson, AZ.

series of conversations prior to the April authorization and a number of Sanctuary prayer meetings throughout the year. Rayburn ran the investigation, codenamed “Operation Sojourner,” in concert with Donald Reno, a newly appointed special assistant to the US attorney whose portfolio exclusively focused on alien smuggling cases. Both had an enormous effect on the case.

As the supervisor, Rayburn oversaw the activities of what became a team of five infiltrators. Solomon Graham, another criminal informant, later joined Cruz. Like Cruz, Graham was a Mexican citizen who had been involved in a for-profit human smuggling ring in the past. Also similar to Cruz, he turned informant after being caught and had worked with Rayburn in the past. Neither Cruz nor Graham could be construed as model citizens. Indeed, the defense attacked their credibility repeatedly before and during the trial. The defense’s investigation of Cruz and Graham turned up allegations of pimping on Graham’s part and gun smuggling and parole violations (due to violation of gun laws) by Cruz. In spite of, or maybe in part due to, their unsavory pasts, both Cruz and Graham proved capable informants. The two of them managed to secretly recorded hundreds of hours of Sanctuary Movement conversations.⁷¹ Border Patrol agents John Nixon and Lee Morgan helped in the investigation, but were not present for the most incriminating recordings. While Rayburn had earned a well-deserved reputation as a crack investigator, his management of Cruz and Graham opened up the government to a variety of charges during the trial. His inability to keep Cruz from violating his parole and recording religious services presented problems for Cruz as a witness, but Cruz’s problems were nothing compared to Graham’s past. Graham’s odious history completely disqualified

⁷¹ Coutin, *Culture of Protest*, 133. For a fuller account of Operation Sojourner see Crittenden, *Sanctuary*, 138-194.

him as a witness as no jury would convict a group of religious workers on the words of a former pimp. Discussed in section 2.5, the government, by default, turned to Cruz when it needed a witness on the stand.⁷²

Special Assistant to the US Attorney Donald Reno passionately believed in the merits of the investigation and pushed tirelessly for the government to bring charges. A number of attorneys in the district office expressed a fair amount of skepticism, wondering if the prosecution of Sanctuary workers would serve the government's purpose. They worried that the trial would be turned into a political sideshow and questioned the ethics of infiltrating churches to gather evidence against lay and clerical workers. Reno pushed ahead and won the support of Mel McDonald, the US attorney for Arizona. By the beginning of December 1984, Reno had the political backing to bring a series of charges in front of a grand jury. As the framer of the charges, Reno held the power over who to prosecute and who to leave as an unindicted co-conspirator. He decided to compose a highly varied set of defendants that included some key figures like John Fife, Jim Corbett, Darlene Nicgorski and Phil Willis-Conger. Other indicted activists included two nuns (Ana Priester and Mary Wadell) who had participated in a few runs but were not deeply involved in the Movement. He excluded a variety of logical targets including Phil Willis-Conger's highly involved wife, fearing that together the young and attractive married couple would elicit sympathy from the jury.⁷³ The final indictment, handed down January 10, 1985, charged 16 individuals with a litany of smuggling offenses and named over 50 co-conspirators. Operation Sojourner accomplished what Harold Ezell demanded. Ezell had wanted something done, but the

⁷² Crittenden, *Sanctuary*, 224.

⁷³ Crittenden, *Sanctuary*, 192.

meaning of that “something” would be vigorously contested in the coming months as the government’s struggle with the Sanctuary Movement transitioned from a covert investigation to an open battle in court.

2.5 From Indictment to Trial

On January 14th, 1985 a series of well-coordinated raids rocked the Sanctuary Movement across the nation from Seattle to Tucson to Rochester. In Seattle, WA two border patrol agents and their female secretary knocked on the door of an apartment on 2900 S. King Street. Maria Teresa Lopez, a Salvadoran who had been in sanctuary with University Baptist Church for two years answered the door, after which she, along with her sister Elba Teresa Lopez, and five of their children were taken into custody.⁷⁴ Similar arrests took place in Phoenix, Philadelphia and Rochester, NY as the government rounded up over 60 migrants to testify against the 16 indicted members of the Sanctuary Movement.

While arresting more than 60 Central Americans, the government sent summons to 16 Sanctuary activists to appear in court on January 23rd, coincidentally the first day of the Sanctuary Movement symposium. Unlike the Central Americans arrested on January 14th, none of the activists of them were taken into custody. The government decided they were not flight risks and asked the activists to appear before a federal judge on January 23rd. There the government charged them with 70 counts including smuggling, harboring/shielding, concealing and encouraging the entry of illegal aliens. The government added the charges of conspiracy to commit these acts and aiding/abetting

⁷⁴ Criminal Investigator Ronald R. Straub. Memorandum on Maria Teresa Lopez and Elba Teresa Lopez, January 15, 1985. Sanctuary Movement Trial Papers, 1982-1988 MS 362, Box 6 Folder 8, University of Arizona Library, Tucson, AZ.

unlawful entry.⁷⁵ The indicted were: Maria Socorro Aguilar, Father Tony Clark, James Corbett, Phillip Conger, Cecilia del Carmen Juarez de Emery, Mary Espinoza, Pastor John Fife, Katherine Flaherty, Peggy Hutchinson, Wendy Le Win, Nena MacDonald, Bertha Martel-Benavidez, Sister Darlene Nicgorski, Father Ramon Dagoberto Quinones, Sister Ana Priester and Sister Mary Waddell. An eclectic group, the indicted included two Mexican citizens, a Presbyterian minister, three Catholic nuns, a Catholic priest, a resident alien and six private American citizens.

By the time the trial started, the government had settled or dropped its charges against five of the sixteen activists. Juarez de Emery's case was separated from the others as it soon became clear that she was using the Sanctuary Movement as a way to reduce the costs of smuggling immigrants to the United States. Charging the equivalent of approximately \$800 to smuggle people from El Salvador to Phoenix, Emery was included in the original indictment to emphasize the Movement's criminality. She quickly settled her case.⁷⁶ Similarly, Martel-Benavidez's case was quickly settled. A Salvadoran whose involvement with the Sanctuary Movement primarily rested on her friendship with Socorro Aguilar, during Operation Sojourner she used government agent Jesus Cruz to smuggle in members of her family.⁷⁷ After lead prosecutor Donald Reno learned of Sister Ana Priester's Hodgkin's Disease he asked the court to drop charges against Priester and Sister Mary Waddell, as she would be Priester's primary caregiver. Neither of the nuns wanted their charges dropped as both wanted to stand trial with the others. Nonetheless,

⁷⁵ Matas, *The Sanctuary Trial*, 67.

⁷⁶ Crittenden, *Sanctuary*, 192-193.

⁷⁷ Cunningham, *God and Caesar*, 44.

the government dropped the charges.⁷⁸ When the trial began on October 23, 1985 the remaining defendants chose to be tried together. They were Aguilar, Clark, Corbett, Conger, Espinoza, Fife, Flaherty, Hutchinson, Le Win, Nicgorski and Quinones. Rather than listing all the defendants, the court recorder and public followed precedent by arranging the defendants alphabetically and using the last name of the first defendant. The case became *United States v. Aguilar et. al* or, as more popularly known, the “Sanctuary Trial.”⁷⁹

During the nine months separating the indictments and the defendants’ first day in court, the defense, prosecution and judge wrestled over the nature of the trial. Was it a simple anti-smuggling case, as the government argued, or was it a trial of humanitarianism vs. legalism, as the defense argued? In addition, what type of evidence would be allowed and what types of defenses could the defense use? After debating these topics for weeks the judge assigned to the case, the Honorable Earl H. Carroll, made a series of decisions that had a dramatic effect on the case and, in turn, the Central American Refugee Crisis.

The bulk of these decisions emanated from motions filed by lead prosecutor Donald Reno, the most important of which was the *motion in limine*. Though used sporadically throughout the twentieth century, government prosecutors had recently recognized the value of this legal strategy.⁸⁰ Originally created for defendants, the *motion in limine* is a pretrial motion that asks the sitting judge to exclude any evidence that would be prejudicial to the jury. Prosecutors found it an effective strategy for preventing

⁷⁸ “Charges Against Nuns Dismissed,” *The Washington Post*, February 13, 1985. A10

⁷⁹ *United States v. Aguilar et. al.*, CR85-008 PHX-EHC (D. Arizona 1986)

⁸⁰ Charles W. Gamble, “The Motion *In Limine*: A pretrial procedure that has come of age,” *Alabama Law Review* 33:1 (Fall 1981), 1.

defendants from using evidence and defenses that might keep the government from winning its case. In the Sanctuary Trial Reno asked the judge to exclude any legal defenses that would allow the Sanctuary lawyers to argue for the innocence of their clients based on what Reno thought to be illegitimate grounds. This included evidence on the legitimacy of Central Americans as refugees (and international law concerning the treatment of refugees), evidence on the religious beliefs of the defendants and evidence on the defendants' lack of knowledge that the people they were transporting were illegal. Reno's believed that without these exclusions the court proceedings would be an opportunity for the Sanctuary Movement to place the government's Central American policy on trial.⁸¹

Carroll concurred and went further than Reno's original proposal. Whereas Reno had only asked that the court preclude any defenses based on free exercise of religion, ignorance of the law, or personal conscience, Carroll ruled that any evidence in support of these defenses was inadmissible. Not only were the defendants forbidden from discussing how their religious and personal convictions led them to help immigrants, they could not use any evidence that referenced these beliefs or the conditions in Central America that led to refugees fleeing north.⁸² Carroll expressed concern that the trial could easily take on a "circus... or a carnival atmosphere" and therefore decided to set strict boundaries regarding what would and would not be permitted in his courtroom.⁸³ While Carroll's concern regarding the attention and passion the case would attract was

⁸¹ Douglas L. Colbert, "The Motion in Limine: Trial Without Jury, A Government's Weapon Against the Sanctuary Movement." *Hofstra Law Review* 15:5 (1986-87), 49, 52.

⁸² Matas, *The Sanctuary Trial*, 70.

⁸³ Kathryn M. Olson and Clark D. Olson, "Judges' Influence on Trial Outcomes and Jurors' Experiences of Justice: Reinscribing Existing Hierarchies Through the Sanctuary Trial," *Journal of Applied Communication Research* 22 (1994), 19.

legitimate, his solution did not result in a composed court. Rather, his decision to preclude a whole range of defenses, arguments and a substantial amount of evidence dramatically affected the trial in two ways: #1 By forcing the defense to scramble to create a coherent defense and #2 by setting up the conditions for a series of dramatic confrontations between the judge, defense and prosecution that lasted throughout the trial.

Worse yet for the defendants, Carroll's decisions regarding evidence came in two waves. His first decision, made relatively early during pretrial motions, precluded defenses based on the defendants' religious beliefs and that enforcement of immigration laws would impinge on the defendants' religious freedom. Three days before jury empanelment, Carroll further excluded defenses based on international law, defendants' belief that those they were helping were legitimate refugees, defendants' understanding of US immigration laws and necessity or duress.⁸⁴ On top of this decision, days before the Trial began prosecutor Donald Reno chose to shift his legal strategy from a reliance on the use of the hundreds of hours of covert surveillance garnered during Operation Sojourner to one that relied on the courtroom testimony of government operatives and the Central Americans who had been helped by the Sanctuary Movement. Therefore, he decided not to submit the tapes as evidence, fearing that they could be used to educate the jury on the religious and humanitarian reasons for Sanctuary. The defense had counted on using these tapes when preparing their defense.⁸⁵ These two decisions, coming so close to the beginning of the trial, forced the defendants' lawyers to reformulate the majority of their legal strategy. Michael Altman, attorney for Darlene Nicgorski, stated that "(w)ith

⁸⁴ Olson and Olson, "Judge's Influence on Trial Outcomes," 22.

⁸⁵ Cunningham, *God and Caesar*, 57.

this ruling, much defense preparation was rendered useless. Worse yet, because Carroll's rulings denuded the defendants' lawyers of their substantive defenses, they relied, almost entirely, on jury selection and legal cunning for their deliverance."⁸⁶

The rapid change in legal strategy, coupled with Carroll's extensive motions, crippled the defense from the start. Some of the defense lawyers, like Karen Snell, believe to this day that the case was lost during the pretrial motions.⁸⁷ Prior to her participation in the Sanctuary Trial, Snell worked on the appeal of another sanctuary case. In May 1984 Stacey Lynn Merkt, a Sanctuary Movement worker in Texas, had been convicted of transporting two undocumented Salvadorans. Snell appealed Merkt's case, arguing that Merkt did not know the migrants were illegal because she thought them to be legitimate refugees.⁸⁸ In June 1985, during the Sanctuary Trial's pre-trial period, the Fifth Circuit Court of Appeals reversed and remanded Merkt's conviction. Carroll's pretrial motions squashed any hope of using this defense. Throughout the pretrial period the defense unsuccessfully filed motions for a mistrial or dismissal of the case on the grounds of Carroll's bias, the unfairness of his rulings or the selective prosecution of the Sanctuary Movement. During the actual Trial the defense repeated this tactic to no avail. Carroll denied each of these motions.⁸⁹

Both Judge Carroll and Donald Reno had a dramatic effect on the case through their actions during the pre-trial period. Carroll's decision to go further than Reno's motions and exclude any evidence relating to religious freedom, international law,

⁸⁶ Michael Altman, "The Arizona Sanctuary Trial," *Litigation* 16:4 (Summer 1990), 25.

⁸⁷ Karen Snell, telephone interview with author, October 20, 2011.

⁸⁸ 764 F.2d 266: *United States of America v. Stacey Lynn Merkt*, United States Court of Appeals, Fifth Circuit.

⁸⁹ Miriam Davidson, *Convictions of the Heart: Jim Corbett and the Sanctuary Movement* (Tucson: University of Arizona Press, 1988), 109-110.

mistaken assumption and ignorance of the law kept the defense from using a legal technique that had worked for an earlier Sanctuary case. By deciding to forego the use of the investigation's tapes and introducing the pre-trial motions to exclude evidence, Reno put the defense off-balance from the start and effectively prevented Sanctuary activists from using the tapes to present their reasons for breaking the law. Finally, as discussed in the following section, Carroll's decisions had a domino-like effect on the case, effectively muzzling Sanctuary activists and Central American witnesses from testifying about the conditions in Central America and their reasons for granting Sanctuary.

2.6 The Trial

Though the motion *in limine* dramatically affected the defense's strategy pre-trial, the full effects of Carroll's actions did not become apparent until the defense and prosecution attempted operate within the constraints Carroll set up in his pretrial rulings. As the defense began its opening statements, it quickly became clear that in spite of Carroll's desire to harshly delineate the shape of the trial, the defense was committed to introducing the conditions in Central America and the defendants' religious beliefs whenever possible. During the defense's opening statements, Carroll interrupted the lawyers a number of times, reminding them of his rulings and warning them not to violate them. The defense complained, arguing that Carroll's interruption of the defense but not the prosecution demonstrated his bias towards the prosecution.⁹⁰ Carroll ignored their complaints and the trial proceeded. The court transformed into a battleground as the defense skirted the line between Carroll's pretrial rulings and their desire to discuss the Sanctuary Movement's motivations. Observers noted that the combination of defense

⁹⁰ Matas, *The Sanctuary Trial*, 73.

lawyers convinced of the righteousness of their clients, a crusading prosecuting attorney and a feisty judge led to a combative courtroom.⁹¹

Others picked up on the tension in the courtroom as well. As the atmosphere grew more poisonous and confrontational, the media's coverage morphed from covering the issues of the Trial to obsessing over who "won" particular days. Though this increased media coverage, many activists worried that the media's day-to-day scoring of the case obscured the Trial's larger issues: the contest over the refugee and immigration policy of the United States. As discussed in section 2.8 others found a way to use the media's interest to their advantage.

In the midst of the media firestorm the Trial continued. The government called a variety of witnesses to the stand in hopes of demonstrating the guilt of the accused Sanctuary activists. These witnesses included Central American refugees, INS agents and Jesus Cruz. For 23 days Cruz, government informant and the prosecution's star witness, took the stand. Reno's decision to forego any use of the Operation Sojourner tapes meant that the government's case depended heavily on Cruz's testimony of his conversations, meetings and border crossings with the Sanctuary Trial defendants. First, Donald Reno examined him, asking him to recount step by step his dealings with the defendants, as the prosecution used Cruz's testimony to sketch out the movement of Central Americans across the U.S.- Mexico border. Reno's interview of the star witness did not go as planned. The defense demanded that Cruz use English, his second language, in any testimony concerning meetings and conversations conducted in English. Surprisingly, Carroll agreed with the defense.

⁹¹ Matas, *The Sanctuary Trial*, 121.

Cruz had difficulty on the stand, speaking a broken and stumbling English. The defense aggressively cross-examined him, attacking his credibility as a witness. First, they asked Cruz to go over his testimony again, demonstrating that when pushed Cruz often had difficulty recalling the most basic facts about his meetings with the Sanctuary Movement. They next forced Cruz to discuss the financial and political incentives for his participation in Operation Sojourner, revealing that he received nearly \$18,000 for his role and insinuating that his participation meant Cruz would be protected from deportation. The defense continued its attempt to impeach Cruz, highlighting his criminal background as a human smuggler from 1977-1980. Finally, the defense emphasized the differences between Cruz's memory of Operation Sojourner and the investigation's documentary record.⁹² The defense ended its cross examination confident that it had severely undermined, if not destroyed, Cruz's credibility. In the end, Cruz's flawed nonetheless lay the foundation for the eventual conviction of the eight defendants, even though Cruz failed to impress either the jury or the press.⁹³ Though few jurors viewed Cruz with sympathy, his testimony provided the essential outlines of the intentions of the Sanctuary Movement. As discussed in 2.6 the jurors, in the end, decided that the very concept of Sanctuary was illegal.

While Cruz offered the grounds to convict the Sanctuary activists, his cross-examination gave the defense the opportunity to lead him into answers that discussed the conditions in Central America and the religious motivations of Sanctuary workers. Similarly, the defense's cross-examination of the 15 Central Americans that the

⁹² Crittenden, *Sanctuary*, 265-268.

⁹³ Mitchell Pacelle, "U.S. v. the Arizona Sanctuary Workers," *Trial by Jury* ed. Steven Brill (New York: Simon & Schuster Inc., 1989, 456; Matas, 79.

government called to the stand gave them the opportunity to discuss the background to the case. It helped that many of the Central Americans who testified were quite sympathetic to the Sanctuary workers.

A dramatic example of this is the testimony of Alejandro Gomez. A 46 year-old Salvadoran former labor leader, Gomez had entered the United States with the help of the Sanctuary Movement. On January 14, 1985 the INS arrested Gomez in Rochester, NY where he was in Sanctuary. As he testified under cross-examination, Gomez stated that he left El Salvador “because I could be killed.”⁹⁴ Immediately, prosecutor Donald Reno objected that Gomez’s statement fell outside the bounds carefully proscribed by Carroll. The judge agreed and had the statement stricken from the record. Gomez’s reference to the conditions in Central America was only one of many that the defense managed to have voiced in the courtroom, even if they were ruled to be inadmissible. The fact that the court consistently proscribed testimony about the circumstances of migrants’ entry into the United States troubled and confused the jury. In addition, many reported to be unhappy with the unruly atmosphere in the courtroom as disputes between the judge, defense and prosecutor erupted up in court. Even when sent out before the fireworks began, the jury anticipated what was about to happen. One juror, Dennis Davis, commented that the jury was sent out to such an extent that “we would joke, ‘Here we go, we’re getting our exercise...’ Sometimes it felt like they could hardly get the door closed before there was going to be a donnybrook. The electricity was there.”⁹⁵

⁹⁴ Carol Ann Bassett and Sandy Tolan, “U.S. Witnesses Bolster Sanctuary-case Defense,” *Philadelphia Inquirer* January 26, 1986

⁹⁵ Dennis Davis, quoted in Pacelle, “U.S. v. the Arizona Sanctuary Workers,” 458.

Gomez and many of the other Central American witnesses did their best to derail Reno's strategy of denying the jury evidence of what was happening in Central America. The refugees' testimonies proved frustrating for Reno, who claimed repeatedly that the witnesses were intentionally sabotaging the case as they sympathized with the defendants.⁹⁶ Nonetheless, these testimonies proved crucial for conviction as they shored up the inconsistencies in Cruz's testimony and gave Reno the material necessary to make a sweeping closing statement.

Reno ended up making that statement much earlier than he expected due to a difficult decision by the defense in March 1986. A series of intense meetings during the government's presentation of its case between the defendants and their lawyers resulted in an radical decision. During the meetings the lawyers argued that testimony by the defendants would result in nothing more than providing the government with the evidence it needed to convict. The defendants were split. Most of them sided with the lawyers. Others, including Darlene Nicgorski and Peggy Hutchinson, desperately wanted to take the stand. Outraged at what they saw as Carroll and Reno's willful obfuscation of the truth about the Sanctuary Movement and Central American migrants, Nicgorski and Hutchinson wanted to testify directly on their motivations for helping migrants and the conditions in Central America. They were less concerned about their eventual fate and more concerned about having an opportunity to tell their story. The lawyers countered that Carroll's restrictions would muzzle the defendants and the actions of the few defendants who wanted to take the stand would endanger the others. In addition, those who took the stand and continued to try to testify on subjects Carroll had excluded would

⁹⁶ Matas, 80.

be found in contempt of court.⁹⁷ After substantial conversation, the defense decided that presenting a case would do more harm than good. On March 14, 1986, days after the government had finished its presentation, the defense lawyers for each client rose one by one and rested their case.⁹⁸ Shocked, Judge Carroll adjourned the court, stating that “There is no Sanctuary Defense,” a statement that earned another round of futile attempts by the defense to have Carroll withdraw from the case or declare a mistrial.⁹⁹ After the defense left the court, lawyer Michael Altman spoke to the press, saying, “Why attend the football game when the score is 27-0?”¹⁰⁰

The Trial moved on to the next stage as the defense and prosecution offered suggestions to the judge over instructions for the jury’s deliberation. The instructions were critical in a case like this, as they would direct the jury what were the correct grounds for conviction for over 70 counts. For a few days the mood in the courtroom lightened as the judge, prosecution and defense engaged in very little of the fireworks that had characterized the trial for the past few months. Controversy erupted once again after Carroll announced his rulings on jury instructions. Of the 126 suggestions that the defense had provided, Carroll had only taken two of them. Defense lawyers Bates Butler and Jim Brosnahan could barely contain themselves as they skirted the line between expressing their unhappiness and contempt of court.¹⁰¹ In one telling exchange between Brosnahan and Carroll long-simmering tempers exploded:

⁹⁷ John Fife in *The Sanctuary Experience*, 166; Nancy Postero, telephone interview with author, July 5, 2011.

⁹⁸ Crittenden, 315.

⁹⁹ Matas, 110.

¹⁰⁰ Associated Press, “Defense Attorneys Rest Case in Sanctuary Movement Trial” March 15, 1986.

¹⁰¹ Crittenden, 316.

Mr. Brosnahan: . . . I cannot understand why Your Honor would fashion the last paragraph of Instruction 38 (change to 11496) unless Your Honor has, as I believe you do, a strong desire in this case to see a conviction, which is inconsistent with your function as a judge.

And I determine that sadly. I determined it in an unhappy fashion, because I have a lot of respect for the federal courts and what they are supposed to do. But I did want Your Honor to know, that I, at least, understand what Your Honor is trying to do in this courtroom. And on behalf of my client I object to it. I have not seen anything like this in all my days of practice.

The Court: Perhaps none of us are too old to learn, Mr. Brosnahan.

Mr. Brosnahan: I'm not too old to fight, I'll tell you that.

The Court: Well, maybe you are too weak.

Mr. Brosnahan: No, I'm not too weak either.

The Court: Maybe it is too late.

Mr. Walker: I take exception--

Mr. Brosnahan: Not too late, either.¹⁰²

In their analysis of Carroll's influence on the trial, communication scholars Kathryn and Clark Olson argue that the content and the form of "(t)he judge's instructions virtually foreclosed any verdict other than conviction."¹⁰³ In his instructions Carroll carefully reminded the jury of their solemn oath to follow the law rather than their own prejudices, sympathies or opinions. Carroll gave each juror a written copy of his instructions, telling them that they should avoid writing on them. Throughout the two week deliberation the jurors referred to these notes time and time again to the point that to many of the jurors the notes became a part of the law, rather than instructions on how to refer to the law. When looking back on their reliance on the judge's notes, juror Lynn Cobb states that "I just think we went overboard by following them too closely."¹⁰⁴ Only the closing arguments for the prosecution and defense remained. The defense hoped that in spite of the less than advantageous instructions they could plant a seed of doubt in the mind of the jury during closing arguments.

¹⁰² U.S. v. Aguilar at 11496-11497

¹⁰³ Olson and Olson, 25.

¹⁰⁴ Lynn Cobb, quoted in Pacelle, "U.S. v. the Arizona Sanctuary Workers," 469.

As is traditional, the prosecution went first. Meticulously detailing each government charge, Reno's closing argument lasted three days. Reno did his utmost to ensure that his closing argument was a thorough but dry recitation of facts, stressing that the case was a matter of law and not of emotion. In contrast, the defense poured the passion pent up over the course of nearly a year of trying to negotiate Carroll's restrictions into their closing arguments. Each lawyer came before the court, presenting the reasons, both moral and legal, that his or her client should be acquitted. Chief among their strategies was to contrast the character of each of the defendants with that of Jesus Cruz, asking the jury if they would rely on Jesus Cruz to make the most important decision of the defendants' lives.¹⁰⁵ Following the defenses' arguments, Reno gave a rebuttal dramatically different than his closing. While his closing argument dryly outlined the legal arguments for conviction, Reno's rebuttal passionately defended the supremacy of the law of the United States, imploring the jury "to have the courage to come out, look these people in the eye as I have done and tell them there is no higher law than that passed by Congress..."¹⁰⁶

At 1 PM on Thursday April 17, 1986, the jury began its deliberations. They lasted fourteen days. As its first order of business the jury selected Catherine Shaeffer as its forewoman, the woman whose political affiliation had been mistakenly identified as Democrat, rather than Republican. This turned out to be pivotal as Ms. Shaeffer repeatedly used her position during the deliberations to stress the precedence of the law over emotions.¹⁰⁷ Many of the jurors found the decision to convict a difficult one. Some

¹⁰⁵ Crittenden, *Sanctuary*, 318-319.

¹⁰⁶ Donald Reno, quoted in Crittenden, *Sanctuary*, 320.

¹⁰⁷ Pacelle, "U.S. v. the Arizona Sanctuary Workers," 461.

jurors, like Janice Estes, wondered aloud if this was the correct decision, “So we’re going to hang these people for helping other people?”¹⁰⁸ Nonetheless, after persistent cajoling by Shaeffer, the jurors reached a series of decisions that led to convictions. They returned again and again to Carroll’s instructions and decided to forego their emotions. Referring back to their notes, they looked for specific evidence of illegal actions and decided to let their respect for the law overrule their disgust with Jesus Cruz. On May 1, 1986 the judge called the defense back into court and the jury announced its verdict. After days of deliberation the jurors decided that they had enough evidence of illegality to convict eight of the eleven defendants: Maria Socorro Aguilar, John Fife, Darlene Nicgorski, Ramon Dagoberto Quinones, Peggy Hutchinson, Wendy Le Win, Tony Clark and Phillip Conger.¹⁰⁹

The convicted defendants returned to court one month after the verdict for sentencing. During the intervening month concerned priests, nuns, veterans, lawyers, doctors and others, as well as 47 members of Congress, wrote to Judge Carroll. They pleaded leniency in his sentencing and Carroll listened.¹¹⁰ Before he could deliver the sentences each defendant had the right to make a final statement free of Carroll’s restrictions right before sentencing. In turn, each defendant rose and gave a stinging rebuke to the judge’s behavior, the United States’ foreign policy and the INS’s inhumanity towards Central American migrants. Their statements lasted so long that Carroll pushed sentencing for the final three defendants to the next day. Carroll listened dispassionately to each defendant and issued his sentences. Their leniency surprised the

¹⁰⁸ Janice Estes quoted in Pacelle, “U.S. v. the Arizona sanctuary workers,” 463.

¹⁰⁹ Matas, *The Sanctuary Trial*, 110-11.

¹¹⁰ Cunningham, *God and Caesar*, 60-61.

defendants. Each sentenced called for suspended probation for a period ranging from three to five years. The terms of their probation primarily focused on immigration law, and Carroll threatened prolonged jail sentences to any defendant convicted of similar violations of immigration law. Carroll received the last word in sentencing where he told the defendants to pursue their objectives within the constraints of the law and an immigration system that had, to his mind, worked for 200 years.¹¹¹

Maria Socorro Aguilar, John Fife, Darlene Nicgorski, Ramon Dagoberto Quinones, Peggy Hutchinson, Wendy Le Win, Tony Clark and Phillip Conger did not believe that the system worked. Neither did their acquitted co-defendants, other members of the Sanctuary Movement or many of the Americans who, as a result of the Sanctuary Trial, learned of the Central American Refugee Crisis for the first time. As discussed in sections 2.7 and 2.8, the Sanctuary Movement Trial led to massive changes in the lives of the participants and the CARC that belied Carroll's belief in the system.

2.7 The Effect of the Trial on Participants

On June 2, 1986 eight of the Sanctuary defendants emerged from the courtroom with a new label, felons. The year and a half ordeal of the Trial, as well as the verdict, changed them forever. Using a representative member of each of the three groups of ground-level actors, the following section examines the way that the Sanctuary Trial affected the lives of those who participated in it. They are activist Darlene Nicgorski, Central American migrant Alejandro Gomez and government prosecutor Donald Reno.

Unlike Jim Corbett or John Fife, Sister Darlene Nicgorski did not need the stories of Central American migrants to learn of the horrific violence in Guatemala and El

¹¹¹ Crittenden, *Sanctuary*, 336-339.

Salvador. She had lived it. In the summer of 1980 Nicgorski arrived in Guatemala where she served as a missionary for a little over a year. Her work came to an abrupt end after the assassination of Father Tulio Maruzzo, the local parish priest. Braving the death threats directed at her, Sister Nicgorski waited until Maruzzo's funeral to leave Guatemala. She spent a year working with refugees along the Mexico-Guatemala border until she returned to the United States in 1982.¹¹² During her convalescence in Phoenix from an illness caught while working along the border, Nicgorski started working with the Central Americans in the United States. Her work brought her in contact with members of the Sanctuary Movement, and by 1983 she worked full-time as a paid coordinator for the Movement. On January 14, 1985, the day the government handed down the indictments, Nicgorski was at a retreat in Michigan. She recalls that upon returning from a hike a small group ushered her into a conference room. There they told her that she had been charged with a variety of smuggling crimes and, if convicted, would face years of jail.¹¹³

After a few days of prayer and reflection, Nicgorski returned to Tucson and began the year and a half long ordeal of pretrial, trial, deliberations and sentencing. Passionate about the conditions in Central America and eager to use the trial as an opportunity to publicize them, she found the time in the courtroom infuriating. Due to Carroll's restrictions, any comments regarding Central America or the Movement's religious/humanitarian basis were verboten. In response she began to work outside. Using every opportunity she could in the midst of a busy court schedule, Nicgorski gave hundreds of interviews and community speeches concerning the Central America

¹¹² Julia Lieblich, *Sisters: Lives of Devotion and Defiance* (New York: Ballantine Books, 1992), 218-222.

¹¹³ Darlene Nicgorski, telephone interview with author, September 2, 2011.

Refugee Crisis around the country.¹¹⁴ When the jury came back with a guilty verdict on May 1, 1986, Nicgorski was unsurprised. Based on the behavior of the judge and the draconian restrictions on evidence, she expected nothing else. Yet, the verdict caused her to reflect: “The next two months I tried to prepare myself for the prospect of prison, however one does that. Prison is supposed to be the ultimate unfreedom, the worst curse of society. What I experienced was a sense of great inner freedom that I had never known before... I sensed that I had to begin to deal with my own oppression- I needed to pick up my own struggle...”¹¹⁵

Sister Nicgorski soon realized that part of the oppression in her own life came from the patriarchal structure of the Catholic Church. A little over one year after the verdict she made the difficult decision to seek dispensation from her vows. Nicgorski felt that it was impossible to speak out against the injustice she had seen while in Guatemala and during the Trial, within the constraints of the church. She left the church with only \$1,000 to her name. Her felony conviction made it difficult to secure work, but Nicgorski used her Spanish skills to become an English as a Second Language teacher. Soon she began independent consulting with businesses that hired a substantial number of Spanish-speaking workers, trying to bridge the cultural gaps between employers and employees. This led to a career in human resources, a field she worked in until her retirement on July 1, 2011.¹¹⁶

¹¹⁴ Darlene Nicgorski, telephone interview with author, September 2, 2011.

¹¹⁵ Darlene Nicgorski, “Confronting Oppression,” in *Sermons Seldom Heard: Women Proclaim their Lives* ed. Annie Lally Milhaven (New York: Crossroads Publishing, 1991), 220-221.

¹¹⁶ Lynda-Marie Taurasi, “Ex-nun, activist reflects: Risked prison for her beliefs” *The Chapel Hill News*, August 3, 2011.; Dan Holly, “A Devoted Career Comes Full Circle,” *Raleigh City Buzz Examiner*, August 22, 2011.

As Nicgorski and the other defendants dealt with the aftereffects of the Trial, the arrest of the more than 60 Central Americans as a result of Operation Sojourner immediately placed them in danger of deportation. Most of the refugees had entered the country illegally and now had to apply for asylum. Due to privacy laws, the dizzying array of pseudonyms used by those involved and the routine destruction of records, it is impossible to determine the fate of all of those involved. Nonetheless, the experience of Alejandro Gomez, who remained in the public record following the trial, is instructive.

Gomez and his wife were first taken into custody in the original round of arrests on January 14, 1985. The same day an anonymous donor posted the \$3,000 bail needed for his release, and his wife was released on her own recognizance. They had been living in sanctuary in Rochester, NY's Downtown United Presbyterian since June of 1984. Shortly after their release from custody, Gomez and his wife applied for asylum. As the typical asylum process took more than a year, they reentered sanctuary at Downtown United and waited for a subpoena for the Sanctuary Trial.¹¹⁷ A little more than a year after his arrest, the government called Gomez and his wife to the stand in the Sanctuary Trial. His testimony and cross-examination, discussed in section 2.6, caused an uproar. Carroll immediately sent the jury out after Gomez stated that he did not want to go back to El Salvador because he feared that he could be killed. In addition, Gomez elicited strong emotions from the defendants, as when he personally thanked Maria Soccoro Aguilar while on the stand for giving him and his family shelter when they needed it

¹¹⁷ "2 Salvadorans arrested here," *Rochester Democrat and Chronicle* Tuesday January 15, 1985 1A and 2A; Mark Hare, "Support grows for Salvadorans sheltered here," *ibid.*, Tuesday January 22, 1985, 5B.

most.¹¹⁸ After his and his wife's testimony he returned to sanctuary in Rochester and waited for his asylum hearing.

On May 23, 1986, less than six months after his testimony and two weeks after the guilty verdict, the INS arrested Gomez and his wife once again. Though the Gomez's were still waiting for their asylum hearing, federal authorities justified their arrest on national security grounds, stating that they had received new information that indicated Alejandro had serious communist ties. These included trips to Cuba, Moscow and various Eastern-bloc countries. The arrests galvanized Rochester's sanctuary committee as they tried to raise the \$50,000 bail. The city's main newspaper, the *Democrat and Chronicle*, accorded the arrests front-page coverage and continued to follow Gomez's case for the next two months. The *Democrat and Chronicle* continued its coverage of Gomez throughout the next two months, devoting front page space to Gomez's case on May 24, 26 and 28, and July 15 and 16 with a number of other articles scattered throughout the paper.¹¹⁹ The stories reveal that Gomez enjoyed substantial support among the Rochester religious community as they raised a \$50,000 bail within two days of his arrest. He had not revealed his former communist ties to Sanctuary workers or his lawyer prior to the government's accusations, stating that his ties did not extend beyond the 1960s and were far in the past. The government alleged that he had returned to Cuba for training in 1972, a claim that he denied.

Following two months of legal wrangling, Gomez and his family fled to Canada as it became evident that neither he nor his family would receive asylum. In Canada they

¹¹⁸ Bassett and Tolan, "U.S. Witnesses Bolster Sanctuary Case Defense."

¹¹⁹ In order: Todd Lighty and John Hammond, "Salvadoran seized"; Jack Jones, "Salvadoran refugee won't discuss charges"; James Goodman, "Salvadoran loses request for bail reduction"; Vincent Taylor, "Refugee flees U.S."; James Goodman, "Refugees who fled city are in Canada"

lived in Fort Erie and volunteered in support of refugees along the New York/Ontario border during the border crisis that developed in early 1987 (the subject of chapter 4). Gomez and Rochester Sanctuary providers noted the timing of his second arrest: it came less than 15 days after the verdict in the Sanctuary Trial and alleged that once the government secured the result it was looking for in the Trial, they felt free to move against the migrants the Movement helped. Gomez's original arrest as part of Operation Sojourner made him a much more public figure and an easier target for subsequent prosecution. As a result of a 15-20 year old affiliation with the Communist Party in Cuba, he was arrested and on the verge of being denied asylum, thus forcing him to flee to Canada. Though other Central Americans like Maria Teresa Lopez picked up in Operation Sojourner were successful in their bid for asylum, others, like Alejandro Gomez, found the heightened profile dangerous and were forced to make drastic changes in their lives.¹²⁰

As would be expected, government prosecutor Donald Reno's thoughts on the Movement and the Trial differed from those of Nicgorski and Gomez. Where the activist and refugee saw a group of religious people trying to follow their conscience, Reno saw a dangerous conspiracy to subvert the law of the United States. In his opening statement Reno argued that the foundation of the case rested on the question, "are we going to have two Immigration Services? Are we going to have one that has been duly constituted, controlled and funded by the federal government or are we going to have a secondary and

¹²⁰ Ms. Lopez' was denied asylum on September 10, 1987, see Carol M. Ostrom, "Woman loses asylum bid" *Seattle Times*; while her sister in law, Pilar Martinez, received asylum in November of 1987 see Ann Fagan Ginger and Jim Ginger eds. *Meiklejohn Civil Liberties Institute Human Rights and Peace Law Docket* (Berkeley: University of California Press, 2005) < <http://sunsite.berkeley.edu/meiklejohn/meik-peacelaw/meik-peacelaw-1.html>>. For a thorough examination of the arbitrary nature of asylum adjudication see Nogales, Schoenholtz, Schrag, and Kennedy, *Refugee Roulette: Disparities in Asylum Adjudication and Proposal for Reform* (New York: New York University Press, 2009).

perhaps a third and a fourth immigration service funded and controlled and created by the defendants here and their colleagues across the country?”¹²¹ Reno’s work prosecuting the Sanctuary Movement led him to question his membership in the Methodist church. After hearing of the denomination leadership’s condoning of Sanctuary, Reno publicly speculated on whether he needed to “rethink my Methodist heritage.”¹²²

While Reno deeply believed in the righteousness of his cause, to the point of questioning his church membership, he found the burden of Operation Sojourner and the Sanctuary Trial quite heavy. The secretive nature of the investigation and lack of support from his superiors made the process of conducting Operation Sojourner an exhausting one. Reno found the Trial even more taxing. Due to the defendants’ varied roles in the Movement and their decision to stand trial together, Reno had to weave together a common narrative that tied together eleven very different individuals in the face of a ferocious legal team themselves convinced of the righteousness of their clients. He called the entire process, from the beginning “a very grueling experience... a tremendous imposition on me and my family personally for two years.”¹²³ Shortly after the trial he left his position in Phoenix and accepted a transfer to Seattle, stating that he was excited to leave the Trial behind. There Reno continued working on anti-smuggling cases for the next 25 years, receiving in 2009 the Department of Homeland Security’s “Trial Attorney

¹²¹ Donald Reno, quoted in Susan Bibler Coutin, “Smugglers or Samaritans in Tucson, Arizona: Producing and Contesting Legal Truth,” *American Ethnologist* 22:3 (1995), 555.

¹²² Matas, *The Sanctuary Trial*, 52.

¹²³ Marcia Friedman, “Welcoming Vigil for Prosecutor in Sanctuary Trial: ‘Why is he here?’” *Seattle Post-Intelligencer* June 9, 1987 News D3

of the Year Award” for his prosecution of a business that employed undocumented workers.¹²⁴

The experience of the trial was a significant factor in leading a nun to renounce her vows; a Central American to flee to Canada; and a prosecution lawyer to question his faith and move from Phoenix to Seattle. This is only a small sample of the people involved in Operation Sojourner and the Sanctuary Trial. Some of the defense lawyers interviewed for this project called it the high point and most significant aspect of their legal careers,¹²⁵ eight of the defendants received felony convictions that affected everything from their voting rights to their ability to rent an apartment, and the more than sixty Central Americans arrested as a result of Operation Sojourner’s success were placed in federal custody and in danger of being deported.

2.8 The Effect of the Trial on the CARC

There is no doubt that the Trial deeply influenced the individuals involved in it, but it also affected the Central American Refugee Crisis. While the government attempted to paint it as a simple “anti-smuggling case,” the Trial was much more than that. By the conclusion of the Trial in Tucson, the Sanctuary Movement had been transformed, the government was tied up in another court case over its approach to asylum adjudication that began in part as a countersuit to Sanctuary prosecution, the American public was more informed of the issues in Central America, and the international community had a new view of America and its relationship with refugee issues.

¹²⁴ Paul Shukovsky, “Homeland Security Honors Local Lawyer,” *Seattle Post-Intelligencer* January 28, 2009. News A9

¹²⁵ Postero, telephone interview with author, July 5, 2011; Bates Butler, telephone interview with author, July 6, 2011.

In the less than three years between the public declaration of the Sanctuary Movement on March 24, 1982 to the unsealing of the indictments against 13 Sanctuary workers on January 7, 1985, the Sanctuary Movement grew from a handful of houses of worship in Tucson, Phoenix and San Francisco to an international movement with religious groups in Canada, the United States and the United Kingdom proclaiming Sanctuary or declaring their support. It captured the imagination of liberal theologians like Elie Wiesel and Paul Weller, prompted international symposiums and sparked a debate in editorial pages throughout the United States.¹²⁶ As mentioned in section 2.4, this rapid growth was not without its problems. Sanctuary communities across the country hotly contested the theological nature and political goals of the Sanctuary Movement. In early January 1985 Movement leaders braced themselves for a permanent split at the upcoming national symposium. Yet they quickly set aside their differences after the government's indictment of many of the Tucson wing's leading figures two weeks before the symposium. Sanctuary leaders throughout the country turned their focus to the Trial. For a year and a half most ideological and theological issues disappeared as Sanctuary churches and synagogues mobilized massive public relations and fundraising campaigns in support of the 11 defendants.

Both campaigns turned out to be enormously effective and influential. From its very beginning, the Sanctuary Movement saw the press as an invaluable tool. The Movement wanted to publicize the plight of Central Americans, and the Sanctuary Trial gave it a better opportunity than it had ever had before to alert the American public to US

¹²⁶ For a brief discussion of Sanctuary in the United Kingdom see Paul Weller, *Sanctuary: the beginning of a movement?* (London: Runnymede Trust, 1987), and in Canada see Randy Lippert, *Sanctuary, Sovereignty, Sacrifice: Canadian Sanctuary Incidents, Power, and Law* (Vancouver: University of British Columbia Press, 2005).

support for Central American human rights violations. Between January 14, 1985, the day the government unsealed the indictments, to July 1, 1986, the day Carroll sentenced the Sanctuary workers, *The New York Times* published 75 articles on the Sanctuary Movement, an average of nearly one every week. In comparison, during an equivalent span of dates beginning July 29, 1983 to January 13, 1985, the day of the indictments, *The New York Times* published only nine articles on the Movement, an average of less than one article every two months. The coverage of the Movement in other publications increased in much the same manner, from six articles in the *Washington Post* to 51 articles during the Trial, and from 11 articles in the *Los Angeles Times* to 233 articles.¹²⁷ Coverage of the Movement did not stop after the conclusion of the Trial. In a way the prosecution of Corbett, Fife, Nicgoski and the others gave the defendants an added moral authority on refugee issues. The government transformed them into martyrs. The defendants' opinions on developments in refugee policy in the United States and Canada, as well as conditions in Central America, continued to be sought for years after the Trial.¹²⁸ This meant that the prosecution of the Sanctuary Movement, which Operation Sojourner had meant to destroy, had strengthened its position and authority in the minds of the media.

Acutely aware of the increase in publicity, the defendants did their best to use that coverage to educate the public about the situation in Central America and the United States' policy towards Central American migrants. Most of the defendants' press

¹²⁷ Based on a Lexis-Nexis search of "Sanctuary Movement" in *The New York Times*, and *Washington Post* conducted September 22, 2011; and a Proquest search of "Sanctuary Movement" of *Los Angeles Times*

¹²⁸ This was particularly true with changes in Canadian refugee policy, discussed in chapter 4.

conferences took place in front of a church, synagogue or strategically placed cross.¹²⁹ In addition, the defendants made constant references to US refugee policy and practice towards Central Americans in trial-related interviews and profiles. Jim Corbett used his newfound celebrity to invite a news crew from NBC to film a border crossing. This segment, which aired nationally on August 25, 1985, included an interview with Corbett, a conversation with a Salvadoran refugee and a counter by the INS.¹³⁰ As a result of the explosion in publicity, the Sanctuary Movement put an immense amount of political pressure on the United States government. Though the US government did not stop deportations, political pressure did have some effect on the United States' role in Central America. Sociologist Christian Smith has demonstrated that the Sanctuary Movement, coupled with two other organizations involved in Central American activism, Witness for Peace and Pledge of Resistance, heavily influenced congressional opposition to US funding of the Guatemalan and Salvadoran militaries, the two forces that generated most of the refugees from Central America.¹³¹

In addition, the Sanctuary Movement's public relations campaign helped to nearly double the number of Sanctuary sites between the spring of 1985 and summer of 1987.¹³² During the Trial letters from churches and synagogues across the country poured into the Sanctuary offices in Tucson, Chicago and Los Angeles, asking how they could join the Movement.¹³³ The original arrests in January of 1985 raised the public profile of both defendants and migrants. Shock over Alejandro Gomez's second arrest helped push

¹²⁹ Cunningham, *Culture of Protest* 143

¹³⁰ "Sanctuary Movement Continues to Aide Central Americans Fleeing Violence," NBC News, aired August 24, 1985, (http://www.nbcuniversalarchives.com/nbcuni/clip/5112530051_s07.do).

¹³¹ Smith, *Resisting Reagan* 367-372.

¹³² Cunningham, *God and Caesar*, 64.

¹³³ Sanctuary Movement Trial Papers, 1982-1988, MS362 Box 31, Folders 7-11, University of Arizona Library, Tucson, AZ.

through a city council resolution in Rochester that designated it a Sanctuary city.¹³⁴ As the number of sites proliferated, the opportunities for Central Americans to take advantage of them increased. While the Movement never kept full records on the number of Central Americans who lived in Sanctuary, activists estimated the number to be near 3,000.¹³⁵ This number does not account for those refugees who took advantage of Sanctuary services, but did not stay in Sanctuary.

The services provided to those refugees who lived in Sanctuary varied dramatically depending on the site. Some sanctuaries provided outstanding legal, educational and political assistance to the Central Americans living there. Other Sanctuary sites were wholly unprepared for the difficulties inherent in helping refugees bearing the deep physical, emotional and psychological scars of living through civil war and torture. Still others lacked the resources to provide a complete and consistent set of services. Nevertheless, every Sanctuary site was, at minimum, a safe space from deportation. While in Sanctuary, migrants could take advantage of legal assistance for preparing their asylum applications. If the site was unable to provide legal assistance, Central Americans could at least use the safe space of Sanctuary to access other social services and thereby educate themselves about asylum law. After the 1986 passage of the Immigration Reform and Control Act, Central Americans in Sanctuary prepared amnesty applications that would allow them to bypass the corrupt asylum system entirely. Finally, Central Americans in Sanctuary in 1991 received new asylum hearings as a result of the settlement of *American Baptist Churches v. Thornburgh* (the subject of chapter 3).

¹³⁴ Andy Pollack, "Victory for sanctuary" *Democrat and Chronicle* May 28, 1986 1A

¹³⁵ Kathleen Lorentzen, *Women in the Sanctuary Movement* (Philadelphia: Temple University Press, 1991), 15.

While Movement activists spent much of their energy publicizing Sanctuary during the Trial, they also increased their fundraising efforts as they struggled to pay for the services required for an adequate defense. Through the National Sanctuary Defense Fund, an organization set up for the defense of two other Sanctuary workers arrested in 1984 and expanded as a result of the Sanctuary Trial, the Movement raised over \$1.8 million dollars. Much of the fundraising came through direct mail campaigns. Bernie Mazel, an experienced direct mail compiler, and one of the chief fundraisers in the National Sanctuary Defense Fund, recalls the unusually large response to Sanctuary fundraising. From an initial fundraising drive of 127,000 letters, the Fund received nearly \$900,000 in profit and a list of 38,000 contributors. The list expanded dramatically over the course of the Trial and became a valuable resource for other activist responses to the Central American Refugee Crisis. The National Sanctuary Defense Fund had an effect on the CARC far beyond the Trial, as it continued to offer Central Americans in danger of deportation legal assistance and shared its fundraising list with the organization that supported *American Baptist Churches v. Thornburgh*.¹³⁶

Some activists saw the Movement's success in its publicity and fundraising campaigns as a mixed blessing. In the midst of the Sanctuary Movement Trial Jim Corbett noted that "(b)y diverting awareness from and funding away from legal services for refugees, the Arizona Sanctuary Trial may have already had an adverse impact on

¹³⁶ Bernie Mazel, interview by Eileen M. Purcell, June 30, 1998, transcript, *Sanctuary Oral History Project*, Graduate Theological Union, Berkeley, CA. pp. 23-25; The full papers of the National Sanctuary Defense Fund can be found at the Graduate Theological Union, Berkeley, CA. GTU 98-9-04.

refugee advocacy.”¹³⁷ He worried that resources that could have been spent on helping refugees in the Sanctuary Movement were being diverted into the Trial’s defense. Counteracting Corbett’s fears, financial resources poured into the Movement like never before. The Sanctuary Movement expanded its services for refugees in terms of support and staff. Following the end of the Trial the flow of donations slowed considerably. The drama of a collection of religious workers fighting the government appealed to donors much more than the seemingly mundane tasks of providing social services for refugees already in the United States. This led to staff layoffs and the shuttering or partial running of services established during the Trial.¹³⁸ These changes had a significant impact on the morale of Sanctuary workers, as the remaining staff members redoubled their efforts to maintain what services they could.

In addition, the staffing of the Sanctuary Movement in southern Arizona changed as many of the defendants halted their participation during the Trial. This left space for new members of the Movement to take leadership roles, particularly in the Tucson Refugee Support Group (TRSG). Founded in 1981, the TRSG was one of the primary organizations for crossing Central Americans across the border.¹³⁹ As the Trial wore on, the character of the TRSG changed as it became younger, feminized and more fearful of government infiltration. After the Trial many of the defendants, particularly the men, began to reassert their traditional positions of leadership, sparking conflict among TRSG participants who thought they were being pushed aside as patriarchal attitudes took

¹³⁷ Jim Corbett, Discussion draft for “A Covenant for Sanctuary Services on the Border,” Page 2. 12/16/1985. Sanctuary Trial Papers” MS 362 Box 28 Folder 17, University of Arizona Libraries, Tucson, AZ.

¹³⁸ Cunningham, *God and Caesar*, 66.

¹³⁹ Coutin, *The Culture of Protest*, 27.

over.¹⁴⁰ Some of the defendants and their ideological allies in TRSG grew more cautious over border transportation, demanding a standardization of procedure to minimize participants' legal risk. While they wanted to continue helping Central Americans and refused to be stopped by Carroll's orders, they still feared violation of their parole.¹⁴¹ Based off the acquittal of Sanctuary worker Stacey Merkt, the male-dominated former leadership wanted to send letters to the INS before every border run, informing the government of their intentions to transport refugees to a safe spot to claim asylum. They thought this provided the legal cover necessary to secure future Sanctuary acquittals. Other members of TRSG were wary of this strategy, arguing that providing too much information to the INS risked the safety of the refugees in the United States, as well as that of their families back in Central America.¹⁴²

Two separate incidents further contributed to a split within the TRSG, leading the more radical and political members to form another organization to help refugees across the border called El Puente (The Bridge). The first of the two incidents involved a family of Salvadorans living in Mexico City who possessed what most TRSG members believed to be a legitimate claim to refugee status. At the same time, some of the more conservative members of the TRSG were reluctant to bring the family north into the United States, saying that they had lived in Mexico City for quite a while and were thus resettled. They believed that bringing the family north would be an unnecessary risk for the Movement.¹⁴³

¹⁴⁰ Cunningham, *God and Caesar*, 166-167.

¹⁴¹ Coutin, *Culture of Protest*, 115.

¹⁴² Cunningham, *God and Caesar*, 169.

¹⁴³ Interviews with Kathe Padilla and Roger Pennington in Otter and Pine, *The Sanctuary Experience*, 219-221

The second incident involved a family of Salvadorans, some of who had been involved with *Mano Blanco* (the paramilitary group associated with the death squads in El Salvador). Some of the younger and more radical members of TRSG felt that helping former *Mano Blanco* members was politically, spiritually and morally wrong. *Mano Blanco* and its fellow travelers had created the refugee crisis and were guilty of countless human rights violations. They viewed the Sanctuary Movement as, in part, a political Movement that stood against the US government's aid to El Salvador's military and death squads. Helping a former member would contradict that. Corbett and Fife simply saw people in need and wanted to help, regardless of the political, moral and spiritual implications.

Kathy Padilla, one of the founding members of El Puente, describes the debate: "Jim (Corbett) and John (Fife)'s take on it was that this was not a political thing, this was a humanitarian thing. Mine was that this was a spiritual and political thing, because you cannot separate one's spirituality from one's politics."¹⁴⁴ Eventually, the TRSG did decide to move them, but it was not without considerable debate. These two incidents, combined with the growing reliance of TRSG leaders like Fife and Corbett on legal means led to the split within the TRSG and the creation of El Puente. While there remained some overlap between the two groups, the relationship between the two groups descended into name-calling and personal attacks that deeply discouraged the participants of both groups.¹⁴⁵ In many ways, this debate on the Movement's political and humanitarian goals echoed the issues that had nearly split the Movement in the months

¹⁴⁴ Kathe Padilla in Otter and Pine, *The Sanctuary Experience*, 189.

¹⁴⁵ Cunningham, *God and Caesar*, 172-173. For a fuller discussion of the TRSG/El Puente split see Cunningham, 157-201.

before the Trial. The Trial had temporarily patched over the splits within the Movement, but they re-emerged in Tucson within two years of the Trial's conclusion.

Thus the Sanctuary Trial had a variety of temporary and long lasting effects on the Sanctuary Movement and, in turn, the CARC. The Trial's direct effect on government policy and practice is more difficult to measure. The clearest link is a countersuit filed against the INS in May of 1985 in response to the Sanctuary Movement prosecutions. Among other things, this lawsuit alleged that the government's attempt to police their assistance to Central American migrants violated the right to free exercise of religion as guaranteed by the First Amendment.¹⁴⁶ The subject of the next chapter, this case, *American Baptist Churches vs. Thornburgh* (ABC case), resulted in a sweeping settlement that dramatically altered the United States' approach to asylum adjudication. It granted new asylum hearings to Salvadorans who had already been denied a fair hearing, offered work permits to Salvadorans waiting for asylum hearings and stayed deportation of Salvadorans until they had been processed under the new asylum regulations.¹⁴⁷ The settlement also mandated new training for asylum officers devised by refugee advocates. Finally, it overloaded the asylum system and led to massive backlogs.

A second lawsuit emerged out of the Sanctuary prosecutions. This case, *Presbyterian Churches v. United States* was brought in January of 1986 by four Lutheran and Presbyterian churches in Arizona (including Southside Presbyterian) and their national denominations. The lawsuit was against the United States, INS, Department of Justice and the INS officers involved in the case. It charged that during Operation Sojourner the government violated the churches' first and fourth amendment rights by

¹⁴⁶ Blum, "The Settlement of American Baptist Churches v. Thornburgh," 351.

¹⁴⁷ *Ibid.*, 354.

covertly recording church services. Dismissed by the US District Court on October 30, 1986, on the grounds that the churches lacked standing to prosecute the claim, the churches appealed the case to the Ninth Circuit Court. The Ninth Circuit heard the case on July 14, 1987, but did not file a decision until March 15, 1989. The decision found that the churches did have standing and remanded the case back to the district court. The district court revisited the case and issued a new ruling on December 10, 1990. The new ruling affirmed the government's right to infiltrate churches and record services, but instructed government officials that they must only do so "in good faith; i.e., not for the purpose of abridging first amendment freedoms... (and) undercover informers [must] adhere scrupulously to the scope of the defendant's invitation to participation in the organization."¹⁴⁸ Further appeals by the churches failed. While not a total victory for Sanctuary Movement activists, it did clarify the ability of government agents to interfere with Sanctuary work and keep the Movement and its goals in the news into the next decade.

In addition to prompting the *ABC* and *Presbyterian Churches* cases, the negative publicity engendered by the Trial and the monumental costs of the investigation and prosecution largely convinced government officials that future prosecution of the Sanctuary Movement was neither good politics nor as it cost-effective. While government officials may have claimed victory by gaining the conviction of 8 of the 11 defendants, they largely avoided future prosecutions of Sanctuary.¹⁴⁹ This is in spite of the harsher and more explicit penalties and powers that Congress granted the INS related to the

¹⁴⁸ *The Presbyterian Church (U.S.A), et. Al., v. The United States of America, et. Al.* 752 F. Supp. 1505; 1990 U.S. Dist AZ, pp. 28-29.

¹⁴⁹ AP, "Alien Sanctuary Movement's State Unclear A Year After Court Case," *The New York Times* July 7, 1987. A15 Tucson, AZ 7/6/87.

harboring, concealing or inducing entrance of undocumented aliens through the Immigration Reform and Control Act of 1986.¹⁵⁰ The government's failure to zealously prosecute meant that Sanctuary activists could continue their work largely unmolested, though many remained wary of future government infiltration.

Finally, there is one last effect that the Trial had on the Central American Refugee Crisis that is easy to overlook. Though the Trial led to successful PR and fundraising campaigns for the Sanctuary Movement, an important lawsuit in *American Baptist Churches v. Thornburgh*, increased political pressure on refugee policy makers and changes in the ideological makeup of the Sanctuary Movement, perhaps the most important outcome of the Sanctuary Trial was the continued operation of the Sanctuary Movement. For Central Americans crossing the border and the Sanctuary activists who worked with them, this was an extremely personal and important consequence. As Susan Bibler Coutin notes, "(t)hose who brought refugees across the border assessed sanctuary's effectiveness not only by its ultimate objectives but also according to the lives that participants saved on a daily and weekly basis."¹⁵¹ Through the publicity generated by the Trial more sites joined the Movement and more individuals volunteered to help save Central Americans from deportation. For those given shelter in Sanctuary churches and synagogues, incremental changes in policy and practice were less important than the fact that they safely crossed the border and avoided the threat of deportation. Too often, policy historians get caught up in a macro-analysis of events with national or international importance. While the macro issues of refugee policy and practice remained important to all those involved in the Movement, the Movement itself meant much more.

¹⁵⁰ Immigration Reform and Control Act of 1986, S. Res. 1200, 99th Congress, 2d Sess. § 112

¹⁵¹ Coutin, *Culture of Protest*, 177.

The things that mattered most to them were the hundreds of hurried midnight crossings of a dusty river gulch from Mexico to the United States, the security of a warm blanket, or the chance to provide for someone truly in need.

2.9 Conclusion

Throughout the creation of the Sanctuary Movement, Operation Sojourner, the Sanctuary Movement Trial and its aftermath a variety of individuals affected and were affected by the Central American Refugee Crisis. The work and stories of Central Americans provided the impetus and foundation for Sanctuary. Two religious Americans in Tucson were moved enough by these stories that they started a Movement that spread throughout the nation. Unhappy with activists' interpretation of religion and immigration policy, a collection of government officials began an investigation of the Movement that culminated in a nine-month long Trial and eight newly convicted felons. Though muzzled in the courtroom by the preliminary motions granted by Judge Carroll, Central American witnesses and religious activists worked tirelessly to publicize the conditions in Central America and their reasons for defying the government. As a result, the public profile of the Sanctuary Movement increased dramatically during the Trial. Wary of the increased costs in time, money and credibility, the government avoided further covert investigation and prosecutions of the Movement. A countersuit filed by a collection of churches became a part of the *ABC* case (chapter 3), the settlement of which resulted in far ranging official and unofficial changes in refugee policy. Though the Trial temporarily closed a growing rift in the Movement, the division between various political factions within the Sanctuary Movement reappeared after the verdicts. The rift even developed among Sanctuary workers in Tucson, as members of the TRSG and El Puente grew apart.

Finally, the Trial's failure in shuttering the Movement meant that Sanctuary's work continued.

Just as the investigation and Trial had significant effects on the Central American Refugee Crisis, it had dramatic effects on the individuals involved. Both a defendant, Darlene Nicgorski, and government official, Donald Reno, questioned their participation in their respective churches as a result of the Trial. Alejandro Gomez's increased public profile invited more scrutiny, resulting in his arrest after the Trial, threat of deportation and eventual immigration to Canada. Other refugees arrested because of Operation Sojourner received new refugee hearings, some receiving asylum, while others did not.¹⁵² The Trial did not end the Movement, and the consequences of participation in the Movement carried on. As Coutin notes, for workers this meant constructing new relationships with the law, reexamining their religious beliefs and forming deep and lasting relationships.¹⁵³

Finally, it is worth noting that the effects of the Trial went beyond national borders. As activists and Central Americans in the United States spent months in trial, their counterparts in Canada looked on with concern. Recent events in their own country indicated that Canada's more liberal asylum policies, which had largely precluded the need for a Canadian Sanctuary Movement, were coming to an end. For over four years religious groups and the Canadian press had monitored the Movement's rise. Many Canadian churches offered aid to Movement affiliated sites in the United States and some

¹⁵² Neither Alejandro Gomez nor Elba Lopez received asylum, but Lopez's sister, Pilar Martinez, did: James Yuenger, "Passage to Freedom" *Chicago Tribune* January 27, 1989 <http://articles.chicagotribune.com/1989-01-27/features/8902280835_1_refugees-brownsville-bandits> (accessed 1/25/2014).

¹⁵³ Coutin, *Culture of Protest*, 223-226.

helped transport refugees from US churches across the US-Canada border where they could apply for asylum in Canada. During the application process churches offered legal and financial assistance as refugees navigated the complex maze of Canadian asylum adjudication.¹⁵⁴ The arrest of the Sanctuary workers in January 1985 seemed to only further convince Canadian activists of the importance of their work in support of Central Americans as they pledged their support to their counterparts in the US. David Matas, an influential Canadian immigration lawyer, attended the entirety of the Trial and made frequent reports back home. Following the Trial he released numerous articles relating to the case, as well as a book-length report on its effects on US and potentially Canadian immigration policy.¹⁵⁵

As the Trial progressed the Conservative government in Canada passed the first major legislative change to refugee law since 1976. In May of 1987 it introduced a second law that proposed to fully retool the refugee determination process in a way that the government hoped would both stream line the adjudication of refugee applications and cut down on false claims. Bill C-55 is discussed in more detail in chapter 4. Canadian activists saw the changes as a way to keep refugees at bay and shut Canada's previously open doors.¹⁵⁶ They drew connections between US prosecution of Sanctuary activists and Canada's new asylum policy and promised that: "whatever the latest policy, church people, among others, are committed to welcoming refugees and offering sanctuary. They

¹⁵⁴ Garcia, *Seeking Refuge*, 148-150; Regina Hickl-Szabo, "Salvadoreans seek refuge here after wave off from Miss Liberty," *The Globe and Mail*, June, 5, 1984.

¹⁵⁵ Matas, *The Sanctuary Trial*.

¹⁵⁶ Ninette Kelley and Michael Trebilcock, *Making of the Mosaic: A History of Canadian Immigration Policy*, (Toronto: University of Toronto Press, 1998), 413-414.

would prefer to do that with the co-operation of the government. Failing that... count on the emergence of sanctuary churches in Canada.”¹⁵⁷

In spite of the changes, Canada’s policy remained relatively liberal and the Sanctuary Movement never achieved the level of prominence or organization in Canada as it did in the United States. Neither was it ever infiltrated to the extent the Movement was in the US. Yet, the threat of Sanctuary remained a powerful tool for activists to use when discussing individual cases with Canadian officials.¹⁵⁸ As indicated by the quote above, and the fact that various Sanctuary incidents occurred throughout the rest of the decade and still continue today in the face of even harsher laws, the threat carried weight.

In sum, the actions of a few activists, migrants and government officials dramatically changed the shape of Operation Sojourner and the Sanctuary Trial. These two events gave the Sanctuary Movement a public platform to educate an ignorant public, initiated a countersuit that transformed US refugee policy towards Central Americans, sparked condemnations from the international religious community and changed the lives of its participants forever.

¹⁵⁷ Bruce McLeod, “Why Church Leaders would Defy Refugee Rules,” *Toronto Star* March 3, 1987. A 17

¹⁵⁸ Lippert, *Sanctuary*, 15-16.

CHAPTER 3

SIX YEARS TO SETTLEMENT: THE AMERICAN BAPTIST CHURCHES V.

THORNBURGH LAWSUIT

“This settlement is a major victory for all Salvadorans and Guatemalans in this country whose claims for political asylum were being summarily denied for purely foreign policy reasons.” – Marc Van Der Hout, Lawyer for the Plaintiffs, December 19, 1990.¹⁵⁹

“It was a fair agreement. That’s why we agreed to it.” – Joe Krovisky, Justice Department Spokesman, January 31, 1991.¹⁶⁰

3.1 Introduction

On January 31, 1991 lawyers representing over seventy different religious and lay organizations, as well as six Central Americans, reached a sweeping settlement with lawyers from the US Department of State and US Immigration and Naturalization Service that radically altered the shape of US asylum policy and changed the fate of the hundreds of thousands of Salvadorans and Guatemalans in the United States.¹⁶¹ The settlement, a result of the landmark case *American Baptist Churches et. al. v. Richard Thornburgh et. al.* (popularly known as *ABC*), mandated new asylum hearings for thousands, and reshaped asylum adjudication procedures. It was filed on May 7, 1985 in response to the US government’s decision to prosecute 16 Sanctuary Movement activists on immigration and smuggling charges (discussed in chapter 2). The case lasted for nearly 6 years before it was settled in January 1991. Originally focused on preserving religious freedom, the case eventually became a lawsuit based on the government’s discriminatory treatment of

¹⁵⁹ Tracy Wilkinson, “U.S. Relents, will Review Asylum Cases,” *Chicago Sun-Times*; December 20, 1990, NEWS 86;

¹⁶⁰ Associated Press, “Settlement Blocks Deportation of Refugees,” *Houston Chronicle*, February 1, 1991 A3.

¹⁶¹ *American Baptist Churches v. Thornburgh*, No. C-85-3255-RFP, 1991 U.S. Dist. LEXIS 3446 (United States District Court for the Northern District of California, January 31, 1991). Hereafter the case shall be referred to as *ABC* with document name, date, filing number and page number following.

Central American refugee applicants, ending in an out of court settlement. This chapter shows how the actions of a small collection of individuals composed of Central Americans, activist lawyers, government officials and an influential judge reshaped the US response to the Central American Refugee Crisis through a landmark settlement reached in the winter of 1990 and formalized in early 1991. It pays particular attention to the evolution of the lawsuit, emphasizing the ways that a handful of individuals tirelessly worked to keep the case alive. As discussed below, the intense legal negotiations of this case have never been studied before and deserve a close examination and discussion. Although the legal complexities of this particular case are the focus of the majority of this chapter, the importance of the individuals involved should not be forgotten. Six years of dedication, negotiation and guidance by the activist attorneys, government lawyers and presiding judge shaped the case into the landmark *ABC* settlement.

3.2 Sources and Historiographical Context:

Since the conclusion of the *ABC* case in 1991, scholars have extensively studied the *ABC* settlement and its effects. Anthropologist Susan Bibler Coutin has been at the forefront of research into the ways that Central Americans negotiated the legal complexities of the *ABC* settlement with *Nations of Emigrants: Shifting Boundaries of Citizenship in El Salvador and the United States*, and *Legalizing Moves: Salvadorans Struggle for U.S. Residency*.¹⁶² Coutin and other scholars reveal the immense effect that the *ABC* settlement had on the asylum policy of the United States. In *Fragmented Ties: Salvadoran Immigrant Networks in America*, and articles like “Liminal Legality: Salvadoran and Guatemalan Immigrants’ Lives in the United States” sociologist Cecilia

¹⁶² Coutin, *Nations of Emigrants*; Coutin, *Legalizing Moves*.

Menjívar examines the ways that the *ABC* settlement affected the lives Central American in the United States.¹⁶³ Comparatively little scholarly analysis has been done on the evolution of the case itself. Carolyn Patty Blum, a lawyer for the plaintiffs, wrote a short law review article, while Coutin and Menjívar mention the case in passing.¹⁶⁴ Blum's article, published shortly after the settlement, provides an important overview of the case, but was never intended as a detailed examination of the case. Therefore, the focus of this chapter is on the case's legal history. This chapter's primary contribution is an account of how the lawsuit transformed from a retaliation for the Sanctuary Movement Trial into a landmark equal opportunity settlement.

Unfortunately most of the materials generated by the activists' lawyers during the *ABC* are held by the Center for Constitutional Rights and remain unavailable while awaiting compilation. In the future, their opening will make further research into the *ABC* trial possible. Similar difficulties arise when trying to access the work of government lawyers. Under the attorney work product exclusion they are protected from Freedom of Information Act Requests. Though all the archives may not be available, some of the lawyers and government officials who participated in the case have consented to oral histories. Their memories of the case, combined with publicly available court filings, personal letters and newspaper articles are enough to demonstrate the powerful effect that individuals and small groups had on *American Baptist Churches v. Thornburgh*. This

¹⁶³ Cecilia Menjívar, *Fragmented Ties: Salvadoran Immigrant Networks in America*, (Berkeley: University of California Press, 2000); Cecilia Menjívar, "Liminal Legality: Salvadoran and Guatemalan Immigrants' Lives in the United States," *American Journal of Sociology* 11:4 (January 2006), 999-1037.

¹⁶⁴ Carolyn Patty Blum, "The Settlement of 'American Baptist Churches v. Thornburgh': Landmark Victory for Central American Asylum-Seekers," *International Journal of Refugee Law* 3:2 (1991), 347-356.

analysis reveals the importance of individuals and small groups to the *ABC* lawsuit and, subsequently, the asylum policy of the United States.

3.3 Outline:

This chapter analyzes the nearly six years from the initial filing of the lawsuit (May 1, 1985) to the announcement of the final settlement (January 31, 1991). Much of this transformation stemmed from seemingly arcane legal dealings between activist lawyers, government lawyers, and the judge. As a result, there is a heavy emphasis on specific legal documents and issues, as well as extensive use of legal jargon. As much as possible, without breaking the narrative flow, the meaning of a legal term is explained following its first usage. Occasionally further explanation is provided in footnotes. Cornell University Law School's online legal dictionary and encyclopedia proved to be an invaluable tool when researching and writing this chapter.¹⁶⁵

The remainder of the chapter traces the chronological evolution of the case. By never going to trial, this case followed a different trajectory than many readers may be familiar with. The activists (plaintiffs) filed a lawsuit against the government (defendant), alleging in their complaint that the defendant violated the plaintiffs' first amendment right to freely exercise their religion by infiltrating churches during Operation Sojourner. In addition, they charged the governments with disregarding its responsibilities to Central American refugees as set out under the Refugee Act of 1980.¹⁶⁶ For the next six years, the

¹⁶⁵ Cornell University Law School: Legal Information Institute < <http://www.law.cornell.edu/wex>>

¹⁶⁶ In a lawsuit there are two parties, the plaintiffs (in this case churches, refugee organizations and refugees) who bring the case against the defendants (in this case the government, or more explicitly the attorney general and the commissioner of the Immigration and Naturalization Service in their official capacities). Hereafter I will refer to activists and plaintiffs interchangeably, and defendants and government and defendants interchangeably. The initial document outlining the reasons for the lawsuit is the "complaint," which lays out the reasons for the complaint and its relevance to current law.

government repeatedly filed motions to dismiss¹⁶⁷ the case. Three times the presiding judge ruled on the motions to dismiss, each time dismissing some of the claims while upholding others and granting the plaintiffs the chance to amend their complaint. Finally, the activists and government reached a settlement agreement in December 1990 that the court made official on January 31, 1991.

This chapter breaks up each of these steps into separate sections. It begins **(3.4)** with the Center for Constitutional Rights' reaction to the Sanctuary prosecutions (discussed in chapter 2) and analyzes the ways that activists Ellen Yaroshefsky, Morton Stavis and Marc Van Der Hout formed and filed the initial complaint on May 7, 1985. It then proceeds **(3.5)** to examine the two years from the initial filing through the first formal ruling on the motion to dismiss (March 24, 1987). Next **(3.6)**, the two-year span between the March 1987 and the March 1989 rulings are analyzed. During this crucial period the case evolved from a complaint primarily concerned with the government's violation of the "free exercise clause" to a complaint based on the government's refusal to provide "equal protection under the law," as guaranteed by the fourteenth amendment, to Central American refugees. Here the role of Judge Robert Peckham is particularly emphasized. The final chronological period **(3.7)** looks at the last two years of the case. After examining the evolution of the case, the chapter concludes with a discussion on how the participants were transformed by the case **(3.8)** and how the lawsuit transformed the Central American Refugee Crisis **(3.9)**.

¹⁶⁷ A motion to dismiss asks the judge to dismiss some or all of the complaints listed in the lawsuit for any of a variety of reasons including lack of standing (plaintiffs must not just disagree with the government's actions, they must have been either directly affected by the action or related to it), lack of jurisdiction (court does not have the authority over the defendant, area of law or region in which the complaint was brought) and frivolity (the lawsuit is a waste of the court's and defendant's time).

3.4 Filing the Lawsuit:

While the catalyst for the *ABC* lawsuit was the Sanctuary case, its roots lie in the years of litigation on Central American issues by the Center for Constitutional Rights (CCR), and immigrant/refugee advocacy by the National Lawyers Guild (NLG) and its affiliates. In his recent history of the CCR, Albert Ruben defines the Center as “a not-for-profit law office dedicated to using the law creatively to effect social change and to advance and defend rights guaranteed the Universal Declaration of Human Rights.”¹⁶⁸ Founded in 1966 by William Kunstler, Arthur Kinoy, Morton Stavis and Benjamin Smith in the American South during the throes of the Civil Rights Movement, the Center’s original rationale was to “function as people’s lawyers for the movement.”¹⁶⁹ During the first decade of its existence the CCR defended African-American and white civil rights activists, including the Student Non-Violent Coordinating Commission (SNCC). In their first annual report the founders explained the need for an organization like the CCR:

“It seemed to [the founders] that there was a need for creative experimentation in the development of new legal approaches whose major thesis would be that litigation, besides its obvious defensive purpose, could also, and perhaps primarily, become an affirmative means of preserving individual liberties and freedom.”¹⁷⁰

In short, the CCR hoped that the impact of its litigation would extend far beyond the original case and serve as a bulwark against the encroachment of civil liberties and freedoms by the government and individuals. To do this they approached litigation as test cases for new approaches and new methods, often employing widespread publicity and

¹⁶⁸ Albert Ruben, *The People’s Lawyer: The Center for Constitutional Rights and the Fight for Social Justice, from Civil Rights to Guantánamo*, (New York: Monthly Review Press, 2011), 8.

¹⁶⁹ Arthur Kinoy, Quoted in *People’s Lawyer*, 19.

¹⁷⁰ *Docket Report* Quoted in *People’s Lawyer*, 28.

innovative legal arguments. They used both of these approaches to tremendous effect in the *ABC* case.

Since the start of the 1980s, the CCR litigated a number of cases surrounding the Reagan administration's involvement in Central America. Both the CCR and the Reagan administration saw Central America as a proving ground for US foreign policy and imperialism.¹⁷¹ In 1981 Michael Ratner, President of the CCR, and Peter Weiss, a CCR lawyer, met with Congressman George Crockett of Michigan. Crockett wanted to sue the Reagan administration for violating the War Powers resolution, a 1973 resolution that set a sixty-day limit on the executive's ability to place US soldiers into war zones or places where hostilities were imminent without express consent from Congress.¹⁷² Ratner saw this as an opportunity to not only set limits on the executive's ability to start quasi-wars, but a chance to prevent the United States from giving military and economic aid to countries who grossly violated human rights. The case, filed on May 1, 1981 as *Crockett v. Reagan*, was dismissed at the district and appeals level and denied certiorari¹⁷³ to the Supreme Court. Nonetheless, it helped publicize the conditions in El Salvador and established the CCR as one of the leading organizations for litigation surrounding El Salvador.

The other national legal organization that aided activists during *ABC* was the National Lawyers Guild (NLG). On December 1, 1936 a number of progressive lawyers

¹⁷¹ In 1981 Jeane Kirkpatrick, Reagan's ambassador to the United Nations, stated that "Central America is the most important place in the world for the United States today." Quoted in Walter LaFeber, "The Reagan Administration and Revolutions in Central America," *Political Science Quarterly* 99: 1 (Spring 1984), 1. For the CCR see Jules Lobel, *Success Without Victory: Lost Legal Battles and the Long Road to Justice in America* (New York: New York University Press, 2004), 187.

¹⁷² Lobel, *Success Without Victory*, 191.

¹⁷³ Either the plaintiffs or defendants can appeal their case to a higher court (in this case the US Supreme Court, the highest court in the land). If the court agrees to hear the case it grants a "writ of certiorari." If it declines to hear the case it denies certiorari.

met to examine the need for an alternative to the American Bar Association, an organization they saw as exclusive and hostile to the New Deal. This meeting resulted in a call for a convention, which, on February 20, 1937, founded the National Lawyers Guild.¹⁷⁴ They quickly formed a constitution that set out the goals for the NLG:

“The National Lawyers Guild aims to unite the lawyers of America in a professional organization which shall function as an effective social force in the service of the people to the end that human rights shall be regarded as more sacred than property rights.”¹⁷⁵

Over the course of the next fifty years the NLG became the leading association of progressive lawyers. Its members operated low-cost legal services for impoverished individuals during the Great Depression and beyond. They defended civil rights and antiwar activists during the 1960s and 1970s. NLG members continued to fight for civil rights into the 1980s, but as the Vietnam War wound to a close in the mid 1970s its internationally minded members shifted their attention to apartheid in South Africa and the Reagan administration’s interest in Central America. Members of the Guild also fought extensively for immigrant rights. In 1971 it began publishing the *Immigration Newsletter* and released a guidance pamphlet in 1979 titled “Immigration Law and Defense.” By the 1980s its struggle over immigrant rights was closely tied to the Guild’s interests on Central America and South Africa.¹⁷⁶ The *ABC* case became a signature accomplishment of Guild lawyers: a victory for immigrant rights and a clear antiwar protest.

¹⁷⁴ Victor Rabinowitz and Tim Ledwith eds., *A History of the National Lawyers Guild*, (New York: National Lawyers Guild, 1987), 7-9.

¹⁷⁵ Quoted in Rabinowitz, *A History of the National Lawyers Guild*, 10.

¹⁷⁶ Ann Fagan Ginger and Eugene M. Tobin eds., *The National Lawyers Guild: From Roosevelt through Reagan*, (Philadelphia: Temple University Press, 1988), 385.

The indictment of sixteen Sanctuary workers in January 1985 presented lawyers from the CCR another chance to challenge US policy concerning Central America on explicitly constitutional grounds. Morton Stavis, co-founder of the CCR and the original force behind the case, saw the indictments as a clear violation of the activists' religious liberties. He asked Ellen Yaroshefsky, then serving pro-bono as attorney to Wendy LeWin (one of the Sanctuary defendants), to join him. In addition, he invited Marc Van Der Hout, then president of the NLG, as well as a prominent immigration and refugee attorney, to come in as co-counsel. Van Der Hout, who had worked with the CCR on a number of Central American cases prior to the *ABC* case, recalls:

We talked about a lot of possible theories. When the government started to prosecute sanctuary workers then we decided that the CCR would bring a case to enjoin the prosecutions or stop them from going after them. That was the initial impetus of the case. I said that if we were going to bring a case we should bring in the refugee part of it too. Not just the religious workers part of this, not just the church people. So we added causes of actions for the denial of what was called extended voluntary departure... We added a cause of action on the refusal of extended voluntary departure and we added the claim that ultimately became the most important part of the case ironically that didn't start out that way, the part of the case that we actually won on, challenging the discrimination and adjudication of Salvadoran and Guatemalan asylum cases based on foreign policy grounds rather than what it was supposed to be by the statute. So, that became ultimately the other two causes of actions got thrown out and that's the part of the case that survived.¹⁷⁷

After Stavis, Yaroshefsky and Van Der Hout chose the causes of action, they needed to compile an appropriate client list. As lead plaintiff they selected American Baptist Churches in the U.S.A., a national organization headquartered in New York that coordinated activities and ministries between local American Baptist churches. They were joined by more than seventy other individuals, religious organizations and refugee aid groups, including the General Assembly of the Presbyterian Church, Bishop John

¹⁷⁷ Marc Van Der Hout, telephone interview with author, April 10, 2012.

Fitzpatrick of the Roman Catholic Diocese of Brownsville, Texas, the Committee of Central American Refugees, San Francisco Friends Meeting, Casa Oscar Romero and Southside Presbyterian of Tucson, AZ. The eclectic set of plaintiffs included representatives from 22 states and more than 10 different denominations.

With this extensive list Morton Stavis, Sarah Wunsch, Ellen Yaroshefsky, Marc Van Der Hout and Teresa Bright, on May 7, 1985, filed a complaint for declaratory and injunctive relief in the United States District Court for the Northern District of California. Close to Van Der Hout, who practiced in San Francisco and took the lead on the case's litigation, the Northern District of California had a liberal reputation. Judge Robert F. Peckham, a well-respected jurist appointed to the federal bench in 1966 by President Lyndon Johnson, drew the case.

The complaint began with an introductory statement that asked for the court "to protect the rights of plaintiff religious institutions and their constituent bodies, agencies and members who offer sanctuary to refugees from El Salvador and Guatemala and to protect the rights of refugees themselves."¹⁷⁸ Next, it established the jurisdiction of the court by citing the statute that gave US district courts jurisdiction over all claims arising under the Constitution, laws or treaties of the United States and the statute that gave courts the right to enforce relief. The complaint listed the 77 plaintiff parties and named the defendants, Edwin E. Meese and Alan Nelson in their official positions as Attorney General of the United States and Commissioner of the Immigration and Naturalization Service respectively. It followed with a twenty-two page long "statement of facts." The "statement of facts" gave the plaintiffs' version of the case's background and need for a

¹⁷⁸ ABC "Complaint for Declaratory and Injunctive Relief," May 7, 1985 (1), p. 3.

suit on religious liberty grounds (for Sanctuary activists) and equal protection claims (for Central American refugees). Drawing from NGO and United Nations reports, it painted a grim portrait of conditions in Central America. The complaint proceeded to cite asylum approval statistics, quote verses from the Old and New Testament and list prosecutions of Sanctuary activists in an attempt to demonstrate both the injustice of US asylum approval rates and the religious desire of activists to help Central American refugees. After establishing a solid background, the lawyers transitioned to laying out the “causes of action.”

The four “causes of action” formed the heart of the complaint. They used the preceding statement of facts to specifically elucidate why legal action was necessary. The first, pertaining to religious organizations, alleged that the defendants, by prosecuting Sanctuary workers who aided undocumented Central American refugees, had violated the plaintiffs’ first amendment right to freely exercise their religion. Their religiously motivated attempts to help Central American refugees did not break the law. The activists’ religion encouraged them to aid the needy, and their actions did not break the law because the defendants had misinterpreted the statute (8 U.S.C. §1324) they used to charge Sanctuary workers. The statute under which workers were charged only prosecuted individuals who harbored or transported aliens who they knew to be without a lawful basis to be in the United States. The plaintiffs argued that due to US (Refugee Act of 1980) and international law (Geneva Conventions of 1949, 1951 UN Convention on the Status of Refugees and the 1967 UN Protocol) Central American refugees had a lawful basis to be in the country. Therefore any prosecution of Sanctuary workers for aiding Central American refugees was a misapplication of the law and infringed

“plaintiff’s performance of their religious duties and the exercise of their rights under the first amendment.”¹⁷⁹

The second cause of action placed the named Central American refugee organizations as representatives of Guatemalans and Salvadorans fleeing civil war, violence and human rights violations in their home countries. The plaintiffs argued that due to the conditions in their home countries, Guatemalans and Salvadorans fit the conditions necessary for refugee status outlined in US and international law. Thus the government’s actions, through the arrest, denial of asylum and subsequent deportation of Central Americans were unlawful.

Third, the plaintiffs alleged that the defendants “engage in a practice of generally granting asylum, refugee status, extended voluntary departure or other relief providing refuge to persons who are fleeing unrest or disorder in countries they consider to be ‘communist’ or dominated by the Soviet Union.”¹⁸⁰ Simultaneously, the defendants routinely denied refuge to those fleeing governments allied or affiliated with the United States. This violated the fifth amendment’s guarantee of equal protection under the law.

The final cause of action alleged that the defendants “knowingly, willfully and recklessly engage in a policy and practice of deporting Salvadoran and Guatemalan refugees back to those countries where they are threatened by war, persecution and the systematic and widespread denial of fundamental human rights.”¹⁸¹ This cause of action further described the danger and devastation in these two countries where residents were subject to government sponsored torture, disappearance, execution and more. Therefore

¹⁷⁹ 666 F. Supp. 1358; 1985 U.S. Dist. LEXIS 7128 Compl. P. 46.

¹⁸⁰ 666 F. Supp. 1358; 1985 U.S. Dist. LEXIS 7128 Compl. P. 48.

¹⁸¹ 666 F. Supp. 1358; 1985 U.S. Dist. LEXIS 7128 Compl. P. 49.

by deporting Central Americans in the United States back to their home countries the defendants recklessly placed refugees in danger.

After listing the causes of action, the complaints final section, “relief,” asked the court to take specific actions in response to the “causes of action.” In the initial complaint the plaintiffs asked for six forms of relief. First, they asked the court to bar any present and future prosecutions of Sanctuary Movement workers for hiding or smuggling Central American refugees. Second, they requested the court issue a declaratory judgment¹⁸² that grants Sanctuary workers the legal right to provide aid to refugees from El Salvador and Guatemala.¹⁸³ Third, the plaintiffs asked the Court to bar the INS and State Department from apprehending and deporting Central Americans until after the civil wars and human rights violations ceased in Guatemala and El Salvador. Fourth, they petitioned the court to issue a second declaratory judgment that states all Guatemalans and Salvadorans fleeing conflict in their home countries are entitled to temporary refuge in the United States. Fifth, they asked the court to charge the defendants for plaintiffs’ legal fees (a standard practice in pro bono cases, as this one was). Finally, they requested that the “court award such other relief as this Court deems just and proper.”¹⁸⁴

The day they filed the complaint, the churches, refugee organizations and plaintiff lawyers held a news conference. Attended by local and national news outlets, it resulted in articles the next day in *The New York Times*, *The San Francisco Chronicle*, *Torrance*

¹⁸² A declaratory judgment is judgment that expresses the court’s opinion of a legal matter that often clarifies specific constitutional issues. It does not provide for enforcement.

¹⁸³ ABC “Complaint for Declaratory and Injunctive Relief,” May 7, 1985, p. 51.

Breeze, *Sacramento Bee*, and other regional and national newspapers. As Marc Van Der Hout, one of the lead lawyers for the plaintiffs, explained:

“In a political case, it is multifaceted... what happens in the courtroom is very important, what happens in the court of public opinion, the plaintiffs, and giving them a voice is very important, bringing this lawsuit was also viewed by the plaintiffs as a means to expose the hypocrisy in US foreign policy of Central America.¹⁸⁵

In articles published the next day reporters first mentioned the lawsuit’s affiliation with the recent Sanctuary prosecutions (the subject of chapter 2).¹⁸⁶ Less than four months before the suit’s filing the media had given Sanctuary activists generally sympathetic coverage following their indictment and arrests in January. Present, but less emphasized in the articles covering the lawsuit was the complaint’s attempt to remedy the treatment of Guatemalan and Salvadoran refugees. This was fitting, as the original impetus for the case was the treatment of Sanctuary Movement workers. Yet, as Marc Van Der Hout noted above, ironically the case ultimately focused exclusively on the treatment of Central American refugees. This came from a series of complex legal maneuverings analyzed in the following sections.

3.5 Depositions, Motions to Dismiss and the First Ruling

After filing a complaint the next step in the case was discovery, a process where plaintiff and defendant lawyers gather information necessary to strengthen their case. Both groups may take depositions,¹⁸⁷ request documents, make a variety of motions on the inclusion/exclusion of evidence (similar to the motion in limine in the preceding

¹⁸⁵ Marc Van Der Hout, telephone interview with author, May 5, 2012.

¹⁸⁶ Associated Press, “Suit Seeks to Stop Sanctuary Prosecutions,” *Los Angeles Times* May 8, 1985, p. B32; Katherine Bishop, “Sanctuary Groups Sue to Halt Trials,” *New York Times* May 8, 1985, p. A13.

¹⁸⁷ Depositions are sworn testimonies most often taken prior to trial to assist the parties in gaining the relevant information necessary for the case. The opposite party may file a “motion for a protective order” to stop the deposition.

chapter) or move that the case be dismissed entirely. The case never left this stage as the plaintiffs, defendants and judge spent five years arguing in court over what parts (if any) of the complaint were legitimate, who could be deposed (interviewed) and what documents needed to be produced. Throughout this half-decade long process the plaintiffs amended their complaint three times, the defendants filed three motions to dismiss, and Judge Peckham issued four formal rulings.

The process began with the plaintiffs' lawyers attempting to gather more information to strengthen their complaint. In addition, as a political case, they wanted to keep the spotlight on US foreign policy in Central America. Therefore, they decided to strengthen their case by deposing several high-ranking government officials. They hoped that by taking depositions from Elliot Abrams, Assistant Secretary of State for Human Rights and Humanitarian Affairs, and Alan Nelson, Commissioner of the Immigration and Naturalization Services, they would uncover information on US asylum procedures and US knowledge of human rights crimes in Central America that would prove legally and politically useful. The lawyers mailed out the deposition notices to Abrams and Nelson on June 12, 1985.

The government immediately tried to stymie the plaintiffs by preparing a motion for a protective order that would bar the requested depositions. They filed the motion on July 8, 1985 and provided two justifications. First, they argued that any depositions should be halted until after they had filed their motion for dismissal. Second, they argued that the depositions were an attempt to discover the "mental processes" of government officials, something that is protected under US law.

On September 16th Judge Peckham called lawyers from both parties into his chambers to discuss the deposition requests and the motion for a protective order. Similar to many of his other cases, Peckham called a variety of semi-informal meetings between himself and the participating lawyers over the course of the case that demonstrated that he possessed a flexible legal mind willing to engage lawyers in a debate free of the trappings of standard legal procedures. Frank Deale, a CCR staff attorney from New York who was unfamiliar with Peckham's style, was involved early on in the discovery process. He recalls the following about the meetings:

Normally [judicial proceedings are] very formal... What struck me was that I thought Peckham was so different in that regard. I remember being there... He comes in, I don't even know if he had his robe on... and he essentially ran a dialogue. He came in with a series of questions... and he put the questions to both sides. And that was basically it... That was very memorable. That so called oral argument because it wasn't an argument at all.¹⁸⁸

Eleven days after the "oral arguments" over the depositions Peckham issued a ruling addressing both of the government's arguments for a protective order. The government first asked to stay the depositions as it was on the verge of filing a motion to dismiss. Peckham ruled against the government, stating that preventing the plaintiffs from interviewing officials "might prejudice their ability to develop sufficient facts to survive the forthcoming motion to dismiss..."¹⁸⁹ Peckham ruled in partial favor of the government regarding its second argument ("mental processes") for a protective order. On August 2nd plaintiffs had filed a response to the motion for protective order where they stated that their depositions were only for specific information, and Peckham ruled that these questions could be answered through written communication, rather than

¹⁸⁸ Frank Deale, telephone interview with author, April 26, 2012.

¹⁸⁹ ABC, "Memorandum and Order," September 27, 1985 (14), p 3.

through face-to-face interviews. While the plaintiffs sought in-person interviews, the government wanted to protect INS officials and complained that this would be too burdensome. In the hopes of getting a speedy response, the plaintiffs agreed to pose the questions to the INS and State Department through interrogatories (questions submitted in writing), a compromise that the defendants' lawyers had assured the Court would be acceptable during the September 16th meeting. Finally, Peckham cautioned the defendants that insufficient answers to the interrogatories could very well result in future depositions, a warning that proved prescient.¹⁹⁰

The plaintiffs quickly submitted a set of broad interrogatories that sought information on a host of subjects related to US policy in Central America and US policy towards asylum seekers from around the world. These included requests to "Identify each government employee within and without the Department of Justice who has taken part in any... approval or denial of grants of extended voluntary departure. For each individual so named please state the particular decision.... Identify in particular any office or individual whose positive or negative decision in consideration of extended voluntary departure may be determinative," and to "Identify all documents and other information in the possession... of defendants or any of their representatives which refer or relate to conditions or events in El Salvador and Guatemala since January 1, 1979."¹⁹¹

Unsurprisingly, the government did not take this request well. While they answered in part most of the interrogatories on January 31st, they filed a fifteen page set of objections as well as a motion to dismiss the same day. The challenges included three

¹⁹⁰ *ABC*, "Memorandum and Order," September 27, 1985 (14), pp. 4, 6-7.

¹⁹¹ *ABC* "Defendants' Objections to Plaintiffs' First Set of Interrogatories," January 31, 1986, filed February 5, 1986 (18), p. 3, 14.

general objections¹⁹² and thirteen specific objections. The bulk of the specific objections related to the breadth of the requests and the burden answering them would place on the government. As an example, the government objected to the plaintiffs' request for information concerning the conditions or events in El Salvador and Guatemala by writing:

Plaintiffs request all documentary or nondocumentary information about any condition or even in El Salvador and Guatemala since January 1, 1979. As drafted, the interrogatory encompasses every telegram, memorandum, or document prepared in or obtained by the defendants that mentions El Salvador or Guatemala throughout a seven-year period. Indeed, plaintiffs' request broadly encompasses every scrap of paper pertaining to El Salvador or Guatemala without regard to its relevance to extended voluntary departure or asylum.

Clearly, not only was the breadth and burden of the requests a problem to the government, but they also sensed that the plaintiffs' requests went beyond a case built around denial of asylum and violations of religious freedom. As Van Der Hout stated, the plaintiffs also intended to make this a case on the government's hypocrisy in Central America.

Recognizing the gravity of the case, the government moved to dismiss on the grounds that #1: the plaintiffs lack standing, #2: the claims in the complaint are political issues and not subject to legal action, and #3: the complaint does not give a claim for which relief can be granted.¹⁹³ In addition to the motion to dismiss, the government filed a 28-page supplemental memorandum elaborating on its arguments for dismissal. The

¹⁹² #1: The interrogatories covered information not held by the defendants. #2: The information requested did not have any relevance to the case. #3: The plaintiffs requested information relating to "Extended Voluntary Departure," a status that the President and Secretary of State can grant to a specific group which stays deportation. This is a foreign affairs power given explicitly to the President under the amended Immigration and Nationality Act of 1952.

¹⁹³ *ABC*, "Defendants Notice of Motion and Motion to Dismiss," January 31, 1986, filed February 5, 1986 (20), p.2.

supplemental memorandum attacked the complaint on all fronts. Notable is its exploration of plaintiffs' lack of standing.

Standing is an important legal doctrine used to determine who may bring suit in a federal court. It is meant to limit the number of lawsuits to only plaintiffs who are directly affected by the actions taken by defendants. The courts have developed two sets of requirements for standing, constitutional and prudential, both of which typically must be met in order to bring suit in a federal court.¹⁹⁴ In order to meet the constitutional requirements for standing (taken from Article III of the US Constitution) the plaintiffs must have suffered or been threatened injury that can be traced to the defendants that the court may either resolve or offer relief for. Prudential standing, a doctrine evolved over decades of case law, requires three tests: #1: plaintiffs must be arguing in their behalf and not on the rights/interests of third parties #2: injury to plaintiffs must be specific to them or to a small group #3: the grounds for the plaintiff's complaint must be something protected by federal law.¹⁹⁵ The government's motion to dismiss argued that the plaintiffs failed to meet these requirements and tests for standing. For example, the government pointed out that the majority of the plaintiffs have never been prosecuted for violations of immigration law. Since they have never suffered injury they fail the first part of constitutional standing. The plaintiffs later countered counter with the argument that their participation in the Sanctuary Movement left them open to the potential to suffer injury. Similarly, the government argued that the plaintiffs fail the first test of prudential

¹⁹⁴ For a more detailed discussion of the issues of standing in the case see Judge Peckham's 1987 decision on the government's motion to dismiss: *ABC*; 1987 U.S. Dist. Lexis 7128, p. 5.

¹⁹⁵ *ABC*, "Defendants' Memorandum in Support of Motion to Dismiss," (1986) pp. 7-8. The test for constitutionally protected religious activity comes from the 1983 case *Equal Employment Opportunity Commission v. Pacific Press Publishing Association*, 575 F. 2d, 1272, 1279 (9th Cir. 1982).

standing as they lack the standing necessary to bring suit on behalf of refugees. This was a thorny issue, and repeatedly caused the plaintiffs issues throughout the case as the refugee aid organizations were not themselves refugees. The plaintiffs later solved this problem by adding refugees to their complaint.¹⁹⁶

Next, the memorandum argued that aiding undocumented immigrants was not a constitutionally protected religious activity, citing a variety of cases to argue that not all religious activity is constitutionally protected. The first case they cited was *Reynolds v. United States*, an 1878 Supreme Court case where George Reynolds, a member of the Church of Latter-day Saints, argued that bigamy convictions illegally violated his right to freely exercise his religion. The Supreme Court denied Reynolds' claim, stating that religious belief must be subject to the government's laws. Subsequent cases further refined this doctrine, exploring the tension between religious freedom and the state's laws. In 1982 the Ninth Circuit Court established a three-pronged test designed to test religious freedom claims.¹⁹⁷

The first prong of the test examined the extent of the law's affect on the exercise of a particular religious belief. The government argued that enforcement of immigration law had no impact on religious belief as anyone is free to believe that undocumented Central Americans should remain in this country. Yet they cannot aid those people in illegally crossing the border.¹⁹⁸

The second prong measures how compelling the state's interest is in enforcing the law that violates someone's free exercise. On this count the government argued that the

¹⁹⁶ ABC, "Defendants' Memorandum in Support of Motion to Dismiss,"(1986), pp. 4-5, 12-13.

¹⁹⁷ ABC, "Defendants' Memorandum in Support of Motion to Dismiss," (1986), pp. 7-9.

¹⁹⁸ ABC, "Supplemental Memorandum Motion to Dismiss," (1986). p 9.

control of one's own borders and immigration policy is among the most pressing of government concerns. They quoted a variety of Supreme Court justices discussing the magnitude of the immigration issue in preceding cases (examples include "titanic" from Justice William Brennan, "staggering" from Justice Sandra Day O'Connor and "a tide of illegal aliens... massive lawlessness" from Chief Justice William Burger).¹⁹⁹

The final prong of the test asks if an exemption from the statute/law would obstruct the state's goals for the statute. Here the government stated that the plaintiffs' desire for an exemption from laws relating to those fleeing war and human rights violations in Guatemala and El Salvador was overly broad as it would apply to all immigrants from those countries. In addition, the government argued that if the court granted the exemption in this case, it would set precedent for the same exemption to be granted to all immigrants fleeing war and human rights violations in any country. The government believed that this would place undue stress on the nation's immigration system. The argument concluded by stating that any religious interest plaintiffs might have in aiding undocumented Central Americans in the United States "is overbalanced by the government's interest in enforcing its immigration laws."²⁰⁰

The supplemental memorandum continued through the remaining counts in the complaint relating to INS treatment of Central Americans, arguing that each should also be dropped. It stated that the plaintiffs lacked the standing needed to make claims for Central Americans as they are not themselves Salvadoran and Guatemalan refugees. In addition, the requested claims were not suitable for a judge to decide as they were political issues. Finally, even if the clients were granted standing and the claims were

¹⁹⁹ ABC, "Supplemental Memorandum Motion to Dismiss," (1986), p. 10.

²⁰⁰ ABC, "Supplemental Memorandum Motion to Dismiss," (1986), p.11.

found to be suitable for a judge to decide, the case should be dismissed as the claims were wrong according to the law.

While the government prepared its motions to dismiss, Sanctuary activists in Phoenix filed a new lawsuit in retaliation to the Sanctuary prosecutions, a court in Washington, DC issued a ruling on a similar case, and President Reagan signed a new immigration bill into law. Each of these events had an effect on the case. Judge Peckham asked both parties to submit memorandums discussing the impact of the Washington, DC case and the passage of the Immigration Reform and Control Act (IRCA) on the *ABC* case.

The Presbyterian Church and American Lutheran Church, in conjunction with their members and two churches infiltrated by INS agents during Operation Sojourner, filed a lawsuit on January 14, 1986 in the US District Court of Arizona that bore many similarities to the *ABC* case. This lawsuit, *The Presbyterian Church et. al. v United States*, mirrored the first half of the *ABC* complaint (free exercise claims). Dismissed at the district court level, the plaintiffs appealed to the Ninth Circuit. The Ninth Circuit told the district court to hear the case. After hearing the case the district court decided in favor of the government, but warned it to be careful when recording religious activities.²⁰¹ This case offers an interesting comparison to the *ABC* case. A significant reason for the durability of the *ABC* case was the plaintiffs' ability and the judge's willingness to shift the focus of the complaint back and forth from religious freedom to refugee rights. This kept the *ABC* case alive whereas the plaintiffs in *Presbyterian Church v United States* lost their case because they kept their focus on one issue.

²⁰¹ Barbara Bezdek, "Religious Outlaws: Narratives of Legality and the Politics of Citizen Interpretation," *Tennessee Law Review* 62:899 (1994-1995), 981.

On October 31 the Federal Circuit Court of Appeals for the District of Columbia issued a decision in the case of *Hotel and Restaurant Employees Union v. Smith*.²⁰² The case was first brought in 1984 by the Hotel and Restaurant Employees Union in Washington, DC and appealed in 1986. The union, primarily made up of Salvadoran workers, challenged the INS's asylum procedures and the Attorney General's decision not to grant Extended Voluntary Departure (EVD) to Salvadorans. EVD was a status the Attorney General could grant that allowed a specific group of foreign nationals to remain in the country until the conditions in their countries of birth stabilized. Prior to the *Hotel* decision EVD had been granted to, among others, Polish, Iranian and Nicaraguan citizens. The plaintiffs in the *Hotel* case argued that the Attorney General abused his own privileges and only granted EVD status to nationals for political purposes.

Like the *ABC* case, the government tried to dismiss the case on three grounds: that the plaintiffs lacked standing, that the case was on a political question, and that the plaintiffs failed to state a claim. In 1984 the district court denied the government's motions to dismiss, but made a summary judgment that denied the plaintiffs' asylum claims and found granting EVD was within the discretion of the Attorney General and not subject to judicial review. In 1986 the Circuit Court both affirmed in part and reversed in part the decision. It found that the plaintiffs had standing and that EVD was solely within the Attorney General's discretion.²⁰³ Though not binding on the District Court of Northern California, the decision benefitted both parties in the *ABC* case. It supported the plaintiffs' arguments in support of standing, while strengthening the

²⁰² *Hotel and Restaurant Employees Union, Local 25 v. Smith* 594, 84-5859 (D.C. Cir. October 31, 1986).

²⁰³ Lynda J. Oswald, "Extended Voluntary Departure: Limiting the Attorney General's Discretion in Immigration Matters," *Michigan Law Review* 85:1 (Oct. 1986), 160-163.

government's case that this was a political issue not subject by judicial review. In his first ruling on the government's motion to dismiss Peckham relied heavily on the *Hotel* decision in regard to the all-important grounds of standing.

The second event Peckham asked to be addressed was the passage of the Immigration Reform and Control Act (IRCA). This extensive transformation of immigration policy, signed into law on November 6, 1986, had a number of provisions significant to the case. Most significantly, it revised the statute (8 U.S.C. §1324) under which Sanctuary workers had been prosecuted. Prior to the passage of the IRCA section 274(a) made it a crime to (#1) bring into the United States anyone who is not legally permitted, (#2) knowingly transport an alien within the United States, (#3) willfully harbor, conceal or shield an alien from detection, or (#4) knowingly encourage or attempt to encourage entry into the United States of an alien.

Partly in response to Sanctuary Movement lawyers' arguments that international and domestic law gave refugees (even if they were undocumented) legal rights to reside in the United States, Section 112 of IRCA amended that statute to clarify the illegality of transporting undocumented immigrants. It made significant revisions to each of the four provisions cited above. For the first, it made it clear that it was illegal to bring an undocumented immigrant into the United States in any place other than at a designated port of entry "regardless of whether such alien has received prior official authorization to come, enter, or reside in the United States..." On the second provision, it put "reckless disregard" on par with "knowing," as a response to some arguments by Sanctuary lawyers that activists had transported refugees without being aware that the refugees were undocumented. For the same reason IRCA also added "reckless disregard" to the third

and fourth provisions.²⁰⁴ In response to the passage of IRCA the plaintiffs told Peckham that they were “prepared to limit their request for relief to halt prosecutions for sanctuary activities to be considered to be illegal by the defendants up to and including November 6, 1986 the date that the new statute was promulgated.”²⁰⁵ Two months after the plaintiffs’ submission of the memorandum on the IRCA Judge Peckham issued a split ruling on the government’s all-important motions to dismiss. The ruling dismissed some of the plaintiffs’ claims and allowed others to proceed.

The government had asked the court to dismiss the case as #1: the plaintiffs lacked standing, #2: the complaint was not justiciable (able to be tried in a court of law) as it addressed political issues, and #3: the complaint lacked relief for the claim it addressed. Peckham structured his ruling by sketching out a brief background to the complaint. He proceeded to address first the standing and merits of the religious organizations’ claims and then those of the refugee organizations.

He found that the plaintiff religious organizations had standing to sue based on the fact that the government’s actions had “interfere(d) with their own religious missions, because they have alleged the threat of prosecutions has a deterrent effect on persons who would otherwise be willing to participate in the Sanctuary Movement.”²⁰⁶ Thus they met the constitutional requirements for standing. They also met the prudential requirements for standing as the limitations on religious freedom they alleged was on their own behalf and particular to the organizations, and the claim rested on religious freedom, which is

²⁰⁴ The statutes are compared side by side and further discussed in Gregory A. Loken and Lisa R. Bambino, “Harboring, Sanctuary and the Crime of Charity Under Federal Immigration Law,” *Harvard Civil Rights-Civil Liberties Law Review* 28:1 (1993), 119-184.

²⁰⁵ ABC, “Plaintiffs’ Supplemental Memorandum in Opposition Defendants’ Motion to Dismiss,” January 26, 1987, filed January 28, 1987 (54), p. 1-2.

²⁰⁶ ABC, “Memorandum and Order,” March 30, 1987, p. 6

protected under the first amendment. Crucially, Peckham added that, “if the plaintiff religious organizations are unable to prove the existence of such a deterrent effect at trial, the court will be compelled to conclude that they lack standing to assert their claims.”²⁰⁷ The recent passage of the IRCA made this a difficult task that, as we will see, proved impossible for the plaintiffs.

While he had found that the plaintiffs had standing to assert their first amendment rights and ask for protection for those already prosecuted, Peckham was suspect of the request by the plaintiffs for an injunction against prosecution of anyone affiliated with Sanctuary. Here he ruled that deciding the merits of that request would require every member of the religious organizations to take the stand and testify that his or her actions were the product of religious, and not secular, belief.²⁰⁸ Therefore he allowed the plaintiffs to continue their suit asking for protection for those already being prosecuted, but dismissed the request for protection from prosecution for all those affiliated with the Movement.

He also ruled on the merits of the religious organizations’ first amendment claims in response to the government’s motion to dismiss on the basis of non-justiciable issues. Using the EEOC test discussed above, he found that #1: the government’s actions had the potential to impede the free exercise of religion and were worth arguing over in court, #2: the state did have a compelling interest but not an overriding one that would make the claim non-justiciable, and #3: plaintiffs’ argument that they had statements from top-ranking government officials that said Sanctuary was not that big of an issue was worth

²⁰⁷ *ABC*, “Memorandum and Order,” March 30, 1987, p. 6.

²⁰⁸ *ABC*, “Memorandum and Order,” March 30, 1987, p. 6.

discussing in court. Therefore, he declined the government's motion to dismiss the suit as non-justiciable.²⁰⁹

Peckham then turned to the refugee organizations that requested temporary refuge for their members and claimed the government had violated the equal protection clause in its treatment of Salvadorans and Guatemalans asylum applicants. He primarily discussed the government's argument that the organizations lacked standing. First, he examined whether the organizations met the constitutional requirements for standing and found that they were able to allege sufficient injuries to themselves and their members to confer standing. Yet, he found that they lacked prudential standing. The claim the organizations were trying to make (violation of international refugee law by the government against Central Americans), and the relief they were seeking (temporary refuge for Salvadorans and Guatemalans) was neither a claim based on the organization nor a relief for the organization. Instead, it was a claim based on injuries to individual refugees and best brought by refugees themselves.²¹⁰

In anticipation of that ruling, the organizations had argued in a supplemental memorandum that even if they were denied standing to sue in their own right, they possessed something called "associational standing" to sue on behalf of Central Americans as members of a group. Associational standing can be conferred on an organization if it meets the three requirements laid out in the landmark case *Hunt v. Washington Apple Advertising Commission*. There are three requirements: "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim

²⁰⁹ ABC, "Memorandum and Order," March 30, 1987, p. 7.

²¹⁰ ABC, "Memorandum and Order," March 30, 1987, p. 8-9.

asserted, nor the relief requested, requires the participation of individual members in the lawsuit.”²¹¹ Peckham found that the refugee organizations did not meet the first requirement as he was unsure whether the refugees themselves had standing as there was no mention in the complaint that they had “exhausted administrative remedies,” meaning that they had taken every available legal recourse to gain asylum. Since they failed the first prong he did not go any further. As the refugee aid organizations lacked standing and their claims were dismissed, Peckham did not discuss the merits of their claims like he did for the religious organizations.

Almost two years after filing their complaint and with hundreds of hours invested in motions, court dates and more, the plaintiffs saw all but one of their claims dismissed. This had the potential to be an enormously discouraging ruling, but Peckham significantly added one small phrase at the end of his ruling: “The court grants the motion to dismiss the remaining claims with thirty days leave to amend to state facts in support of their argument for associational standing.”²¹² This sentence left the door open for a massive overhaul of the plaintiffs’ complaint, particularly in the area that became the lawsuit’s lasting legacy. Without the permission to amend the complaint, the suit would have continued only on the grounds of religious freedom, claims that the court ultimately dismissed. By leaving room to amend the complaint, Peckham gave the plaintiffs the opportunity to present a more refined argument on how the government discriminated against Guatemalan and Salvadoran asylum seekers. This argument led to a massive

²¹¹ *Hunt v. Washington Apple Advertising Commission* 432 U.S. 333, 343, 53 L. Ed. 2d 383, 97 S. Ct. 2434 (1977). Quoted in ABC, “Memorandum and Order,” March 30, 1987, 6.

²¹² ABC, “Memorandum and Order,” March 30, 1987, p. 11.

asylum settlement that transformed US asylum policy towards refugees from Central America and around the world.

3.6 First and Second Amended Complaint and Class Certification:

The plaintiffs' first amended complaint,²¹³ submitted twenty nine days after Peckham's memorandum and order, directly addressed the judge's ruling by widening the list of plaintiffs and asking for additional relief. The amended complaint also significantly transformed the case from one brought by disparate religious and refugee aid organizations into a class action lawsuit.

First, the amended complaint subtracted three plaintiffs and added twelve new ones to the suit. Most notable among the omissions was Southside Presbyterian, the church that had been the main target of "Operation Sojourner." The plaintiffs had actually removed Southside six months before filing the amended complaint, as it was participating in the *Presbyterian Churches v. U.S.A.* case discussed in section six.²¹⁴ The new plaintiffs included both religious organizations and individual refugees. The new religious organizations broadened the geographic scope of the case, with new churches and houses of worship from Washington, Illinois, Pennsylvania and Ohio. The new refugee plaintiffs, John Doe and Marvyn Perez, were the most important additions.

John Doe (pseudonym), a Salvadoran citizen in his early 30s, fled his country in January of 1985 in fear for his life after he had been arrested and beaten for two and a half days for his activity in a trade union, as well as the activities of his family in student and teacher groups. Accused of being a "subversive" (and thus in danger of the far-right

²¹³ ABC, "First Amended Complaint for Declaratory and Injunctive Relief," April 29, 1987 (57).

²¹⁴ ABC, "Declaration of Ellen Yaroshefsky in Support of Withdrawal of Southside Presbyterian Church," November 17, 1986 (49), p. 1.

death squads roaming the country), Doe migrated to Mexico. In Mexico the police abused Doe, and he subsequently moved north to the United States. Once in the US, Doe asked an immigration lawyer about applying for asylum who advised him that applying for asylum would be fruitless and only result in deportation.

In May 1982 the Guatemalan National Police arrested, beat and tortured Marvyn Perez, a 14 year old Guatemalan child, for his participation in student activism. Two months later a local newspaper published his photo and Perez was forced to make a public confession that he was a former guerilla. Shortly afterwards he fled north and entered the United States in October of 1982. Like Doe, Perez never applied for asylum. Less than two years after entering the country, Perez and other young people who lived through conflicts went on a lecture tour around the United States trying to raise awareness of the consequences of war and violence on children. This lecture further heightened his profile and made it all the more dangerous for him to return to Guatemala.

The inclusion of John Doe and Marvyn Perez served a number of important purposes for the plaintiffs. First, it responded to Peckham's dismissal of the claims of the refugee organizations. His ruling had determined that while the organizations had constitutional standing, they lacked "prudential standing" because individual refugees could bring their claims to court. Thus the plaintiffs assumed that Doe and Perez possessed both constitutional and prudential standing as individual refugees for their temporary refuge and equal protection claims.

Second, incorporating Doe and Perez allowed the plaintiffs to add class action allegations to their complaint. Class actions suits are commonly used when it is logistically impossible for courts to hear the complaints of all the members of a broad

class of people. Class actions must meet four criteria in order to be considered. There must be a substantial number of members whose claims can be folded into one class; there must be commonality between members of the class in issues of law and fact; there must be representatives of the class in the complaint; and the representatives of the class must be able to protect the interests of the class.²¹⁵ The plaintiffs divided up their class action into two sub classes, one for Salvadorans in the US and one for Guatemalans in the US. They further divided the sub classes into Salvadorans and Guatemalans who: #1: “fled their countries because of internal armed conflict, war, and gross violations of human rights and have not nor will be granted temporary refuge in the U.S...” or #2: “meet the eligibility requirements for refugee status pursuant to 8 U.S.C. 1101(42)... whose status has not been and will not be recognized by the defendants.”²¹⁶

Doe and Perez helped the plaintiffs meet each criteria for a class action. First, the hundreds of thousands of Guatemalan and Salvadoran citizens in the United States who had fled strife in their home countries met the numerical requirement. Second, the people included in the class all had a common injury, being denied or potentially denied asylum/temporary refuge. Third, Doe (Salvadoran) and Perez (Guatemalan) represented both subclasses. Finally, they could successfully represent the entire class as neither had a criminal history or serious history of moral failings.

The addition of Doe and Perez did present one problem for the plaintiffs. As neither had applied for asylum, they were open to accusation that they failed to exhaust

²¹⁵ For a quality overview of class action see: Legal Information Institute, “Class Action,” http://www.law.cornell.edu/wex/class_action <retrieved 6/14/2012>

²¹⁶ *ABC*, “First Amended Complaint for Declaratory and Injunctive Relief,” April 29, 1987 (57), 34.

administrative remedies. As discussed below, the government took this line of attack, among others, in its motions to dismiss.

Furthermore, the amended complaint added some information when listing the plaintiffs, particularly when discussing the refugee aid organizations. In his ruling Peckham had faulted the plaintiffs for not making the refugee aid organizations' affiliation with refugees clear. The amended complaint emphasized the membership of plaintiff Centro Presente (80% Salvadoran and Guatemalan citizens, many of whom were refugees) and plaintiff Committee of Central American Refugees (which required that its members be Central Americans fleeing conflict).

The complaint then transitioned to the statement of facts and the causes of action. It added to the first cause of action the accusation that "(t)he defendants cannot demonstrate a compelling state interest in prosecuting sanctuary workers which outweighs the religious sanctuaries' and their members' sincerely held religious beliefs."²¹⁷ It expanded the second cause of action to state that applying for asylum was not only futile but also dangerous as a result of the defendants' actions. This was a direct response to Peckham's dismissal of the refugee organizations' claims on the basis that their members had failed to exhaust administrative remedies. On the third cause of action the amended complaint explicitly added that the discriminatory treatment of Guatemalans and Salvadorans during asylum procedures violated the guarantee of equal protection of the law. It made no change to the fourth and final cause of action regarding deportations. Though these additions were notable for the expansion of the complaint's allegations, the most significant addition (outside of the inclusion of Doe and Perez) was the new relief

²¹⁷ *ABC*, "First Amended Complaint for Declaratory and Injunctive Relief," April 29, 1987 (57), 73.

the plaintiffs requested. Specifically, they asked that: “this court issue an order to require defendants to propose a plan for the orderly, non-discriminatory and procedurally fair reprocessing of all denied political asylum applications of Salvadorans and Guatemalans filed subsequent to 1980.”²¹⁸ This request presaged, almost exactly, one of the most substantial sections of the settlement agreement.

A month after submitting the first amended complaint the plaintiffs filed a deposition notice for Raymond Kisor, associate commissioner for enforcement for the INS. One of the case’s main goals at the beginning was the deposition of high-ranking INS officials to gather more information and perhaps uncover material embarrassing to the government. While Peckham denied plaintiffs access to the highest ranking officials in September 1986, activists hoped that Kisor would be an important enough official to supply the information they wanted but not important enough to justify an exclusion of him on the grounds that he was too busy. They requested a wide-ranging array of documents from the government related to its policies in Central America, prosecution of the Sanctuary Movement, and treatment of Central American refugees and refugee claims.

On July 1, 1987, two weeks after the notice to depose Mr. Kisor, the government filed a series of answers to the first amended complaint.²¹⁹ The first three (court lacks jurisdiction, plaintiffs do not have standing, complaint does not state a relievable claim) reiterated in a single sentence per claim the arguments laid out in the government’s motions to dismiss. The fourth went step by step through the complaint, attacking the plaintiff list, statement of facts, causes of actions and requests. The response either denied

²¹⁸ *ABC*, “First Amended Complaint for Declaratory and Injunctive Relief,” April 29, 1987 (57), 79.

²¹⁹ *ABC* “Defendants’ Answers to the First Amended Complaint” July 1, 1987 (61).

the plaintiffs' statements, partially admitted them, attacked them as characterizations or claimed to have insufficient knowledge about them to make a firm denial (which has the effect of a denial). The final defense was a blanket request to deny the plaintiffs any form of relief, and remunerate the defense for expenses or any relief the court may see fit.

In addition, the defense filed another series of motions, asking the court to dismiss the case, issue summary judgment and/or place a stay on the depositions.²²⁰ First, the government moved for summary judgment²²¹ on the religious organizations' first amendment claims, attempting to end the case immediately. Then if summary judgment was not granted, they asked the court to dismiss the religious organizations' claims for lack of standing and/or legal insufficiency (insufficient evidence available to prove the claim). The government also moved for dismissal of the refugee organizations' claims, arguing that they lacked standing, had failed to exhaust administrative remedies and were also legally insufficient. As for the individual refugees, the government moved that the individual refugees had both failed to exhaust available administrative remedies and that their claims were legally insufficient. Finally, the government asked that the court stay Mr. Kisor's deposition while it considered the motions.

Like before, Peckham followed a slow and methodical approach to the competing motions. First he called lawyers from both parties into his chambers to discuss the motions to dismiss. Peckham again issued a stay on formal depositions but granted the plaintiffs leave to send written questions to Mr. Kisor.²²² For nearly 14 months the case

²²⁰ *ABC* "Defendants' motion to dismiss, for summary judgment or for a stay" July 24, 1987 (63).

²²¹ A court may issue summary judgment in a civil case if it believes that the case lacks dispute over its facts and that the person who moves for summary judgment is entitled to judgment. This ends the case but leaves it open to appeal.

²²² *ABC*, "Oral Motion for a Protective Order" August 14, 1987 (69).

proceeded in a similar fashion to its first year. The plaintiffs requested a widening array of documents and attempted to depose INS officials. The government rebuffed their requests and requested the judge dismiss the complaint.

On October 6, 1988, Peckham granted a measure of clarity to the muddled legal issues with a major ruling on the government's motions to dismiss and for summary judgment, and the plaintiffs' motions to compel the government to produce the documents they requested.²²³ Similar to his previous ruling in March 1987, it was a split decision that granted some of the government's motions and denied others. The inclusion of Doe and Perez proved crucial for the plaintiffs. Unlike his previous ruling Peckham dismissed all of the religious organizations' claims. In addition, he dismissed all of the claims from the refugee aid organizations. Only those from Doe and Perez survived.

Peckham's dismissal of the religious organizations' first amendment claims stemmed from the changes to immigration law that came from the Immigration Reform and Control Act of 1986 (IRCA). As noted above, a series of modifications to the laws on transporting and harboring of aliens in the IRCA more clearly criminalized Sanctuary activities. The plaintiffs therefore changed their request for relief to a retroactive one that was only applicable to prosecutions of Sanctuary activities prior to IRCA's passage. Yet, when Peckham denied the government's motion to dismiss the religious organizations' claims in 1987 he stressed that in order to have standing the plaintiffs must be able to prove that the government's actions affected their religious beliefs. Peckham found that as the plaintiffs were only requesting relief for actions taken in the past, the government's

²²³ *ABC*; "Memorandum and Order Granting in Part and Denying in Part Defendant's Motion to Dismiss" October 6, 1988 (89).

activities were not affecting their religious beliefs. Thus they lacked standing and their claims were dismissed.

The second claim made by the religious organizations was of religious harassment. Peckham found that the plaintiffs were unable to demonstrate that they had been selectively targeted for their religious belief as they were unable to demonstrate “that others are generally not prosecuted for the same conduct.”²²⁴ When confronted with this argument, the plaintiffs had argued that agricultural companies were rarely prosecuted for immigration law violations. Yet this was not enough for Peckham. A selective enforcement claim requires that the majority of potential violators of the law be ignored while the plaintiffs are targeted specifically. Peckham pointed out that there the government convicted over 4,000 people for violations of the harboring/transporting provision between 1984 and 1986 and during that time brought only five cases against Sanctuary workers. Thus Peckham issued summary judgment on the selective enforcement claim in favor of the government, ending any real legal hope for the religious organizations’ claims in *ABC*.

Next, Peckham turned to the refugee organizations to see if they had standing. In his previous ruling he had found they lacked standing but granted them the ability to amend their complaint. The amended complaint explicitly answered a number of Peckham’s critiques, addressing each prong of the Hunt test. Peckham found that the plaintiffs had satisfactorily met the first prong of the Hunt test as they had proved that their members had standing to sue in their own right. This was important for a variety of reasons. First, Peckham had ruled in 1987 that the organizations failed the first prong and

²²⁴ *ABC*; “Memorandum and Order,” October 6, 1988 (89), p. 12.

then declined to go any further in his examination of their claims. Second, Peckham found that while traditionally people must show they have exhausted all administrative remedies in order to have standing, it was unnecessary in this case as exhausting administrative remedies (applying for asylum etc) was not only futile (due to the abysmally low acceptance rate) but also dangerous. This meant that the claims of Doe and Perez, neither of whom had applied for asylum, would not be dismissed due to a failure to exhaust administrative remedies. Peckham also found that the organizations met the second prong of the Hunt test, that the cause the organization sued over was relevant to its purpose. Yet, Peckham found that they failed the third prong as the claims they brought would still best be brought by the refugees themselves and not by the refugee organizations. Therefore, he dismissed all of the claims made by the refugee organizations on the basis of their lacking standing.

Fortunately for the plaintiffs, they had included individual refugees in the complaint. This saved the complaint from outright dismissal, something that would have ended the chance for the landmark settlement in 1991. Peckham turned to the individual refugees' claims. First, pursuant to his ruling on refugee aid organizations he declined to dismiss individual refugees' claims on the grounds of failing to exhaust administrative remedies.²²⁵ Then, he undertook a detailed examination of their claims for temporary refuge. Doe and Perez had asked for the court to grant temporary refuge to Salvadorans and Guatemalans in the US until the civil wars and human rights abuses had ended in their countries. They asserted that they were entitled to this due to international law (Articles 1, 3, 45 and 49 of the 1949 Geneva Conventions and customary international

²²⁵ *ABC*; "Memorandum and Order," October 6, 1988 (89), p. 23.

law) and the Refugee Act of 1980. The government wanted to dismiss this on the grounds of legal insufficiency. Peckham was sympathetic to the government's motion on a variety of fronts. First, he found that the cited portions of the Geneva Conventions were not wholly relevant to the case as they predominantly pertain to civilians IN countries where conflict is taking place. Article 45 of the Geneva Conventions forbids forced repatriation of civilians to places where international armed conflict is taking place, not where internal civil strife is taking place.²²⁶ Second, Peckham followed precedent regarding the relationship between international law and laws of the United States, finding that those of the US take precedence. In the case of refugee law, Congress passed a number of laws that superseded international law including the Refugee Act of 1980 and various immigration reforms (1967, IRCA etc). In addition, Congress had explicitly argued over giving temporary refuge to Central Americans and decided against it. Thus, Peckham ruled that "Congress has specifically rejected the norm of temporary refuge relied upon here. Accordingly, the motion to dismiss the temporary refugee claim is granted."²²⁷

Penultimately, Peckham turned to Doe and Perez's equal protection claim, where the plaintiffs argued that Central Americans fleeing right-leaning regimes are not afforded protection equal to those fleeing Communist regimes (Poland, Cuba etc) are. They argued this violated the Fifth Amendment's guarantee of equal protection of the laws. The government argued that aliens were not afforded equal rights as citizens. Peckham cited a variety of past cases, including the aforementioned *Hotel* case, to establish the Executive must have a "rational basis" for denying rights to aliens that are

²²⁶ ABC; "Memorandum and Order," October 6, 1988 (89), p. 28.

²²⁷ ABC; "Memorandum and Order," October 6, 1988 (89), p. 35.

afforded to citizens.²²⁸ He paid particular attention to the *Hotel* case, referring to the court's decision withholding EVD to a specific group lay within the Attorney General's discretion and passed the "rational basis" test. At the same time, he faulted both the plaintiffs and defendants for failing to address the rational basis test and therefore decided to deny the government's motion to dismiss the individual refugees' claims.

In addition, Peckham denied the government's motion for summary judgment on the equal protection claim due to the request for relief added to the amended complaint. The plaintiffs had asked for the court to order the government to establish "a plan for the orderly, non-discriminatory and procedurally fair reprocessing of all denied political asylum applications of Salvadorans and Guatemalans filed subsequent to 1980."²²⁹ While international and domestic law did not compel the US to offer temporary refuge, Peckham found it worth arguing in court whether the Attorney General can use nationality to determine whether someone is eligible for asylum as US refugee law does not give him or her that right. Therefore, he declined to issue summary judgment.

Finally, Peckham addressed the plaintiff's charge that the government had "wrongfully and willfully" sent Salvadorans and Guatemalans into danger when deporting them back to their country of birth. The government responded by saying that this claim was a "garden variety tort" and should be treated as such. Therefore, the government argued that as the plaintiffs raised issues protected by sovereign immunity, that Congress had already addressed the issue of immigration law and did not discuss why the court had jurisdiction over the claim, Finally, they claimed that if the tort was

²²⁸ ABC, "Memorandum and Order," October 6, 1988 (89), p. 37.

²²⁹ ABC, "First Amended Complaint for Declaratory and Injunctive Relief," April 29, 1987 (57), 79.

treated as a fifth amendment issue, it had already been established in previous court cases that immigration procedures, by their very nature, grant due process.

Peckham did not agree with the last point, finding that the court did possess jurisdiction over the matter and that immigration procedures did not necessarily grant due process. Yet, as neither the plaintiffs nor the defendant discussed the issues relevant to the case cited (*Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*), he would not issue a ruling on the matter.

In his first ruling in 1987 Peckham had issued a stay on Raymond Kisor's deposition until after he had ruled on the government's motions to dismiss. As some of the complaint survived the motions, he ordered the deposition to proceed either with Mr. Kisor or an official with similar authority and knowledge. In addition, he ordered the two parties to confer regarding the request for documents. When first confronted with the request, the government claimed it to be too broad. The plaintiffs agreed to narrow their request so Peckham ordered the two parties to meet rather than compelling the government to produce the requested documents.

On March 28, 1989 Judge Peckham released an amended order with three significant changes to his October 1988 ruling. First, Peckham revisited his reliance on the *Hotel* decision, which he had used when ruling against the government's motion to dismiss the individual refugees' EVD claims. In the October decision he wrote that the court had "summarily rejected (Salvadorans') contention that the Attorney General had violated their right to the equal protection of the laws..."²³⁰ but decided that "(a)fter further review... we note only that the court did subject the EVD decision to at least

²³⁰ ABC; "Memorandum and Order," October 6, 1988 (89), p. 38.

some review.”²³¹ This rewording of the decision gave the plaintiffs more latitude in asserting their equal protection claims.

The second significant change reshaped the discussion of the refugees’ claim for temporary refuge. In the October decision Peckham wrote, concerning temporary refuge, “(f)urthermore, the norm itself has not ripened into a settled rule of international law via the general assent of ‘civilized nations.’ Accordingly, the motion to dismiss the temporary refuge claim is granted.” In the amended decision Peckham simply dismissed the claim without adding any further discussion of the norm of temporary refuge. Again, this gave more room for the plaintiffs, who could now attempt to prove a norm for temporary refuge.

Finally, Peckham repackaged his discussion of the individual refugees’ equal protection claims, the same claims that he let stand in October. Peckham again upheld those claims but significantly added to the discussion. While most of the language of this section remained the same, Peckham split his discussion into two. First, he took up the claim that the government had violated its equal protection obligations when it denied Extended Voluntary Departure to Central Americans but granted it to Poles. He declined to dismiss this claim. Second, he examined the refugees’ complaint that the government had violated the equal protection clause when applying the Refugee Act and adjudicating asylum applications. He also declined to dismiss the claim.

Peckham maintained his decision to dismiss the religious and refugee organizations’ claims. This marked the end of the first amendment and religious harassment claims. Though American Baptist Churches remained the lead and titled

²³¹ *ABC* “Memorandum and Order,” p. 18.

plaintiff, the focus of the case shifted entirely to the rights of Salvadorans and Guatemalans in the United States.

3.7 Discovery and the Push for Settlement

Neither party received all of what they wanted in Peckham's ruling, so over the next four months they prepared their next motions. The plaintiffs struck first, when on February 17, 1989 they filed their second amended complaint.²³² While the Second Amended Complaint included the religious and refugee organizations, it was a last ditch effort that Peckham paid little attention to in his remaining rulings. His October 1988 order had assured that the only surviving parts of the case involved individual refugees and, if the plaintiffs could convince the court, the class(es) of refugees that they represent. Barring one significant addition, the Second Amended Complaint looked much like the First Amended Complaint. That addition came in the make-up of the plaintiffs.

Working closely with many of the refugee aid organizations identified in the complaint, the plaintiffs selected five new refugee plaintiffs who had applied for asylum and been denied. Four of the five new refugee plaintiffs went by the pseudonyms of Jane and John Doe. Jane Doe fled from El Salvador to the United States in 1986. Military sponsored death squads killed most of her family due to their participation in a farmworkers' union. This included her brother, uncle, sister and mother. Her father disappeared in 1985. Like most *desaparecidos* it is likely that he was killed by the military. Similar to Marvyn Perez and John Doe in the previous complaint, Ms. Doe never applied for asylum. The next three plaintiffs went by "John Doe." The first "John Doe," and second new plaintiff, immigrated from Guatemala in 1988 after fleeing the

²³² ABC, "Second Amended Complaint for Declaratory and Injunctive Relief," February 17, 1989 (94).

military. The third new plaintiff abandoned the Salvadoran military in 1986, fleeing to the US the same year and was denied asylum in 1988. The fourth new refugee plaintiff left Guatemala in 1983. The Guatemalan military accused this new plaintiff, a Kanjobal-Mayan from San Miguel Acatan, of being a collaborator with the guerillas. He received a number of death threats from the military prior to fleeing Guatemala in 1983. He applied for asylum in the United States in 1986 and was denied in 1988. The final plaintiff, Rosa Maribel Fuentes, left El Salvador in 1983 after being jailed for nearly a year and a half for her political activities in a textile workers' union. She applied for asylum and the State Department recommended to deny her application. At the time of filing the complaint a final verdict on her application had not been reached.

These five new refugee plaintiffs represented the spectrum of Central Americans the lawsuit aimed to help. Some had applied for asylum but been denied, while others had not as they thought applying would be futile. The plaintiffs hoped that the court would use the four new refugee plaintiffs, as well as the two listed in the first amended complaint, as representatives of six subclasses representing all Salvadoran and Guatemalan refugees in the United States.²³³

The plaintiffs first moved for class certification on February 17th and then offered a corrected copy of the motion on February 27th. The first two subclasses included all refugees from, respectively, El Salvador and Guatemala in the United States who had applied for asylum and been denied. The third and fourth subclasses comprised of Salvadoran and Guatemalan refugees who never applied for asylum because they believed that the attempt futile. Refugees from El Salvador and Guatemala who had fled

²³³ ABC "Plaintiffs' Notice of Motion and Motion for Class Certification (Corrected Copy)," February 24, 1989 (100).

the violence in their countries and wanted to return to their homelands once the violence had ceased made up the fifth and sixth classes.

The defense replied in two stages. First, it filed another motion to dismiss and a request for summary judgment. The motion to dismiss attacked each of the surviving claims. It first looked at the constitutional tort claim that Peckham had let stand. The government cited two recent court cases (*Schweiker v. Chilicky* 108 S. Ct 2460(1988) and *Kotarski v. Cooper* 9th Cir. 84-5673 (1989)). It argued that both cases made it clear that when “Congress has made a deliberate choice as to the appropriate remedy for the harm alleged by plaintiffs, no constitutional tort remedy is to be replied.”²³⁴ Congress made “deliberate choices” on the treatment of refugees during the debates and passage of the Refugee Act and IRCA. Second, in direct response to Peckham’s critique of their failure to address the “rational basis” test, the defense pointed to the *Hotel* decision, as well as letters written by the Secretary of State and Attorney General to members of Congress regarding extending EVD to Salvadorans, as clear evidence that the Attorney General possessed a “rational basis” for denying Salvadorans EVD. Finally, the defense argued that the plaintiffs’ request for the court to force reprocessing of asylum applications was non-justiciable. Citing *National Coal Association v. Marshall* (510 F. Supp. 803 D.D.C. 1981), it stated that re-hearing the tens of thousands of asylum applications was simply too much for the court and far beyond its expertise. Thus, the court would be unable to effectively enforce its order and the claim should be dismissed.

The second wave of the defense’s reply to the plaintiffs’ flurry of activity came on March 13th when it filed a memorandum opposing the motion for class certification. The

²³⁴ ABC “Defendants’ Memorandum in Support of Motion to Dismiss and for Summary Judgment” February 27, 1989 (102), p. 2.

government argued that the plaintiffs' motion to certify six classes should be denied as it did not meet the requirements for class certification.²³⁵ The memo in opposition to class certification argued first that the plaintiffs had addressed only the make-up of the class while failing to address the type of action to be brought. Both must be satisfied in order to bring a class action. In addition, the defense argued that the Central Americans who did not apply for asylum because they believed it to be futile did not have enough in common to be a class ("the claims or defenses of the representative parties are typical of the claims or defenses of the class"). The lawyers argued that there are many reasons why a refugee might decide not to apply for asylum and the only way to determine who should be included in the class would be to investigate each claimant.²³⁶ Finally, the defense asked to deny the motion for class certification on the grounds that the plaintiffs' request for temporary refuge had already been dismissed. The government noted that in the original motion submitted on February 17th the plaintiffs asked for the certification of two subclasses of refugees who have been wronged as they have been denied temporary refuge, which is given to them under *international* law. Peckham had forcefully denied this claim in his October 1988 ruling. The plaintiffs realized their mistake shortly after submitting the motion and in their corrected copy changed the wording to a claim for temporary refuge given under *federal* law. As the government noted, "(t)he change is entirely cosmetic. The temporary refuge issue has been adjudicated and cannot be revived with a new adjective."²³⁷

²³⁵ ABC, "Defendants' Opposition to Motion for Class Certification," March 13, 1989 (111).

²³⁶ See either the Federal Rules of Civil Procedure 23 (a)(b) or above for a full listing of the requirements for class certification.

²³⁷ ABC, "Defendants' Opposition to Motion for Class Certification," March 13, 1989 (111).

The plaintiffs responded within a week. In contrast to the dry legal language of earlier filings, the plaintiffs submitted a document that, for a legal brief, expressed their frustration with the defense. In strong language they accused the government of woefully misreading the motion for class certification.²³⁸ In response to the defense's argument that they failed to address the type of class action, the plaintiffs asserted that a host of documents, including the second amended complaint, motion for class certification and more, had repeatedly shown that they met the requirements for a specific class action type. Namely, they indicated that the government has "acted or refused to act on the grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole."²³⁹ They expressed "astonishment" that the government claimed they did not meet it and saw the only reasonable explanation to be that the government believed "the plaintiffs must *prove* that 23 (b) (2) has been met. Such a requirement, however, would obligate plaintiffs to prove their entire case at the class certification stage."²⁴⁰ The government's second objection, that the class of refugees who had never applied for asylum as they saw it to be futile was overly broad, also came under attack. The plaintiffs referred back to Peckham's October 1988 decision where he recognized that for many Central Americans applying for asylum is futile and dangerous. Thus the claims of the refugees named in the suit are similar to those they are trying to represent. Finally, they turned to the defense's claim that the court had already rejected the temporary refuge claim. The plaintiffs responded by making the distinction the government had mocked in its opposition to

²³⁸ ABC; "Plaintiffs' Response to Defendants' Opposition to Class Certification," March 20, 1989 (113).

²³⁹ *Federal Rules of Civil Procedure* 23(b)(2)

²⁴⁰ ABC; "Plaintiffs' Response to Defendants' Opposition," March 20, 1989 (113), pp. 1-2.

class certification: that they were basing their claim for temporary refuge under federal law, not under international law, a concept Peckham had already ruled against.

They also replied to the government's motion to dismiss and for summary judgment.²⁴¹ The plaintiffs argued that until they have been given a chance to discover the reasons why the government was denying EVD to Salvadorans and Guatemalans the court could not issue summary judgment. In addition, they argued that the defense's attempt to dismiss their request for new asylum procedures "proceeds from a demonstrably false premise, thereby foredooming the entire argument."²⁴² The plaintiffs did not ask the court to oversee the new process but simply "develop a plan that ensures that its reprocessing of the applications will be accompanied by the fairness and even-handedness lacking in their initial review and determination."²⁴³ They cited previous examples of similar processes like *Orantes –Hernandez v. Meese* (685 F. Supp. 1488 C.D.Cal. 1988) and *Haitian Refugee Center v. Smith* (676 F. 2d 1023 5th Cir. 1982). Finally, they addressed the defense's attempt to dismiss the constitutional tort claim, arguing that the two cases cited by the defense had no bearing on the present case as they had nothing to do with immigration law or discrimination.

Three weeks later the plaintiffs filed another motion, asking the court to force the defense to release documents relating to asylum procedures. The defense replied with a request for a protective order. They continued to trade motions over evidence for the next six months until Peckham's ruling on September 11, 1989. Once again, Peckham ruled for the defense in part and the plaintiffs in part. He declined to dismiss the EVD and

²⁴¹ ABC; "Plaintiffs' Opposition to Defendants' Motion to Dismiss and for Summary Judgment" March 13, 1989 (107).

²⁴² ABC; "Plaintiffs' Opposition to Defendants' Motion to Dismiss," March 13, 1989 (107), p. 8.

²⁴³ ABC; "Plaintiffs' Opposition to Defendants' Motion to Dismiss," March 13, 1989 (107), p. 8.

asylum claim, while dismissing the constitutional tort claim. He reasoned that it was possible that the plaintiffs could prove the government discriminated against Salvadorans and Guatemalans while denying them EVD. It would be difficult to prove and “(a)lthough plaintiffs’ burden is a heavy one... we cannot determine on the record before us that the plaintiffs will not be satisfied.”²⁴⁴ Using the same cases cited by the plaintiffs in their opposition to dismiss memo, Peckham also denied that government’s attempt to dismiss the asylum claim, finding that courts had enforced similar orders in the past. He then turned to the plaintiffs’ constitutional tort claim, finding that Congress had established sufficient procedures to determine who was a refugee, and who was and was not deportable. Regarding class certification, Peckham ruled that four of the six subclasses were permissible. The two that were not were those based on Salvadorans and Guatemalans who never applied for asylum as they thought it would be futile. Peckham agreed with the defense’s motion in opposition to class certification that these two subclasses were overly broad and it would be impossible to identify such a broad class. Finally, Peckham declined to rule on the plaintiffs’ motion to compel discovery as both parties had, once again, agreed that the rulings would resolve problems with discovery. Similar to his March 1989 ruling, he threatened to step in if the government continued to hold up the discovery process. He thus ended the ruling by granting the plaintiffs leave to amend their complaint for the third time.

And amend they did, submitting the third amended complaint on January 24, 1990.²⁴⁵ Unlike the first or second amended complaint, the third complaint looked significantly different than the original complaint. The complaint did not contain any

²⁴⁴ *ABC*, “Memorandum and Order,” September 11, 1989 (132), p. 6.

²⁴⁵ *ABC*, “Third Amended Complaint for Declaratory and Injunctive Relief,” January 24, 1990 (139).

details concerning the plaintiff religious and refugee organizations. Instead, the complaint only listed six of the seven refugees listed in the Second Amended Complaint. The only omission was Marvyn Perez, the Guatemalan teenager who had gone on a speaking tour following his arrival in the United States in 1984. During the interval between the Second and Third Amended Complaints Perez had been one of the few Central Americans to receive asylum. The other six remained in legal limbo and represented the subclasses included in the complaint. While the plaintiffs had divided their class action allegations into six subclasses in the Second Amended Complaint, in the Third Amended Complaint they reduced it down to two sub classes that encompassed all Salvadoran and Guatemalan citizens who had either #1: “fled their countries because of internal armed conflict, war and gross violations of human rights and have not been granted extended voluntary departure by the United States...” or #2: “who meet the eligibility requirements for refugee status... namely that they have a well-founded fear of persecution on account of political opinion, race, religion, nationality or social group, and whose status has not been recognized...”²⁴⁶

The statement of facts was shorter as it did not discuss the religious justifications for the Sanctuary Movement nor the government’s prosecutions of the Movement. The causes of action also went from five to two. The first surviving cause of action reiterated the tenets of the Refugee Act of 1980 and emphasized that the US government is required to grant asylum to those who meet the criteria set out in the act, regardless of the applicant’s nationality. Specifically, the first cause of action argued that the government’s “disregard of the requirements of the Refugee Act, and their pattern and practice of

²⁴⁶ *ABC*, “Third Amended Complaint,” January 24, 1990 (139), p. 12-13.

discrimination against Salvadorans and Guatemalans in the asylum adjudication and the withholding of deportation processes, constitute a violation of the 1980s Refugee Act, the Immigration and Nationality Act and the Fifth Amendment.”²⁴⁷ The second cause of action argued that the government’s granting of Extended Voluntary Departure to those fleeing communist regimes while withholding it from Central Americans “invidiously discriminates against plaintiffs in violation of their First and Fifth Amendment rights.”²⁴⁸

The plaintiffs asked for three forms of relief. First, they requested a declaratory judgment from the court granting all Salvadorans and Guatemalans fleeing civil war extended voluntary departure. Second, they requested that the Court order the government to set up a new and more fair asylum process that would reprocess all of the Salvadoran and Guatemalan asylum applications turned down post 1980 and all new applications made in the future. Finally, they made the standard request for the Court to award them any relief that the court saw fit (namely legal fees).

On February 26, 1990, the defense filed a set of answers to the complaint that looked much like their previous submissions.²⁴⁹ The government argued that the plaintiffs lacked standing and neglected to present a justiciable claim. In addition, it argued that the court did not have jurisdiction and the case did not meet the requirements for standing. Finally, the defense went step by step through the complaint denying the vast majority of it as a characterization or lacking in knowledge. These were the same defenses made in previous filings. A week later the government amended its answers and

²⁴⁷ *ABC*, “Third Amended Complaint,” January 24, 1990 (139), p. 37.

²⁴⁸ *ABC*, “Third Amended Complaint,” January 24, 1990 (139), p. 38.

²⁴⁹ *ABC*, “Defendants’ Answer to Third Amended Complaint,” February 26, 1990 (150).

presented two new defenses.²⁵⁰ These new defenses argued that the plaintiffs had taken too long to assert their claims and they no longer qualified for relief. Yet, neither of these defenses was ever resolved as the case took a turn toward settlement that spring.

Four factors influenced the push for settlement. First, and most important, was the discovery process and the future complications it indicated. In his fall 1989 order Peckham had re-opened discovery and warned the government that it needed to cooperate with the plaintiffs. For the next nine months the two sides traded deposition requests and asked the court to deny the requests made by the other side. By July 1990 it was clear the plaintiffs had Judge Peckham's ear and sympathy.²⁵¹

For discovery the plaintiffs' made an immense request for documents that included tens of thousands of asylum decisions, training documents for asylum officers and much more. Fulfilling the discovery requests would have been a logistical nightmare. The government had no central repository for asylum decisions and immigration forms, so they lay in boxes scattered across the country. In addition, in keeping with privacy laws, the INS would have been required to redact the names of those involved and screen the papers for additional privacy and national security concerns.²⁵² This promised to be an incredibly laborious and expensive process. In addition, the plaintiffs submitted depositions for a host of influential governmental officials, including James A. Baker III (Secretary of State), Richard Thornburgh (Attorney General), Ricardo Inzunza (Deputy Commissioner of the INS) and others. The government anticipated further depositions and foresaw a lengthy and expensive court case, which they could very well lose. Not

²⁵⁰ *ABC*, "Defendants' Amended Answer to Third Amended Complaint," March 2, 1990 (152).

²⁵¹ Carolyn Patty Blum, telephone interview with author, June 19, 2012; Mary Beth Uitti, telephone interview with author, June 16, 2012.

²⁵² Carolyn Patty Blum, telephone interview with author, June 19, 2012.

only would it tie up enormous amounts of time for government lawyers, it could result in the government paying what was bound to be the astronomical legal fees for the plaintiffs. As Carolyn Patty Blum, a lawyer for the plaintiffs explains: “The then-general counsel for the INS, William Cook, pragmatically assessed the situation and determined settlement negotiations were appropriate.”²⁵³

Not only was the discovery process expensive, but it had the potential to be enormously embarrassing. Allegedly the plaintiffs unearthed a videotape of an official from the State Department training asylum officials to be receptive to applications from asylum seekers leaving the leftist Sandinista government in Nicaragua but skeptical of those seekers fleeing the right-wing death squads in Guatemala and El Salvador.²⁵⁴

Discoveries of this sort would have only added to the public pressure activists and refugees had brought to bear on the government and its lawyers. As one lawyer explains,

Every time we went to court, the courtroom was filled with people from the sanctuary movement. And they would do prayers out front before hand and be there with their habits and collars and everything in court and it was a very powerful statement.²⁵⁵

Second, in the early 1990s immigration lawyers around the country began to notice a newfound willingness to settle immigration cases, including asylum/refugee cases like *Haitian Refugee Center v. McNary* (1991) and, of course, *ABC*. Many attributed this change in direction to new INS commissioner Gene McNary and William Cook who “is generally credited with advancing settlement talks in *ABC*... McNary is

²⁵³ Carolyn Patty Blum, “The Settlement of American Baptist Churches,” p. 352, 356.

²⁵⁴ Coutin, *Nations of Emigrants*, 55.

²⁵⁵ Anonymous attorney for the plaintiffs in Coutin, *Nations of Emigrant*, 52.

praised for encouraging the talks and approving the settlements.”²⁵⁶ The INS was in the process of crafting a new set of procedures for adjudicating asylum applications. Announced in July of 1990, these new regulations set up a new group of “Asylum Officers” who would “receive specialized training in the relevant fields of international relations and international law...” and would make asylum decisions in a non-adversarial setting.²⁵⁷ This stood in stark contrast to how INS officers had previously made asylum decisions where they received little training on the conditions in applicants’ home countries and were heavily dependent on State Department officials.²⁵⁸ For years refugee activists had complained that dependence on the State Department injected politics into asylum decisions, as State Department opinions often tracked with partisan US foreign policy. During the coming settlement negotiations the plaintiffs would place a great deal of stress on the role of the State Department, and the nature of asylum officers’ training.

The third factor in the push for settlement was the Immigration Act of 1990. Signed into law on November 29, 1990, the Act extended family unification measures, encouraged high skilled immigration for businesses and granted, in a last minute addition, “temporary protected status” (TPS) for Salvadorans seeking asylum for a period of eighteen months. If the INS continued to argue the case they would, in effect, be arguing against recently passed legislation. President George H.W. Bush’s prominent support for

²⁵⁶ Don J. DeBenedictis “INS in a Mood to Settle,” *American Bar Association Journal* 78 (September 1992), p. 36.

²⁵⁷ Federal Register, Volume 55, 1990, pg. 30676.

²⁵⁸ Susan F. Martin, *A Nation of Immigrants*, (New York: Cambridge University Press, 2010), 247.

the bill signaled a softening by the administration towards immigration and a desire to put much of the immigration and asylum related battles of the 1980s behind.²⁵⁹

George H.W. Bush also had a different foreign policy than Reagan. The change in foreign policy teams, as well as the shift in the global political climate was the fourth factor in the push for settlement. President H.W. Bush held a distinctly different view of the Central American revolutions than Reagan. While his predecessor thought of the Central American revolutions as an ideological struggle between the forces of good and evil (communism and democracy), H.W. Bush had a much more pragmatic view. He saw that Congress and the American public's dim view of US foreign policy in Central America had only been further tarred by the Iran-Contra affair. As the Soviet Union began falling apart many of the foreign policy concerns undergirding US hostility to Central American asylum applications were beginning to dissipate. The Cold War was ending as the Soviet Union was falling apart. Communism was no longer the existential threat many political leaders once thought. The ultimately unsuccessful major guerilla offensive of 1989-1990 in El Salvador had not been enough to force either side to capitulate. Rather, it rekindled peace talks between the leftist guerillas and the rightist government that were more promising than any before. In Guatemala the situation remained tenuous, but in late 1990 new Guatemalan president Jorge Serrano Eliás began peace talks. Though they would ultimately collapse in late 1991, that was after the US government and activists reached the *ABC* settlement.²⁶⁰

²⁵⁹ For a discussion of the legislative process by which the Immigration Act of 1990 was reached see; Daniel Tichenor, *Dividing Lines: The Politics of Immigration Control in America*, (Princeton, NJ: Princeton University Press, 2002), 268-274.

²⁶⁰ LaFeber, *Inevitable Revolutions*. 357-361.

By the summer of 1990 the INS and Department of Justice had reached the decision to settle, but their willingness to settle came as a surprise to the plaintiffs. After Peckham's discovery order in 1989, the plaintiffs, somewhat daunted by the prospect of an enormous and time-consuming discovery, began laying the groundwork for discovery. Beginning to sift through the immense amount of data promised by the discovery order, it quickly became clear that they needed further assistance. They enlisted lawyers from Morrison and Foerster, a top San Francisco Law firm that had defended two of the Sanctuary Trial defendants, academics from the UC-Berkley law school and a social scientist. Still, they remained unsure how to proceed in a cost effective manner.²⁶¹ Susan Bibler Coutin quotes a member of the plaintiffs' legal team:

I remember one day getting a call from someone... and it was real staticky. And I asked, "Where are you calling from?" "I'm in an airplane." It wasn't [INS general counsel] Bill Cook. It was an aide. "Give Bill Cook a call. There might be some talk you two might want to have regarding settlement."²⁶²

The months between June 1990 and the initial announcement of the settlement in December were consumed by intense negotiations over the settlement between the plaintiffs and the government in San Francisco and Washington, DC. The two sides had to agree on what remedies they would take to try and end discrimination against Central American asylum seekers and who would be eligible to take advantage of those remedies. These two issues were among the most contentious of those discussed during settlement negotiations.

One of the plaintiffs' chief concerns regarding discrimination against Central American asylum applications was that those charged with adjudicating asylum applications had very little knowledge or experience of the countries applicants came

²⁶¹ Blum, "The Settlement of American Baptist Churches," 352; Blum, telephone interview, June 19, 2012.

²⁶² Coutin, *Nations of Emigrants*, 55.

from or the asylum process. The new regulations announced by the INS in July regarding asylum promised new “asylum officers” but did not specify how they would be trained. Therefore, for the plaintiffs an important part of any settlement was that outside organizations be involved in the training of the new asylum officer corps. Initially, the government was adamant that all the training being done “in-house” by government officials. The plaintiffs demanded a more open training regimen that included experts from outside the government. The plaintiffs secured the right for outside groups to get involved in in-service training, offering their expertise to new asylum officers on conditions in the countries they would be hearing about and cultural sensitivity. Blum, one of the lead lawyers negotiating the settlement for the plaintiffs, remembers this as an important part of the settlement, as it was a cultural change for the INS to allow outside groups to participate in training.²⁶³

Another contentious issue lay in the question of who was eligible for the settlement. The government tried to restrict the settlement only to those whose cases had been tried and denied by the INS. This would keep those who never applied for asylum from benefiting from the settlement, as well as those who had been denied by an immigration judge. The plaintiffs replied that two of their class members had never applied and immigration judges were far from impartial in their adjudication of asylum claims. Therefore, all Salvadorans and Guatemalans should be eligible. The plaintiffs won out and all Salvadorans who entered the United States before September 19, 1990,

²⁶³ Blum, telephone interview, June 19, 2012; Coutin, *Nations of Emigrants*, 56.

and all Guatemalans who entered before October 1, 1990 received the benefits of the settlement.²⁶⁴

Yet, what exactly what benefits were they eligible for? The negotiated settlement²⁶⁵ granted Salvadorans and Guatemalans whose asylum applications had been denied *de novo* hearings in front of the newly trained asylum officers. The new officers could not see previous INS decisions denying applicants asylum and the State Department could not issue opinions on the likelihood of the country to generate refugees. The plaintiffs saw this as a major victory as they firmly believed that the politically oriented State Department had an undue influence on asylum policy. Finally, workers received work permits while waiting for their hearing. Unbeknownst to the framers of the settlement, the new hearings and procedures created a substantial backlog, meaning that the work permits lasted for months and then years.²⁶⁶

In 1992 the National Asylum Project, in conjunction with scholars at the Harvard Law School led by Sara Ignatius and Deborah Anker, authored an intense study of the United States' asylum process as led by the Immigration and Naturalization Service (INS). They found that between 1983 and 1991 the INS accepted less than 3 percent of Salvadoran applications for asylum.²⁶⁷ The year after the ABC decision the rate jumped to 28 percent, but declined throughout the decade, returning to 3 percent by the year 2000.²⁶⁸ Undoubtedly this is due, in part, to the decreasing levels of violence over the

²⁶⁴ Coutin, *Nations of Emigrants* 57.

²⁶⁵ ABC, "Stipulated Order Approving Class Action Settlement Agreement," January 31, 1991.

²⁶⁶ Garia, *Seeking Refuge*, 111; Menjivar, *Fragmented Ties*, 85-86.

²⁶⁷ National Asylum Project, *An Interim Assessment of the Asylum Process of the Immigration and Naturalization Service*. Immigration and Refugee Program, Program of the Legal Profession, Harvard Law School, (Cambridge: Harvard University Press, 1992), 17.

²⁶⁸ Menjivar, *Fragmented Ties*, 87.

course of the 1990s, but also may come from the INS's asylum practice regressing to the mean.

In sum, the *ABC* settlement led to a raft of changes in US asylum policy. First and foremost, it changed the culture of asylum officer training and decisions. By blunting the influence of the State Department and including NGOs, the *ABC* settlement affected asylum decisions not just of Central Americans, but of all applicants. In addition, it reopened nearly 150,000 cases and let over 100,000 more Central Americans apply for new decisions. The changes in training led to a significant spike in asylum acceptance rates. Though those rates returned to their pre-*ABC* levels by 2000, the relatively high levels of acceptance during this brief period meant that many more Salvadoran refugees were accepted than ever before. Finally, these nearly 300,000 asylum applications added to an already understaffed and overburdened asylum system, an event that had a cascading set of consequences far outside the intentions of the settlement framers.²⁶⁹ These consequences are discussed in the final section (3.9) of this chapter.

3.8 How Participants Transformed and were Transformed by *ABC*

When Morton Stavis, Sarah Wunsch, Ellen Yaroshefsky, Marc Van Der Hout and Teresa Bright filed their complaint on May 7, 1985, they never, in their wildest dreams, could have hoped for the settlement agreement announced on January 31, 1991. Originally a case primarily concerned with government prosecution of the Sanctuary Movement, it transformed into a landmark settlement that promised to reform US asylum policy and procedures. Not only did the *ABC* settlement give new asylum hearings to

²⁶⁹ Philip Schrag, *A Well Founded Fear: The Congressional Battle to Save Asylum in America* (New York: Routledge, 2000), 33.

hundreds of thousands of Central Americans, the reforms in asylum officer training helped applicants from across the world.

While heretofore this chapter has focused on the legal evolution of the case from religious freedom to equal protection, the effect of a few individuals on the formation of the settlement needs to be emphasized. First, Judge Peckham's willingness to allow the plaintiffs to revise their complaint time and time again over the course of the six years between filing and settlement proved crucial. In contrast, a similar case filed in Phoenix was quickly closed and the judge did not permit the plaintiffs to revise their complaint. Second, the plaintiffs' legal team's persistence to litigate the case on every possible angle kept the case alive. Third, the fundraising by refugees and refugee aid organizations funded the expensive and complex legal process that lasted six years. Finally, the select group of government officials that agreed to settle allowed the benefits of the settlement to extend to refugees years before litigation would have been possible. Without the actions of this small group of individuals the effects of the *ABC* settlement either would have never have felt or would have come much later.

Following the January 31, 1991 announcement of the settlement, the various participants in the *ABC* case found them transformed in different ways. The lawyers for the plaintiffs had the most direct and long lasting experience. A large legal team made up of human rights, immigration and constitutional law lawyers from across the country participated in the case as its focus shifted from religious freedom to legal rights. Carolyn Patty Blum, who was tangentially involved in the formation of the complaint but took a much more active role during the last few months as equal protection issues came to the fore, remembers the experience fondly, "This team was the dream team. That was

certainly my memory. I loved working with these people....”²⁷⁰ For Marc Van Der Hout, the only lawyer to be consistently involved in the case from its filing to settlement, the settlement was the culmination of over a decade of immigration and asylum litigation.²⁷¹ The case also led many of the plaintiffs’ lawyers to become further involved in human rights and asylum issues. Shortly after the settlement Blum partnered with the Center for Justice and Accountability, a non-profit that has brought a variety of human rights abusers from Vietnam, to Peru, to Guatemala to justice, including notorious Salvadoran Colonel Inocente Montano.

Mary Beth Uitti, one of the assistant attorney generals assigned to the case, remembers her involvement with the case much differently. Overloaded and overworked, Uitti took over for Andrew Wolfe, the original assistant attorney general assigned to the case, after Wolfe left for private practice. Though notable in the magnitude of the settlement, as well as the fact that as the case reached its final stages the office in Washington, DC took over, the case itself was simply one among many.²⁷²

Two years after the settlement, Judge Peckham passed away. He left little record of his feelings on the *ABC* case, though it did mesh well with his long record of liberal jurisprudence. Many of his most noteworthy cases involved discrimination and equal protection issues. Peckham had issued desegregation rulings for the San Francisco Police Department and the San Jose Unified School District, as well as rulings forbidding the use of discriminatory I.Q. tests that were biased against African-Americans.²⁷³ The *ABC*

²⁷⁰ Blum, telephone interview, June 19, 2012.

²⁷¹ Marc Van Der Hout, telephone interview with author, April 19, 2012.

²⁷² Uitti, telephone interview, June 16, 2012.

²⁷³ “Obituary: Robert F. Peckham, Influential Federal Judge,” *The New York Times*, February 17, 1993.

settlement was one more lasting example of his advocacy on the behalf of underrepresented groups.

When asked to reflect on what the six year long court case meant to them, it is clear that the lawyers for the plaintiffs felt the effects of the *ABC* case far more keenly than those from the government. In part, that is likely due to the case's result. While not an outright victory in court, the scope of the settlement was a clear win for refugees, activists and their lawyers. While they, like the lawyers for the government, had other court cases as well, the *ABC* case was a *cause célébré* for the lawyers for the plaintiffs. Finally, it validated the years spent toiling in immigration law for some (such as Marc Van Der Hout) and pushed others into further human rights work (such as Carolyn Patty Blum).

3.9 Conclusion

Following the settlement of the case on January 31, 1991, activists went to work to notify Guatemalans and Salvadorans of the new benefits to which they were entitled. While part of the settlement included government money for radio ads in five major markets across the country, it was through the work of Guatemalan, Salvadoran and American volunteers that the Central American community felt its effects. Combined with the recently passed Temporary Protected Status (TPS) included in the Immigration Act of 1990 this meant *ABC* applicants could avoid deportation for many months, if not years.

Refugee aid organizations, like El Rescate in Los Angeles, put out the word to the community, and groups of lawyers and volunteers organized what they called “charlas”

(chats) across the country to inform Guatemalans and Salvadorans of the new benefits.²⁷⁴ Susan Bibler Coutin recounts one lawyer's memory of the process, where at meetings he told prospective applicants, "Hay que quedarse en el barco grande [You have to stay in the big boat]. You apply for TPS, and when you finish TPS, what happens? Then you apply for *ABC*."²⁷⁵ This led to a dramatic increase in asylum applications, and with the inauguration of the new asylum officers mandated in the settlement, a sizeable backlog. The first group of asylum officers, numbering 82, began to work in early 1991 with more than 100,000 applications pending. The INS appointed seventy-two more officers the next year, but this did little to help the backlog as the adjudication process took an incredible amount of time, and the *ABC* settlement added over 200,000 new applications in one fell swoop.²⁷⁶

Since pending asylum applicants received work permits the backlog created an incentive for all Guatemalans and Salvadorans, regardless of their eligibility for refugee status, to apply for asylum. This further exacerbated the backlog. Unlike in Canada, where an enormous backlog in asylum applications (discussed in chapter 4) led to considerable concern among immigration officials and the public regarding people taking advantage of the system, the public and governmental perception of Central Americans differed dramatically from that of other undocumented immigrants (like Mexicans). The Illegal Immigration Reform and Immigrant Responsibility Act added teeth to US deportation procedure. Yet, the asylum backlog had given Central Americans time to put down roots in their communities and make the transition from publicly perceived

²⁷⁴ Patick McDonnell, "Plan Offers Guatemalans Asylum," *Los Angeles Times*, October 21, 1991.

²⁷⁵ Anonymous attorney, quoted in Susan Bibler Coutin, *Nations of Emigrants*, 58.

²⁷⁶ David A. Martin, "Making Asylum Policy: the 1994 Reforms," *Washington Law Review* 70:725 (July 1995), 731-732.

“underserving immigrants” to “deserving immigrants.” In addition, officials worried that a massive influx of deportees, coupled with the loss of remittances, would destabilize Guatemala and El Salvador, just as the two countries were staggering towards peace.²⁷⁷ This led to the passage of Nicaraguan Adjustment and Central American Relief Act (NACARA), which, for a fee, extended renewable one-year work permits to most Guatemalans and Salvadorans who had registered for TPS and *ABC*. This means that most of those who benefited from the *ABC* settlement exist in what Cecilia Menjivar calls a state of “liminal legality.”²⁷⁸ The settlement activists worked so hard to secure kept hundreds of thousands of Central Americans from being deported, but for most it did not translate to refugee status and therefore permanent residency.

Finally, the effects of the *ABC* settlement extended beyond the legal battle of asylum. In May of 1985, *ABC* had begun as a response to felony smuggling charges against 16 clerical and lay workers stemming from government agents’ infiltration church services and prayer meetings. Though the plaintiffs dropped the religious freedom charges, Sanctuary activists were still felt deeply moved by the case’s conclusion. As Hilary Cunningham writes,

Sanctuary workers seized upon the settlement as a vindication of the movement, but more importantly as an indication that progressive religious groups could effect positive change in the political realm. The *ABC* decision asserted that churches had a legitimate right (as well as a responsibility) to influence government policies, and encouraged churches to take governments to task (even to the point of a court suit) for violating moral/religious values.²⁷⁹

Though the Sanctuary Movement, as an organized entity, ceased to exist in the United States by the mid-1990s its spirit lived on. Many former Sanctuary Workers formed “No

²⁷⁷ Coutin, *Nations of Emigrants*, 64

²⁷⁸ Menjivar, “Liminal Legality,” 1013.

²⁷⁹ Cunningham, *God and Caesar on the Rio Grande*, 205.

More Deaths” in 2004, including Sanctuary Movement founder John Fife. No More Deaths provides water, food and medical to migrants crossing the harsh Sonoran Desert.²⁸⁰

In sum, the *ABC* lawsuit had a drastic effect on the Central American Refugee Crisis. First, it dramatically changed training procedures for asylum officers, decreasing the level of the State Department’s influence on asylum decisions. This was important for both the Central Americans named in the lawsuit and all future asylum applicants, regardless of national origin. Second, the *ABC* lawsuit extended another avenue for residency that with Temporary Protected Status, Deferred Extended Departure and the Nicaraguan Adjustment and Central American Relief Act has allowed hundreds of thousands of Central Americans to legally stay in the United States, albeit tenuously. Finally, the settlement “vindicated” the actions taken by the Sanctuary Movement and encouraged activists to keep up their struggle for human rights into the present day.

²⁸⁰ Marta Caminero-Santangelo, “Responding to the Human Costs of US Immigration Policy: No More Deaths and the New Sanctuary Movement,” *Latino Studies* 7:1 (Spring 2009), 113. For more on the growth of progressive religious activism see Helene Slessarev-Jamir, *Prophetic Activism: Progressive Religious Justice Movements in Contemporary America* (New York: New York University Press, 2011).

CHAPTER 4

THE PLATTSBURGH BORDER CRISIS

“Turning back 300 people into a community the size of Buffalo isn’t very significant, but it’s different in a city the size of Plattsburgh.” – Roger White, Spokesman for Canadian Immigration Services, March 7, 1987²⁸¹

“I truly believe that was Plattsburgh’s finest hour.” – Rose M. Pandozy, Clinton County Social Services Commissioner August, 3, 2012²⁸²

4.1 Introduction

Confused and often penniless, hundreds of would-be refugees found themselves unexpectedly trapped along the US-Canada border in early 1987. On February 20th, 1987 Canadian immigration officials barred hundreds of prospective refugees from entering Canada until after their asylum applications had been processed, effectively stranding them in small communities all along the border. This refusal took most refugee claimants from “B-1” countries by surprise. A list of countries composed by the Canadian government, nationals from these countries who applied for asylum at a Canadian port of entry were automatically admitted to Canada while officials reviewed their asylum applications. The rejected refugees’ surprise stemmed from reports on the existence of the list and Canada’s previous reputation as a welcoming country for refugees. Just a few months prior to Canada’s revocation of the B-1 list, the United Nations’ High Commissioner for Refugee Affairs awarded the Canadian people the Fridjof Nansen Medal for outstanding service to refugees, the first time it had been awarded to a people or government.²⁸³ During the 1970s and 1980s nearly 75,000 refugees from Uganda,

²⁸¹ Roger White, Quoted in Rick Lyman, “Stranded Fearful of U.S. Law, Refugees Pin Hopes on Entering Canada,” *Philadelphia Inquirer*, 3/12/1987, A1.

²⁸² Rose Pandozy, interview with author, Plattsburgh, NY, August 3, 2012.

²⁸³ Garcia, *Seeking Refuge*, 122.

Chile, Lebanon and Southeast Asia entered Canada, along with the thousands of Central Americans who arrived between 1982-1987 as a result of the civil wars in their home country. This chapter asks, with such a sterling record in refugee rights, why did Canada suddenly change its mind, what happened to the refugees it rejected, and how did the arrival of hundreds of refugees transform the communities they were stranded in?

I argue throughout this chapter that Canada's change in policy stems from a shifting refugee and immigration climate in Canada brought on by shifts in global refugee flows, administrative inefficiencies in Canada's immigration office, and a public fearful of an "overwhelming" tide of refugees. One of the most notable consequences of this policy was the creation of camps along the US-Canada border. Particularly interesting is what I call the "Plattsburgh Border Crisis" in Plattsburgh, NY. This small town of less than 30,000 people suddenly found itself in the spring of 1987 hosting hundreds of refugees trapped between a border newly sealed by the Canadian government, and the United States' Immigration and Naturalization Service that was threatening to deport them. I use the story of the Plattsburgh Border Crisis and the individuals involved in it to examine the ways that Canada's change in policy transformed and was transformed by the people who lived the Crisis.

4.2 Sources and Historiographical Context

A few scholars have examined the ways that US and Canadian refugee policy shaped each other during the 1980s. Most notable among them is María Cristina García's *Seeking Refuge: Central American Migration to Mexico, the United States, and Canada*. Discussions of US and Canadian asylum policy occasionally briefly mention Canada's closing of the border in February of 1987. In *Transnational Ruptures* and other works

Catherine Nolin discusses how changes in US immigration legislation in 1986 created spaces of “asylum demand” across the US-Canada border.²⁸⁴ Julie Young’s “Seeking Sanctuary in a Border City: Sanctuary Movement(s) across the Canada-US Border” examines the ways that the Sanctuary Movement developed in the US-Canada borderlands during the 1980s and 90s. She pays particular attention to the collaboration between Sanctuary groups in Detroit and Windsor during the 1980s and early 90s.²⁸⁵ She briefly discusses the Canadian government’s decision to close the border to asylees in 1987. Yet, none of these discussions examine in detail the specific effects of that decision on the communities, like Plattsburgh, NY, along the border.

The only book specifically written on the subject is a self-published memoir by Fran Ford, an activist who was highly involved in the care for refugees.²⁸⁶ During my research I was lucky enough to interview Ms. Ford, other activists and a number of government officials. These conversations proved crucial in adding extra context to my research. They also opened up a number of private collections for perusal. The bulk of the sources used in this paper come from local and national newspapers like the *Plattsburgh Press-Republican* and *The Globe and Mail*. I also made extensive use of Canadian governmental archives in my exploration of the reasons for the border closure. Together these sources demonstrate the ways that legislative and policy decisions in Canada and the United States affected each other, the ways that a small community

²⁸⁴ Catherine Nolin, *Transnational Ruptures: Gender and Forced Migration* (New York: Ashgate Publishing Company, 2006), 100-107.

²⁸⁵ Julie Young, “Seeking Sanctuary in a Border City: Sanctuary Movement(s) Across the Canada-US Border,” in *Sanctuary Practices in International Perspectives: Migration, Citizenship and Social Movements*, eds. Randy Lippert and Sean Rehaag, (New York: Routledge Press, 2012), 236-239.

²⁸⁶ Fran Ford, *I Will Remember You: A Testament to Both Tenderness of the Human Heart and the Strength of the Human Soul* (Interlaken, NY: Windswept Press, 1994).

banded together with its resident refugees to meet a rapidly developing humanitarian crisis, and the long lasting effects of this experience.

4.3 Outline

The next three sections trace the creation and consequences of the “Plattsburgh Border Crisis. Section 4.4 (“Closing the Border”) begins with a discussion on Canadian asylum and refugee policy from 1976-1987 and pinpoints the reasons for Canada’s policy changes in February 1987. This section demonstrates the interconnectedness of North American immigration policy and the cascading consequences of each country’s actions. After 4.4’s analysis of how and why the Canadian government reached the decision to close its border, “A Community Responds” (section 4.5) examines the cascading consequences of these federal decisions on immigration and refugee policy on Plattsburgh, New York. The chapter concludes with “A Community Transformed.” This section (4.6) discusses the ways that the “Plattsburgh Border Crisis” temporarily transformed Plattsburgh from a small community of less than 30,000 people to a space of global import where refugees from countries around the world interacted with changes in US immigration law and Canadian refugee policies.

4.4 Closing the Border

The Canadian government’s decision to close its country’s border in February of 1987 emanates from changes in the ways that the country and its citizens perceived and interacted with refugees from around the world. During the 1970s and 1980s Canada resettled a significant number of refugees from countries like Chile and Uganda that Canadian officials selected at its embassies around the world. Seemingly geographically isolated from refugee-generating countries, policy makers did not expect significant

numbers of refugees to arrive on Canada's shores or ports of entry. An increase in air travel and a number of highly publicized boat landings changed this dynamic as Canada suddenly confronted the possibility of welcoming in refugees that it had not pre-screened.

These new arrivals seemed small when compared with the growing number of refugees coming from the United States. While few American citizens sought refugee status in Canada after the Vietnam War, changes in immigration policies prompted unrecognized refugees in the United States to leave the country and seek asylum in Canada. In particular, during the 1980s Guatemalans and Salvadorans fled north through Mexico and across the US-Mexico border to the United States. At first, Canada was largely unaffected by Central American immigrants as the majority of refugees stayed in the United States. The Canadian government chose to offer assistance to what it believed would be a limited number of Central American refugees, including Guatemala and El-Salvador on the B-1 list mentioned above. Those refugees who did arrive at either ports of entry or on its shores were mostly welcomed, and deportation was relatively scarce. Throughout most of the 1980s Canada deserved its reputation as a refugee-welcoming country. For many refugees this is what made the government's seemingly sudden policy changes in 1987 so shocking.

In reality, the Canadian government's change in heart had been building throughout the decade. In their sweeping history of Canadian immigration policy, Ninette Kelley and Michael Trebilcock argue "(t)he Immigration Department's inability to handle the inland-refugee claim backlog is the dominant theme in Canada's immigration history in the 1980s..."²⁸⁷ The backlog they refer to was made up of pending asylum applications

²⁸⁷ Kelley and Trebilcock, *The Making of the Mosaic*, 412.

by prospective refugees in Canada. Many applications remained in limbo for months, if not years, waiting for the claim to be adjudicated. This led, in large part, to the closing of the border in 1987. Three factors exacerbated the backlog in late 1986 and made it into a domestic crisis that required action: an ineffective and time consuming adjudication system, well-publicized abuses to the system, and the passage of the Immigration Reform and Control Act (IRCA) by the United States.

The first factor, administrative inefficiencies, came from an overwhelmed refugee determination system that was never prepared for the high volume of claimants who arrived during the 1980s. In 1976 Canada modernized its immigration system and divided immigrants into four classes, each of which were admitted under different parameters: family, assisted relatives, independents and refugees. An enormous step forward, the new immigration system stopped the racist and capricious system through which Canada had discriminated against non-white migrants.²⁸⁸ Prior to 1976 Canada had no formalized refugee determination system. The refugee class was an attempt by the Liberal government to meet Canada's humanitarian obligations on the world stage. Refugees could gain admission to Canada in three different ways. First, if refugees could prove that they met the "well-founded fear of persecution" standards set out by the 1951 Convention Relating to Refugees,²⁸⁹ he or she could apply at a Canadian consulate abroad for refugee status and be granted shelter in Canada. Second, the Act gave the Canadian government the power to create a temporary "designated class" status that allowed refugees who did not meet the strict criteria set out by the 1951 Convention, but lived in "refugee-like situations," to enter Canada. Finally, the Act created a category for in-land asylum

²⁸⁸ Kelley and Trebilcock, *The Making of the Mosaic*, 396-397.

²⁸⁹ For further discussion of the United Nation's standards for refugee see section 1.2 of the introduction.

proceedings for those who met the standards for refugee status, but were either in Canada or at a US/Canada border crossing.²⁹⁰

The in-land determination system was a two-step process. First the individual who applied for status (applicant) provided a sworn statement to an immigration official. The Refugee Status Advisory Committee (RSAC) received and compiled each immigrant's statement. Made up of immigration officials, a representative from the Department of External Affairs and a variety of individuals appointed by the Immigration minister, the RSAC would read over the sworn statement. From the statement, the RSAC determined whether or not the applicant was an actual refugee according to the 1951 Convention. A positive decision granted the applicant landed-immigration status as long as s/he passed both health and background tests. Applicants who were denied could appeal to the Canadian Federal Court under limited parameters. The lack of an oral presentation outraged advocates for refugees, who claimed that an inanimate transcript could not convey the trauma refugees underwent. It also denied the RSAC an opportunity to ask questions of the applicant to fill in holes in his or her application. Opponents countered that an in-person interview would be too time consuming and create a backlog. This argument proved prescient. Refugee advocates continued to agitate for in-person hearings. In April 1984 the Canadian Supreme Court decided *Singh v. Canada (Minister of Employment and Immigration)*, a landmark refugee case that transformed Canadian asylum policy.²⁹¹

The *Singh v. Canada (Minister of Employment and Immigration)* came from the claims of seven Indian immigrants seeking asylum. Six of the seven plaintiffs were

²⁹⁰ Dirks, *Controversy and Complexity*, 62.

²⁹¹ Dirks, *Controversy and Complexity*, 80-82.

Indian Sikhs who claimed that their membership in the Akali Dali party opened them up to political persecution. The seventh, a woman from Guyana but of Indian ancestry, said that deportation would open her up to racial and religious persecution. The Canadian government denied asylum to all seven. Each of the prospective refugees appealed their decision to the Canadian Federal Court, but did not meet with success. In collaboration with the Canadian Council of Churches and the Federation of Canadian Sikh Societies, the seven took their cases to the Canadian Supreme Court. The Court chose to combine their cases and hear them together. At issue was whether the Immigration Act of 1876 violated the Charter of Rights and Freedoms. Particularly, the Court was interested in whether the Charter granted the seven asylum applicants the right to an oral hearing. It decided that the lack of oral hearings, where officers could talk to and assess asylum applicants' verbal and non-verbal cues, violated the Charter's promise of justice. The decision went even further, finding that the Charter protected all people *present* in Canada, regardless of their citizenship or immigration status. This gave all asylum applicants, not just the seven in the case, the right to an oral hearing.²⁹²

In response, the Canadian Parliament enacted legislation that gave in-person hearings to denied applicants and enlarged the RSAC committee that heard appeals. This failed to solve the backlog of applications. The officials who designed the refugee process in 1976 believed that in-land applications would be the least used form of refugee aid. After all, Canada's only land border was with the United States, considered to be a non-refugee producing nation. The 1980s proved both of these calculations false. In the first five years of the decade more than 17,000 individuals claimed refugee status in

²⁹² Andrew S. Thompson, *In Defence of Principles: NGOs and Human Rights in Canada* (Vancouver: University of British Columbia Press, 2011), 28-30.

Canada, at its borders or at its airports. In 1985 the backlog was at 3,710 applications. The understaffed RSAC could not deal with the high volume of applications.²⁹³ The *Singh* decision exacerbated the problem, as it added time-consuming oral interviews to the process. In spite of a partial amnesty granted to over 20,000 applicants in May 1986 the backlog remained at over 3,500 applications at the end of 1986.²⁹⁴ Both Canadian government officials and the media worried about the development and persistence of the backlog, as it reinforced the image of an overwhelmed and incompetent immigration system. Most importantly, in the minds of many policy makers, the backlog prompted abuse of the system by “bogus refugees,” people who fraudulently applied for refugee status knowing they could live and work in Canada while waiting up to three years for their application to be adjudicated.²⁹⁵

This concern was the second factor in the closing of the border. Notable abusers included the 2,000 Turkish immigrants who arrived in 1986, most making blatantly fraudulent refugee claims. The same was true of the Portuguese, 1,000 of whom arrived in six months claiming to be Jehovah Witnesses and therefore persecuted for their religion.²⁹⁶ The majority of these immigrants arrived in Canada by air. In response, the Canadian government started warning airline carriers that unaccepted asylum applicants would be sent back to their countries of birth at the airlines’ expense.

The most public “abuse” of the system, as it generated copious media attention, was the arrival of a group of immigrants hailing from southern Asia. Fishermen off the coast of Newfoundland rescued 155 Tamils from Sri Lanka on August 11, 1986. The

²⁹³ *Employment and Immigration Canada: Annual Report* (Ottawa, 1984-1985), 69.

²⁹⁴ *Employment and Immigration Canada: Annual Report* (Ottawa, 1984-1985), 48.

²⁹⁵ Dirks, *Controversy and Complexity*, 85.

²⁹⁶ Kelley and Trebilcock, *The Making of the Mosaic*, 414-415.

fishermen found the Tamils in lifeboats, who told their rescuers they fled civil war in Sri Lanka via a freighter that had left directly from the country and had been forced out into lifeboats. Sri Lanka, like Guatemala and El Salvador, was on the “B-1 list,” a list of sixteen countries where atrocities were so widespread that Canada did not deport refugees claiming asylum. Refugee advocates had successfully convinced policy makers that if sent back to these sixteen countries deportees would be in danger of their lives. Not only did the B-1 list bar deportations to the countries on the list, it also automatically entitled the nationals of those countries entrance into Canada and asylum hearings.

As a result, the government gave “minister permits” to the Sri Lankans to stay in the country for one year to wait for the violence to die down in their home country. They were eligible to reapply for the following year.²⁹⁷ This ignited a minor firestorm in the media with charges of “queue jumping” over other immigrants trying to gain status and worries that the welcome of the Tamils would inspire others to follow suit. Yet, the official response to the Tamil refugees was relatively forgiving, even after it emerged that the Sri Lankans had not come directly to Canada. Instead they had stopped in West Germany, which would not accept them, and then proceeded to Canada. For the rest of the year Canadian papers obsessed over this story, first focusing on the dramatic rescue of 155 people huddled in lifeboats by picturesque fishermen. After the Tamils confessed where they came from, the papers hosted a raging debate over whether the Tamils should be allowed to stay in the country or not. Finally, the media closely followed the attempt to prosecute Wolfgang Blindel, the unscrupulous captain of the ship that brought the Tamils to Canada. After charging the Tamils for passage to Canada, Blindel forced them

²⁹⁷ Alexandra Mann, “Refugees Who Arrive by Boat and Canada’s Commitment to the Refugee Convention: A Discursive Analysis” *Refuge* 26:2, 195-196.

off his ship off the coast of Newfoundland into the lifeboats where they were found. By the end of the year newspapers like the *Toronto Star* were publishing articles like “Immigration at Crossroads Over Refugees: 155 Tamils Set Adrift Near Newfoundland May Have Triggered Backlash for Review of Canada’s Policies” and “Canadian Agents in Turkey Probe Record ‘Refugee’ Influx”.²⁹⁸ Thus the arrival of refugees continued to loom large in the public eye for most of 1986 and into 1987. While many Canadians remained concerned about Tamil, Turkish and Portuguese refugees continuing to slowly arrive by sea and by air, these could be construed as isolated events that improved airline policies or the better equipped, albeit still understaffed, Canadian Coast Guard could control. It took one final event to prompt the Canadian government to close its land border with the United States to incoming refugees. This final event was the United States’ passage of the Immigration Reform and Control Act.

The third factor in the Canadian government’s closure of its border came from US legislation. The Immigration Reform and Control Act (IRCA) was the first major overhaul to the US immigration system since the 1965 Immigration and Nationality Act. The product of a growing anti-immigrant groundswell within the country, the IRCA attempted to calm Americans who feared that their country was no longer able to police its borders. In particular, Americans publicly worried over the “illegal” immigration across the US-Mexico border of undocumented immigrants from Latin America. Politicians hoped that IRCA would stem this flow of immigrants. Though originally conceived as a restrictive measure that would enforce American immigration law, the lasting legacy of IRCA was its amnesty provisions that gave approximately three million

²⁹⁸ Patricia Orwen, *Toronto Star* (Hereafter *TS*) October, 8, 1986; *TS*, December 30, 1986.

illegal aliens legal residency.²⁹⁹ The law, as passed, required any amnesty recipients to be able to prove that they had entered the United States prior to January 1, 1982 and maintained continuous residence in the country while being “known to the government.” In addition, they had to prove that they would not become a “public charge.” At the outset the Immigration and Naturalization Service read these restrictive qualifications very narrowly, as “known to the government” meant “known to the INS.”³⁰⁰ Many immigrant and immigrant advocates argued that “known to the government” could mean a wide range of actions, including applying for a drivers license, parking tickets, tax filings etc. The INS’ interpretation of “known to the INS” took on a much more narrow definition as it meant people who had formal dealings with the Immigration and Naturalization Services.

Understandably many aliens were unable to prove that they met these criteria, as they had avoided the INS during their time in the United States and/or not retained the necessary documentation to prove their continuous residency. For undocumented refugees from Central America, the law was particularly concerning. Since many of them had fled quickly, leaving behind their files, they did not have the requisite material. As discussed in chapters 2 and 3 asylum approval rates for Salvadorans and Guatemalans hovered between three and seven percent throughout the decade, prompting most to avoid application in fear that it would result in deportation. Though the Sanctuary Movement offered some protection, most Central Americans sought to live an anonymous life outside of a church or synagogue. Lawyers for the *American Baptist Churches* case had yet to file their first amended complaint and the settlement was years away. Finally,

²⁹⁹ Tichenor, *Dividing Lines*, 262.

³⁰⁰ Tichenor, *Dividing Lines*, 264.

Central Americans needed to be able to support themselves and were fearful of the tough new employer sanctions embedded in the IRCA.

Prior to IRCA it was not a crime to employ illegal aliens, only to “harbor and transport them.” IRCA retained penalties for these crimes but also made employers of undocumented aliens liable for fines, injunction orders and even criminal proceedings with escalating penalties for repeat offenders.³⁰¹ Though the government never enforced the employment sanctions to the extent they were envisioned, the prospect intimidated employers and employees. Thus thousands of undocumented immigrants were either fired or fled their jobs. Undocumented refugees in the United States were faced with a vexing issue. Unwilling and unable to return to their countries of birth, they still needed to support themselves and their families. Thousands turned to Canada as a potential safe haven. Many had heard of Canada’s more liberal asylum policies, and therefore they streamed into the country. Between December 1986, one month after the passage of the IRCA, and February 1987, when Canada closed its borders, over 10,000 would-be refugees crossed the border into Canada.³⁰²

For refugees the three main routes from the United States to Canada went through Seattle to Vancouver, Detroit or Buffalo to Toronto, and Plattsburg to Montreal. Montreal acutely felt the influx of refugees. Its airport was already a primary destination for Turkish and Portuguese refugee applicants. Local and national newspapers ran headlines such as “Central Americans Pour Into Canada Seeking New Homes,” and “Quebec Feels

³⁰¹ Steven M. Kaplan, “Employer Sanctions Provisions of IRCA: Deterrence or Discrimination,” *Georgetown Immigration Law Journal* 6:545 (1992), 548.

³⁰² Garcia, *Seeking Refuge*, 131.

Budget Pinch As Refugees Keep Arriving”³⁰³ The *Globe and Mail* cited a government estimate that over 1,100 new refugees had arrived during a 10-day span in late December and early January.³⁰⁴ The *Toronto Star* added another government estimate: over 600 of the year’s recent arrivals were Central Americans who had crossed the border by bus from the United States to Quebec.³⁰⁵ This only added to the fears of an overwhelmed refugee-determination system already established by the Tamil, Turkish, and Portuguese controversies.

Canadian newspapers continued to publish refugee related articles with inflammatory headlines like “More than 700 Ask for Refugee Status in Three Day Rush,” and “Canadians Fear Asian Influx, Minister Says.”³⁰⁶ Op-eds, letters to the editor and radio shows pled with the government to “do something” about the assumed refugee flood as Canadians wondered what to do about the “Bus People” showing up at the border.³⁰⁷ Anti-refugee feeling manifested itself in small anti-refugee protest in downtown Montreal and a number of bomb threats against a hotel temporarily housing over 500 refugee applicants in Montreal.³⁰⁸ Pressure came from other minority groups as well. On January 30th Peguis First Nation Chief Louis Stevenson accused Canada of neglecting people at home, “We feel betrayed when Canada tells us there is not assistance

³⁰³ “Central Americans Pour Into Canada Seeking New Homes” *TS* January 14, 1987; Canadian Press, “Quebec Feels Budget Pinch as Refugees Keep Arriving” *Globe and Mail* (Hereafter *GAM*) December 22, 1986.

³⁰⁴ Victor Malarek, “Flood of Arrivals Strains Province’s Programs,” *GAM*, January 6, 1987.

³⁰⁵ Arch MacKenzie, “U.S. Refugee Crackdown Boosts Exodus to Canada,” *TS*, January 15, 1987.

³⁰⁶ Victor Malarek, *GAM*, December 30, 1986; Francois Shalom, *GAM*, December 31, 1986;

³⁰⁷ “Refugees in Waiting,” Graham Fraser, “Restrictions on Refugee Entry, Appeals Feared,” *GAM* January 7, 1987.

³⁰⁸ “Keep Refugees Out: Protesters,” *Montreal Gazette* (Hereafter *MG*), January 10, 1987.

to resolve our distressing situation, yet is prepared to pour millions of dollars into other countries and give royal treatment to refugees.”³⁰⁹

The government listened to these concerns. On January 15th Benoit Bouchard, the Minister for Employment and Immigration, told reporters that “The law allows the minister, while waiting to find the personnel necessary to deal with these cases quickly, to leave those people on the other side of the border. Are we going to use this method? It is too soon to say.”³¹⁰ A month later Gerry Weiner, the Minister of State for Immigration, spoke further about the need to adjust Canadian border policies to new realities that pushed applicants into Canada. He promised changes that will guarantee “the orderly control of refugee claimants through the country.”³¹¹ On February 20th the government released its changes in refugee policy. They included visa transit requirements and ended the “minister’s permits” system. In addition, the government abolished the “B-1 List,” stopping immediate entry across the border for Central Americans after nearly 3,000 Salvadorans and 600 Guatemalans had crossed since the start of the year.³¹²

A combination of an overwhelmed refugee determination system, media coverage of “foreign refugees” arriving on Canadian shores and a sudden influx of refugees brought on by US immigration policy ended Canada’s policy of allowing Guatemalans, Salvadorans, Sri Lankans and nationals from thirteen other countries immediate entrance into Canada. Instead, the hundreds of refugees streaming weekly from the United States to Canada found themselves halted at the line between the two countries. At crossing

³⁰⁹ “ACROSS CANADA: Refugees ‘treated better than natives,’” *GAM*, January 31, 1987.

³¹⁰ Quoted in “Bouchard Considering Change to Make Refugees Wait in U.S.” *GAM*, 1/16/1987

³¹¹ Quoted in Alexandra Radkewycz, “Weiner Decries Attitude of Many Toward Refugee Status,” *GAM*, February 16, 1987. Claimants,” *GAM*, February 16, 1987.

³¹² Victor Malarek, “Ottawa Acts to Stop Torrent of Refugees,” *GAM*, February 20, 1987.

stations along the border Canadian officials interviewed, processed, and then sent prospective refugees back to the United States to wait for a hearing date four to six weeks in the future. For those living in the United States without legal permission this meant being sent back into the arms of the US Border Patrol that was legally bound to deport them. Plattsburgh, NY, 20 miles south of the main border crossing to Montreal, QC, was on the verge of transforming from a sleepy community near the border to a makeshift refugee camp.

4.5 A Community Responds

In late February 1987 at the Champlain border crossing, just 20 miles north of Plattsburgh, NY and 38 miles south of Montreal, Greg Ledges, Supervisor and Immigration Inspector for the United States' Immigration and Naturalization Service had heard Canada was about to close the border but was unsure of the consequences. Multiple Greyhound busses passed through the border checkpoint every day on their way to Montreal. For weeks they were carrying prospective refugees on their way to apply for asylum in Canada. Going north the busses never concerned him or his colleagues. Their jobs were to monitor those who entered the United States, not those leaving it. Most of those who entered the United States were quickly waved by as they possessed the necessary forms of identification and were either Canadian or U.S. citizens. Occasionally nationals from countries besides the United States or Canada would cross the border, some legally and others illegally. Yet, this was relatively rare compared to normal U.S./Canada traffic.³¹³

³¹³ Greg Ledges, telephone interview with author, September 5, 2012.

This changed dramatically following Minister Bouchard's announcement on Friday February 20, 1987. When prospective refugees tried to enter Canada without the proper paperwork Canadian immigration officials stopped them at the border. After an interview and general processing, refugees were sent back to the United States to wait for their hearing. Though the exact number turned away by Canadian officials at the Champlain border crossing over the weekend is unknown, one refugee relief activist in Plattsburgh (where most of those turned away at the Champlain border crossing went) estimated it at over 200.³¹⁴ At the border refugees met with US immigration officers who initiated another round of interviews and processing designed to determine their legal status. If refugees still had documents like a visa or temporary permit authorizing them to remain in the United States INS officers immediately released them. Those without legal status were processed for deportation, and assigned either voluntary or involuntary departure. Migrants usually received involuntary departure if they had a criminal record or an outstanding deportation order. This procedure highlighted some of Canadian activists' biggest fears concerning the change in policy.

Canadian activists charged that refugees forced to wait in the United States by Canada's policy change were in danger of deportation back to their home country. When first announcing the change in policy, Bouchard told both the press and members of the opposite party that migrants would be safe from deportation, but a few days later, after a letter from the head of the INS was made public, Bouchard was forced to walk back his comments. The INS head said that if someone was eligible for deportation he or she

³¹⁴ Jack Downs, "Refused by Canada, Aliens Seek Shelter," *Plattsburgh Press Republican* (Hereafter *PPR*), February 23, 1987.

could still be deported, but local officials could use their discretion on when to set deportation dates if someone was eligible for voluntary departure.³¹⁵

The US Border Patrol sent involuntary deportees to prison to await transit back to their home countries, while those eligible for voluntary deportation were given papers and told to leave the United States by a certain date. As Mr. Ledges remembered it, the entire process from crossing the border into Canada through Canadian processing and U.S. processing, to either release or imprisonment, could take longer than 10 hours.³¹⁶ After being processed migrants, were no longer undocumented and this meant that it was no longer illegal under U.S. immigration law to provide them assistance. For the churches, organizations, government agencies and volunteers in Plattsburgh who offered prospective refugees protection this was an incredibly important distinction as the recently passed Immigration Reform and Control Act, which most of the refugees were fleeing, had made it a penalty to “conceal, harbor, or shield from protection” undocumented immigrants.³¹⁷

The village of Champlain, a small cluster of houses and businesses just south of the Canadian/US border, had no place for the rejected refugees to stay so those who did not go to jail were given a bus ride back to Plattsburgh, NY, the nearest US town to Champlain, As law enforcement officials wanted to conserve jail space for dangerous criminals, most of the rejected refugees were released.³¹⁸ While Plattsburgh was larger than Champlain, it was still a small town of less than 30,000 people. Its economic

³¹⁵ Victor Malarek, “Refugee Claimants May Face Deportation,” *GAM*, February 24, 1987.

³¹⁶ Greg Ledges, telephone interview with author, September 5, 2012.

³¹⁷ See Immigration Reform and Control Act Section 112 (c).

³¹⁸ For the purposes of this chapter I treat the town of Plattsburgh and the city of Plattsburgh as one entity. While they have separate governing bodies, they collaborated together and with Clinton County to provide the services discussed here.

mainstays came from the Plattsburgh Air Force Base (part of the Strategic Air Command) and one of the State University of New York's campuses (SUNY Plattsburgh). In addition it was and remains the closest US city of any size to Montreal. Canadians in search of US goods or services often crossed the border at Champlain to shop in Plattsburgh. In turn, Plattsburgh residents often took trips north to Montreal for a "big city" experience or to watch the Major League Baseball's Montreal Expos. Plattsburgh was, in many ways, a quintessential border town where Canadians and Americans interacted distinctly. Yet, because the border was not militarized, the border did not loom large in the city's imagination. Plattsburgh saw itself as a decidedly "All-American" city, and the residents prided themselves on the hospitality of their community, a virtue that the "Border Crisis" tested tremendously in early 1987.

For the first few months after IRCA's passage residents had seen the number of immigrants and refugees passing through the town increase, but the numbers remained small and their stay very short. Though Plattsburgh did have some experience with refugees and was considerably larger than Champlain, it was ill prepared for what was to come. On February 21, 1987 refugees began to arrive in Plattsburgh in numbers the town had never seen before. Instead of proceeding through the town and across the border, refugees were trapped with nowhere to go. Within days the small border town of Plattsburgh transformed from a sleepy community to the meeting place of a host of global networks.

The first to respond was the Plattsburgh Community Crisis Center. Founded in 1970, the Plattsburgh Community Crisis Center, headed by Brian Smith, offered assistance to homeless, impoverished and mentally-ill Plattsburgh residents. It proved to

be a crucial part of Plattsburgh's refugee relief effort. As the Border Crisis evolved other organizations involved included the Salvation Army, the Red Cross, Clinton County Social Services, Catholic Charities and the Ecumenical Food Shelf. Within the first week Rose Pandozy, the Clinton County Social Services Commissioner, formed a committee with the department heads of the various services. Yet, on the Crisis' first few days the Plattsburgh Community Crisis Center took the lead. On February 21st and 22nd, Greyhound workers told Brian Smith that refugees were stranded at the bus station. The Center swung into action, housing the refugees at local motel rooms and providing them with food. On Monday the 23rd the *Plattsburgh Press-Republican*, the local newspaper, printed a front-page story about the refugees' arrival, announcing the onset of the Crisis and the actions taken up to that point. It was quickly becoming clear that the Center did not have the resources for the emerging crisis. Most importantly, it did not have the space to house or money to provide hotels to incoming refugees. Plattsburgh community leaders decided to set up an emergency shelter at the Salvation Army to both provide more space for refugees and to conserve fast dwindling resources.³¹⁹

The new shelter at the Salvation Army had the capacity to house approximately 100 refugees. While that was enough for the first few days of the crisis, it would soon become too small. Brian Smith, Rose Pandozy and other leaders of the refugee relief effort began looking for other options. On the 27th they found a temporary solution at a local building called "The Office," which was able to house 90 more. While the building provided a place for people to sleep, it lacked beds, showers or a kitchen. Thus volunteers

³¹⁹ Jack Downs, "Refused by Canada," *PPR*, February 23, 1987.

were forced to transport sheltered refugees back and forth for showers and bring food. Clearly, this was not a permanent solution. Smith and Pandozy kept looking.³²⁰

Both volunteers and local government officials began to publicly express anger over the lack of state and federal support. One unnamed charity head complained in the local newspaper: “It’s a sad thing. The government created this problem, but they’re dumping all the responsibility on the poor people of a small community.”³²¹ Legislation and policy formulated in Ottawa and Washington, DC created a crisis along the border, as nation-less refugees waited for admission into Canada, and the governments responsible were taking no actions to alleviate the issue. As the chapter’s opening quotation demonstrates, Canadian officials recognized the strain that de facto refugee camps placed on small communities, but they refused to change their minds regarding policy that initiated the crisis, the revocation of the B-1 list.³²²

For refugees the Plattsburgh shelter offered a liminal space as they waited to transition from illegal immigrants in the United States to welcomed refugees in Canada. The same day the article complaining of a lack of support appeared, the National Guard, as if by magic, offered its assistance in temporarily housing the refugees. In this first sign of outside support, the National Guard volunteered a local armory as a shelter. Refugees could only stay in the armory while the unit could guarantee the site’s security. Therefore, when the unit left for military maneuvers in two weeks the community had to find alternative housing. Though they were grateful for help from the state, the refugee relief leaders were desperate to secure permanent assistance. To make matters worse, the

³²⁰ Mitch Rosenquist, “Second Refugee Shelter Opens,” *PPR*, February 27, 1987.

³²¹ Tom Bergin, “Anger Reigns Over Fugitive Aid,” *PPR*, February 27, 1987.

³²² Roger White, Quoted in Rick Lyman, “Stranded Fearful of U.S. Law, Refugees Pin Hopes on Entering Canada,” *Philadelphia Inquirer*, March 12, 1987, A1.

leaders had no way of ascertaining the scope of the crisis. As William Donnell, the coordinator of Plattsburgh's Office of Emergency Preparedness, explained, "(w)eeks from now we could have 200 or even 300 (refugees). We have to stay prepared."³²³

Three days later the National Guard at Saranac Lake, a village over 50 miles away in neighboring Franklin County, extended an invitation for refugees to stay at its armory. After long deliberation, the relief leaders rejected its offer. They looked at the facilities at the Saranac Lake armory, as well as its location and deemed them unsuitable. The armory did not have sufficient facilities to safely house refugees. In addition, the armory was far away from the Red Cross and Salvation Army, making it a logistical nightmare to provide food and care for the refugees housed there.³²⁴

On March 4th leaders finally secured a semi-permanent solution that lasted through May. The Association for Retarded Children (ARC) offered its new building just west of the city in the county's Air Industrial Park as a shelter, saying that it could stay in its former offices for the next few months. The 30,000 square foot building could house over 150 refugees and had facilities for showers and cooking. Yet, it was little more than an empty shell. The cavernous main room needed to be divided into separate spaces for refugees and their families. The activists decided to set up "privacy cubicles" throughout the main room. Three walls with a sheet in the front, these privacy cubicles did not mean too much, but at least they offered some relief from the massive room. In addition, the refugee relief needed to build showers, additional toilets, washers and dryers. While imperfect, the ARC meant an end to the shuttling of refugees back and forth and a more manageable situation. Yet, the new improvements came at a cost. All in all, they came to

³²³ Jack Downs, "National Guard Armory to House More Refugees," *PPR*, March 2, 1987.

³²⁴ Tom Bergis, "Saranac Lake Eyed for Refugees," *PPR*, March 3, 1987.

approximately \$60,000, a significant sum of money that the county social services organizations did not have. Rose Pandozy, who by this time had taken the lead in the refugee relief effort, believed that she could secure assistance from the state.³²⁵

On March 5th Pandozy traveled down to Albany to meet with the New York's Department of Social Services and asked for help. The commissioner told her there was no assistance available. Pandozy asked for the decision in writing so she could share it with the local, state and international reporters who were already starting to come to Plattsburgh. Though Pandozy never released a statement to the media, this threat had the desired effect. On the next day New York State Governor Mario Cuomo released \$177,000 in emergency funds to Clinton County to help provide for the refugees.³²⁶

Two days later the refugees, with the help of the National Guard and Salvation Army, moved into the ARC shelter. For the next three months the ARC building served as the sole shelter for the refugees in Plattsburgh awaiting their hearing. Three days before closing Joachim Henkel, the head of the liaison office for the United Nations High Commissioner for Refugees, toured the ARC shelter. While there he expressed his admiration of the community's response to the refugee crisis and drew attention to the ways that the Plattsburgh Border Crisis demonstrated the ways that refugee crises have impacts on communities worldwide.³²⁷ On June 10th the housing situation for the refugee relief effort went full circle. The ARC moved into its new building, and most refugees returned to local motels. A few temporarily moved in with host families who housed the refugees while awaiting their hearing. The closure of the shelter did not mean the end to

³²⁵ Bruce Rowland, "Aliens to Go to ARC Building," *PPR*, March 5, 1987.

³²⁶ Tom Bergin, "\$177,000 in State Aid for Refugee Effort," *PPR*, March 5, 1987.; Rose Pandozy, interview with author, August 3, 2012.

³²⁷ Tom Bergin, "U.N. Official Documents Plight of Refugees," *PPR*: June 9, 1987.

Plattsburgh Border Crisis. Refugees on their way to Canada continue to enter Plattsburgh to this day, but at a lower rate than during those first few months after the border's closure. The remainder of this chapter focuses on that three-month period when Plattsburgh operated a virtual refugee camp. It is fascinating in many ways, most of all because of the interactions between three groups: refugees, volunteers and local government officials. Due in large part to their positions, each of the three groups had varying, though overlapping, views of the ways that the community should respond to the Plattsburgh Border Crisis.

The three leading government/semi-government officials, Pandozy, Brian Smith, and Captain Jack Holcomb of the Salvation Army, saw the shelter as the answer to a humanitarian crisis that needed support. Largely bereft of assistance from state or federal authorities, Pandozy and Smith took the lead in determining how to pay for shelter, food and medical assistance for an unknown number of refugees. It was not an easy task, as the number of refugees fluctuated wildly over the first few months, as did their medical needs. At one point Captain Jack Holcomb was predicting an influx of 500 refugees.³²⁸ Nonetheless, Smith and Pandozy found the funds through a skillful use of political persuasion (see Pandozy's trip to Albany above), cooperation with local charities and fundraising.

As the leader of the local Salvation Army chapter, Holcomb was in charge of the day-to-day operations of the shelter. Holcomb set the rules and procedures for the shelter and gave broad outlines of the expectations for behavior. Notable among them was his ban on alcohol. One of the most quoted figures in the media reports concerning the relief

³²⁸ Tom Bergin, "Flow of refugees eases; shelter at capacity," *PPR*, February 26, 1987.

effort, some volunteers expressed unhappiness with his brusque demeanor and supposed tendency to spend more time with reporters than at the shelter.³²⁹ Holcomb was, without a doubt, a formidable presence. A number of my interviewees recalled an incident at the shelter in late May when Holcomb called the entire building for a meeting. He sternly excoriated unnamed individuals for presence of alcohol in the shelter, general rowdiness and invasions of privacy. The most memorable part was when he halted his address to search a young man's cubicle, where Holcomb found a quart of liquor. In stony silence he marched across the main room into the men's bathroom where he poured the alcohol into the drain. He reemerged and dramatically threw the empty bottle into the trash.³³⁰ Following the closure of the shelter in June 1987, Holcomb's role in the refugee relief effort shrunk as he was no longer responsible for the day-to-day care of the refugees. A little over a year later Holcomb fled Plattsburgh due to a sexual abuse complaint filed against him in August 1988. The complaint charged Holcomb with rape, sodomy and sexual abuse of a young girl under the age of 14. He remained at-large for months until he turned himself in on January 16, 1989.³³¹ One month later he pleaded guilty to second-degree rape, and in April was sentenced to 1-3 years in prison. Holcomb's guilty plea, which resulted in a lightened sentence, meant that the victim was never forced to publicly testify or reveal her identity.³³² Holcomb's decreased involvement in the refugee relief effort probably meant that the victim was not a refugee, but his crimes likely negatively effected Salvation Army fundraising during the months he was at-large.

³²⁹ Ford, *I Will Remember*, 64.

³³⁰ Ford, *I Will Remember*, 70-71.

³³¹ Mitch Rosenquist, "Salvation Army Leader Answers Sex Charges," *PPR* January 29, 1989.

³³² Sue Botsford, "Holcomb Sentenced on Rape Charge," *PPR* April 15, 1989; Mitch Rosenquist, "Prosecutor Walks Fine Line," *PPR* April 30, 1989.

While government officials oversaw the setup and then overall operation of the shelter, Plattsburgh residents, the group that made up the largest group of volunteers, tried to understand exactly who the refugees were and where they came from.³³³ During the months under examination here the largest group of refugees came from Central America, fleeing recent changes in U.S. immigration law and caught unawares of the changes in Canadian asylum policy. Individuals from around the globe, South America, South Asia and East Africa, soon joined them. All of them hoped for asylum in Canada. Refugees arrived in varying socio-economic circumstances, some able to provide for themselves, while others came with little more than the clothes on their back.³³⁴ Language skills varied widely. While many of the refugees were fluent in English, others only spoke Spanish, French, Arabic, Tamil, Amharic or other languages. Similarly, many refugees entered the shelter in desperate need of medical attention. One Salvadoran woman arrived in Plattsburgh six months pregnant. Other medical issues included lice, malnutrition, pneumonia and ulcers.³³⁵ The one thing in common for those arriving in the first few weeks was that they did not expect to be in Plattsburgh. An invisible line, manned by Canadian immigration officials, kept them in the United States. Waiting at the shelter for their applications to be adjudicated they were forced to negotiate a space that had been created in great haste on a shoestring budget. Frustrated, confused and desperate, refugees nonetheless began to work with volunteers and government officials to create temporary routines in their new lives.

³³³ Joe LoTempio, "Refugees Find Comfort in Shared Situations," *PPR*, February 23, 1987.

³³⁴ Ford, *I Will Remember*, 12. Darlene Pavone, the relief effort's lead nurse for much of the spring of 1987 recalls that one woman arrived with intense internal bleeding due to a botched medical operation that prevented her from menstruating. Darlene Pavone, telephone interview with author, August, 8, 2012.

³³⁵ Mitch Rosenquist, "Refugees Fear Persecution," *PPR* March 3, 1987.

These new routines included card games, sports, cooking and cleaning. Cooking presented a unique challenge due to the diversity of refugees as many had dietary restrictions or preferences that did not match. Yet, it provided a diversion from the monotony of sitting around the shelter. Three of the most notable activities refugees undertook were security patrols, putting on special events and language classes. As the shelter population grew to over 150, security became a concern. Initially volunteers from the Salvation Army and local community did patrols through the shelter, but the refugees quickly took control of this themselves.³³⁶ One Salvadoran, “Oscar,” took a lead role in the organization of security patrols. Well respected by the other refugees, Oscar came from a middle class background and had extensive business experience, as well as a Master’s from Michigan State. For the month that he lived in the shelter Oscar drafted the lists for the work crews and help set up security patrols.³³⁷

Refugees also worked with volunteers to organize a series of special events and classes. These included talent shows, picnics and a Mother’s Day celebration. At the conclusion of a talent show on March 19th the refugees sang “God Bless America,” an interesting choice given that they were being forced out of the United States.³³⁸ While most of the refugees in Plattsburgh were bound for Francophone Quebec, few knew how to speak French. Walid Hourri, a Lebanese refugee, taught French to those unfamiliar with what, to many refugees, was an exotic language.³³⁹

³³⁶ Ford, *I Will Remember*, 34.

³³⁷ Ford, *I Will Remember* 52. “Oscar” made a strong impression on most of the Plattsburgh volunteers I interviewed.

³³⁸ Tom Foster, “Waiting Refugees Kept Busy with Activities, Learning,” *The Syracuse Post-Standard*, March 26, 1987.

³³⁹ James Goodman, “In an emergency refugee shelter,” *USA Today*, April 20, 1987.

In addition to the chores, cooking, classes, games and performances, many refugees gave interviews to the press. Newspaper reporters and television crews from across the United States, Canada and the rest of the world discovered the charm of this small part of the world and found themselves fascinated by both Plattsburgh residents and the refugees who were forced to temporarily call it home. Immediately after the crisis began, the *Montreal Gazette* published a front-page story called “Dreams of new life shattered at border,” complete with a picture of two young Salvadorans and the subtitle: “My life is in danger and I can’t go back.”³⁴⁰ The *Gazette* continued its coverage and was joined by other national and international outlets including the *Globe and Mail*, *Toronto Star*, *New York Times* and *Philadelphia Inquirer*, as well as distributors like the Associated Press and United Press International. Through games, chores, talent shows and interviews refugees transformed the space from a shelter born out of necessity into a sanctuary and a site of political action.

While refugees provided stirring images and heartbreaking quotes, reporters were also interested in the plain-speaking volunteers who staffed the refugee relief effort. They had good reason to be. One of the most fascinating parts of the Plattsburgh border crisis is the way that a relatively conservative rural community responded to an unforeseen, and, for many, unwelcome, emergency. At first the unknown aspects of the crisis intimidated many Plattsburgh and Clinton County residents, even those who agreed to volunteer. Fran Ford, author of a memoir of the crisis, remembers on her first day of volunteering taking two refugees to the doctor’s office, “I took a seat across the room, the farthest chair I could find. Why? Was I embarrassed to be seen with these women that

³⁴⁰ Karen Seidman, “Dreams of new life shattered at border,” *MG*, February 23, 1987.

were different in language and appearance? Yes I was!”³⁴¹ Within a few weeks Mrs. Ford would become one of the most important volunteers in the refugee relief effort. She began by answering phones, but quickly transformed into a “jack-of-all trades,” running errands with refugees, counseling deeply scarred women who feared for their families’ lives, inviting refugees over for dinner, and serving as a go-between for volunteers and government officials.³⁴² Other Plattsburgh residents, like Mike Bressard, answered the call as well. The owner of a muffler shop, Bressard donated his time and money, while other local businesses donated food and clothing.³⁴³

The academic community got involved as well. Professors from SUNY Plattsburgh offered translation and paralegal services. A variety of Plattsburgh undergraduates, members of the Alpha Phi Omega fraternity, as well as high school Model U.N. students, raised money for the refugees. For some Plattsburgh undergraduates this represented a unique opportunity as they were participating in a Model Organization of the American States (OAS) and had just been chosen to represent El Salvador. The faculty leader of the Model OAS, Stuart Voss, was one of the paralegals for the refugee relief effort. At the shelter students could meet and interact with Salvadorans to supplement their learning.³⁴⁴ For volunteers the shelter was a transformative space that opened their eyes to a wider world, proved the hospitality of Plattsburgh and created new opportunities for learning.

³⁴¹ Ford, *I Will Remember*, 15.

³⁴² Helen G. McLeod, “‘I Will Remember You.’ Refugee book now in print,” *PPR* August 21, 1994. Every Plattsburgh volunteer and government official I interviewed spoke highly of Mrs. Ford and her contributions to the Refugee Relief Effort.

³⁴³ Rick Lyman, “Stranded, Fearful of U.S. Law, Refugees Pin Hopes on Entering Canada,” *Philadelphia Inquirer* 3/7/1987; Fran Ford, interview with author, Plattsburgh, NY, August 2, 2012.

³⁴⁴ Stuart Voss, telephone interview with author, August 24, 2012; Steve Manor, “Model U.N. Students Collect for Refugees,” *PPR*, March, 6, 1987.

In addition, volunteers from outside the immediate community responded to the crisis. Over the first weekend of the crisis residents of Hemmingford, Quebec, a little village less than 5 miles north of the border, drove a Volkswagen bus stuffed with food and clothing down to the Crisis Center. Disagreeing with their government's policy change, they continued their support the following weekend, driving down to provide entertainment and religious services.³⁴⁵ The interviews and media coverage of the refugees and volunteers and Plattsburgh touched concerned citizens across the United States. They took to the media, writing letters to the editor and publishing articles in an attempt to raise money and awareness for the Plattsburgh volunteer groups. Nancy Murray, president of the Syracuse Interreligious Council, issued an explicitly religious appeal for financial support, asserting that like the Israelites wandering in the desert after fleeing Egypt, "today's strangers in a foreign land need our manna to survive."³⁴⁶ Carolyn Patty Blum, one of the lawyers in the *ABC* case covered in chapter 3, wrote an opinion piece in the *Christian Science Monitor*, that tries to draw attention to the crisis along the border. Excoriating the United States' treatment of Central American refugees, she praises Canada's treatment of refugees throughout the decade but expresses worry about the consequences of recent changes.³⁴⁷ Articles like these, along with the combined efforts of volunteers and refugees raised the profile of the crisis. Donations began streaming in; first they came from around the region and then the country.

Of course not all responses in the community or around the country to the crisis were positive. Various citizens voiced concerns similar to those in Canada that had led to

³⁴⁵ Joe LoTempio, "State to Pay for Refugee Care," *PPR*, February 25, 1987.

³⁴⁶ Nancy S. Murray, "Strangers in a Strange Land," *The Syracuse Post-Standard*, March 17, 1987.

³⁴⁷ Carolyn Patty Blum, "Canada, Closing the Door to Central American Refugees," *Christian Science Monitor*, April 16, 1987.

the closing of the border. Some members of the Plattsburgh community questioned the wisdom of spending so many resources on refugees while Plattsburgh residents went hungry and homeless. One letter to the editor claimed that,“(t)he refugee problem could easily be solved by taking the money for one day’s maintenance and buying each refugee who can’t afford one a one-way ticket to Albany along with a map (to the) State Campus and the South Mall.”³⁴⁸ Other letters echoed the sentiment. Not only was the crisis draining the resources of county and city social services, it also became the focus of volunteer activity at the expense of other volunteer-driven services. Nonetheless, future events proved that though the refugee relief effort came with some initial costs, it came with some unexpected benefits.

4.6 A Community Transformed

The most tangible benefit came a little more than seven months after the letter to the editor quoted above. Tiny Clinton County secured a \$1 million grant from New York State’s Homeless and Housing Assistance Program. It was the third largest grant for the program, only behind the much more populated regions of New York City and Westchester County. Brian Smith and Rose Pandozy, the authors of the grant proposal, credited in large part Plattsburgh’s response to the refugee crisis to their acquisition of the grant.³⁴⁹ Three years later Smith, Pandozy and other community leaders dedicated the Evergreen Townhouse Community, an innovative new low-income housing complex built with the grant secured in 1987. The amount had been increased by \$700,000 to make, in the words of State Social Services Commissioner Cesar A. Perales, “a little

³⁴⁸ “Speak Out: Aliens,” *PPR*, March 6, 1987.

³⁴⁹ Tom Bergin, “\$1 Million Grant to Build Welfare Housing,” *PPR*, October 23, 1987; Rose Pandozy, author’s interview, Plattsburgh, NY, August 2, 2012.

community of its own.”³⁵⁰ The Evergreen Townhouse Community remains a crucial part of Clinton County’s and Plattsburgh’s social services.

Other, less tangible, effects on the community included a broadening of horizons by area churches and residents who had raised funds, clothing and food during the relief effort. Prior to the Border Crisis people of the community thought of themselves as friendly and neighborly, but the refugee relief effort was demonstrable proof of those virtues to both themselves and the world. Today the First Presbyterian Church in Plattsburgh has extensive outreach programs both at home and abroad. Mission of Hope, a charity centered in Plattsburgh, makes yearly visits to Nicaragua for both humanitarian and missionary work.³⁵¹

In this chapter’s second opening quotation, Rose Pandozy calls the response to the Plattsburgh Border Crisis the community’s “finest hour.”³⁵² Various members of the community, when interviewed, remember the experience fondly. They believed that the willingness of the town’s and county’s various social service organizations to band together to meet a staggering crisis proved the area’s hospitality.

For many of the volunteers, the most important effect the crisis had on the community was the friendships community residents formed with each other and with refugees. They were formed while spending long hours at the shelter, grieving the fate of family members, laughing over the inanities of everyday life and inviting refugees over for dinner. These friendships still last today. While conducting interviews in Plattsburgh, many of the activists encouraged me to talk to each other. They mentioned recent dinners

³⁵⁰ Quoted in Joe LoTempio “Evergreen Townhouse Community Dedicated,” *PPR*, June, 5, 1990.

³⁵¹ Stuart Voss, telephone interview with author, August 24, 2012.

³⁵² Roger White, Quoted in Rick Lyman, “Stranded Fearful of U.S. Law,” *Philadelphia Inquirer*, March 12, 1987, A1.

or coffee meetings between activists turned into old friends. Each activist interviewed remember her or his time fondly.³⁵³

A little over a year after the closing of the shelter many of the refugees, volunteers, and local government officials reunited in Montreal for a picnic. Organized by Fran Ford, Margot Zeglis and the Kiwanis Clubs of Plattsburgh and Montreal, the August 21, 1988 picnic was, for many refugees and volunteers, the first they had seen of each other since Canada's acceptance of each refugee's application. The day was filled with song, laughter, feasting and a special visit from Santa Claus. Ron Wood, a Plattsburgh volunteer, reprised his role as St. Nicholas, which he had played at a party for the refugees last Christmas.³⁵⁴

That picnic in September of 1988 was not the end of Plattsburgh's interactions with refugees. To this day, Plattsburgh remains a way station for prospective refugees intent on applying for asylum in Canada. Yet, the picnic is a powerful reminder that the crisis was, in many ways, overcome by the generosity of and cooperation between refugees, volunteers and local government officials. While they did not end the refugee flow or change Canadian policy, these three groups found a way to transform a desperate situation into a negotiable one. None of the refugees who came knocking at Plattsburgh's door starved or went homeless. The "tide of refugees" never overwhelmed Plattsburgh's social services. Rather, it helped lead to the construction of top-of-the line low-income

³⁵³ Pandozy, interview with author, August 2, 2012; Fran Ford, interview with author, August 2, 2012; Stuart Voss, telephone interview with author, August 24, 2012; Margo Zeglis, interview with author, tape recording, Plattsburgh, NY, August 3, 2012.

³⁵⁴ Ford, *I Will Remember*, 139-140; Cathy Supple, "Reunion held for former refugees and volunteers," *North Country Catholic*, September 7, 1988.

housing. And while some of the citizens were unsure of the aid given to refugees, in the end the experience became one of civic pride that the community still remembers fondly.

The Plattsburgh Border Crisis also temporarily transformed Plattsburgh, as a space, into the hub of a host of global networks. Civil wars in Central America, Southeast Asia, Afghanistan and Africa pushed refugees out of local camps and into western countries. Policy and legislation in Canada and the United States pushed refugees out of their homes across the United States and into a collection of border zones in Seattle, Detroit, Buffalo and Plattsburgh where they waited for the Canadian government to decide their fate. As these border zones struggled to deal with the ramifications of these changes brought on by an ineffective refugee adjudication system, repeated abuses of the asylum system and IRCA, the Canadian government tabled its new proposal for refugee adjudication, C-55, supplemented by an anti-smuggling bill (C-84) in early summer of 1987.

Another landing of South Asians, and the resultant histrionics of the Canadian press, helped push these new bills. This time 174 Tamils arrived just off the coast of Nova Scotia, triggering another panic among Canadians in favor of restrictive immigration policies. Continuing fears about the arrival of new boats from foreign lands and rushes of refugees from the United States, coupled with extensive protests by Canadian refugee advocates, kept the asylum issue an important one in Canadian politics. Noteworthy among Bill C-55's statutes was the "safe third country" provision, which barred applicants from approval if they had already passed through what was deemed a safe third country. Refugee advocates feared that for foreign policy reasons the United States would be considered a safe third country, thereby making the vast majority of

Salvadoran applicants ineligible. Though Bills C-55 and C-84 passed in July 1988, the Canadian government never compiled the safe third country list, thus sparing Canadian officials the embarrassment of excluding the United States.³⁵⁵ This further proved that Canada's government needed to take a global, rather than domestic, approach to its immigration, refugee and asylum policy. It was forced to respond to hemispheric and global realities. The local and international forces that caused the Plattsburgh border crisis continued, just like the friendships and goodwill that it created.

³⁵⁵ Dirks, *Controversy and Complexity*, 89-94.

CHAPTER 5

"IN THE MIDDLE OF TWO GREAT POWERS"

“We are in the middle of two great powers, the U.S. and Canada. The U.S. doesn’t want us here. Canada doesn’t want us – now anyway. I can’t go back to Salvador. So we wait here.”

– “Carlos,” March 1, 1987³⁵⁶

“We will continue to provide sanctuary services openly and go to trial as often as is necessary to establish... that the projection of human rights is never illegal.” – Jim Corbett, July 1, 1986³⁵⁷

5.1 Introduction

On March 1, 1987, Carlos found himself trapped along the border due to the recent changes in US and Canadian immigration and asylum policies discussed in chapter 4. After his arrest and torture in El Salvador, Carlos sought refuge in the United States, but the US’s new Immigration Reform and Control Act threatened to deport him back to his captors. When Carlos tried to flee north, Canadian officials stopped him at the border, informing him of a new policy and telling Carlos to wait in the United States, where he was in danger of being deported, until they processed his application for asylum. I chose to conclude this study’s introduction, and introduce this study’s conclusion, with Carlos’s complaint about being trapped along the border because it illustrates the seemingly impossible situation Central American refugees in the United States, and then Canada, found themselves in during the 1980s. Roving death squads in El Salvador and Guatemala, a government-sponsored genocide in Guatemala and a generalized climate of violence had made life untenable in their home countries for hundreds of thousands of Central Americans. So they went north in the pursuit of a better life. Many could not find

³⁵⁶ “Carlos” (pseudonym”) Quoted in Howard Witt, (Chicago Tribune) “Canada’s about face on immigration puts hundreds in limbo” *The Orange County Register*, 3/1/1987

³⁵⁷ John Corbett Quoted in Crittenden, *Sanctuary*, 324.

the opportunities to support themselves or their families in Mexico or other surrounding Central American countries, and decided to make their way first to the United States and then to Canada.

In spite of an ambivalent at best, hostile at worst, reception from the two countries' governments, over a million Central American immigrants took refuge in the United States and Canada during the decade. They did so through wit, ingenuity, resourcefulness and cooperation. This dissertation analyzed the Central American Refugee Crisis in the United States and Canada during the 1980s by taking a social approach to policy history that emphasized the importance of "ground-level" actors on the formation, implementation, negotiation and reformulation of asylum policy.

Using three case studies I examined how refugees, activists and government officials ("ground-level" actors) transformed and were transformed by the CARC, finding that they often had a pivotal role in the Crisis. Public and private organizations cooperated in an attempt to deal with the consequences of the Crisis. Activists and refugees brought pressure on policy makers that constrained their options. Activists also sued the government in an attempt to maintain their ability to shelter refugees from the United States' Immigration and Naturalization Service. Though their lawsuits did not protect their ability to offer aid to refugees, activists reshaped asylum policy and thereby transformed the CARC. Yet, the ability of activists and refugees to influence policy had its limits. In spite of impressive public relations campaigns, activists and refugees were unable to secure the substantial legislative changes to refugee and asylum law that they sought. These experiences had tremendous personal and public consequences. As a result of their involvement in the CARC participants questioned their religious beliefs, chose

new careers, formed long-standing connections and re-invigorated the dormant concept of Sanctuary, giving new life to their religious beliefs. In these ways, and the others discussed in the dissertation, “ground-level” actors transformed and were transformed by the Central American Refugee Crisis.

5.2 Research Findings

A chapter-by-chapter discussion of my dissertation best summarizes my research findings. Building on each other, these chapters demonstrated the tremendous importance of “ground-level” actors to the development of the Central American Refugee Crisis in North America, as well as the ways that their experiences in the Crisis affected them. First, I addressed the linguistic complexities of the word “refugee,” and the difference between its legal and popular meanings. Refugees and activists used the public’s broader understanding of the term to their advantage in political and fundraising campaigns, even as they battled the government’s legal interpretation of “refugee.” An overview of the civil wars in Central America that generated the CARC highlighted the ways that US Cold War foreign policy led it to contribute millions of dollars in aid to the hard-right Central American governments fighting leftist guerillas. This prompted a US State Department unwilling to recognize that it supported refugee-creating regimes to overwhelmingly recommend against asylum status for Guatemalans and Salvadorans. In the United States political convictions heavily influenced whether Americans perceived Central Americans as undeserving economic immigrants or refugees fleeing persecution.

Canada’s involvement in the Crisis started slowly and evolved differently than that of its southern neighbor. Central American refugees did not begin to arrive in statistically significant numbers until the mid-1980s. Rather than seeing Central

Americans as a distinct group, many Canadians viewed Guatemalans and Salvadorans as part of a larger refugee flow that they feared would overwhelm Canada. In addition, the Canadian government had a much different foreign policy than that of the United States. Therefore, the Central American Refugee Crisis unfolded in the United States and Canada within a complicated social, political and legal context where the very meaning of the word “refugee,” as well as Central American refugees themselves, were open to interpretation, contestation and negotiation.

With this foundation I began with the stories of a refugee, activist and government involved in the Sanctuary Movement Trial (discussed in chapter 2). A nine-month long covert investigation of the Sanctuary Movement by the Immigration and Naturalization Service, codenamed “Operation Sojourner” culminated in charges that led to the Sanctuary Movement Trial.³⁵⁸ The Sanctuary Movement, a national network of churches, synagogues, private homes and cities, was an attempt by people of conscience to resist the US government’s refusal to recognize the legitimacy of Central American refugees. Those involved smuggled Central American refugees across the US-Mexico border north into Canada, hid them from the Immigration and Naturalization Service, and held press conferences where refugees in Sanctuary told the media about the conditions in Central America and the injustice of the US immigration/refugee system. In 1985 the government attempted to end the Movement with the Sanctuary Trial by bringing many of its most prominent members, including its two founders, to court on multiple felony counts of breaking immigration law. Throughout the case “ground-level” actors had a tremendous effect on the Trial and the public’s perception of it. The government’s attorney

³⁵⁸ United States v. Aguilar et. al., CR85-008 PHX-EHC (D. Arizona 1986)

successfully applied for a *motion in limine* that excluded any evidence of religious motivations for Sanctuary activities, unintentionally pushing Sanctuary Movement members to take their case outside the courts. The press conferences, writings and interviews given by Sanctuary Movement members generated an enormous amount of publicity and introduced the issue of Central American refugees to a wide spectrum of Americans who had never heard of it before. In addition, far from ending the Sanctuary Movement, the stresses of the Trial temporarily patched over a fractured relationship between different Sanctuary Movement sites. It also brought a host of new churches and synagogues into the Movement. Finally, the Trial inspired a series of countersuits by activists furious over what they took to be the government's blatant violation of their free exercise of religion.

Throughout the Sanctuary Movement's existence, as well as the Sanctuary Trial's duration, a series of ground-level actors shaped the outcomes of the Movement and Trial. The stories of individual refugees prompted two Arizona religious activists to formalize the Movement in March of 1982. A concerned government official pushed for an investigation of the Movement in 1984 by a veteran INS agent. The actions of the judge and prosecutor during the Trial pushed the activists to make their case outside of the courtroom. Finally, the Trial itself prompted activists across the country to file countersuits against the government.

The most influential of the Sanctuary Trial countersuits, *American Baptist Churches et. al. v. Meese* (later changed to *American Baptist Churches et. al. v. Thornburgh et. al.* and popularly known as the *ABC case*)³⁵⁹ transformed US asylum

³⁵⁹ *American Baptist Churches et. al. v. Thornburgh*, No. C-85-3255-RFP (D. Northern California 1991).

policy (discussed in chapter 3). This court case initially began as a response to the INS's covert investigation of churches in the Sanctuary Movement but eventually transformed into a landmark settlement between churches, refugees and refugee aid groups, and the government. On May 7, 1985, lawyers affiliated with the Center for Constitutional Rights, National Lawyers Guild and religious organizations filed a lawsuit against the directors of the Immigration and Naturalization Services (Alan Nelson) and Justice Department (initially Edwin Meese III and later Richard Thornburgh), alleging that they had infringed on the religious freedom of Sanctuary Movement members, neglected their legal duties to Central American Refugees, violated the equal protection clause of the Constitution, and recklessly deported Central Americans back into dangerous situations. The primary focus of the initial lawsuit lay in the first claim, that the government had violated Sanctuary Movement members' religious freedom. After nearly two years of legal wrangling between government and activist lawyers, the judge dismissed all of the suit's claims but permitted the activists to resubmit their complaint after making major and important changes to its arguments. This complaint placed more importance on the government's mistreatment of Central American refugees. Over three and a half years this process twice repeated itself with the activists finally completely dropped their religious freedom claims, and focusing exclusively on a class action lawsuit regarding the government's civil rights violations towards Central American refugees. The case resulted in an out of court settlement with far reaching implications including stays of deportations of Central Americans, *de novo* asylum adjudications, new training for asylum officers and more. The ramifications of the ABC settlement are still felt today throughout the US immigration system.

My research into the *ABC* case's legal filings, media coverage and oral interviews with participants uncovered the importance of a sympathetic judge, tireless activists and administrative changes in the Immigration and Naturalization Service. The *ABC* settlement would have been impossible without the relentless focus of the activist lawyers, the judge's willingness to let the activists repeatedly rework their complaint, and the eventual willingness of INS officials to settle. The effects on participants varied widely based on their role in the *ABC* case. Activist lawyers remember *ABC* with fondness, seeing it as the high point in their careers and a pivotal moment in their professional development. The one government official willing to reflect on her role in the case saw it a one case among many.

As the Sanctuary Movement and the *ABC* case attempted to fight the widespread denial of Central Americans' asylum applications, most Central Americans in the United States lived in the shadows, working "under-the-table" in undocumented jobs to provide for themselves and their families. While best remembered for its "amnesty" provisions, the 1986 Immigration Reform and Control Act (IRCA)³⁶⁰ also contained strict provisions against employing "undocumented immigrants." Fearful of the prospective fines and jail-time threatened by the Act, employers around the country cut ties with tens of thousands of immigrants lacking sufficient documentation.

In need of a safe space, many refugees turned to Canada (as discussed in chapter 4). Needing a job and unwilling to return to Central America, thousands of Central Americans fled north to Canada. In the midst of this northern migration, the Canadian government passed a series of provisions that dramatically altered its refugee and asylum

³⁶⁰ Immigration Reform and Control Act, Pub. L. No. 99-603 99th Cong., 2nd. Sess.

policy. The most notable for those fleeing from IRCA was the removal of immediate acceptance into Canada at all ports-of-entry for asylum seekers from a set of refugee generating countries on the “B-1 List.” The February 1987 revocation of the “B-1 List,” which had included Guatemala and El Salvador, meant that Canadian officials turned back Central American asylum applicants at the US-Canada border and told them to wait for the completion of their asylum hearings in the United States, where they were subject to deportation. Due to a sizeable backlog these hearings often did not take place for weeks or months. Many did not know where to go and de facto refugee camps emerged up and down the US-Canada border. Carlos, discussed in the chapter’s opening paragraph, hoped to cross the Niagara Falls Bridge to Canada. Instead, the law forced him to temporarily take up residence in a shelter for refugees at the St. Mary of the Angels convent in a Buffalo, NY suburb. A popular route to Canada for asylum seekers ran from New York City to Montreal. Those who took the route found themselves forced to return to the small border town (25,000) of Plattsburgh, NY.

Unprepared for the entrance of hundreds of impoverished refugee seekers, the social services of Plattsburgh, NY were quickly overwhelmed. A variety of local, regional and international private and public partnerships formed in response to the refugee influx, some of which last to this day. My research examines the reasons for, and consequences of, Canada’s changing policies towards asylum seekers, placing the creation of asylum policy in a comparative and transnational context. I particularly focus on the ways that “ground-level” actors in Plattsburgh, NY dealt with the creation almost overnight of a refugee camp in their midst and the transformative effect of this “border crisis” on “ground-level” actors and the town of Plattsburgh. Here I stress the importance

of activists, refugees and government officials in creating a safe space for refugees awaiting adjudication, while discussing the inability of a vigorous public relations campaign to change Canadian asylum policy. The Border Crisis had a series of long-term effects on refugees, Plattsburgh and its residents. It led to greater interaction between the volunteer community in Plattsburgh and the local government. Due in large part to its impressive response to the Crisis the area received substantial funding for a low-income housing community that still stands as a model for public assistance. Finally, Plattsburgh residents formed long-standing friendships between themselves and refugees.

Thus ground-level actors, and the public visibility which they brought to the United States' complicity in the horrors of the civil wars in Central America, shaped the realities of the CARC by changing asylum policy, igniting a public debate on US/Central America foreign policy, and providing a safe space for hundreds of refugees while awaiting Canada's asylum courts. In the process, ground-level actors saw themselves transformed. Their experiences led many to reflect on their religious beliefs. Others found a new calling as volunteers for social justice. The city of Plattsburgh found itself thrust on the world's stage, using that opportunity to broaden its horizons and secure the funds necessary to create a network of social services that is still in use today. Together, refugees, activists and some government officials found ways to shelter refugees from the INS and the dangers of deportation.

5.3 Research Implications

These findings suggest a number of implications for the study of the Central American Refugee Crisis, refugee and asylum policy history, and the history of public policy in general. Many scholars of the CARC already integrate the study of separate

groups of “ground-level” actors³⁶¹ into their work, but without a holistic study of all three groups (activists, refugees and government officials), it is impossible to fully understand how the overlapping actions, consequences and motivations of the three groups transformed the Crisis. One example lies in the tremendous effect the litigation brought by activists and refugees against the government had on the CARC. The ways that these three groups interacted inside and outside the courtroom led to massive changes in asylum policy and needs to be further studied.³⁶²

While the consequences of changes in asylum and refugee policy towards applicants remains a logical area of research, my research indicates that participation in refugee crises had a number of long-term effects on activists and government officials. Refugee relief efforts have been, and continue to be, crucial to the humanitarian treatment of refugees all over the world. More research is needed into this important subject as refugee relief efforts depend on educated and engaged “ground-level” actors. By further studying the effects of participation, scholars will be able to recommend better support services for those on the front-lines of refugee relief, ensuring a more healthy work force that is able to stay engaged for long periods of time, rather than burning out from the stress.

There is no reason to believe that the tremendous effect of “ground-level” actors on the CARC was an aberration from other refugee crises. All historians of refugees should pay attention to the ways that activists, refugees, and government officials shaped

³⁶¹ For refugees see the work of Norma Chinchilla, Jacqueline Hagan, Nora Hamilton and Cecilia Menjívar; for activists see Susan Bibler Coutin, Hilary Cunningham, Randy Lippert and Christian Smith; for government officials see Carl Bon Tempo, Valerie Knowles, and Gil Loescher.

³⁶² In *Legalizing Moves*, Susan Bibler Coutin provides an impressive guide to how this can be done, but her study of Central American refugees’ use of the courts and legal process primarily examines the 1990s, falling outside of the heart of the CARC.

refugee issues, asking how did understudied groups like activists, government officials and refugees shape refugee policies or crises? After the “crisis” or push to reform policy was over, what happened to participants? In particular, what happened to participants one, five, ten or twenty years after their involvement? Also, just as litigation proved critical to the unfolding of the Central American Refugee Crisis, how have the courts shaped refugee and asylum policy in general? A heightened focus on the importance of litigation to the shape and outcomes of policy would serve general studies of refugee and asylum policy history well.

These same questions can be expanded to general policy histories. Further exploration into the ways that “ground-level” actors interacted with policy of all different types will likely reveal their tremendous importance. “Ground-level” actors’ interpretation, mediation and resistance to public policy means that policy history should go beyond the legislative level and look at the way policy is worked out. As public policy is implemented “ground-level” actors consciously and unconsciously reformulate the wishes of the elites legislating it and create a counteracting force from below. While the focus of my research was on the historical evolution and consequences of the CARC, my research does indicate the importance of “ground-level” actors on public policy. Current policy makers should take the effects of “ground-level” actors into account when formulating policy. Though difficult to forecast, the intended and unintended consequences of policy are often determined by the behavior of those implementing, navigating and resisting it.

5.4 Future Research

Discussed in part in section 5.3, my study indicates a number of avenues for future research. The 1982 lawsuit of *Orantes-Hernandez v. Meese* (later changed to *Orantes-Hernandez v. Thornburgh*)³⁶³ resulted in a far-reaching court order that dramatically altered INS apprehension, detention, processing and removal of Salvadoran immigrants. Much like the *ABC* case, the effects of the lawsuit are well documented but the development of the case is not. Further research into the *Orantes-Hernandez* case using legal documents and oral interviews would provide an important part of our understanding of the CARC.

My research into Canadian asylum policy for chapter 4 revealed a number of differences between the United States and Canada over the evolution of their asylum and refugee policies during the 1980s. Following the 1980 Refugee Act, litigation largely drove changes in US asylum policy. In contrast, Canada's change in asylum policy after the 1976 codification of the UN Convention on Refugees into Canadian law, stemmed primarily from the Prime Minister's office, which held enormous power to admit and deny refugee groups. An historical comparison between the approaches, formation and consequences of asylum policy in the two countries could explore why activists in the United States were so successful in the courts while Canadian activists, outside of *Singh v. Minister of Employment*,³⁶⁴ were largely unsuccessful.

While not a significant part of this study, Mexico had a critical role in the Central American Refugee Crisis. Though Maria Cristina Garcia's *Seeking Refuge* (2006)

³⁶³ *Orantes-Hernandez v. Thornburgh* No. 919 F.2d 549 (9th Cir. 1990). Discussed in greater detail in chapter 3.

³⁶⁴ *Singh v. Minister of Employment and Immigration* 1 S.C.R. (1985) 17904. Discussed in greater detail in chapter 4.

examines the asylum policies of the three North American countries during the CARC in concert, a further analysis of the role of “ground-level” actors in Mexico during the CARC is needed. How were their experiences during the CARC along the Mexico/US and Mexico/Guatemala borders similar and different to those along the US/Mexico and US/Canada borders?

“Operation Sojourner,” discussed in chapter 2, deserves further investigation. Full of colorful characters, this covert operation of the Sanctuary Movement has the high drama of a “cloak and dagger” infiltration of churches, religious fervor, courtroom denunciations and secret agents. Richly documented, much of the source material for the operation is contained and readily available for further research in University of Arizona’s Special Collections.

Individual members of the press are another group of “ground-level” actors worthy of further study. Activists and refugees explicitly designed their press conferences and Sanctuary Movement *testimonials* to appeal to the press, convinced that media attention to their governments’ treatment of Central Americans would convince an indifferent public to force their representatives to make legislative and administrative changes. As evidenced by the articles cited throughout this dissertation, at major newspapers like the *New York Times*, *Globe and Mail*, *Los Angeles Times*, and *Philadelphia Inquirer* a handful of journalists drove coverage of the CARC. How did activists and refugees connect with these reporters? Why did they choose to continue to cover the CARC? What effect did their coverage have on their personal and professional lives?

Finally, future research is needed on the experiences of other towns along the US/Canada border following the Canadian government's closure of the border to refugees in 1987.³⁶⁵ The three other primary ports of entry lay close to the major cities of Buffalo (Niagara Falls/Toronto), Detroit (Windsor/Toronto) and Seattle (Vancouver). How did their response differ from that of Plattsburgh? Did the "border crisis" also transform their communities?

5.5 Conclusion

This study took a social approach to policy history, emphasizing "ground-level" actors' importance on the development of the Central American Refugee Crisis in Canada and the United States, and the ways that the Crisis affected them. Previous studies of the CARC have either focused on separate groups of actors or taken a more top-down approach to the Crisis. Three case studies on the Sanctuary Movement Trial, the *American Baptist Churches* lawsuit, and the crisis along the US/Canada border in 1987 revealed that through implementation, negotiation and resistance to asylum policy "ground-level" actors transformed the Crisis from the bottom-up while simultaneously being transformed themselves. Yet, they proved unable to pass significant legislative reforms to asylum law and end US financial support to the Central American governments generating hundreds of thousands of refugees. Still, they formed public/private partnerships in response to the Crisis that endure today. Through refugee testimonials and press conferences "ground-level" actors pressured the government and constrained its options. They brought lawsuits that transformed US asylum policy and had a lasting effect on the entire US immigration system.

³⁶⁵ Some of this has already begun. On Detroit-Windsor see Julie Young, "Seeking Sanctuary in a Border City," 232-245.

While pushing, negotiating and resisting the laws of the Canadian and American governments, “ground-level” actors went through a metamorphosis of their own. Participation in the CARC prompted some to disavow, question, or renew their religious beliefs. Others found new callings in social justice volunteer work or new paths for their careers. Public involvement in the Central American Refugee Crisis often had enormous legal consequences. Some activists received felony convictions for their participation. Sanctuary Movement testimonials raised the public profile of Central American refugees, placing them in danger of arrest, deportation and death. The CARC also forced an international role on the Plattsburgh community, and further developed a set of social services that endures today.

In this chapter’s second opening quotation Jim Corbett, one of the original members of the Sanctuary Movement, stood in front of the press on the final day of the Sanctuary Movement Trial. He declared that the government’s attempts to stop them were bound to fail. Members of the Sanctuary Movement had a religious and moral calling to a power higher than the law of man. The Sanctuary Movement forged ahead. The combined efforts of activists, refugees and well-meaning government officials inside and outside the Sanctuary Movement saved thousands of refugees from deportation and death. Jim Corbett continued to work for Sanctuary, albeit in a limited capacity. Right before passing away in 2001 he began discussions on the need for a “New Sanctuary Movement” to protect immigrants from deportation.³⁶⁶ Six years later houses of worship across the country launched the New Sanctuary Movement. The ideas of collaboration,

³⁶⁶ Douglas A. Martin, “James A. Corbett, 67, is Dead; A Champion of Movement to Safeguard Illegal Refugees,” *New York Times*, 8/12/2001.

testimonials, and resistance formulated by “ground-level” actors during the Central American Refugee Crisis continue to be used and contested today.³⁶⁷

³⁶⁷ For a more detailed discussion of the New Sanctuary Movement see: Gregory Freeland, “Negotiating Place, Space and Borders: The New Sanctuary Movement,” *Latino Studies* 8:4 (Winter 2010), 485-508.

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GLOSSARY

ABC: American Baptist Churches et. al. v. Thornburgh et. al.

Asylee: An asylee is someone seeking refugee status (asylum) within her or his country

CARC: Central American Refugee Crisis

INS: Immigration and Naturalization Service

Refugee: In US and Canadian law a refugee is someone outside of her or his territory possessing a “well-founded fear of persecution” based on her or his race, religion, nationality, political opinion or membership in a particular social group. See chapter 1 for a more detailed explanation.