

IMMIGRATION LAW: A CIVIL RIGHTS ISSUE

The Human Impact of Immigration and Refugee Law on the District of Columbia's Latino Population

Report prepared for presentation to the
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D.C. LATINO CIVIL RIGHTS TASK FORCE

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■ Introduction and Executive Summary

From May 5 to May 8, 1991, a Washington, D.C. neighborhood where many of the District's Latinos reside erupted with violence serious enough to cause the Mayor to declare a curfew.¹ The incident that set off the disturbances in the Mount Pleasant, Adams Morgan and Columbia Heights section of the nation's capital was the shooting by a police officer of a Salvadoran man who witnesses said was staggering toward the officer with his hand raised holding a knife. A crowd of curious onlookers turned into a bottle and rock throwing mob. Police vehicles were set on fire, stores were looted, the police used tear gas and the Immigration and Naturalization service was reported to be on the scene, "assisting" the police. One New York Times reporter noted that "[t]his incident clearly touched a nerve - one that angry residents said had been tested by repeated injustices."²

Several months later, a representative of the Mayor's office testified before a congressional committee:

The recent troubles several months ago in Mount Pleasant were the strongest possible statement that any community can make that it feels left out and excluded and wants access and progress The Dixon Administration is not unaware that many members of the Latino community . . . are frustrated and feel that they have no power to control their lives.³

For Washington's Latino community — the overwhelming majority of which is Salvadoran — the feeling that they have no power to control their lives, and the frustration that accompanies it, is directly linked to their immigration status. It is estimated that there are as many as 200,000 Salvadorans in the Washington, D.C. area. Fewer than 20,000 are thought to have permanent residence status. Approximately 35,000 currently have temporary legal status and work authorization under a program that is set to expire this summer, on June 30, 1992. To the extent that immigration status — and the lack thereof — is an underlying cause of the problems of D.C.'s Latino community, that June 30th date stands as a warning sign that the situation is about to go from bad to worse.

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- 1 The facts described in this paragraph are taken from various press reports. See *infra* notes 13-41 for a detailed description of the events of those days, with citations to those press reports.
 - 2 B. Drummond Ayers, Jr., *Street Unrest Flares Again in Capital*, N.Y. Times, May 7, 1991; see also *infra* note 31 and accompanying text.
 - 3 *Effectiveness of Federal Assistance Programs in Meeting Fiscal Distress - Part II: Field Hearing before the Subcomm. on Housing and Community Development, of the House Comm. on Banking, Finance and Urban Affairs, 102d Cong., 1st Sess. 47, 49 (Sept. 6, 1991)* (statement of Austin Penny, Deputy Mayor for Economic Development of the District of Columbia).

This report describes how various provisions of United States immigration law affect the lives of Washington, D.C. residents. While much of what is discussed is applicable to other communities across the country, the fact that there is such a high percentage of Salvadorans in the D.C. area has meant that in some important respects, the immigration laws have had a disproportionately adverse impact on this particular Latino community.

For instance, this report concludes that for D.C.'s Salvadoran population, the legalization program of the 1986 Immigration Reform and Control Act had only limited effect because most Salvadorans arrived in the U.S. after the cutoff date for legalization. For this group, the legalization program did not achieve the goal of bringing an "underground" community that was living in the shadows into the light of day. Area Salvadorans, and their advocates in the community, speak in this report of what it means, in the words of a 1986 House of Representatives Committee report, to "live in fear, afraid to seek help when their rights are violated, when they are victimized by criminals, employers or landlords or when they become ill."⁴ It is our hope that this report will bring their voices to many listeners and that they will be heard.

This report confirms the predictions of critics of the employer sanctions provisions of the Immigration Reform and Control Act of 1986 — which penalize employers who hire undocumented workers — that the new federal law would lead to discrimination against certain groups of people legally authorized to work in the United States. They were right. For example, a D.C. attorney who works with an agency that assists the Latino community has had employers tell her that they will not hire people authorized to work in the U.S. unless they have green cards or are U.S. citizens — a type of discrimination that is prohibited — because they are worried about being fined and do not want to train employees who then might be lost to deportation. Her story is one of many.

The research for this report indicated that, as the Congress intended, employer sanctions have made it more difficult for undocumented Latinos to find work. However, contrary to what Congress anticipated, they have not left the country and they have not stopped their search for jobs. D.C.'s undocumented Salvadorans who do find work, find as well that they have to endure abuse, including long hours, dangerous conditions and low pay — when they are paid at all — in order to keep their jobs. Off the job site, they and their fellow documented Salvadorans are daily confronted by banks, landlords, educational institutions and even motor vehicle departments that harass them for "documents" when no "documents" are required. The employer sanction provisions should be repealed.

4 H.R. Rep. No. 682(I), 99th Cong., 2d Sess. 49 (1986), *reprinted in* 1986 U.S.C.C.A.N. 5649, 53 (House of Representatives Judiciary Committee report on proposals for legalization, discussing the situation of undocumented persons); *see also infra* notes 82-83 and accompanying text.

Congress expected that employer sanctions would deter people without legal status from coming to the United States. But the Salvadorans interviewed for this report, like most of their fellow citizens elsewhere in the United States, did not come here because they were looking for work and intended to make this their home. Provisions of U.S. immigration laws that they had never heard of were irrelevant to their decision "to abandon possessions, homes and communities . . . [and] to endure separation from family members and friends."⁵ They fled the terror and danger of a war and a human rights disaster that over the last 12 years claimed 75,000 lives.⁶

This report describes a study of 100 of those Salvadorans whose flight ended in the Washington, D.C. area; that study found that over half of them knew someone who had been murdered, more than 20 percent had actually witnessed a murder, close to 40 percent had been present when their neighborhood was bombed and about 40 percent had been forced to seek safety from gunfire.⁷ That study also found that the single most important factor to adversely affect the Salvadorans' emotional well-being was the lack of a "green card" and the threat of discovery and deportation its absence signified.

When Salvadorans arrived in the United States, another provision of U.S. immigration law, the Refugee Act of 1980, was supposed to protect them from being deported to a country where they had a "well-founded fear" of being persecuted. The law was enacted for the express purpose of ensuring that the decision as to who obtains refugee status — which for people already in the U.S. is by an asylum application — be made on a politically neutral basis. This report, like many before it, found that in the case of Salvadorans, this was not to be. The United States was supporting the government of El Salvador and, despite that government's abysmal human rights record, the approval rate for Salvadoran asylum applicants between 1983 and 1991 was 2.6 percent; for Poles and Iranians during that same period, it was 33.6 percent and 61 percent, respectively.⁸ The skewed rate of Salvadoran asylum denials was the basis for a successful class action lawsuit that resulted in an unprecedented settlement in which the U.S. government agreed to start over and re-adjudicate all the Salvadoran claims it had previously denied.⁹

5 Americas Watch, *El Salvador's Decade of Terror: Human Rights Since the Assassination of Archbishop Romero* 107 (1991); see also *infra* notes 67-78 and accompanying text.

6 Trevor Rowe, *Salvadorans Reach Final Accord*, Wash. Post, Jan. 15, 1992, at A18 (12 year civil war claimed 75,000 lives and caused extensive economic damage). The estimated 1990 total population of El Salvador was 5,250,000. *The Universal Almanac* 1991 309 (1991). In 1990, the estimated total population of the United States was 250 million. *Id.* When calculated as a percentage of the population, the 75,000 killed in El Salvador over the last twelve years would translate into 3,600,000 American lives.

7 Margaret McCallin, *The Psychosocial Consequences of Violent Displacement: The Experience of Central American Refugee Women in Washington, D.C.* 7-8 (Int'l Catholic Child Bureau 1991); see *infra* notes 198 - 202 and accompanying text.

8 See *infra* note 230 and accompanying text.

9 See *infra* notes 254-59 and accompanying text.

Included in the 2.6 percent of Salvadorans who were granted asylum is a young man who is now a D.C. resident. His claim to having a "well-founded fear of persecution" is based on a harrowing story that unfortunately is not unusual for El Salvador — and that claim was initially rejected by INS.¹⁰ As a high school student, he was an active member of a nationwide organization that denounced the human rights violations of the Salvadoran government. In early 1980, he and a friend went to a peaceful demonstration in San Salvador; government security forces opened fire and his friend was killed. Threats followed, and after the threats, in mid-1980 several heavily armed men in civilian clothes invaded his home and those of his neighbors. He escaped. Within fifteen minutes, they had taken four of his friends who were also high school activists. And two weeks later, their mutilated and tortured bodies were found along San Salvador's major highway. In mid-1981, one of his friends somehow survived daily torture at a local army headquarters to awaken in a dump surrounded by 10 or 15 dead bodies. That friend then crawled to a residential area where he was found and taken to a hospital; he told the young man who is now a D.C. resident that his name was on a "hit list." More friends "disappeared."

In 1982, after spending several months in hiding, this young man was discovered by the civilian patrol, taken to a warehouse, stripped naked, tied, beaten, submerged in a concrete tub of cold water and threatened with a gun pointed to his face that he would be killed. Miraculously, his family found out where he was being held, threatened to bring lawyers from San Salvador and obtained his release. Immediately after that narrow escape, he left the country and, via Mexico, made his way to the United States. In January 1990, the Immigration and Naturalization Service informed him that he would be denied asylum because he failed to show a "well-founded fear of persecution" if returned to El Salvador. Thirty members of Congress and Amnesty International championed his case and in April 1990, he was finally granted political asylum.

This man was accorded asylum status, which means that he has temporary residency and then will be eligible for permanent residency — he will get a "green card." However, this result is rare. The combined effect of the 1982 cut-off date for legalization under the 1986 Immigration Reform and Control Act and the discriminatory application of the asylum provisions of the 1980 Refugee Act has meant that today only a very few Salvadorans have green cards. The problems faced by thousands of other Salvadorans would best be addressed by the grant of permanent legal status.

10 See Omar Centurion Statement (Jan. 1992). The facts of this paragraph, and the two thereafter, are based entirely on that statement, the story of which was the basis of a sworn affidavit filed in support of his application for political asylum.

In November 1990, Congress formulated a new provision for ensuring that foreign nationals in the United States would not be sent back to countries where armed conflict poses a danger to their safety. Temporary Protected Status (referred to as "TPS") provides that Salvadorans can remain in the United States temporarily, with work authorization granted and with the threat of deportation suspended. On June 30, 1992 the TPS provision relating to Salvadorans will expire. At that time, the Attorney General has the authority to "extend" TPS status for Salvadorans, if he finds that requiring them to return to El Salvador would endanger their safety.

This report found that TPS has had a significant impact on D.C.'s Latino community. After much hard work on the part of D.C.'s community-based organizations, approximately 35,000 area Salvadoran residents registered for TPS. They were temporarily brought out of the shadows, or perhaps more accurately, into the twilight — they have work authorization but it is about to expire and they will again become "undocumented". And in their case, because they have registered with INS, the cloud of uncertainty and the looming threat of deportation will hang over them all the more heavily. Their days are numbered. The period during which their deportation was suspended is set to expire on June 30, 1992.

This report documents that despite the Peace Accord that was signed on December 31, 1991, press reports and experts describe the situation in El Salvador today as very tense and unstable. They predict that the transition will not be a smooth one and say that it is simply too early to tell whether the signed paper of the Accord will mean that El Salvador will become a country in which human rights are respected. Until such time, the Bush Administration should extend the Temporary Protected Status program for Salvadorans, including the grant of work authorization and the suspension of deportation proceedings.

All Salvadorans and local community advocates interviewed for this report spoke of the fear of deportation and the uncertainty and vulnerability of Salvadorans whose daily existence is permeated with that threat. However, they were unanimous in stating that if TPS is allowed to expire at the end of June, they will stay here and live with that fear. Salvadorans will stay whether or not it is legal for employers to hire them. They will suffer the indignities and endure the exploitation that is the lot of the undocumented. They will not return to El Salvador unless and until they are sure that it will be safe to do so.

In January 1992, one of D.C.'s Salvadoran residents summed up the problem with simple eloquence:

I still fear being forced to return to El Salvador even though the peace accord has been signed Life here in the U.S. is difficult and it is not easy to earn a lot of money, but it is all worthwhile because I can live without fear of persecution This is why I, and perhaps other Salvadorans who fear being returned to El Salvador, will live in apartments that are over crowded, dirty and broken down, without

complaining. Despite the mistreatment of Latinos in the community here, I would rather stay here than return to El Salvador and constantly fear for my life.¹¹

No resident of the United States should face such options. Salvadorans should not be forced to return to El Salvador if to do so means they must fear for their lives; nor should they be resigned to a life of mistreatment here. The interplay of U.S. laws created this dilemma — and it is now time for the U.S. government to change those laws.

11 Eusibio Rodriguez Statement (Jan. 1992) ¶¶ 15, 16.

I. Description of Events in Mount Pleasant, Adams Morgan and Columbia Heights—May 1991¹²

A. May 5 - May 8, 1991

On Sunday, May 5, 1991, at about 7:30 p.m., Officer Angela Jewell shot Daniel Enrique Gomez, a 30-year-old Salvadoran, in Mount Pleasant, a neighborhood located in northwest Washington, D.C.¹³

Witnesses said the shooting victim was hit at point-blank range in the chest as he staggered toward a female officer with his hand raised, holding a 3- to 4-inch knife.¹⁴

A few hours later, the growing crowd of curious onlookers had "at times swelled to as many as 600 people."¹⁵ The mob threw bottles and rocks at the growing number of Metropolitan Police.¹⁶

Within minutes, three police vehicles were blazing Minutes later, three more police vehicles, including a wagon, were set afire . . . as officers scrambled to move other vehicles to safety several blocks away

. . . Thick smoke from the burning vehicles filled the air as explosions rocked them, spewing glass in all directions.¹⁷

By midnight, a "7-Eleven" store and a nearby clothing shop had been looted.¹⁸ It was not until 2:00 a.m. that the crowd dispersed because of rain.¹⁹

12 These neighborhoods are contiguous and located in northwest Washington, D.C., approximately two miles from the downtown area. According to the 1990 census, which the District of Columbia Office of Latino Affairs ("OLA") uses for baseline estimates of the Latino population in Washington, D.C., the Latino population in Mount Pleasant totaled 3,002 persons, a 129.7 percent increase from the 1980 census; in Adam's Morgan, according to the 1990 census, there were 3,125 Latinos, a 31.4 percent increase from the 1980 census; and the Latino population in Columbia Heights totaled 3,288, an increase of 318.3 percent from the 1980 census. Office of Latino Affairs, *Total and Hispanic Population Changes by Census Tract for the District of Columbia: 1980-1990* 2-3 (Mar. 14, 1991). According to OLA, the Bureau of Census statistics for Latino populations in these areas undercounts the number of people because census takers are unwilling to go to certain buildings at certain hours and many Latino families "double up" in apartments, which may not have been reflected in the census count. Telephone Interview with Antonio Melus, OLA (Jan. 15, 1992).

13 Carlos Sanchez & Rene Sanchez, *Police, Hispanic Youths Clash in 2nd Night of Violence; Dixon Tries to Restore Calm, Retreats to Escape Tear Gas*, Wash. Post, May 7, 1991, at A1.

14 Mark Vane, *Shooting by Police Ignites Violence in Mount Pleasant*, Wash. Times, May 6, 1991, at A1, A12.

15 Carlos Sanchez & Rene Sanchez, *Dixon Imposes Curfew on Mt. Pleasant Area As Police, Youths Clash for a Second Night; Skirmishes, Looting Spread Under Cloud of Tear Gas*, Wash. Post, May 7, 1991, at A1.

16 Nancy Lewis & James Rupert, *Neighborhood Erupts After Officer Shoots Suspect; Crowd of Hundreds Confronts Police, Sets Cruisers Ablaze in Mt. Pleasant*, Wash. Post, May 6, 1991, at A1.

17 *Id.*

18 *Id.*

19 *Id.*

During the next two days, Mayor Sharon Pratt Dixon declared a curfew from midnight to 5:00 a.m. for the immediate areas in which the disturbances had taken place.²⁰ The Mayor stated, "[t]he situation is such that we think it is clearly a state of emergency."²¹

The curfew was scheduled to end at 5:00 a.m. on Wednesday, May 9, 1991.²² According to one Washington Post reporter, the area remained "calm" until Tuesday evening.²³

As soon as the curfew started at 7 p.m., police began arresting youths who were congregating on street corners.

At one early point, police fired tear gas into a crowd of several hundred youths, who then smashed dozens of car windows as they fled.²⁴

That night, the "violence and looting in Mount Pleasant . . . extended through Adams Morgan [to] Columbia Heights."²⁵

On Thursday, May 9, 1991, the National Guard and the Immigration and Naturalization Service (INS) announced that both were ready to aid the Mayor.²⁶

The 4,000-member D.C. National Guard could be mobilized almost immediately for law enforcement duty at Mrs. Dixon's request, authorities said, and U.S. Immigration and Naturalization Service agents already are standing by in a "support role."²⁷

With the mention of the INS working in conjunction with local police, rumors spread throughout the community "that immigration officers are sweeping through the area to round up 'illegal aliens.'"²⁸

[F]our agents . . . from the U.S. Immigration and Naturalization Service [were] called by the D.C. police to help cope with the unfolding street violence last week

. . . INS officials have said that they provided only background checks for local police. District officials have denied using the INS as a retaliatory tactic in the fracas.²⁹

20 Sanchez & Sanchez, *supra* note 15, at A1. The curfew area was drawn roughly from "S Street, New Hampshire Avenue, 12th Street, Spring Road, Piney Branch Parkway, 20th Street and Rock Creek Park." *Id.*

21 *Id.*

22 Rene Sanchez, *Curfew Leaves Mount Pleasant Area Quieter; Sporadic Incidents Reported On 3rd Night*, Wash. Post, May 8, 1991, at A1.

23 *Id.*

24 *Id.*

25 *Id.*

26 Jerry Seper & Alan McConagha, *National Guard, INS Ready To Go-If Need Arises*, Wash. Times, May 9, 1991.

27 *Id.*

28 *Id.* The phrase "illegal alien" appears in quotations throughout this report because to many it is considered pejorative.

29 Christine Spolar, *Mount Pleasant Anger Stirred by Distrust of INS; Hispanics' Wariness, Fear Seem Out of Proportion to Activities of Immigration Agency*, Wash. Post, May 18, 1991, at B5.

INS District Director William J. Carroll stated that "INS agents are assisting Metro police in identification and background checks."³⁰ Carroll continued to say that "[w]e are not taking the lead role . . . [o]urs is a role of assistance."³¹

Protest from the community continued.

This incident clearly touched a nerve—one that angry residents said had been tested by repeated injustices. They said that if the rest of the city was surprised by the intensity of the outburst, that in itself was an indication of the depth of the insensitivity of the rest of the city to the needs and problems of the Hispanic community.³²

During the second day of unrest, at a community meeting attended by the Mayor, one resident said:

If you do not act, and fast, this is going to be a very hot summer . . . people are fed up. We are not violent people, but we won't take it anymore. We came to this country in search of justice, and still there is no justice.³³

Raul Yzaguirre, president of the National Council of La Raza, echoed the resident's statement by saying,

We have all the elements of these kinds of explosions repeating themselves . . . I can tell you I've seen the face of hate and anger that I've never seen before in my 35 years of involvement in the Hispanic community. We could have a long, hot summer.³⁴

Maria Otero and Joseph Eldridge, residents of Mount Pleasant, had this to say about the rioting in a Washington Post Op-ed piece:

The fires that burned in the streets of Mount Pleasant were born of the same frustration that has started fires of anger in the capitals of Central America. The difference, of course, is that demonstrators in America's capital are not killed.

. . . The police can and should do no other than keep order, making arrests when necessary. But as things return to normal, the city and the mayor's office should find ways to address the needs of this underrepresented population.³⁵

Later that week, as the community once again became "normal,"³⁶ statistics from the Metropolitan Police indicated that of the 175 people arrested for rioting or curfew violations in the Mount Pleasant and Adams Morgan neighborhoods, Latinos comprised fewer than half

30 Seper & McConagha, *supra* note 26.

31 Lauren Weiner, *INS Joins Probe of Mount Pleasant Rioting: City to End Curfew Today*, Wash. Times, May 9, 1991, at A1.

32 B. Drummond Ayres, Jr., *Street Unrest Flares Again in Capital*, N.Y. Times, May 7, 1991.

33 *Id.*

34 Major Garrett, *Hispanic Groups Split on Riots' Implications*, Wash. Times, May 7, 1991.

35 Maria Otero & Joseph Eldridge, *Central America to Mount Pleasant*, Wash. Post, May 11, 1991, at A21.

36 *Id.*

of those arrested.³⁷ Many non-Latinos arrested were blacks and whites who came from Maryland, Virginia, and other parts of the District.³⁸

"A lot of these people were thugs taking advantage of the situation," one police man posted in Mount Pleasant during the disturbances said.³⁹

One Washington Post reporter discovered from filed city police arrest logs "that the percentage of blacks arrested from Sunday to Thursday increased each day as the percentage of Hispanics declined."⁴⁰

On Thursday, May 9, 1991, Mayor Dixon, D.C. Delegate Eleanor Holmes Norton, and two Texas congressmen went to tour the area in which the rioting had taken place.

Rep. Albert Bustamante, a Texas Democrat who joined Mrs. Dixon, noted, "Whenever anything happens in the District, it affects the entire nation."⁴¹

B. Role of the Immigration and Naturalization Service

According to newspaper accounts of the May, 1991 Mt. Pleasant, Adams Morgan and Columbia Heights disturbances, the District of Columbia police force requested assistance from the Immigration and Naturalization Service ("INS") to "check the backgrounds of some arrested people who seemed to be leaders in inciting crowds."⁴² After the disturbances, Latino community organizations pointed out that there is no provision in any U.S. law requiring that city officials report undocumented people to INS.⁴³ Moreover, except for a determination of eligibility for participation in a restricted federal program, there is no requirement that city (or state) officials inquire into whether a person has documented status.⁴⁴

In 1986, Mayor Barry issued an executive order, still in effect today, that prohibits D.C. employees from asking an applicant for city services about his or her immigration status.⁴⁵ The

37 Gary Fields, *Most Seized in Riots Not Hispanic*, Wash. Times, May 10, 1991, at A1.

38 *Id.*

39 *Id.*

40 Rene Sanchez & Debbi Wilgoren, *D.C. Police Consulted INS During Disturbance: Immigration Agency Was Asked for Information on Several People Arrested in Mt. Pleasant*, Wash. Post, May 11, 1991, at A10.

41 Fields, *supra* note 37, at A10.

42 Sanchez & Wilgoren, *supra* note 40.

43 D.C. Latino Civil Rts. Task Force, *The Latino Blueprint for Action: Final Recommendations to the District of Columbia Government* 14 (Oct. 1991) ("Latino Blueprint").

44 Undocumented foreigners are not eligible for a range of public benefits, including Aid to Families with Dependent Children, Social Security insurance, unemployment insurance, food stamps, and Medicaid for emergency services. *Si No Soy Ciudadano de EE.UU. Para Cuales Programas de Beneficios Publicos Califico Yo? [If I am not a U.S. Citizen, What Public Benefits Programs do I Qualify for?]*, 5 Immigrants' Rts. Update, Oct. 28, 1991, at app. (translation on file at the National Immigration Law Center). Temporary Protected Status, *see infra* notes 261-62 and accompanying text, allows qualified Salvadorans to obtain unemployment insurance; other than that, all the above-listed benefits are not available to them. *Id.* Refugees and asylees are eligible for all the benefits listed above. *Id.*

45 Mayor's Exec. Order No. 86-91, *Clarification of Benefits Available to Non-Citizens or Individuals Without U.S.*

order makes clear that all services and benefits funded solely by District appropriation are available to all District residents, regardless of immigration status.⁴⁶ This order was based on the view that the city's cooperation with immigration officials discourages Latinos, both documented and undocumented, from availing themselves of city services and benefits to which they are entitled.⁴⁷ While INS officials have complained that the policy "worked against the INS," the policy has also been described as "merely an announcement that the city 'would not volunteer information' to the INS or cooperate with the agency 'beyond the means necessary.'"⁴⁸ The D.C. Latino Civil Rights Task Force has pointed out that "because the documented and undocumented Latino population are inextricably tied together - including many 'mixed families' consisting of persons with varied immigration status - attitudes and policies that seek to exclude or punish the undocumented inevitably hurt citizens and legal residents as well."⁴⁹

The need for Latinos to freely avail themselves of city benefits and services without fear of INS reprisal was explicitly recognized by the City of Takoma Park, Maryland in a 1985 ordinance. In that ordinance, the city declared itself a sanctuary and ensured all residents there would be no city enforcement of immigration laws; no city inquiries into citizenship; and no city release of information about citizenship status.⁵⁰

Residency Status, (1986).

46 *Id.*

47 Latino Blueprint, *supra* note 43, at 13-14.

48 Joyce Price, *INS Says Barry's Sanctuary Policy Lured Salvadorans*, Wash. Times, May 9, 1991.

49 Latino Blueprint, *supra* note 43, at 14.

50 Takoma Park, Md., Code § 10A (1985). The ordinance specifically provides that no city officer or employee shall (1) "assist or cooperate with the Immigration and Naturalization Service of the United States in the investigation or arrest of any persons for civil or criminal violation of the immigration and nationality laws of the United States"; (2) "make any inquiry about citizenship or residency status of any person seeking to enforce rights or obtain benefits or discriminate in the enforcement of rights or granting of benefits on such bases," or (3) "release to the Immigration and Naturalization Service any information regarding the citizenship or residency status of any city resident. *Id.*"

II. A Profile of D.C.'s Latino Population

A. Who They Are

It is difficult to ascertain a reliable estimate of the number of Salvadorans in the United States. One study noted that because the majority of Salvadorans in the U.S. are "undocumented," accurate counts of their numbers are difficult to come by. That study estimated that in 1988 there were approximately one million Salvadorans residing in the United States.⁵¹ A 1985 report by the U.S. Census Bureau referencing 500,000 as the figure frequently cited by contemporaneous studies, made the same observation, *i.e.*, "estimates of total illegal migrants to the United States lack a firm empirical base: these people try to avoid contact with authorities and thus are not easily counted."⁵² In its 1991 *World Refugee Survey*, the United States Committee for Refugees ("USCR") reported: "It is estimated that between 500,000 and 1 million Salvadorans may live in the United States."⁵³

The current estimate of Washington, D.C.'s Latino population varies from 65,000 to 85,000 of the District's 600,000 residents.⁵⁴ The 1990 United States Census reported that the District's population included 32,710 Hispanics.⁵⁵ While that number represents D.C.'s documented Latinos,⁵⁶ the official figure inadequately counts the undocumented. The D.C. Mayor's Office of Latin Affairs ("OLA") estimates that there are approximately 65,000 Latinos in D.C., representing roughly 10 percent of the population.⁵⁷ Latino community-based

51 Segundo Montes Mozo & Juan Jose Garcia Vasquez, *Salvadoran Migration to the United States: An Exploratory Study* 5, 6 (Hemispheric Migration Project, Center for Immigration Policy and Refugee Assistance, Georgetown University 1988) ("Georgetown Report"). It cited other studies, which rely on estimates of the INS and the U.S. Department of State which place that figure at between 0.5 million and one million, a Government Accounting Office estimate of 100,000 to 500,000 in 1983, and a private study conducted in 1986 that came up with the figure of 0.5 million Salvadorans. *Id.*

52 *Central American Refugees: Hearing Before the Subcomm. on Census and Population of the House Comm. on Post Office and Civil Service*, 99th Cong., 1st Sess. 16 (1985) (testimony of Linda S. Peterson, U.S. Census Bureau) ("Congressional Hearing on Refugees"); Georgetown Report, *supra* note 51, at 5.

53 U.S. Comm. for Refugees, *World Refugee Survey: 1991* 83 (1991) ("1991 Refugee Survey"). The USCR describes itself as "a program of the American Council for Nationalities Service, a private, nonprofit organization." *Id.* at cover page.

54 Latino Blueprint, *supra* note 43, at 2.

55 *Id.* at 3 (citing Bureau of the Census, *Preliminary 1990 Census Counts* (March 1991)). The 1990 census indicates that the District's Hispanic population had grown by 85 percent over the last decade. *Id.* In fact, the Washington D.C. metropolitan area has experienced the highest increase in Hispanic population of the nation's 30 largest metropolitan areas. *Id.*

The U.S. census "did not extensively use the term 'Hispanic' until the 1980 census." Nicholas Lehmann, *The Other Underclass*, *The Atlantic Monthly*, Dec. 1991, at 96.

The term "Hispanic," which is used to describe Spanish-speaking American ethnic groups—mainly Mexican-Americans, but also Cubans, Puerto Ricans, Dominicans, Colombians, Salvadorans, Nicaraguans, and immigrants from other Latin American countries—may wind up having only a brief run in common parlance. . . . Now . . . another name, "Latino," is gaining favor, especially on campuses, because it implies that Latin America has a distinctive indigenous culture, rather than being just a stepchild of Spain. *Id.*

56 Latino Blueprint, *supra* note 43, at 2.

57 *Id.* at 3. This is the figure used by the Washington Post. See, e.g., Carlos Sanchez, *A New Voice for District Hispanics: Aviles Emerges Amid Unrest*, *Wash. Post*, June 2, 1991, at B8.

organizations consider even that count to understate the Latino residents and instead estimate that there are 85,000 Latinos, comprising 12 percent of the total population.⁵⁸

Estimates vary regarding the Latino population in the greater Washington, D.C. area, which includes the Virginia and Maryland suburbs. According to a leading community-based organization, there are an estimated 150,000 to 180,000 Latinos in the D.C. area.⁵⁹ A 1985 report prepared for Congress regarding the impact of Central American migrants on the Social Security Act programs estimated that 80,000 to 150,000 Salvadorans live in the Washington, D.C. area.⁶⁰

The vast majority of the D.C. area's Latino population is Salvadoran and Guatemalan. "Between 75 and 85 percent of these people are Central Americans, and Salvadorans make up the overwhelming majority."⁶¹ In fact, recent statistics compiled by INS suggest that the Washington, D.C. area has one of the largest Salvadoran populations in the United States.⁶²

As for the living conditions of D.C.'s Hispanic population, in 1989 the OLA reported that "Hispanics are at a higher risk of being poor than any other racial or ethnic group in the city."⁶³ Indeed, the Mayor's Office estimates that the poverty rate for District Latinos is 35 percent.⁶⁴ One indication of this poverty is the lack of health insurance coverage. Recent national surveys show that Hispanics are less likely to have health insurance than other ethnic groups—and undocumented Hispanics are even less likely than other Hispanics to have any coverage.⁶⁵ In addition, only 3,000 to 5,000 Hispanics — 1 to 2 percent of the electorate — are registered to vote in D.C.⁶⁶

58 Latino Blueprint, *supra* note 43, at 4.

59 Joyce Price, *INS Says Barry's Sanctuary Policy Lured Salvadorans*, Wash. Times, May 9, 1991 (quoting Oscar Chacon, Director, CARECEN).

60 Office of the Assistant Secretary for Planning and Evaluation, Dep't of Health and Human Services, *The Impact of Central American Migrants on Social Security Act Programs* (1985).

61 Price, *supra* note 59 (quoting Oscar Chacon, Director, CARECEN).

62 Latino Blueprint, *supra* note 43, at 8. These numbers were obtained in connection with the Temporary Protected Status program ("TPS"), established by Congress in 1990, which required Salvadorans to register with INS to receive its benefits. In order to qualify for TPS, Salvadorans had to prove that they arrived in the United States before September 19, 1990, and to register during the period beginning January 1, 1991 and ending June 30, 1991. 8 U.S.C.A. 1254a note (West Supp. 1991). See discussion *infra* at notes 261-94 and accompanying text.

According to the INS, the combined registration numbers for Salvadorans in the Baltimore and "Washington" (located in Arlington, Virginia) offices, cumulative as of January 2, 1992, was 35,354. Letter from E.B. Duarte, Jr., Director, Examinations Operations Facilitation Program to Ezra Borut, Arnold & Porter (Jan. 13, 1992) (on file with Arnold & Porter). (The Arlington office of the INS covers immigrants in Washington, D.C. and Virginia and the Baltimore office has jurisdiction over the entire State of Maryland.)

63 Latino Blueprint, *supra* note 43, at 5 (footnote omitted).

64 *Id.* Nationally, the economic status of Hispanics has gone downhill in the 1980s as compared to the 1970s. *Id.*

65 Christine Spolar, *For Uninsured, Medical Care Is a Luxury*, Wash. Post, Dec. 27, 1991, at A1, A4 (citing GAO testimony).

66 Carlos Sanchez & Nell Henderson, *D.C. Hispanics Find Voice, But Power is Elusive*, Wash. Post, May 11, 1991, at A11 (citing activists' estimates of 3,000); Carlos Sanchez, *D.C. Hispanic Task Force Talks Tough on Parity*, Wash. Post, Sept. 12, 1991, at C3 (5,000 registered Hispanic voters); Christine Spolar & Rene Sanchez, *D.C.'s Hispanics*

B. Why They Came to the United States

Of those directly victimized by the war in El Salvador, the largest number are people who have had to flee their homes, either to take refuge outside the country or to seek some haven within it. Since 1979 at least one fourth of the entire population of the country has had to abandon possessions, homes, and communities; many have had to endure separation from family members and friends. These separations have often become permanent.⁶⁷

Salvadorans came to the United States in the 1980s in large numbers, fleeing the widespread violence of the civil war in their country. A United States Bureau of the Census representative testified before a congressional committee hearing on Central American refugees that:

Salvadorans began fleeing their country *en masse* in April, 1980 as the conflict between government troops and opposition forces escalated after the assassination of Catholic Archbishop Oscar Romero.⁶⁸

At the same hearing, the Vice Chairman of Americas Watch pointed to the apparently insignificant number of Honduran emigrants and commented that "if the cause of this migration were simply a desire for economic betterment, one would imagine that there would be a refugee flow, or an emigration, from Honduras that would be significant"⁶⁹

An MIT study of Salvadoran migration that explicitly examined the question of why those immigrants came to the United States found "strong empirical evidence that political violence in El Salvador contributes in a major way to Salvadoran migration to the U.S."⁷⁰ That study used a multivariate regression analysis and found a close correlation between three major military "sweeps" in El Salvador in the 1980 to 1983 period and the number of Salvadorans apprehended at the Mexican border after a designated "lag" period. The study concluded that, "the level of political violence in El Salvador is closely associated with the numbers of Salvadorans who come to the U.S., indicating that fear of political violence is in fact the dominant motivation of Salvadorans who migrate here."⁷¹

A more recent study, published by Georgetown University and based on research conducted both in the United States and El Salvador, came to the same conclusion: "Emigration [from El Salvador] has been greater in the time periods and departments⁷² in which violence

Look to Themselves for Help, Wash. Post, Sept. 16, 1991 (estimating 5,000 registered voters).

67 Americas Watch, *El Salvador's Decade of Terror: Human Rights Since the Assassination of Archbishop Romero* 107 (1991) ("Decade of Terror").

68 Congressional Hearing on Refugees, *supra* note 52.

69 *Id.* at 26 (testimony of Aryeh Neier, Vice Chairman, Americas Watch).

70 William Stanley, *Salvadoran Migration to the United States: An Analysis of Motivation and U.S. Policy Response* 20 (Mar. 1985) (Dep't of Political Science, Massachusetts Institute of Technology, March 1985) ("MIT Report").

71 *Id.* at 24.

72 El Salvador is divided into administrative departments, much like provinces or states.

has been the most acute . . . [O]ver three-fourths of the emigrants arrived in the United States after 1979, once the political crisis and repression had become most intense."⁷³

In November, 1989, the FMLN launched the most powerful offensive of the entire war, which resulted in a wave of emigration.⁷⁴ In December, 1989 government officials in El Salvador reported that applications for passports numbered over 2,000 per day,⁷⁵ and from early November 1989 to early January 1990, approximately 67,000 passports were issued.⁷⁶ The exodus of Salvadorans in response to the civil turmoil continued into 1990 when another guerilla offensive caused large numbers of casualties.⁷⁷ The escalating violence in El Salvador prompted the United States Committee for Refugees to write to the U.S. Attorney General: "Let us not now put additional lives at risk by returning people into the maelstrom of contemporary El Salvador," and requested that all Salvadoran deportations be suspended.⁷⁸

73 Georgetown Report, *supra* note 51, at 11, 9. Dr. Montes was one of six Jesuit priests murdered at Central American University, San Salvador, on November 16, 1989. *Decade of Terror*, *supra* note 67, at 35.

74 *Decade of Terror*, *supra* note 67, at 156 app. B. The attacks left over 40,000 people homeless and thousands more dead or wounded. U.S. Comm. for Refugees, *World Refugee Survey: 1989 in Review* at 70 (1990) ("*1989 Refugee Survey*").

75 *1989 Refugee Survey*, *supra* note 74, at 70.

76 El Rescate Human Rights Dep't, *El Salvador Chronology*, Vol. V, No. 1 at 11 (Jan. 1990) ("*El Rescate*").

77 *1991 Refugee Survey*, *supra* note 53, at 83.

78 *1989 Refugee Survey*, *supra* note 74, at 70.

III. Immigration Reform and Control Act of 1986: Implications for D.C.'s Latino Population

The Immigration Reform and Control Act of 1986 ("IRCA"), signed into law November 6, 1986, was comprised substantially of two provisions — a legalization program for certain undocumented aliens who arrived in the United States prior to January 1, 1982, and a provision establishing penalties for employers who knowingly hire undocumented aliens.⁷⁹

A. Legalization

Recognition of the need for a legalization program preceded enactment of IRCA. For example, Rev. Theodore M. Hesburgh, former Chairman of the bipartisan Select Commission on Immigration and Refugee Policy, forcefully endorsed legalization:

[L]egalization . . . is one of the points on which we [the Commissioners] were all unanimous.

We had a feeling, all of us, I think, that these were people living in the shadows. These were people who somehow had to be brought into the light of day so they could not be exploited, as they presently are. These people . . . cannot go to the police, the authorities, because they feel they will be deported. These people are here. They are law abiding, and we felt that as soon as possible they should be brought out of the shadows.⁸⁰

IRCA's "amnesty" program meant that individuals who could show unlawful immigration status as of January 1, 1982, continuous residence in the U.S. since that date and that they were not otherwise excludable would qualify for temporary residence status and could then apply for permanent residence.⁸¹ In explaining the legalization provision, Congress suggested that the large undocumented population living and working in the United States had a claim to legal status:

The United States has a large undocumented alien population living and working within its borders. Many of these people have been here for a number of years and have become a part of their communities. Many have strong family ties here which include U.S. citizens and lawful residents. They have built social networks in this country. They have contributed to the United States in myriad ways, including providing their talents, labor and tax dollars.⁸²

79 Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359 (codified in scattered sections of 8 U.S.C.).

80 *Immigration Reform and Control Act of 1986: Hearings on S. 1200 Before the Subcomm. on Immigration and Refugee Policy of the Senate Comm. on Judiciary, 99th Cong., 1st Sess. 6-7 (1985)* (statement of Rev. Theodore M. Hesburgh, C.S.C., Former Chairman, Select Commission on Immigration and Refugee Policy) ("Hesburgh Statement"). Father Hesburgh had been president of Notre Dame for the preceding 33 years and was a former chairman of the Civil Rights Commission of the United States. *Id.* at 4.

81 8 U.S.C.A. § 1255a(a), (b) (West Supp. 1991). IRCA provided for a two-stage process. In the first 12 month application period, individuals could apply for temporary status if they could meet the standards described above. *Id.* § 1255a(a). In the second stage, applicants had to fulfill additional requirements and application deadlines in order to obtain permanent residence status. *Id.* § 1255a(b).

The legalization program also reflected an acknowledgment that the twilight existence of an “undocumented” population was harmful to both that population and the country:

[B]ecause of their undocumented status, these people live in fear, afraid to seek help when their rights are violated, when they are victimized by criminals, employers or landlords or when they become ill.

Continuing to ignore this situation is harmful to both the United States and the aliens themselves.⁸³

The American Civil Liberties Union (“ACLU”) had made a similar argument on behalf of the Salvadoran population residing in the United States in 1983:

[T]he existence of an “underclass” in the U.S. is extremely prejudicial to the interests of the U.S. population. Social order and occupational, medical or housing standards suffer from the presence of an intimidable and exploitable population in our midst. It is axiomatic in discussions of U.S. immigration policy that persons illegally present in the U.S. will be afraid of apprehension and deportation. They will therefore be particularly exploitable by employers, landlords or sharp traders, and will be particularly reluctant to seek medical attention or police protections [sic].⁸⁴

There is a “general consensus” that at the outset, the legalization program was effective: 1.7 million individuals applied for temporary resident status and approximately 95 percent of those applications were approved.⁸⁵ However, it has been pointed out that there were significant problems with implementing the second phase of the program such that the newly legalized are at risk of losing their status and family members may be subject to deportation.⁸⁶ Indeed, the National Council of La Raza came to the conclusion that:

As a result of these problems, the overall goal of legalization—to eliminate the exploitable subclass of undocumented U.S. residents—has not been achieved. Even if the maximum possible number of newly legalized persons safely reach permanent residence status, the U.S. will be left with a large undocumented population which did not legalize, or which

82 H.R. Rep. No. 682(I), 99th Cong., 2d Sess. 49 (1986), reprinted in 1986 U.S.C.C.A.N. 5649, 5653.

83 *Id.*

84 ACLU Public Policy Report, *Salvadorans in the United States: The Case for Extended Voluntary Departure* 55-56 Dec. 1983 (“ACLU Report”).

At that time, “estimates of the Salvadoran population in the U.S. range[d] from 300,000 to 500,000.” The ACLU described the problems stemming from an undocumented “underclass” in a report in which it urged that the government grant “Extended Voluntary Departure” to the Salvadoran population then residing in the United States. See *infra* notes 265-66 and accompanying text.

85 Cecilia Munoz, National Council of La Raza, *Unfinished Business: The Immigration Reform And Control Act of 1986* 4 (Dec. 1990) (citing Doris M. Meissner & Demetrios G. Papademetriou, *The Legalization Countdown: A Third Quarter Assessment* (The Carnegie Endowment for International Peace Feb. 1988) and David North & Anna Mary Portz, *The U.S. Alien Legalization Program* (TransCentury Dev. Assocs. June 1989)) (“NCLR Report”).

86 *Id.* at iv. The NCLR report concluded that “[m]any who successfully completed the first stage of legalization may lose their legal status because of implementation problems with the second stage of the program.” *Id.* at iii (emphasis omitted). In addition, “[w]hile legalization benefited many individuals, the benefits did not always apply to their families; many of the families of newly legalized immigrants continue to face separation by deportation.” *Id.* at iv (emphasis omitted).

arrived after IRCA was enacted. NCLR estimates that the size of the undocumented population today [December 1990], perhaps three to four million persons, equals that of the early 1980s, when the debate over IRCA took place.⁸⁷

As regards the Salvadoran population, the legalization program fell woefully short of the mark, precisely because the greatest number of Salvadoran migrants arrived after the 1982 cutoff date.⁸⁸ The United States Catholic Conference, in a powerful statement issued in November of 1988, denounced that date as "too restrictive. It left an ineligible population of post-1982 arrivals that many estimate is as large as the eligible population."⁸⁹ In the context of IRCA's impact on the Salvadoran population, the Catholic bishops' statement was entirely accurate. Salvadorans "arriving after 1981 constitute almost half of the total Salvadoran emigrant population in the United States[.]" and none of the post-1981 arrivals were eligible for the IRCA legalization program.⁹⁰ In fact, according to INS, 168,000 — of the estimated 500,000 to one million Salvadorans in the United States — obtained residency status under IRCA.⁹¹

Thus, the ills visited upon an undocumented population and their neighbors, so eloquently described by legalization proponents, continue to accurately describe the situation of half the Salvadoran population in the U.S. The impact of this situation is especially felt in the D.C. area, which is the home for as many as 200,000 Salvadorans, the majority of whom could not benefit from IRCA's legalization program.⁹² Many of these people — who lead their lives in fear and without protection, ripe for exploitation by all and without redress — reside in the Columbia Heights, Mount Pleasant and Adams Morgan sections of Washington, D.C.

B. Employer Sanctions

1. Employer Sanctions: In Theory and In Practice

The second half of IRCA, which provides civil and criminal sanctions for employers who hire undocumented aliens, only made matters worse — both for Salvadorans who benefited

⁸⁷ *Id.* at iv (emphasis omitted).

⁸⁸ See *supra* notes 74-78 and accompanying text for discussion of 1989-90 influx of Salvadoran immigrants.

⁸⁹ National Conference of Catholic Bishops, Policy Statement on Employer Sanctions 2 (Nov. 1988) ("Bishops' Statement"). The statement was issued by the United States Catholic Conference National Office of Migration and Refugee Services in December 1988, with a press release stating that the policy statement had been approved overwhelmingly on November 16, 1988 by the U.S. Catholic bishops during their meeting in Washington, D.C.

⁹⁰ Georgetown Report, *supra* note 51, at 9.

⁹¹ Immigr. & Naturalization Serv., U.S. Dep't of Justice, 1989 Statistical Yearbook of the Immigration and Naturalization Service 46 (1990) ("1989 INS Yearbook"). This figure is based on applications processed as of May 16, 1990. See *supra* note 84 and accompanying text for estimate of Salvadorans in the United States.

⁹² According to the INS, the total number of foreign nationals that benefited from IRCA's legalization program in the "Washington, D.C.-Maryland-Virginia" metropolitan area was 20,863. *Id.* (The INS defines metropolitan statistical areas as "large population nucle[i] together with adjacent communities which have a high degree of social and economic integration with that nucle[i]"). These statistics are based on applications processed as of May 19, 1990. *Id.* No figures were available for Salvadorans in the same metropolitan area.

from legalization and for those who did not. The employer sanctions provisions prohibit (1) hiring any person without verifying his or her identity and authorization to work;⁹³ (2) knowingly hiring unauthorized aliens;⁹⁴ and (3) continuing to employ known unauthorized aliens.⁹⁵

Under IRCA, employers must verify all employees' authorization to work and maintain I-9 forms indicating that the employees' eligibility was verified.⁹⁶ The employer is required to examine certain specified documents⁹⁷ to determine the applicants' identity and work eligibility.⁹⁸ A violation of these verification requirements may result in a civil penalty from \$100 to \$1,000 for each individual.⁹⁹

An employer who knowingly¹⁰⁰ hires or continues to employ unauthorized aliens will be assessed civil penalties ranging from \$250 to \$10,000 per worker.¹⁰¹ In addition, the INS is

93 8 U.S.C.A. § 1324a(a)(1)(B)(i) (West Supp. 1991).

94 *Id.* § 1324a(a)(1)(A).

95 *Id.* § 1324a(2).

96 *Id.* § 1324a(b)(1), (3).

97 The documents that may be used to establish employment eligibility are:

- (1) a U.S. passport (expired or unexpired);
- (2) a certificate of U.S. citizenship
- (3) a certificate of naturalization
- (4) an unexpired foreign passport that (a) has an unexpired stamp stating that it was processed for temporary evidence of lawful admission for permanent residence, or (b) has attached an INS Form I-94 with an unexpired employment authorization;
- (5) an alien registration receipt card or a resident alien INS Form I-551 with a photograph of the bearer;
- (6) an unexpired temporary resident card;
- (7) an unexpired employment authorization card;
- (8) an unexpired reentry permit;
- (9) an unexpired refugee travel document;
- (10) a U.S. social security card;
- (11) a certification of birth abroad issued by the State Department;
- (12) a U.S. birth certificate bearing a seal;
- (13) a Native American tribal document;
- (14) a U.S. citizen ID card;
- (15) an ID card for use of resident citizens in the U.S.; or
- (16) an unexpired employment authorization document issued by the INS.

See 8 C.F.R. § 274a.2(b)(1)(v)(A), (C)(1991)(as amended by 56 Fed. Reg. 41,767 (1991)).

The employer may not specify which documents the applicant must present. *Id.* § 274a.2(b)(1)(v).

98 The employer must fill out the I-9 Form and verify the employee's work authorization within three business days from the date of hire. *Id.* § 274a.2(b)(1)(ii).

If an employee's work authorization expires, the employee must show either continuing employment eligibility or a new grant of work authorization no later than the date his work authorization expires. 56 Fed. Reg. 41,767, 41,784 (1991)(to be codified at 8 C.F.R. § 274a.2(b)(1)(vii)). If an individual does not have his required documents, however, he may show a receipt for the application of that document within three business days of hire, and present the required documents within 90 days of hire. *Id.* This section does not apply to an alien who does not have work authorization at the time of hire. *Id.*

99 8 U.S.C.A. § 1324a(e)(5)(West Supp. 1991). Unlike knowing violations of the hiring provisions, *see infra* notes 90-91, subsequent violations of the verification requirements do not lead to escalating penalties or criminal sanctions. *Id.*

100 A "knowing" violation includes knowledge which can be inferred from "notice of certain facts and circumstances which would lead a person . . . to know about a certain condition." 56 Fed. Reg. 41,767, 41,783 (1991) (amending 8 C.F.R. § 274a.1(1)) (final rule revising 8 C.F.R. Parts 103, 274a).

101 8 U.S.C.A. § 1324a(e)(4) (West Supp. 1991). These penalties escalate according to the number of violations

authorized to issue the employer a "cease and desist" order and to order the employer to take appropriate remedial action.¹⁰²

IRCA also provides for criminal penalties of up to six months in jail and/or fines of up to \$3,000 per worker for employers who engage in a "pattern or practice" of knowingly hiring or continuing to employ unauthorized aliens.¹⁰³ Criminal penalties may also be assessed against any person who knowingly transports aliens into or within the United States with the intention of concealing, harboring, or shielding them from detection.¹⁰⁴

The stated congressional purpose behind employer sanctions was to remove "the magnet that lures [undocumented persons] to this country."¹⁰⁵ The House Committee Report further explained the premise and the intended effect of this provision:

Employment is the magnet that attracts aliens here illegally or, in the case of nonimmigrants, leads them to accept employment in violation of their status. Employers will be deterred by the penalties in this legislation from hiring unauthorized aliens and this, in turn, will deter aliens from entering illegally or violating their status in search of employment.¹⁰⁶

As has already been demonstrated, however, it was not the magnet of legal employment that pulled Salvadorans to the U.S., but the violence of the war in El Salvador that drove them out of their own country.¹⁰⁷ No statistics were found explicitly documenting the flow of Salvadorans to the U.S. after December 1988¹⁰⁸ when employer sanctions went into effect. However, the exodus from El Salvador that took place in late 1989 and early 1990 strongly suggests that Salvadoran migration is more a reflection of the war and the human rights situation in El Salvador than changes in U.S. immigration law.¹⁰⁹

In fact, a myriad of studies have struggled with the question of whether there was a decline in illegal immigration in the late 1980s and whether such a decline could properly be attributed to employer sanctions. A review of numerous sociological reports on IRCA's impact, which noted that such reports are generally consistent in finding "at least a short-term decrease

committed by the employer. The employer will be fined \$250 to \$2,000 per worker for the first violation; \$2,000 to \$5,000 per worker for the second violation; and \$3,000 to \$10,000 per worker for the third and subsequent violations. *Id.*

102 8 C.F.R. § 274a.10(b)(1)(i), (iii)(1991).

103 8 U.S.C.A. § 1324a(f)(1)(West Supp. 1991). A pattern or practice violation is one that includes "regular, repeated, and intentional activities, but does not include isolated, sporadic, or accidental acts." 56 Fed. Reg. 41,767, 41,783 (1991) (amending 8 C.F.R. § 274a.1(k)).

104 *Id.* § 1324(a).

105 H.R. Rep. No. 682(I), 99th Cong., 2d Sess. 45-46 (1986), reprinted in 1986 U.S.C.C.A.N. 5649-50.

106 *Id.* at 5650.

107 See *supra* notes 67-78 and accompanying text.

108 8 U.S.C.A. § 1324a(i) (West Supp. 1991).

109 See *supra* notes 74-78 and accompanying text, discussing that exodus and *infra* notes 115-118 and accompanying text, re: human rights situation.

in the flow of illegal migrants across the U.S.-Mexico border," points out that apprehensions data are far from a reliable means of measuring illegal immigration and concludes that "it is difficult to ascribe this decline to effects of employer sanctions."¹¹⁰

If removal of the alleged job magnet has not been shown to have decreased illegal immigration, the question remains whether the unavailability of jobs has driven undocumented residents out of the United States.¹¹¹ From the point of view of the American Friends Service Committee, the intent of the employer sanctions provisions was to make employers "accomplices to starving persons out of the country."¹¹² There is no evidence that

110 Jeffrey S. Passel, Frank D. Bean & Barry Edmonston, *Assessing The Impact Of Employer Sanctions Of Undocumented Immigration To The United States*, in *The Paper Curtain: Employer Sanctions' Implementation, Impact, and Reform* 193, 207 (Michael Fix ed. 1991) ("Passel").

The Georgetown Report researchers commented in a footnote that they were "repeatedly informed that most emigrants leave the country by land." Georgetown Report, *supra* note 51 at 6 n.3. This finding corroborated the MIT Report in which Stanley reported: "Like Mexicans, virtually all Salvadorans entering the U.S. do so via the Mexican border. INS enforcement efforts should affect both groups roughly equally." MIT Report, *supra* note 70, at 11. When measured as a percentage and compared to Mexicans, the number of Salvadorans is insignificant. According to INS statistics of apprehensions at the U.S.-Mexican border "Mexican nationals accounted for 94% of the 'illegal aliens' arrested while Salvadorans comprised 1.1% of the total INS apprehensions in 1986." *Orantes-Hernandez v. Meese*, 685 F. Supp. 1488, 1493 (C.D. Cal. 1988), *aff'd*, 919 F.2d 549 (9th Cir. 1990).

A Department of Labor study of the impact of employer sanctions based its review on the statistics of "illegal aliens" apprehended while entering the United States over the U.S.-Mexican border—a "yardstick" it characterized as "highly inexact." Bureau of International Labor Affairs, Dep't of Labor, *Employer Sanctions And U.S. Labor Markets: Second Report* 60 (1991) ("DOL Report").

One of the most frequently used proxies for the effectiveness of IRCA in reducing significantly illegal immigration is the number of apprehensions along the U.S.-Mexico border. Although use of that yardstick to measure changes in illegal immigration is widely understood to be highly inexact, few observers of the immigration scene are able to resist the attraction of the apprehension proxy. *Id.* at 60 (footnote omitted). While the DOL Report notes that following passage of IRCA apprehensions decreased significantly each year until 1990, it points out that in 1990 apprehensions began to increase again. *Id.* at 61. Thus, "notwithstanding its cause or depth, the drop in apprehensions in the immediate post-IRCA years may have been more of a pause than a change in behavior." *Id.* at 62. The Department of Labor report also points out that a sharp deterioration in Mexico's economy, beginning in 1982, was followed by a 34.9 percent increase in apprehensions in fiscal year 1983, reflecting that apprehension data can surge dramatically in response to significant events in Mexico and do not necessarily reflect a response to changes in U.S. law. *Id.* at 61-62. One study pointed out that "[b]ecause employer sanctions did not become fully implemented until December 1988, they are unlikely to have accounted directly for the sharp decline in apprehensions noted during FYs 1987 and 1988." Demetrios A. Papdemetriou, B. Lindsay Lowell & Deborah A. Cobb-Clark, *Employer Sanctions: Expectations And Early Outcomes*, in *The Paper Curtain: Employer Sanctions' Implementation, Impact and Reform* 215, 220 (Michael Fix ed. 1991). Indeed, that study suggests five possible explanations other than employer sanctions for the early decline in apprehensions. *Id.* at 218-19.

111 The Catholic bishops' statement protested the assumption that there was something wrong about coming to the United States in search of employment, and asserted that there is a "right to migrate for work [which] cannot be simply ignored in the exercise of a nation's sovereign right to control its own borders." Bishops' Statement, *supra* note 89 at 4.

112 Aurora Camacho de Schmidt, *In Their Presence: Reflections on the Transforming Power of Undocumented Immigrants in the United States* 7-8 (American Friends Service Committee 1991) (quoting Plaintiffs' Memorandum of Points and Authorities in Opposition to Defendants' Motion to Dismiss, at 41-42, *AFSC v. Thornburgh*, 718 F. Supp. 820 (C.D. Cal. 1989), *aff'd*, 941 F.2d 808 (9th Cir.), *amended and superseded on other grounds*, No. 89-56095, 1991 WL 264816 (9th Cir. Aug. 2, 1991).

The AFSC filed a lawsuit alleging that employer sanctions contravened the First Amendment protection for religious freedom, and that their religious tenets precluded compliance with the law. The District Court dismissed the action for failure to state a claim, *AFSC v. Thornburgh*, 718 F. Supp. 820, 823 (C.D. Cal. 1989), and the Court of Appeals for the Ninth Circuit affirmed. *AFSC v. Thornburgh*, 941 F.2d 808 (9th Cir. 1991). The Ninth Circuit stated that because (1) IRCA's employer sanctions provisions are not aimed at suppressing the

it has had that effect. If Salvadorans came to this country because they fled violence, and not in search of jobs, it is only reasonable to deduce that they will not leave the U.S. and return to a country where warfare puts their personal safety in jeopardy, simply because it is illegal to work here.¹¹³

Conditions in El Salvador from enactment of IRCA and continuing into 1990, remained relentlessly grim.¹¹⁴ According to the State Department's own report, the human rights situation in 1990 was far from promising:

The FMLN . . . engaged in forced recruitment and caused civilian casualties by the indiscriminate use of land mines and attacks launched on and in residential areas. The [armed forces] engaged in the torture of detainees, arbitrary arrest and detention, and intimidation and abuse of noncombatants perceived as sympathetic to the FMLN. The possibility of a resurgence of right-wing death squad activity remained a serious concern.¹¹⁵

While the State Department's report commented that the number of human rights violations in El Salvador had decreased,¹¹⁶ some commentators do not attribute this to an improvement in the situation: "Even though it is true that the military and the death squads grew more selective in targeting victims of violence later in the decade, they may simply have needed to kill fewer in order to generate a commensurate level of terror."¹¹⁷

Although the hardships and perils of life as an undocumented alien in the U.S. are no small matter, the choice between these two evils presents no choice at all. As one D.C. resident

free exercise of religion; (2) IRCA is a valid and neutral law of general applicability; (3) the AFSC's challenge to the provisions was not based on any constitutional claim other than its free exercise claim; and (4) IRCA does not provide a procedure for granting individualized exemptions, the AFSC failed to state a claim. *Id.* at 811.

The Catholic Bishops also suggested that employers' sanctions contravened their legal teachings and concluded: "Defying legal sanctions must be viewed as an exceptional act justified only by clear moral necessity to prevent a greater evil for which all other remedies have been exhausted." Bishops' Statement, *supra* note 89, at 5-6. In a footnote, the statement then quotes the Second Vatican Council: "[sic]For man has in his heart a law written by God. To obey it is the very dignity of man; according to it he will be judged." *Id.* at 6 n.5 (quoting Second Vatican Council, *The Church in the Modern World*).

113 It bears pointing out that undocumented aliens are not criminals. "Although crossing the border without authorization is illegal (like a traffic violation), it is not a criminal act (except in those few instances when an alien who has previously been deported is caught reentering the United States during the subsequent five years)." U.S. Comm. for Refugees, *Refugees at Our Border: The US Response to Asylum Seekers* (Sept. 1989). In addition, employer sanctions made it illegal for employers to hire undocumented workers — it did not add any additional penalty, other than the existing, draconian sanction of deportation, for undocumented workers who accept such employment.

114 See *infra* for discussion of peace accords and current situation.

115 Department of State, *Country Reports on Human Rights Practices for 1990*, S. Rep. No. 5, 102d Cong., 1st Sess. 608 (Joint Comm. Print Feb. 1991) ("1990 Country Reports"). The State Department's Country Reports are prepared each year in compliance with Sections 116(d)(1) and 502B(b) of the Foreign Assistance Act of 1961, as amended. Pub. L. No. 87-195, 75 Stat. 424 (codified as amended at 22 U.S.C. § 1251 et. seq. (1990)). "The legislation requires human rights reports on all countries that receive aid from the United States and all countries that are members of the United Nations." *1990 Country Reports, supra*, at 1.

116 See *id.* at 609.

117 *Decade of Terror, supra* note 67, at 18.

who is waiting to see whether the government's appeal of his initial grant of asylum is successful, put it: "Life here in the U.S. is difficult; it is not easy to earn a lot of money, but it is all worthwhile because I can live without having to fear prosecution."¹¹⁸

Congress may have thought that employer sanctions would cause undocumented people to leave the country. They have not. Instead, the local community has borne the burden of an undocumented subclass, on the one hand stretching its resources to accommodate and assist a population the government refuses to acknowledge, while on the other hand experiencing the inevitable frictions and strains the situation exacts. The disturbances in Washington, D.C. last spring were, in part, one expression of this crisis.

2. Employer Sanctions and Undocumented Workers

Employer sanctions have exacerbated the difficult conditions of the undocumented Salvadoran community. By some measure, employer sanctions appear to have worked—although there is no evidence that undocumented people are leaving the country, they are having a difficult time finding jobs in the Washington, D.C. area. While it is also true that permanent residents and American citizens are facing unemployment, it is the testimony of local service providers such as Lori Kaplan, executive director of the Latin American Youth Center in Adams Morgan, that the combination of employer sanctions and the recession has made it much more difficult for undocumented Latinos to find work.¹¹⁹ "It [is] much more difficult to find work without documents, especially in a recession and in a time when employers fear sanctions."¹²⁰ This observation is consistent with the findings of a federal government study: "less than 1 percent of all employers in the GAO survey [of some 9,000 employers] . . . report[ed] the routine employment of unauthorized workers".¹²¹

When undocumented Latinos do find work, they are ripe targets for employer exploitation. First, it is frequently the case that undocumented workers will not be paid for their labors.¹²² Furthermore, undocumented employees are afraid to insist that employers pay

118 Eusebio Rodriguez Statement (Jan. 1992) ¶ 16.

119 Lori Kaplan, Executive Director, Latin American Youth Center, Statement (Jan. 1992) ¶ 12.

120 Pedro Aviles, Executive Director, Central American Refugee Center, Statement (Jan. 1992) ¶ 8.

121 DOL Report, *supra* note 110, at 46. The Department of Labor Report was prepared as the Department of Labor's submission to The President's Second Report on the Implementation and Impact of Employer Sanctions, which was mandated by Section 402 of Title IV of IRCA. *Id.* at vii. The DOL submission addresses the "impact of employer sanctions on the employment, wages, and working conditions of United States workers and on the economy of the United States." *Id.*

According to the DOL report, the likelihood of those firms which routinely hire unauthorized workers reporting a practice of national origin discrimination is "6.0 percentage points greater than that for similar firms employing no unauthorized workers." *Id.* at 46. The DOL Report notes that although this finding perhaps seems counterintuitive, firms reporting that they routinely employ unauthorized workers "may use national origin discrimination as yet another means of avoiding sanctions for the employment of unauthorized workers." *Id.*

See *supra* note 110, for discussion of the DOL study of the impact of employer sanctions on illegal immigration.

122 See Sharon O'Day, Casa of Maryland, Day Laborer Assistance Project, Statement (Jan. 1992) ¶ 8.

them, because they fear that employers will turn them in to the INS.¹²³ They do not know that it is their employers who are violating the law by hiring them and by not paying them.¹²⁴ In fact, the Supreme Court and several lower courts have ruled that undocumented workers are entitled to the protections of various U.S. labor rights laws.¹²⁵ Moreover, at least one circuit court and one district court have ruled since passage of IRCA that the new law does not limit the rights of undocumented workers.¹²⁶ As is often the case, such legal rights do not often provide much real protection to undocumented workers. It takes an unusually brave soul to risk revealing his or her undocumented status to authorities by filing a lawsuit, and this is especially the case when deportation to El Salvador, rather than Mexico, is at stake.¹²⁷

123 *Id.*

124 *Id.* ¶ 18.

125 In Sure-Tan, Inc. v. NLRB, 467 U.S. 883 (1984), the Supreme Court ruled that a union violated the National Labor Relations Act ("NLRA") by reporting undocumented alien employees to the INS in retaliation for participating in union activities. *Id.* at 894-96. The Court affirmed that "undocumented aliens are 'employees' within the meaning of" the NLRA, stating that this interpretation was fully supported by its terms and policies.

[E]xtending the coverage of the Act to such workers is consistent with the Act's avowed purpose of encouraging and protecting the collective-bargaining process. As this Court has previously recognized: "[A]cceptance by 'illegal aliens' of jobs on substandard terms as to wages and working conditions can seriously depress wage scales and working conditions of citizens and legally admitted aliens; and employment of 'illegal aliens' under such conditions can diminish the effectiveness of labor unions." If undocumented alien employees were excluded from participation in union activities and from protections against employer intimidation, there would be created a subclass of workers without a comparable stake in the collective goals of their legally resident co-workers, thereby eroding the unity of all the employees and impeding effective collective bargaining.

Id. at 891-92 (citations omitted). The Court then stated that there was no "conflict between application of the NLRA to undocumented aliens and the mandate of the [Immigration and Naturalization Act]." *Id.* at 892.

For other cases holding that undocumented workers are protected by labor laws see Espinoza v. Farrah Mfg. Co., 414 U.S. 86, 95 (1973) (holding that Title VII protection from unlawful discrimination extends to aliens); EEOC v. Hacienda Hotel, 881 F.2d 1504, 1517 (9th Cir. 1989) (holding that Title VII applies to undocumented aliens subjected to employment discrimination); Local 512, Warehouse & Office Workers' v. NLRB, 795 F.2d 705, 717-22 (9th Cir. 1986) (holding that undocumented alien workers who are discriminated against in violation of the NLRA are entitled to back pay and that this does not detract from the purposes of the Immigration and Nationality Act).

126 In Patel v. Quality Inn South, 846 F.2d 700 (11th Cir. 1988), *cert. denied*, 489 U.S. 1011 (1989), the 11th Circuit ruled that an undocumented Indian worker's suit against an employer for violating the wage and overtime provisions of the Fair Labor Standards Act ("FLSA") should not have been dismissed by the district court. The court pointed out that the Supreme Court had adopted an expansive definition of "employee" under the FLSA, that undocumented aliens were "employees" within the meaning of the National Labor Relations Act, and that the Department of Labor supported the plaintiff's position. 846 F.2d at 702, 703. It then turned to IRCA, and referring to the district court's reliance on IRCA concluded that "nothing in the IRCA or its legislative history suggests that Congress intended to limit the rights of undocumented aliens under the FLSA." *Id.* at 704.

Indeed, the FLSA's coverage of undocumented aliens goes hand in hand with the policies behind the IRCA. Congress enacted the IRCA to reduce illegal immigration by eliminating employers' economic incentive to hire undocumented aliens. To achieve this objective the IRCA imposes an escalating series of sanctions on employers who hire such workers. The FLSA's coverage of undocumented workers has a similar effect in that it offsets what is perhaps the most attractive feature of such workers - their willingness to work for less than the minimum wage. If the FLSA did not cover undocumented aliens, employers would have an *incentive* to hire them. Employers might find it economically advantageous to hire and underpay undocumented workers and run the risk of sanctions under IRCA.

Id. at 704 (emphasis in original, citations omitted).

Similarly, in EEOC v. Tortilleria "La Mejor", 758 F. Supp. 585, 587-92 (E.D. Cal. 1991), the court citing Patel, held that Title VII extends coverage to undocumented aliens, and that IRCA does not alter the coverage of Title VII.

127 For example, see Local 512, 795 F.2d at 705, stating that "the knowledge that deportation proceedings are a likely consequence of filing a successful unfair labor practice charge would chill severely the inclination of any

In the minds of Salvadoran refugees in the Washington area, undocumented and documented alike, fear and confusion about a legal system they do not understand deprives them of the ability and the desire to stand up for their rights.¹²⁸ A local undocumented Honduran man is paid roughly 60 percent of what his documented coworkers earn. Since he is undocumented, he is afraid to ask for equal pay, because, "I know from personal experience that those Latinos who complain to their employers run the risk of being fired from their jobs."¹²⁹ Despite the fact that he never complained, Jose Hondora was fired on January 24, 1992. "My employer fired me because I was undocumented. He told me that I could return to work for him when I got legal documents to work. He told me that if he didn't fire me, he could be fined \$10,000."¹³⁰

The kind of exploitation Mr. Hondora faced when he was employed has led to some confrontations at a parking lot in Silver Spring where Sharon O'Day runs the Day Laborer Assistance Project. She has witnessed situations in which an employer is spotted by someone he has not paid, and day workers who gather in the lot will angrily approach his car.¹³¹ In these situations, the police have been effective in getting employers to pay: "The police . . . can be very effective in such situations, sometimes more effective than I can be in getting employers to pay up quickly."¹³² The employers' practice of denying workers their wages makes for a situation that, while controlled, simmers with volatility.¹³³

Apparently, some employers hire and underpay undocumented workers and justify that underpayment on the ground that the employer is running the risk of having to pay fines.¹³⁴ A detailed study published by the Department of Labor in 1990 which examined the preliminary effects of IRCA on the Central American community in Washington D.C., quoted a local agency director who:

unlawfully treated undocumented worker to vindicate his or her rights before the NLRB." *Id.* at 719.

Even temporarily documented Salvadorans are vulnerable to the mistreatment of employers. O'Day Statement ¶ 13. Since they are fearful because of their tenuous legal status, and ever mindful of the dangers of dealing with officials in El Salvador, documented, as well as undocumented, Salvadorans are not likely to seek redress for such mistreatment. *See infra* note 136 and accompanying text.

128 Yvonne Martinez Vega, Director, AYUDA, Inc., Statement (Jan. 1992) ¶ 6 (discussing Latinos' lack of knowledge of their rights under U.S. laws to apply for working papers and asylum).

129 Jose Hondora Statement (Jan. 1992) ¶ 3.

130 *Id.* ¶ 11.

131 O'Day Statement ¶ 9.

132 *Id.* ¶ 10.

133 *Id.* ¶ 9.

134 NCLR Report, *supra* note 85, at 33 (citing GAO, *Immigration Reform: Status of Implementing Employer Sanctions After Second Year 22* (Nov. 1988)):

There are growing indications that some employers in other sectors [other than farm labor] also continue to employ—and exploit—undocumented workers, despite employer sanctions. The 1988 GAO report points out that there have been reports of employers lowering the wages of unauthorized workers in order to offset the adverse effects of employer sanctions fines.

Id. The NCLR report also notes that one consequence of IRCA has been the emergence of day labor pools in "areas with large numbers of unauthorized workers." *Id.*

. . . maintains that workers are more easily exploited now, and that employers have withheld \$200-300 from the wages of undocumented workers in case they are forced to pay the penalty for hiring them.¹³⁵

Employer sanctions have created an environment in which fear of the INS and fear for basic job security is manipulated and exploited by unscrupulous employers. It is the testimony of members of the Salvadoran community in the District of Columbia that undocumented Latinos, given the opportunity to work, will endure abuse, be it reduced pay, long hours or dangerous conditions, to keep their jobs.¹³⁶

In one extraordinary case of abuse, which was brought before the U.S. District Court for the District of Columbia, an undocumented Salvadoran man filed a complaint stating that his employer had not only repeatedly denied him his promised wages over a two-year period, but had also required him to work extraordinarily long hours, and to live in unsafe, unsanitary, and uninhabitable conditions.¹³⁷ In the winter of 1987 he was forced to live in human sewage:

For a period of three weeks human sewage leaked from the broken pipes and attracted worms into the basement . . . room where [the Salvadoran] lived. . . . [His employer], with full knowledge of such breakage, failed and refused to have the pipes fixed and thereby forced [him] for three consecutive weeks to collect the human sewage in a bucket and to endure the resulting odor and filth. . . . As a result of Plaintiff's contact with the human sewage for three weeks, Plaintiff has suffered, and continues to suffer from, an eye condition, nose bleeds, a skin condition, nightmares, infections, headaches, nausea, fevers, fear, and anxiety.¹³⁸

3. Employer Sanctions and Documented Workers

a. Discrimination: A National Perspective

Employer sanctions have also had a serious adverse impact on Salvadorans who are legally authorized to work in the U.S.¹³⁹ At the time IRCA was under consideration by the Congress, there was strong opposition to employer sanctions on the ground that they would result in discrimination against people who were foreign-looking and sounding.¹⁴⁰ The House Conference Report noted that:

135 Terry A. Repak, *"They Came on Behalf of Their Children": Central American Families in Washington, D.C.* 27 (Aug. 1990) (U.S. Dep't of Labor, Bureau of Int'l Labor Affairs, Immigration Policy and Research Working Paper No. 3) ("DOL Families Report").

136 Simon Mendez Statement (Jan. 1992) ¶¶ 6, 12, 21; Hondora Statement ¶¶ 2, 8, 9.

137 Complaint, *Flores Del Cid v. Alcione Vinet*, No. _ (D.D.C. May 31, 1989).

138 *Id.* at 8-9.

139 This population includes (i) those who benefited from IRCA's legalization program, (ii) those who are currently authorized to work because they have pending asylum claims, *see* 8 C.F.R. § 208.2 (1991), and (iii) those who have Temporary Protected Status. TPS recipients, however, have an additional problem in obtaining employment because of the temporary nature of their work authorization. *See, e.g., infra* note 146 and accompanying text.

140 A plethora of private and public studies and reports were written prior to and following the enactment of IRCA which expressed fears about, and ultimately the realization of, discriminatory practices as a result of employer sanctions. Prior to the enactment of IRCA, Hispanic and other civil rights groups, NCLR Report,

Numerous witnesses over the past three Congresses have expressed their deep concern that the imposition of employer sanctions will cause extensive employment discrimination against Hispanic-Americans and other minority group members. These witnesses are genuinely concerned that employers, faced with the possibility of civil and criminal penalties, will be extremely reluctant to hire persons because of their linguistic or physical characteristics.¹⁴¹

In response to that concern, IRCA included a provision creating an Office of Special Counsel ("OSC") in the Justice Department to investigate charges of discrimination based on national origin or citizenship status.¹⁴² IRCA also required the General Accounting Office ("GAO") to conduct a series of annual studies to determine if employer sanctions had resulted in a pattern of discrimination against U.S. citizens or other eligible workers.¹⁴³ In the event that the GAO found in its third study that there was a widespread pattern of discrimination caused by employer sanctions, Congress could terminate the employer sanctions provision.¹⁴⁴ If Congress were to concur with the GAO finding by a joint resolution, the employer sanctions provisions would be repealed.¹⁴⁵ In fact, as discussed below, GAO made a "widespread pattern of discrimination" finding in its third study. Nevertheless, a joint resolution has not been enacted, although bills have been introduced in both the House and Senate to repeal the employer sanctions.¹⁴⁶

supra note 85, at 37-38, as well as The Heritage Foundation, Heritage Foundation Issue Bulletin No. 118, *Halting Illegal Immigration: Employer Sanctions Are Not the Answer* 5 (Aug. 21, 1985), expressed a common concern that employer sanctions would cause national origin discrimination.

141 H.R. Rep. No. 682(I), 99th Cong., 2d Sess. 68 (1986), reprinted in 1986 U.S.C.A.N. 5649, 5672.

142 *Id.* 8 U.S.C.A. § 1324b(c)-(d) (West Supp. 1991). For various reasons, the OSC reaches only a few of those that suffer discrimination because of their immigration status.

First, the IRCA antidiscrimination provision covers discrimination only with respect to hiring, recruitment, or discharge from employment. *Id.* § 1324b(a)(1). Persons who suffer discrimination in their conditions of employment are not protected under IRCA, and may not file charges with the OSC. *Id.* § 1324b(b)(2).

Second, the OSC only serves a portion of the noncitizen population. Because the OSC's duty is to enforce the antidiscrimination provisions in IRCA, and these provisions apply only to "intending citizens," OSC excludes many victims of discrimination from its coverage due to their status. 8 U.S.C.A. § 1324b(a)(3)(A), (B) (West Supp. 1991). "Intending citizens" include legal permanent residents, political refugees and asylees, and those obtaining amnesty under IRCA's legalization program. *Id.* § 1324b(a)(3)(B).

Third, the OSC is a very small organization, with a staff of approximately 30 attorneys, whose only office is located in the District of Columbia. MALDEF & ACLU, *The Human Costs of Employer Sanctions: Recommendations for GAO's Third Report to Congress Under the Immigration Reform and Control Act of 1986* 53 (1989) ("MALDEF/ACLU Report"). Because OSC is a small organization with little funding, there is insufficient publicity regarding the nondiscrimination provisions. *See id.* at 52. As a result, few discrimination victims are aware of the availability of assistance through OSC. *Id.* at 53.

While the OSC has made an effort to reach the relevant population through other agencies, such as the Equal Employment Opportunity Commission ("EEOC"), the number of discrimination claims filed is still low. NCLR Report, *supra* note 85, at 42. In 1991, for example, the OSC reports that a mere 684 cases were filed with the OSC. Interview with OSC personnel. The NCLR estimates that based on its experience with civil rights laws, fewer than one percent of discriminatory acts are ever reported. NCLR Report, *supra*.

143 8 U.S.C.A. § 1324a(j)(1)(B) (West Supp. 1991).

144 *Id.* § 1324b(k)(2)(B) (West Supp. 1991).

145 *Id.* § 1324a(e) (West Supp. 1991).

146 *See* H.R. 3366, 102d Cong., 1st Sess. (1991) (introduced and sponsored by Rep. Roybal on September 19, 1991); S. 1734, 102d Cong., 1st Sess. (1991) (introduced and sponsored by Sen. Hatch September 20, 1991).

The GAO studied two types of discrimination.¹⁴⁷ The first is "national origin discrimination," where employers either selectively required documentation of current employees, or refused to hire prospective employees, because they appeared foreign-looking or were foreign-sounding. The second is "citizenship discrimination," where employers hire only persons who are U.S.-born or refuse to hire workers with temporary work eligibility documents.¹⁴⁸

In March 1990, the GAO issued its third and final report. Based on the results of a survey of over 9,000 employers regarding national origin discrimination, GAO concluded that employer sanctions had, in fact, resulted in a "widespread pattern of discrimination".¹⁴⁹ The GAO study found that ten percent of employers surveyed admitted that they had engaged in national origin discrimination.¹⁵⁰ In particular, the GAO found that this sort of discrimination was higher in areas with high Hispanic populations.¹⁵¹ And the legal status of a Hispanic

147 GAO, No. GGD-90-62, *Immigration Reform: Employer Sanctions and the Question of Discrimination* 19 (Mar. 1990) ("GAO Report"). See *infra*, note 148.

148 *Id.* at 6-7. The GAO Report notes the overlap between national origin discrimination and citizenship discrimination: In those circumstances, where citizenship requirements have the purpose or effect of discriminating against an individual on the basis of national origin, they are prohibited by Title VII Indeed, during hearings held on the antidiscrimination provisions of the House version of IRCA, there was a general consensus among the witnesses that alienage [citizenship] discrimination and national origin discrimination are subject to *considerable overlap*. *Id.* at 144. (emphasis added) (footnotes omitted). For example, an employer who "claims to hire only citizens but rejects foreign-appearing applicants on the assumption that they are not citizens" is according to the GAO "clearly . . . engaged in national origin discrimination." *Id.* at 145. Citizenship discrimination *per se* was determined not to be within the scope of the GAO's determination. *Id.* at 144. "[D]iscriminatory policies or practices based on a person's citizenship status" were however "covered to the extent that they also constitute national origin discrimination." *Id.* The GAO did not include citizenship discrimination in its determination of a "widespread pattern of discrimination." *Id.* at 37.

149 GAO Report, *supra* note 147, at 37. GAO's determination in the third report, like the previous reports, rested "solely" on its finding regarding national origin discrimination. *Id.* The limited nature of GAO's determination was contested by many groups including the U.S. Civil Rights Commission, which felt that GAO should measure "both national origin and citizenship discrimination." U.S. Comm'n on Civil Rights, *The Immigration Reform & Control Act: Assessing the Evaluation Process* 10 (Sept. 1989). Since the GAO believed that its findings on citizenship discrimination could not conclusively be linked to national origin discrimination, its finding of a "widespread pattern of discrimination" did not include citizenship discrimination. GAO Report, *supra* note 147, at 37. Nonetheless, the third report included data on both types of discrimination because "we know that the total amount [of discrimination] lies between the total for national origin discrimination alone and the total for national origin and citizenship discrimination combined." *Id.*

The third report used six different methods to obtain information on discriminatory practices and their relation to the law. *Id.* They consisted of: (1) the employer survey; (2) a hiring audit of 360 employers; (3) a survey of 300 job applicants in five cities; (4) an analysis of over 400 discrimination charges filed with OSC; (5) an analysis of job placement rates before and after IRCA in state employment agencies; and (6) an analysis of data on discrimination charges filed with EEOC before and after IRCA. *Id.* Only the last two methods did not detect evidence of a widespread pattern, but the GAO believed that "various factors in the data masked the employment discrimination found with [its] other methods." *Id.*

150 GAO Report, *supra* note 147, at 38. In fact, this is a conservative estimate. NCLR Report, *supra* note 85, at 42. The GAO based its estimates of discriminatory practices by employers solely on employer responses to survey questions. When employers failed to answer particular questions, the GAO assumed that the employer did not discriminate, although the GAO admits that those employers may have chosen not to respond because they did in fact engage in discriminatory practices. GAO Report, *supra*.

151 See GAO Report, *supra* note 147, at 37-38. This finding applied to Los Angeles, New York City, Chicago, and Miami, but might apply to D.C. as well, where Latinos comprise a smaller proportion of the local population statistically, but are concentrated in small, identifiable areas, like Mount Pleasant, Adams Morgan and Columbia Heights. Testimony of local Latinos appears consistent with the GAO hiring audit of 360 employers in Chicago and San Diego which found that the Hispanic testers, foreign-looking or foreign-sounding persons,

individual in those areas was irrelevant—a fourth-generation American citizen with a foreign-sounding name, a foreign-looking face, or an accent was just as likely to be discriminated against as a political asylee or an individual with amnesty.

As for citizenship discrimination, GAO found that because of the law, nine percent of employers would hire only U.S. citizens and would not hire anyone who was not born in the U.S. or anyone with temporary work eligibility documents.¹⁵² The DOL found that 12.9 percent of “typical firms” were likely to engage in this sort of discrimination.¹⁵³ It also pointed out that citizenship discrimination hurts Hispanics disproportionately because a high proportion of legally resident noncitizens are Hispanic, because they have low rates of naturalization.¹⁵⁴ Thus, in Washington D.C., where Latinos comprise at least 10 to 15 percent of the population, of which the vast majority are Salvadorans who have not been naturalized, one would expect a greater likelihood that citizenship discrimination would occur. The third GAO report provided sufficient data to confirm earlier indications of discrimination from the second GAO report as well as the findings of a substantial number of studies:

All have reached the same conclusion: employer sanctions have resulted in substantial levels of discrimination against Hispanics, Asians, and others who seem “foreign” to their employers.¹⁵⁵

In short, employer sanctions resulted in just the sort of discrimination anticipated by its critics. Nearly one-fifth of employers surveyed by the GAO admitted that they chose to violate the antidiscrimination provisions rather than risk employer sanctions. The impact of that discrimination is felt by Salvadoran residents of the District of Columbia who have work authorization and who, along with their fellow citizens without such authorization, are having a very difficult time finding jobs.¹⁵⁶ While no study of the discriminatory impact of employer sanctions has surveyed employers in the Washington, D.C. area *per se*, the findings of the studies discussed above apply nationwide. As mentioned above, the fact that the majority of

were “three times as likely to encounter unfavorable treatment when applying for jobs as were closely matched Anglos”. *Id.* at 47.

152 *Id.* at 38.

153 DOL Report, *supra* note 110, at 48.

154 *Id.* According to the 1980 census, 43.9 percent of 13.9 million foreign-born residents in the U.S. were naturalized citizens; 41.3 percent were legally resident noncitizens and 14.7 percent were illegal residents. (*See infra* note 52 and accompanying text for unreliability of census reports regarding documentation of illegal residents.) *Id.* at 48 n. 77.

155 NCLR Report, *supra* note 85, at 38-39. The U.S. Civil Rights Commission determined previously that there are “clear and disturbing indications that IRCA has caused at least ‘a pattern of discrimination,’ if not ‘widespread pattern.’” U.S. Comm’n on Civil Rts., *supra* note 149, at iii. The NCLR Report described similar conclusions of reports by, among others: American Civil Liberties Union and Mexican-American Legal Defense and Educational Fund, 1989; California Fair Employment and Housing Commission, 1988; Center for Immigrants’ Rights, 1989; The City of New York Commission on Human Rights, 1989; Coalition for Humane Immigration Rights of Los Angeles, 1989; New York State Inter-Agency Task Force on Immigration Affairs, 1988; and San Francisco State University and the Coalition for Immigrant and Refugee Rights and Services, 1989. *See* NCLR Report, *supra* note 85, at 39-41.

156 Kaplan Statement ¶ 12.

work-authorized Salvadorans in this area have only temporary work authorization, suggests that they are a likely target of citizenship discrimination.

b. Discrimination: A Local Perspective

In fact, there is anecdotal evidence illustrating that both national origin and citizenship discrimination are occurring in the D.C. area. Sharon O'Day described an instance of an employer coming to her and stating that he would not hire someone unless that person has a "green card or they were a U.S. citizen I do not want to train someone and have them deported in six months or a year. That is why I am only going to hire someone who is a U.S. citizen or has a green card."¹⁵⁷ This employer's proclaimed hiring practice, illegal under IRCA yet inspired by fear of employer sanctions, reflects the fear and confusion underlying other employers' illegal hiring practices in the D.C. area. Sharon O'Day explained:

Many of these employers do not even know the differences between a green card and "permiso" (Spanish term for an INS issued work authorization document) and they are angry when I inform them that it is illegal for them to hire only persons with green cards or U.S. citizenship. Often the only thing these employers have heard about IRCA is that they are going to be fined \$5,000.00 a day for every undocumented person that they employ, that their cars are going to be taken, and that they are going to have to hire a lawyer. When I tell them that it is illegal for them to discriminate based on the . . . nationality of the job applicant and that they face fines for discrimination under IRCA as well, they are confused and often angry.¹⁵⁸

Employers have been known to not accept some types of work authorization documents when hiring Latinos, a practice that is illegal under IRCA:¹⁵⁹

On many occasions I have had the experience of employers asking to see the Latino applicant's documents, and when they are shown the "permiso," or a driver's license and social security card, the employer discriminates between the types of documentation which s/he deems appropriate. Under IRCA, employers are not permitted to discriminate among documents and base their choice of employees on the type of documentation presented. Under the law the individual is permitted to select from a number of documents of which s/he wants to show the employer. For example, if a Latino employee shows the employer a

157 O'Day Statement ¶ 14.

158 *Id.* ¶ 15. See *supra* note 114 and accompanying text regarding sanctions for transporting undocumented aliens. O'Day's experiences with employers who discriminate as a result of their confusion about employer sanctions, particularly regarding their responsibility for verifying employment status by reference to an employee's documents, reflect a concern expressed by the GAO in its third report:

IRCA allows persons to use any of 17 different documents to establish work eligibility This multiplicity can give rise to confusion and uncertainty in the minds of employers seeking to confirm whether job applicants are eligible to work. To resolve this uncertainty, employers may choose to "err on the safe side," and not hire foreign-looking or foreign-sounding applicants who are actually authorized to work.

GAO Report, *supra* note 147, at 62.

159 See *infra* note 97.

driver's license and a social security card, then it is illegal for the employer to ask for another type of document.¹⁶⁰

One case of IRCA-related documentation discrimination resulted in the American Civil Liberties Union of the National Capital area filing a complaint with the Office of Special Counsel at the U.S. Justice Department.¹⁶¹ In that case, a worker with American citizenship who resides in the District of Columbia charged that he was illegally fired by Esskay Inc., a Baltimore-based company in March 1991 after he complained to a local union official that "foreign-looking" employees were required to flash a "green card" every day when entering the Maryland plant.¹⁶² According to the complaint:

In or about the middle of February 1991, without any notice or explanation, Esskay introduced the practice of daily checking the identity documents of certain employees who, in the opinion of the security guards, looked foreign. In order for the supposed foreign-looking employees to gain access into the company's premises, they were required to produce and/or display their [green cards] If an employee did not produce sufficient proof of citizenship status, the employee was sent home.¹⁶³

The employer denied the allegations but has since reinstated the worker with full pay and seniority.¹⁶⁴

It is not only undocumented Latinos who are abused by their employers. Simon Mendez, a local Salvadoran who was hired when he was undocumented but later obtained TPS status, worked as a marble cutter for more than two years being paid only sporadically and at times at a reduced rate.¹⁶⁵ The worker repeatedly requested that the employer pay him, and when his employer again refused to pay him for nine weeks of work, he quit.¹⁶⁶ When he refused his employer's demands that he return to work, his employer responded by beating him so badly that he was treated in a hospital for multiple contusions.¹⁶⁷ Mendez is pressing criminal charges against his employer.¹⁶⁸

In Alvarado v. TLC Services, 15 documented Salvadorans filed a complaint against TLC Services Inc., a landscaping company in Arlington, Virginia, contending that the company had

160 O'Day Statement ¶ 16. See *infra* note 97 (listing documents that can be used to establish employment authorization).

161 Office of Special Counsel, U.S. Dept. of Justice, Charge Form for Unfair Immigration-Related Employment Practices, filed by ACLU (Aug. 20, 1991).

162 *Id.*

163 *Id.*, Response to Question 8 at 1-2 (citation omitted). The worker claimed he had been illegally fired by the company for complaining to a local union official about the discriminatory practice. *Id.*

164 Telephone Interview with Andrew Shapiro, Esq., Ross, Dixon & Masback, attorney for complainant (Jan. 9, 1992).

165 Mendez Statement ¶¶ 3, 6, 9.

166 *Id.* ¶¶ 15, 16.

167 *Id.* ¶¶ 17-22.

168 Mendez Statement ¶ 25.

hired them with the intent to discriminate against Hispanic employees by failing to pay them their full wages.¹⁶⁹ According to the complaint, the Salvadoran men, who did not speak English, routinely worked 12 or 13 hours per day for six or seven days a week.¹⁷⁰ On May 28, 1991, when the men demanded overdue unpaid wages, their employer fired them and called the police to evict them from the premises.¹⁷¹ The complaint alleges that they are currently owed close to \$48,000 in back wages.¹⁷²

The plethora of public and private studies on the effect of employer sanctions and the IRCA-mandated GAO study conclusions—that employer sanctions have resulted in a widespread pattern of discrimination—holds true for the Washington, D.C. area. When translated into human terms, this discrimination has meant that undocumented Latinos have a very difficult time finding work, and when they do find it, suffer exploitation that ranges from unsafe conditions, long hours at low pay (if any pay at all), constant fear of being fired and no effective form of redress. D.C. area residents with temporary work authorization have similarly suffered from discriminatory hiring and firing practices, as well as low pay and unsafe work conditions.¹⁷³

4. Employer Sanctions: Discrimination Outside the Workplace

In addition to creating widespread discrimination by employers, IRCA “has also created problems of discrimination outside the workplace.”¹⁷⁴ Specifically, MALDEF and the ACLU found that following the enactment of IRCA, some businesses improperly began to require proof of immigration status from their clients or customers, in spite of the fact that employer sanctions were meant to apply only in the workplace.¹⁷⁵

In the Washington D.C., area Salvadorans, along with other Latinos, have suffered discriminatory practices at the hands of businesses, educational institutions, and government

169 Amended Complaint, Alvarado v. TLC Servs. Inc., No. 91-1621-A (E.D. Va. filed Nov. 15, 1991).

170 *Id.*

171 *Id.* at 4.

172 *Id.* at 18. The plaintiffs also filed complaints at the OSC. According to the OSC complaint of Felipe Rodriguez, the crew leader:

He [Mr. Rodriguez] is aware of the fact that non-Salvadoran employees of TLC Services Inc. were paid what they were entitled to. Along with his Salvadoran coworkers, he attempted to stop working until they were paid, but they were fired. All this happened because they are Salvadorans and because they are not American citizens.

Charge Form for Unfair Immigration-Related Employment Practices, filed by Sergio Mundo (Nov. 13, 1991). Ten of the 14 complaints filed with the OSC, including that of Mr. Rodriguez, were dismissed on jurisdictional grounds. Telephone interview with counsel for plaintiffs, Sergio Mundo, Covington & Burling (Jan. 1992). *See infra* note 142 and accompanying text (describing OSC’s jurisdiction).

173 This report does not focus on discrimination experiences suffered by Salvadorans with permanent resident status, although the results of national studies that indicate widespread national origin and citizenship discrimination undoubtedly apply.

174 MALDEF/ACLU Report, *supra* note 142, at 82.

175 *Id.*

agencies that have designated themselves "immigration police." One D.C. attorney, in an op-ed piece for the Washington Post, noted that there has been a:

Surprising and perhaps unforeseen wave of officially sanctioned petty harassment of illegal immigrants carried out by well-intentioned "volunteers" as well as outright xenophobes, who believe that IRCA created a national policy of legal discrimination against illegal immigrants. IRCA has given people — even reasonable men and women and well-intentioned bureaucrats — the impression that it is not only acceptable but responsible to discriminate against undocumented immigrants in housing, education and even highway safety.¹⁷⁶

Banks: In fact, banks in the Washington area have also assumed the responsibility of checking for documentation:

Banks have also become institutions that believe it is their right to screen Latinos and determine whether they are properly in this country. For example, banks do not need to have a social security number for non-interest bearing accounts, or checking accounts. However all local banks in Maryland require a social security number in order to open an account In Maryland, . . . for example . . . in order to cash a check . . . a Maryland driver's license or a Maryland ID [is required], and the sign at the bank requiring such documents is only written in Spanish.¹⁷⁷

The recent demise of the Latin Investment Corporation ("Latin Investment Corp.") provides the most notorious example of the catastrophic effects of discriminatory banking practices on the Latino community in the District of Columbia.¹⁷⁸ A congressional subcommittee held hearings to investigate the collapse of Latin Investment Corp.¹⁷⁹ A representative of a local community-based organization explained the linkage between immigration status and the Latin Investment Corp. debacle.¹⁸⁰ She was asked why D.C. Latinos, who are primarily

176 Priscilla Labovitz, *No Green Card, No Green Light for Discrimination*, Wash. Post, Oct. 21, 1990 at C8.

177 O'Day Statement ¶¶ 26, 27.

178 Located in Adams Morgan, the Latin Investment Corporation was chartered as an "investment club" in May 1983 by the District of Columbia's Department of Consumer and Regulatory Affairs with the ostensible purpose of offering financial and investment consulting services to its clients. *Unlicensed Banking Practices and Failure of Latin Investment Corporation: Hearing Before the Subcomm. on General Oversight and Investigations of the House Comm. on Banking, Finance and Urban Affairs*, 102d Cong., 1st Sess. 1 (1991) ("Congressional Hearing on Latin Investment") (statement of Rep. Hubbard, Chairman). Nevertheless, it quickly began to operate like any other bank, in spite of the fact that it did not have regulatory authority to accept deposits and make loans and was not insured by the Federal Deposit Insurance Corporation. Joel Glenn Brenner & Carlos Sanchez, *D.C. Knew Firm Had No Bank Charter*, Wash. Post, Dec. 7, 1990, at A1, A8. "Almost immediately . . . its directors began offering a wide variety of banking services including wire transfers of money to El Salvador . . . check cashing . . . savings accounts complete with official looking passbooks, auto financing and airline ticket purchases." Congressional Hearing on Latin Investment, *supra*, at 1 (statement of Rep. Hubbard). Latin Investment Corp. catered exclusively to the "needs and aspirations of Washington's community of Hispanic immigrants [and] succeeded in attracting thousands of unwary depositors, who . . . shun traditional banks and savings and loans." *Id.*

When the doors shut in November of 1990, as a result of the "fraud and mismanagement of Latin Investment Corp.'s directors," an "estimated 3,500 hard working men and women" were left without access to their deposits, *id.* at 2, which totaled over \$6 million. *Id.* at 6 (statement of Murray Drabkin, Cadwalader, Wickersham and Taft).

179 See generally, Congressional Hearing on Latin Investment, *supra* note 178.

Salvadorans, had unwittingly entrusted their life savings to an unlicensed, unregulated, and uninsured institution:

I have also been asked why [our] clients didn't go to Riggs or Perpetual or whatever, why they didn't go to a real bank. The answer is pretty simple. A real bank requires extensive documentation, Social Security number, two forms of I.D., a green card proof of citizenship. In some cases as with three depositors that we talked to even that wasn't enough, given their accents.¹⁸¹

Unlike "real banks," Latin Investment Corp. provided services in Spanish and did not check documentation:

If you are in this country without the proper papers the question of banking becomes moot. Undocumented men and women do not have Social Security numbers, a green card, or a passport. Latin Investment Corp. staff all spoke spanish [sic]. They didn't assume that anyone who could not speak English well was undocumented, and they didn't ask.¹⁸²

As a result of the discriminatory practices of "real banks," thousands of immigrants turned to Latin Investment Corp. and lost everything: their money, their homes, their educational opportunities, and their trust.¹⁸³ The experiences of Ricardo Alvarez, a former depositor of the Latin Investment Corp., are representative of those of other depositors:

In October of [1990] I got a check for \$7,000 from my Aetna Insurance Co. because of the injury to my back. I went to two American banks to try to open an account. At both banks the tellers asked me for identification and I presented them. I showed them my driver's license which has my picture on it, my Social Security card, and my carpenters union card. Both times I was told that I needed more identification or I could not open an account.

I don't understand why I couldn't open an account when I had three kinds of identification and a check from Aetna Insurance Co. Because I couldn't get an account at an American bank I went to Latin Investment Corp. They told me that I would have no problem opening an account, and they were very happy to take my check for \$7,000. A month later, Latin Investment Corp. closed its doors.¹⁸⁴

At that time, Mr. Alvarez was the president of a tenant's association, which was trying to buy their apartment building. Most of the other tenants also had deposits in Latin Investment Corp., and when its doors closed, so did their dream of buying their building.¹⁸⁵ Deposited money for daily necessities disappeared as well, and Mr. Alvarez was unable to buy for his little girl

180 *Id.* at 31 (statement of Elaine Grant, Executive Director, Woodrow Wilson International Center).

181 *Id.*

182 *Id.* at 32.

183 *Id.* at 31.

184 *Id.* at 34 (statement of Ricardo Alvarez, Former Depositor of Latin Investment Corp.).

185 *Id.*

the formula that the doctor said she needed.¹⁸⁶ Shortly after Latin Investment Corp. closed, his little girl became sick with a stomach infection and an ear infection.¹⁸⁷

Housing: IRCA has also encouraged landlords and property managers to discriminate against tenants on the basis of their immigration status. In November of 1987, the resident manager of a Washington D.C. apartment complex "posted a notice to all 'spanish speaking' tenants demanding 'a visa/or resident card'" and threatened to notify INS if and when the management became aware that they were in the country illegally.¹⁸⁸ According to a Department of Labor report on Central American families in Washington, D.C.:

Numerous people complained about landlords who discriminate against Latino tenants; one woman spent all of last winter without heat and with a window missing in her apartment (the landlord refused to replace it). Another woman told of being evicted from her apartment when her landlord saw that she was pregnant.¹⁸⁹

The federal government report points out that undocumented Latinos are victimized by abusive landlords: "Few of those who are here without documents have any recourse against recalcitrant landlords who take advantage of tenants."¹⁹⁰

Education: IRCA has also had an impact on educational access in the District of Columbia, where Latinos face discrimination at the university gate on the basis of their immigration status. In the summer of 1991, an honor graduate of Cardozo High School, a Salvadoran woman with TPS, who attempted to register at the University of the District of Columbia ("UDC"), was asked to produce her alien registration card.¹⁹¹ The resulting protest

186 *Id.*

187 *Id.*

188 MALDEF/ACLU Report, *supra* note 142, at 83. The MALDEF/ACLU Report reprinted part of the notice:

Dear Tenant:

It has come to the management's attention that some of the spanish residents are hear in this country as well as Apartments Illegally, we can not under law allow you who ever you are to rent on a continuing Basis once we find out your name and apartment number If this applies to you please be advised that it is against the law for us a business to let this continue If and when we become aware of it, we must notify the department of Immigration of your status. If you are in this country or on a visa/or with a resident card Please come to the office and present it to me.

Your cooperation is greatly appreciated

thank you
Resident Mgr.

Id. at 83 (sic).

189 DOL Families Report, *supra* note 135, at 34.

190 *Id.*

191 Letter from Anya Sykes, Supervising Attorney, Ayuda, to Harold Nolley, Admission Counsel, University of the District of Columbia (Aug. 7, 1991) ("Anya Sykes Letter").

on her behalf by a local attorney resulted in her eventual admission.¹⁹² Apparently, "well-intentioned bureaucrats" guard not only the doors of UDC, but those of other academic institutions in the D.C. area as well, where prospective students are required to produce a green card in order to be admitted:

[T]he University of Maryland, George Mason University and Prince George's Community College do not admit undocumented foreign students, even those who have met the qualifications for a green card and are merely waiting for their names to be reached on years-long waiting lists.¹⁹³

Immigration status also affects education at the primary school level:

Because many Salvadorans have their family members here, there are more and more children being born in the District. This is creating a problem because their children are now entering schools in the District of Columbia and are encountering various difficulties. Their parents cannot help them with their homework because the parents do not speak the language; the other children make fun of them because they cannot speak English very well; or they fall behind in their studies because of an unstable family situation. . . . Many Latino parents do not get involved in schools because they do not feel comfortable due to their immigration status. Undocumented parents fear that their participation in the educational programs may jeopardize their children's ability to attend the school.¹⁹⁴

Driver's License: Even the D.C. Motor Vehicle Administration ("MVA") checks the immigration documents of driver's license applicants, as does Virginia, and until recently, Maryland as well.¹⁹⁵

192 Telephone Interview with Anya Sykes, Supervising Attorney, Ayuda (Jan. 15, 1992). The protest pointed to a University Board of Trustees resolution adopted in December of 1988, which stated that "the UDC does no longer inquire into a person's citizenship for the purpose of determining their residency and their eligibility for in-state tuition." Anya Sykes Letter. In addition, as the student's counsel pointed out, the Mayor's executive order clearly states that "employees of the District of Columbia should not inquire about a person's citizenship or their legal status." *Id.* See *infra* at (intro).

193 Labovitz *supra* note 176. The article also notes that, like the public colleges that do admit aliens, these other colleges are authorized by the INS "to admit and keep track of those on student visas, but none is required to reject an applicant without one." *Id.*

194 Boris Canjura, Salvadoran Refugee Committee, Statement (Jan. 1992) ¶¶ 10-11.

195 Telephone Interview with Priscilla Labovitz (Jan. 10, 1992) (confirming that D.C. MVA checks immigration documents and that Maryland has recently stopped). In her 1990 op-ed piece, see *supra* 176, Miss Labovitz noted that both:

[t]he Maryland Motor Vehicle Administration and the D.C. Department of Public Works are charged with maintaining public safety, yet they have assumed the task of keeping the roads free of "illegal aliens," a job they are neither qualified nor authorized to do.

This claim is confirmed by Sharon O'Day:

Historically, the Maryland Motor Vehicles Administration (MVA) would only give licenses to individuals if they were provided with certain documents. The MVA was functioning under the mistaken belief that they were an extension of the INS and could demand to see Latinos' valid visitor visas (for more than six months) or other documents to show that they are in the country legally.

O'Day Statement ¶ 25.

Psychosocial Stress: The IRCA-related discrimination is only part of the daily difficulties faced by D.C.'s Latino community. This community is not merely an immigrant community—the overwhelming majority of its members are refugees who fled the war in El Salvador.¹⁹⁶ In a 1988 Ph.D. dissertation on the “Psychosocial Adjustment Problems of War Refugees From El Salvador,” Silvia Petuchowski described their particular problems:

In general, Salvadorans in the United States can be described as a community, living under severe psychosocial stress, which is potentially at major risk for social and health-related dysfunctions. With a history of traumatic war experiences, uprooting, and refugeeism . . . this population confronts the stressors typical of resettlement without the financial and social aid granted to other war refugee groups.¹⁹⁷

A study of 111 Central American women at an Adams Morgan clinic that was designed to determine the effect of life-threatening experiences and current life stressors on their psychological well-being found that 76.6 percent of the women had been victims of at least one traumatic event.¹⁹⁸ More than half of them knew someone who had been murdered, 22 percent had witnessed a murder, 25 percent had experienced a house search; and close to 40 percent had been present when their home or neighborhood was bombed and/or had been forced to seek safety from gunfire.¹⁹⁹ The study found that:

However one conceptualises [sic] the information, it portrays the women as severely stressed, and overburdened with daily life concerns. The fact that so many report concerns for the future would further indicate that they are functioning in a very uncertain state, with little hope of improving their situation.²⁰⁰

196 See *supra* notes 67-78 and accompanying text.

197 Silvia Rita Chepal Petuchowski, *Psychosocial Adjustment Problems of War Refugees From El Salvador* 1-2 (1988) (unpublished Ph.D. dissertation, University of Maryland) (citations omitted).

198 Margaret McCallin, *The Psychosocial Consequences of Violent Displacement: The Experience of Central American Refugee Women in Washington D.C.* 7 (Int'l Catholic Child Bureau 1991).

199 *Id.* at 8. Of the 111 women interviewed, 103 were from El Salvador; 6 from Guatemala; and 2 from Nicaragua. *Id.* at 4-5. While 76.6 percent of these women had been victims of at least one traumatic event, some of them had been multiply traumatized, “with the average number of events involving the woman as victim being 3.3.” *Id.* at 7. A table titled “Percentages of Women Who Were Victims of Traumatic Events” reveals the severity of those traumatic experiences:

1. Witnessed Murder	21.7%
2. Knew Someone Murdered	57.7%
3. Injured by Violence	4.5%
4. Raped/Sexually Abused	2.7%
5. Interrogated/Detained	16.2%
6. Tortured	1.8%
7. Threatened/Humiliated by Verbal Abuse	13.5%
8. Experienced a House Search	25.2%
9. Present when Home/Neighborhood Bombed	38.7%
10. Forced to seek safety from gunfire	42.3%
11. Forced to participate in military activity	1.8%
12. Robbed/Feared for life on journey to USA	24.3%

Id. at 8.

200 *Id.* at 12.

The majority of these women are troubled by frequent headaches and feelings of fearfulness and anxiety; they are unhappy and have difficulty making decisions.²⁰¹

The study further found that these women's legal status significantly affected their emotional well-being:

The most pervasive effect on the women's emotional well-being was identified in those who do not have the 'green card' that denotes legal status in the USA. Women who do not have this documentation are significantly more affected by stress related to traumatic events and daily life conditions. Women without the green card, who have also been victims of trauma are the worst affected. Lack of documentation would appear to underline the women's vulnerability. As they seek to cope with their problems, they live with the additional threat that their 'illegal' status may be discovered, with all the negative consequences for them personally that this may likely entail.²⁰²

Thus, the trauma these women suffered in their home countries is exacerbated by their lack of legal status here.

Undocumented people worry about deportation; it is the cloud that sort of looms over their head. I do not know that they worry about it every single minute, but I think it consistently interferes with their efforts to try to stabilize their situation — whether it is finding a place to live, finding a job, or filing complaints about a job. They are not willing to take a whole lot of risk yet they are willing to accept deplorable conditions in many cases because of their fear of deportation and their fear of speaking out.²⁰³

C. Conclusion

IRCA's employer sanctions provisions have brought only bad tidings to Washington, D.C. area Latinos. The discriminatory impact of employer sanctions has been felt by all members of that community — documented and undocumented alike. The majority of area Latinos are Salvadoran, a population that is estimated to be as high as 200,000. Of those, approximately 35,000 are protected by TPS. An uncounted but very small number are permanent residents. This means that a large majority of Salvadorans in D.C. are undocumented or are temporarily documented under TPS.

For undocumented Latinos, IRCA has made it substantially more difficult to find work and has increased worker vulnerability to employer exploitation. For Salvadorans who have TPS, the picture brightens a bit — at least they temporarily have work authorization and thus employers need not worry that they will be sanctioned for hiring these Salvadorans. However,

201 *Id.* at 15.

202 *Id.* at 19 (emphasis added).

203 Kaplan Statement ¶ 10.

it is clear that IRCA has resulted in discrimination against Latinos — documented and undocumented alike — because many employers responded to the sanctions by hiring only citizens (and they presume that foreign-looking people with accents are not citizens) or permanent residents with “green cards” (and very few Salvadorans have that status). Furthermore, Salvadorans with TPS who do find work are subjected to discriminatory treatment on the job and are less apt to object to mistreatment because of the tenuous nature of their legal status in the United States.

Indeed, the fact is that for Salvadorans in the Washington D.C. area — including those with TPS — the uncertainty of their legal status affects not only their employment situation, but has resulted in discrimination based on their legal status (as distinct from racial discrimination) when dealing with government agencies, educational institutions and businesses. Salvadorans confronted by this discrimination and mistreatment are all the more vulnerable because they fear that the authorities charged with protecting them — most especially the police — will report them to the INS. This fear and uncertainty is the Sword of Damocles that hangs over the lives of area Salvadorans. Their situation thus parallels that which the grant of legalization in 1986 was intended to remedy.

The aim of IRCA’s legalization program was to bring out from the shadows people who were law-abiding and hard-working members of society, but who suffered exploitation and other dangers because they could not turn to authorities without risk of deportation. The majority of Salvadorans, however, arrived too late to benefit from that program. Father Hesburgh’s comments to Congress in 1985, when IRCA was under consideration, ring true for Salvadorans in the U.S. today:

[T]he fact is that they are here, the fact is they are working. Many have been working for many years. The fact is that most of their children are American citizens The fact is that most of them are not on welfare. They are earning their way; they are contributing to the country. They are paying taxes These people are . . . law-abiding, and . . . as soon as possible they should be brought out of the shadows.²⁰⁴

In fact, Salvadorans did not come to the U.S. as “immigrants” looking to make this country their home. They came fleeing for their lives, having experienced the traumas of war that very few born in North America can even begin to understand. And when they arrived here, as described below, they discovered that the law meant to protect refugees fleeing persecution was applied in a discriminatory fashion to Salvadorans. Had the Refugee Act of 1980 been fairly applied over the past decade, it is reasonable to conclude that many — if not most — of the Salvadorans in this country might well have been granted permanent legal status. Instead, they are still living in shadows. William van Wyke, a Washington, D.C. lawyer who

204 Hesburgh Statement, *supra* note 80, at 6-7.

works on asylum cases, pointed out that the United States now has a moral responsibility to grant permanent resident status to Salvadorans who want it.²⁰⁵

These people have really given up everything to leave their country because of a war that was not only funded but advised from here We need to learn that our wars produce refugees and that this war produced refugees also.²⁰⁶

205 Karlyn Barker & Stephanie Griffith, *For Salvadorans, Peace Brings Hard Decisions*, Wash. Post. Jan. 6, 1992, at B1, B5 (“*Peace Brings Hard Decisions*”).

206 *Id.*

IV. Refugee Law and “Temporary Protected Status”: Implications for D.C.’s Latino Population

A. The Refugee Act and Its Application: Bias Against Salvadorans

While IRCA had the effect of legalizing Salvadorans who had arrived in the U.S. before 1982, the fate of Salvadorans in this country, both before IRCA’s passage and after, has hinged not so much on “immigration” issues, but on interpretation of a new law, the Refugee Act of 1980. “Refugees” are different from “immigrants” in that immigrants come to the United States intending to make it their home, whereas refugees are pushed out of their countries and compelled to seek protection elsewhere. Congress adopted the Refugee Act to ensure that the United States grants refugee status in a politically neutral manner, in accordance with its international obligations.²⁰⁷ The Refugee Act defines a “refugee” as:

any person who is outside any country of such person’s nationality . . . and [who] is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.²⁰⁸

It provides for the overseas admission of refugees and authorizes the Attorney General to grant political asylum to individuals in the United States who apply.²⁰⁹

207 See S. Rep. No. 256, 96th Cong., 2d Sess. 1, *reprinted in* 1980 U.S.C.C.A.N. 141, 144. The Refugee Act of 1980 was passed to bring the law of the United States into conformity with the United Nations treatment of refugees, and codifies United States obligations as a state party to the United Nations Protocol Relating to the Status of Refugees, *opened for accession* Jan. 31, 1967, 19 U.S.T. 6223, T.I.A.S. No. 6577, 606 U.N.T.S. 267 (the Protocol) and the United Nations Convention Relating to the Status of Refugees, *adopted* July 28, 1951, 189 U.N.T.S. 150 (the Convention, to which the U.S. is not a party, but which is incorporated in the Protocol).

208 8 U.S.C.A. § 1101(a)(42)(A) (West Supp. 1991).

209 *Id.* § 1158(a).

Cuban refugees in the United States were given preferential treatment under the Cuban Refugees Law of 1966. Cuban Refugees Act, Pub. L. No. 89-732, 80 Stat. 1161, 1360-61 (1966). Under this amendment to the Immigration and Nationality Act (“INA”) all Cuban citizens who came to the United States after January 1, 1959 (the beginning of the Castro regime) were immediately eligible for permanent resident status. Under the old law, those Cuban refugees already in the U.S. would have had to leave the country and then apply for an immigrant visa to return to the U.S. to apply for permanent resident status. H.R. Rep. No. 1978, 89th Cong., 2d Sess. 3794 (1966). According to the House of Representatives report, this special treatment of Cubans was consistent with Congress’ “willingness to approve legislation to aid persecuted peoples of the world.” *Id.* It was stated at the time that, “this special help to Cuban refugees . . . is being given for purely humanitarian and practical reasons.” *Id.* at 3795.

IRCA again amended the INA to confer special status on both Cubans and Haitians. That amendment, the Cuban-Haitian Adjustment, provides that Haitians and Cubans can be immediately granted the status of having been lawfully admitted for permanent residence, regardless of how they entered the United States. Immigration Reform and Control Act of 1986, Pub. L. 99-603, § 202, 100 Stat. 3359, 3404-05 (1986). According to the House of Representatives Report, this special status was extended to Haitians because it was viewed as “inequitable” that thousands of Cubans have had their status adjusted while no Haitians had, and “the two groups came to the United States for similar reasons, under similar circumstances, at the same time.” H.R. Rep. No. 682, 99th Cong., 2d Sess., pt. 1, at 76 (1986). The Committee on the Judiciary stated at the time, “it is time Cuban/Haitian Entrants are granted a status that is consistent with the reality of their permanent residency in the United States.” *Id.*

The United States treatment of Haitian refugees changed dramatically in 1981. President Reagan issued a proclamation that created the “Interdiction of ‘Illegal Aliens’” program which empowered the Coast Guard to stop boats carrying Haitian refugees to the United States. Under that proclamation, the Coast Guard can stop a

An individual admitted to the U.S. through a refugee program, or recognized as a refugee through a political asylum application in the U.S., is entitled to a wide range of benefits. A refugee receives temporary residence and after one year is eligible for permanent status, as is his or her spouse and children,²¹⁰ and can obtain federal refugee assistance, provided by the Office of Refugee Resettlement ("ORR") of the Department of Health and Human Services.²¹¹

Salvadorans are rarely admitted to the U.S. as refugees. In fiscal year 1991, for example, only six Salvadorans were admitted to the United States as refugees; in that year, the U.S. admitted a worldwide total of 111,020 "refugees."²¹² From 1980 to 1991, only 153 Salvadorans were admitted as refugees — over that period, the U.S. admitted 1,203,609 "refugees."²¹³ As for persons applying from within the United States, in the period June 1983 to March 1991, 1,365 Salvadoran asylum applications were granted, and 46,712 were denied, a 2.8 percent approval rate.²¹⁴

vessel when there is reason to believe it is carrying undocumented aliens and, if necessary, return the vessel to the country from which it came. Exec. Order No. 12,324, 46 Fed. Reg. 48,109 (1981).

"Since the interdiction program began in 1981, 22,940 Haitians have been interdicted." *1991 Refugee Survey*, supra note 53, at 107. In 1990, close to 1,200 Haitians were sent back to Haiti by the Coast Guard in 1990, and only 2 Haitians received asylum. *Id.* Indeed, since 1981, only 11 Haitians have been allowed to enter the United States under that program. *Id.*

210 8 U.S.C.A. § 1157(c)(2).

211 *Id.* §§ 1521-22. The Director of ORR funds and administers the refugee assistance programs, which include: Initial Resettlement Program and Project Grants and Contracts. *Id.* § 1522(b), (c). The initial resettlement program is administered through the states and through cooperative agreements and project grants. *Id.* States administer the provision of cash, medical assistance and social services to refugees and the care for unaccompanied refugee children. ORR, U.S. Dep't of Health & Human Serv., Refugee Resettlement Program 24 (1990) (hereinafter "ORR Report"). Several nonprofit organizations, through cooperative agreements with the State Department's Bureau of Refugee Programs, administer the initial reception and placement of refugees. *Id.* at 17.

Project grants include the Matching Grant program, the Transition Program for Refugees and the Planned Secondary Resettlement ("PSR") program. Under the Matching Grant program, federal funds are matched to voluntary agencies' funds to help refugees attain self-sufficiency within four months after arrival. *Id.* at 50. Under the Transition Program, funding is granted for the special educational needs of refugee children, such as bilingual education, remedial programs, and school counseling. *Id.* at 52-53. The PSR program provides resettlement assistance to help unemployed refugees relocate to communities that offer employment prospects. *Id.* at 61.

Assistance for Refugee Children. 8 U.S.C.A. § 1522(d) (West Supp. 1991). Unaccompanied refugee children are sponsored through national voluntary agencies and placed in licensed child welfare programs. ORR Report, supra, at 38. The children are eligible for child welfare benefits, and are placed in home foster care, group care, independent living, or residential treatment. *Id.*

Cash and Medical Assistance. 8 U.S.C.A. § 1522(e) (West Supp. 1991). Refugees may qualify for several federal and State assistance programs, such as Aid to Families with Dependent Children ("AFDC"), Federal Supplemental Security Income ("SSI"), food stamps, and Medicaid. Refugees who do not qualify for assistance under these programs may receive refugee cash assistance ("RCA"). Refugees who are eligible for RCA are also eligible for refugee medical assistance, which is provided in the same manner as Medicaid. ORR Report, supra, at 26-27.

212 *Refugees Admitted to the United States by Nationality: FY 80-91*, Refugee Rep., Dec. 30, 1991, at 11.

213 *Id.* at 10-11.

214 *Id.* In that same period, the asylum approval rate for all nationalities combined was 23.6 percent; 41,227 were granted and 133,178 were denied.

1. Discriminatory Adjudication of Salvadoran Asylum Claims

a. The INS Record: Discouraging Salvadorans from Applying for the Benefits of the Refugee Act of 1980

The appalling record of INS mistreatment of Salvadorans in the asylum context resulted in a series of extraordinary court decisions, sharply reprimanding the INS both for having misread relevant statutory standards and for its generally discriminatory treatment of Salvadorans.

The INS routinely and systematically discouraged Salvadorans in deportation proceedings from applying for political asylum. The treatment of Salvadorans was so egregious that in response to a class action law suit, a federal District Court issued an injunction prohibiting INS from intimidating Salvadorans who had been detained into "agreeing" to return to El Salvador. The Court found that the INS was depriving Salvadorans of their right to apply for political asylum:

INS agents used a variety of techniques to procure voluntary departure, ranging from subtle persuasion to outright threats and misrepresentations. Many [Salvadorans] were intimidated or coerced to accept voluntary departure even when they had unequivocally expressed a fear of returning to El Salvador.²¹⁵

An individual who is given "administrative voluntary departure" never has a deportation hearing, which is the forum in which he or she can seek asylum or a "withholding of deportation."²¹⁶

The Court found that INS officers failed to advise Salvadorans that they could apply for political asylum, and therefore required that an "advisal of rights" be given to Salvadorans during processing.²¹⁷ Furthermore, the Court found that INS told Salvadorans in deportation proceedings that if they did not sign for voluntary departure and instead applied for asylum, their applications would be denied and they would ultimately be deported.²¹⁸ In fact, the Court discovered that INS agents had threatened asylum seekers with detention if they sought asylum, and had told them that the information used in their asylum applications would be sent to El Salvador and they would never be able to return.²¹⁹

In addition, INS blocked Salvadorans from access to legal help. "INS agents often did not allow Salvadorans to consult with counsel prior to signing the voluntary departure forms . . . [and] denied them the use of a telephone to call an attorney."²²⁰ INS violated its own regulations and "acted in bad faith" by distributing inaccurate legal service lists.²²¹ Finally,

²¹⁵ *Orantes-Hernandez v. Meese*, 685 F. Supp. 1488, 1494 (C.D. Ca. 1988), *aff'd*, 919 F.2d 549 (9th Cir. 1990).

²¹⁶ *Id.* The two forms of relief are issued under different standards and have different benefits. *See supra* note 244.

²¹⁷ *Id.* at 1498.

²¹⁸ *Id.* at 1495. *See supra*, notes 227-230 and 240-254, for discussion of denial of Salvadoran asylum claims.

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ *Id.* at 1497-98. The agencies requesting to be included were those that provide free or low-cost representation to

the Court found that INS thwarted Salvadoran access to legal assistance through a transfer policy which transferred detained Salvadorans from areas where they were represented by counsel,²²² and “routinely [did] not notify attorneys that their clients have been transferred.”²²³ In its final hearing on the merits in 1988, the Court found that the INS “pattern of misconduct” had continued despite the preliminary injunction in place since 1982, concluded that such misconduct was “officially condoned” and a “*de facto* policy,” and issued a far-reaching order.²²⁴ The judge ordered INS to inform Salvadorans and others of their right to be represented by an attorney, to request a deportation hearing and to apply for political asylum,²²⁵ and laid out in enormous detail a list of prohibitions and procedures aimed at ensuring that INS conduct towards Salvadorans in deportation proceedings made those rights a reality.²²⁶ When it came to the question of deciding asylum claims on their merits, Salvadorans faced yet another form of discrimination.

b. Asylum Adjudication: Salvadoran Claims Discriminatorily Denied

The Refugee Act requires that asylum claims be determined on a neutral basis. The record of the lopsided way in which Salvadorans were denied asylum makes clear that in actuality, U.S. foreign policy played a major role in asylum adjudication. In fact, the record of bias was so obvious that it became the basis for a successful class action lawsuit.²²⁷ In 1991, that suit resulted in an unprecedented settlement in which the Justice Department agreed to start over and to rehear every case in which it had denied Salvadoran and Guatemalan²²⁸ asylum claims.

detained Central Americans seeking asylum. *Id.* at 1498. INS regulations dating from 1980 require that INS maintain lists of charitable and free legal service organizations to provide to aliens in deportation proceedings and require that organizations must apply to be listed. 8 C.F.R. § 292a.1 (1991).

222 *Orantes-Hernandez*, 685 F. Supp. at 1500-01.

223 *Id.* at 1493-1503.

224 *Id.* at 1505.

225 *Id.* at 1512.

226 *See id.* at 1511-15.

227 *American Baptist Churches v. Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991) (“ABC”). *See infra* at note 254.

228 *Id.* Hundreds of thousands of Guatemalan refugees have fled their country to escape the violent civil conflict that has endured for decades. Congressional Hearing on Refugees, *supra* note 52, at 17-19; 1991 *Refugee Survey*, *supra* note 53, at 84-85. In 1988, for example, the number of Guatemalans applying for asylum in the United States increased ten fold, jumping from 640 applications in 1987 to 6,384 applications in 1988. U.S. Comm. for Refugees, *World Refugee Survey: 1988 in Review* 86-87 (1988). In that same year, the number of Guatemalans caught trying to cross the Texas-Mexico border without inspection increased 38 percent to a total of 9,246. 1989 *Refugee Survey*, *supra* note 74, at 89. In 1989 that number again rose 45 percent; a total of 13,341 persons were apprehended. *Refugee Rep.* (A Project of the American Council for Nationalities Service), Dec. 29, 1989, at 4.

As stated by a witness appearing before the House Subcommittee on Census and Population, Salvadorans and Guatemalans arrive in the United States

with major fears — fears of reprisal from political and military groups in Central America, fear of governmental military conscription and escalating anxiety from living in an environment of repression. More and more, we are finding people who state that they leave simply because they fear the war and the indiscriminate bombings. I have not encountered any individuals who have indicated migration to the U.S. for economic reasons — clearly all the individuals with whom I have talked have arrived to secure their safety and the safety of their families.

Testimony of Rev. Sid L. Mohn, Congressional Hearings on Refugees, *supra* note 52, at 105.

Human rights conditions in Guatemala continue to deteriorate today. Those refugees who attempt to return find a country in which “political killings, disappearances and torture at the hands of the security forces and

In the adjudication of Salvadoran asylum claims, the explicitly nonideological standard of the Refugee Act was applied with rather remarkable results:

The rate of approval for asylum cases decided by INS district directors between June 1983 and September 1986 was highest for applicants from countries generally characterized as unfriendly to the United States. The lowest approval rates were generally for applicants from countries with governments considered friendly and anti-communist, regardless of their human rights records. Thus, applicants from Iran had the highest approval rate during that period, 60.4 percent, followed by the Soviet bloc countries . . . Among the countries with the lowest approval rates were El Salvador (2.6), Haiti (1.8), and Guatemala (0.9). While this kind of statistical comparison has its limitations, the consistency of the numbers indicates an inescapable pattern of bias.²²⁹

A recent cumulative report of asylum cases filed with INS district directors from June 1983 to March 1991 reveals an even more startling disparity in approval rates: 2.6 percent for Salvadorans, 25.2 percent for Nicaraguans, 33.6 percent for Poles, and 61 percent for Iranians.²³⁰ These statistics strongly suggest that individuals fleeing from countries with governments with which the U.S. does not have a friendly relationship have a decidedly easier time obtaining asylum status, regardless of their country's human rights record.²³¹

related groups continue." *1991 Refugee Survey, supra* note 53, at 85. In assessing the human rights conditions in Guatemala in 1990, the State Department reported that

Due primarily to a lack of will, authorities did not stem growing violence during 1990. Reliable evidence indicates that security forces and civil patrols committed, with almost total impunity, a majority of the major human rights abuses. These included extrajudicial killings, torture, and disappearances of, among others, human rights activists, unionists, indigenous people, and street children. . . . The security forces are almost never held accountable for human rights violations. With few exceptions, the Government failed to investigate, detain, and prosecute those perpetrators of extrajudicial and politically motivated killings . . .

1990 Country Reports, supra note 115, at 631-32.

229 James Silk, *Despite a Generous Spirit: Denying Asylum in the United States*, (American Council For Nationalities Service 1986) 8 (emphasis added). Note that these statistics only cover the INS district directors' approval rates, and do not cover the approval rates of the Immigration Judges. The Immigration Judges' approval rates are tabulated separately. Under the regulations, an alien may apply for asylum with the INS if he is not subject to deportation or exclusion proceedings. The applications are reviewed by INS district directors and by asylum officers. 8 C.F.R. § 208.4(a) (1991). If the alien is subject to exclusion or deportation proceedings, he may only apply for asylum with an Immigration Judge. *Id.* at § 208.4(b).

230 Refugee Rep. Dec. 30, 1991, at 10-11; *Asylum Cases Filed With INS District Directors Approved and Denied, by Selected Nationalities*, Refugee Rep., Dec. 21, 1990, at 12.

231 According to the State Department's own 1990 report on human rights violations in El Salvador in 1990, "political and other killings by the FMLN continued in 1990" and "credible reports of civilians killed for political reasons by the military and security forces persist." *1990 Country Reports, supra* note 115, at 609. Further, the State Department reported, "there continued to be credible charges that persons disappeared after being seized by [the armed forces]." *Id.* at 610. "[T]here were numerous cases of arbitrary arrest and detention," and when government forces could not find the person they were looking for, family members were arrested instead. *Id.* at 610-612. In addition, "credible charges of improper air force bombings near civilian populations resulting in civilian deaths continued in 1990." *Id.* at 616.

In highlighting the human rights violations of Nicaragua for this same period, the State Department noted that "there was marked improvement in human rights conditions" but that politically motivated killings, especially in rural areas of the country, continued to occur between supporters of the Sandaristas and the government majority party. *Id.* at 702. In addition, incidents of cruel treatment of prisoners was reported. *Id.* at 705.

In Poland, by contrast — and Polish nationals had a higher rate of asylum applications granted than did nationals from either El Salvador or Nicaragua in 1990 — the State Department found "significant and sustained human rights progress." *Id.* at 1233. Indeed, the State Department finds "[n]o confirmed instances of

Throughout the 1980s, Amnesty International and Americas Watch documented the widespread violation of human rights in El Salvador. Amnesty International reported that in 1982, "all the branches of the security forces . . . participated in a systematic and widespread program of torture, kidnapping and murder of men, women, and children. . . ." ²³² In summarizing the situation during 1983, they again reported a "systematic program of torture, mutilation, disappearance and extrajudicial execution" of civilians. ²³³ In its report on 1984, Americas Watch concluded that the "great majority of political murders are committed by the regular security forces and the Army as part of their regular operations." ²³⁴ Amnesty International also pointed out that the so-called "death squads" were "not extremist groups of the left and right, as successive administrations had maintained, but were customarily made up of regular police and military personnel, acting in plain clothes but under the orders of higher officials." ²³⁵

As recently as 1990, Amnesty International expressed its concern with the "climate of impunity in El Salvador which has been created by the lack of effective investigations and the failure to bring to justice those responsible for massive and serious human rights violations, whether directly or indirectly attributable to police or military personnel." ²³⁶

United States policy towards El Salvador in the 1980s is most simply expressed in monetary terms: over that decade, the U.S. provided close to \$4 billion of assistance to the government of El Salvador, \$1 billion of which was military aid. ²³⁷ Significantly, in addition

political killing were reported;" "[t]here were no reported allegations of torture" and "Polish citizens were not detained or punished for expressing views critical of the Government." *Id.* at 1233-35.

Lastly, the State Department's report on human rights violations in Iran — which had the highest approval rate in 1991 for asylum cases — recorded that there was no "reliable estimate of the number of people killed for political reasons" and that the number of disappearances was unknown, as was whether people had been arrested for expressing views critical of the government. *Id.* at 1445, 1446. The State Department's report does indicate that there were reports of torture and inhumane treatment in Iran's prisons. *Id.* at 1445-56.

²³² Amnesty International, *Amnesty International Report 1983* 1 (1983).

²³³ Amnesty International, *Amnesty International Report 1984* 1 (1984).

²³⁴ Americas Watch, *As Bad As Ever*, 1-17 (Fourth Supp. Jan. 31, 1984).

²³⁵ Amnesty International, *Amnesty International Report 1987* 2 (1987).

²³⁶ Amnesty International, *El Salvador: Killings, Torture and 'Disappearances'* 18 (1991).

²³⁷ *Decade of Terror*, *supra* note 67, at 141, app. A.

Out of the \$4 billion of assistance, \$3 billion was given as economic assistance, which was comprised of development assistance, economic support and food and disaster relief funds. In 1980, the United States gave \$64.2 million to El Salvador, an amount that increased to annual amounts near the \$400 million mark in the last half of the decade. The total foreign aid (in millions of dollars) to El Salvador is shown below:

<u>Year</u>	<u>Economic</u>	<u>Military</u>
1980	58.2	6.0
1981	113.6	35.5
1982	182.2	82.0
1983	245.5	81.3
1984	215.9	196.6
1985	434.0	136.2
1986	322.6	121.8
1987	462.9	111.5
1988	314.1	81.5

to its foreign policy role, the State Department has a direct input into asylum decisions, because the INS forwards all asylum claims to the State Department for an advisory opinion "which is supposed to evaluate each claim in light of the conditions in the applicant's country."²³⁸

Most of the advisory opinions are form letters which state either that the claim is believed to be valid or not. Very few provide reasons for the conclusion. INS officials have said that their asylum decisions agree with the State Department advisory opinion in as many as 99 percent of cases.

* * *

The decisive role of the State Department opinion clearly introduces foreign policy considerations into asylum adjudications [and] . . . the opinions are recommended conclusions, so consistently followed as to make a mockery of the asylum determination process.²³⁹

The record is clear: when it came to the claims of Salvadoran nationals in the United States, the central purpose of the Refugee Act—that asylum determinations be made on a nonideological basis—was obstructed.

In 1987, the Supreme Court admonished the INS for misinterpreting the clear language of the asylum law—a misinterpretation that meant that for its first seven years, the benefits of the Refugee Act had been improperly restricted.²⁴⁰ During the 1980s, Courts repeatedly found that INS and the Board of Immigration Appeals ("BIA")²⁴¹ misinterpreted and misapplied key provisions of the Refugee Act when they denied asylum or withholding of deportation to Central Americans.²⁴² One critical issue finally reached the Supreme Court, and the Court reversed the INS.

In I.N.S. v. Cardoza-Fonseca, the Supreme Court addressed the INS practice of substituting a more stringent standard in place of the appropriate standard for granting asylum.²⁴³ The Court found that the plain language of the statute was clear. Under the Refugee

1989	307.0T	81.4
1990	<u>245.2</u>	<u>81.0</u>
Total	2901.5	1014.8

²³⁸ *Despite a Generous Spirit*, *supra* note 229, at 29-30.

²³⁹ *Id.* at 30.

²⁴⁰ I.N.S. v. Cardoza-Fonseca, 480 U.S. 421, 421-50 (1987).

²⁴¹ The BIA is an arm of the Justice Department that is separate from the INS. The BIA reviews the deportation decisions of immigration judges and the asylum and withholding of deportation decisions of INS asylum officers. *See* 8 C.F.R. § 3.1(a) (1991).

²⁴² *See infra* notes 248-54 and accompanying text.

²⁴³ Cardoza-Fonseca, 480 U.S. at 425. Asylum is granted at the discretion of the Attorney General if the applicant demonstrates a well-founded fear of persecution, a subjective standard. *See* 8 U.S.C. § 1158(a) (1982). Withholding of deportation is granted under the more stringent objective standard of clear probability of persecution. *See* 8 U.S.C.A. § 1253(h) (West Supp. 1991). This means that the individual must demonstrate that it is more likely than not that he or she would be subject to persecution if deported. This is a more difficult standard but if the finding is made, the Attorney-General is prohibited from deporting the individual.

Act, an asylum applicant has to prove that he or she has a “well founded” fear of persecution. In discussing the asylum standard, the Court stated:

There is simply no room . . . for concluding that because an applicant only has a 10% chance of being shot, tortured, or otherwise persecuted, that he or she has no “well-founded fear” of the event happening.²⁴⁴

The INS had taken the position that the asylum standard (“well-founded fear of persecution”), was the same as requiring an individual to show a “clear probability of persecution,” *i.e.*, that it is more likely than not that the individual will be persecuted if deported.²⁴⁵ To this, the Court responded:

The statutory language does not lend itself to this reading One can certainly have a well-founded fear of an event happening when there is less than a 50% chance of the occurrence taking place.²⁴⁶

Justice Blackmun’s concurrence summarized his view that the Courts of Appeal, which review the rulings of the BIA, were correct in “almost uniformly” rejecting the INS’ misreading of statutory language:

The efforts of these courts stand in stark contrast to — but, it is sad to say, alone cannot make up for — the years of seemingly purposeful blindness by the INS, which only now begins its task of developing the standard entrusted to its care.²⁴⁷

The Cardoza-Fonseca decision, however, did not alter the fact that for the first seven years, asylum decisions under the Refugee Act had been determined in accordance with an erroneous, overly stringent standard.

As Justice Blackmun noted, the Courts of Appeal had repeatedly reversed INS asylum determinations. In one key case, the Court of Appeals found that INS was improperly imposing additional burdens of proof on a Salvadoran’s claim for asylum. In Bolanos-Hernandez, the Ninth Circuit Court of Appeals overturned INS’ denial of a Salvadoran national’s application for asylum.²⁴⁸ The Court noted that the Immigration Judge and the BIA did not challenge Bolanos’ credibility or doubt that the threat against his life had actually been made.²⁴⁹ However, the BIA had concluded that “the specific threat against Bolanos’ life was merely ‘representative of the general conditions in El Salvador.’”²⁵⁰ The Court of Appeals, finding this a “clear error of law,” responded with a sharp rebuff:

244 Cardoza-Fonseca, 480 U.S. at 440.

245 *Id.* at 430.

246 *Id.* at 431.

247 *Id.* at 452.

248 Bolanos-Hernandez v. I.N.S., 749 F.2d 1316, 1318 (9th Cir. 1985).

249 *Id.* at 1323.

250 *Id.*

We are mystified by the Board's ability to turn logic on its head. . . . It should be obvious that the significance of a specific threat to an individual's life or freedom is not lessened by the fact that the individual resides in a country where the lives and freedom of a large number of persons are threatened. If anything . . . that fact may make the threat more serious or credible.²⁵¹

The Court also disagreed with the Immigration Judge who had rejected Bolanos' evidence of persecution as insufficient because it was not "supported by 'independent corroborative evidence.'"²⁵² The Court pointed out that the law required no such corroboration, and that "the imposition of such a requirement would result in the deportation of many people whose lives genuinely are in jeopardy."²⁵³

The record of INS bias against Central American asylum claimants was so blatant that it became the basis for a successful nationwide class action lawsuit filed on behalf of all Salvadorans and Guatemalans in the United States.²⁵⁴ The suit was filed in May, 1985; after protracted discovery,²⁵⁵ in 1990 the U.S. government contacted attorneys for the plaintiffs with an offer to negotiate a settlement, and on January 31, 1991 the Court approved the settlement.²⁵⁶

The ABC settlement is unprecedented in that the U.S. government agreed to start over and readjudicate all the Salvadoran and Guatemalan claims it had previously denied. The settlement affects as many as 500,000 Salvadorans and Guatemalans currently in the United States,²⁵⁷ and explicitly makes the previous denial of an asylum claim not relevant to the *de novo* determination.²⁵⁸ Unlike past practice, the State Department's advisory opinion must indicate that it is "advisory only" and must articulate the reasons for its recommendation.²⁵⁹

251 *Id.*

252 *Id.*

253 *Id.* at 1324; *see, e.g.,* Omar Centurion and Rodriguez Statements, *infra* at app. (containing the basis for asylum claims).

254 American Baptist Churches v. Thornburgh, 760 F. Supp. 796 (N.D. Ca. 1991) ("ABC"). *See* Debbie Smith, Unprecedented Victory for Guatemalan and Salvadoran Asylum Applicants: America Baptist Churches Settlement Agreement, *Immigr. J.* 27-29 (April-June, 1991), for discussion of history of the litigation and terms and implementation of the settlement.

255 Plaintiffs sought materials that would demonstrate the policy formulations behind the decisions; the government eventually produced 7,000 documents and made 200,000 State Department records available for review and the plaintiffs began deposing government officials. Smith, *supra* note 254, at 27-28.

256 *Id.* at 28; *see* ABC, 760 F. Supp. 796.

257 Smith, *supra* note 254, at 27. The settlement applies to all Salvadorans in the U.S. as of September 19, 1990 and all Guatemalans in the U.S. as of October 1, 1990. ABC, 760 F. Supp. at 799. Deportation of Salvadorans and Guatemalans covered by the case ceased as of November, 1990. Smith, *supra*, at 28. Benefits of the settlement agreement are provided to Salvadorans who register during the six month period commencing January 1, 1991; Guatemalans must register during the six month period commencing July 31, 1991. ABC, 760 F. Supp. at 799-80. In addition, Salvadorans who registered for TPS automatically receive the benefit of the settlement. *Id.* at 800-01.

258 ABC, 760 F. Supp. at 822-23. If the *de novo* decision is negative, the prior administrative or judicial proceedings, which had been closed during the new hearing, would resume, and the applicant would be allowed to supplement his or her record with materials from the *de novo* adjudication. Smith, *supra* note 254, at 28. Revised INS regulations, which changed the procedures for adjudicating asylum requests, were implemented

Thus, the settlement terms reflect that which Salvadoran advocates had long argued—the adjudication of Salvadoran asylum claims under the Refugee Act had been discriminatory. The overwhelming number of Salvadorans denied asylum, if they were not actually deported, have remained in the U.S. and have simply “gone underground.”²⁶⁰ They have joined their fellow Salvadorans who did not benefit from IRCA’s legalization program but suffer from its employer sanctions provisions, and are either undocumented or temporarily protected from deportation under “Temporary Protected Status.”

B. Temporary Protected Status

1. The Statute

At the same time that the ABC settlement recognized the discriminatory manner in which Salvadorans were being denied political asylum, there was an effort in Congress to formulate a new standard to protect foreign nationals in the United States from being sent back to countries where armed conflict endangered their safety. In that context, Congress specifically granted Salvadorans a temporary reprieve from deportation. Recognizing the perilous situation of Salvadorans who were at risk of being deported to a war-torn country, Congress attempted to address the situation by creating Temporary Protected Status (“TPS”).

TPS allows undocumented persons to remain in the United States and obtain work authorization for a limited period of time without being subject to deportation, when “the Attorney General finds that there is an ongoing armed conflict within the state” or that “there exist extraordinary and temporary conditions” such that it is unsafe for the country’s nationals to return.²⁶¹ The statute thus delegates to the executive branch the determination of which

while ABC was in discovery. 55 Fed. Reg. 30,675 (1990). The Justice Department stated that the regulations, which became effective October 1, 1990, were “intended to modify” the regulations in effect since enactment of the Refugee Act in 1980 and to:

formulate and implement a comprehensive and uniform asylum policy and procedure . . . [T]hat policy reflects two basic guiding principles: A fundamental belief that the granting of asylum is inherently a humanitarian act distinct from the normal operation and administration of the immigration process; and a recognition of the essential need for an orderly and fair system for the adjudication of asylum claims.

Id.

The ABC settlement provides that Salvadorans and Guatemalans who had not previously applied for asylum can do so now. They will be adjudicated under the revised INS regulations. For Salvadorans who registered, TPS provides protection from deportation until TPS expires on June 30, 1992. At the termination of TPS, Salvadorans have the right to apply for a *de novo* political asylum hearing. If they are successful they will be granted political asylum; if they are denied, they will be put into deportation proceedings at that time. ABC, 760 F. Supp. at 799-801.

259 ABC, 760 F. Supp. at 807.

260 While denial of asylum is not tantamount to deportation, of the Salvadorans denied asylum and found deportable, a disproportionate number have actually been deported. See General Gov’t Div., U.S. Gen. Accounting Office Pub. No. 33BR, *ASYLUM: Uniform Application of Standards Uncertain — Few Denied Applicants Deported* 25 (1987).

261 On November 29, 1990, the President signed into law the amendment granting temporary protected status. Immigration Act of 1990, Pub. L. No. 101-649, § 303, 104 Stat. 5030, 5036 (to be codified at 8 U.S.C. § 1254a). The statute, in pertinent part, reads:

The Attorney General, after consultation with appropriate agencies of the Government, may

countries qualify for TPS. Congress viewed El Salvador as fitting the above description but apparently was not sanguine about leaving the fate of Salvadorans in the hands of the Attorney General. Thus, a separate section of the bill specifically provided that for the 18-month period beginning January 1, 1991 and ending on June 30, 1992 Salvadorans would be protected from deportation and authorized to work in the U.S. under a special TPS status.²⁶²

2. The Background to TPS for Salvadorans

When Representative Moakley first introduced the TPS amendment, he intended that refugees from nations in addition to El Salvador be specifically named to receive TPS.²⁶³ However, the final version, approved by both the House and the Senate, granted the extraordinary measure of mandatory TPS only to Salvadorans.²⁶⁴

The legislative history of TPS, and the history of similar predecessor bills, reflects long-standing public and congressional concern with the plight of Salvadorans in the United States and their treatment by the INS in the asylum process. In 1981, Members of Congress petitioned the Administration to temporarily stay the deportation of Salvadorans to prevent "unnecessarily endangering the lives of Salvadorans."²⁶⁵ From 1983 to 1989, five bills favoring

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- designate any foreign state (or any part of such foreign state) under this subsection only if—
- (A) the Attorney General finds that there is an ongoing armed conflict within the state and, due to such conflict, requiring the return of aliens who are nationals of that state to that state (or to the part of the state) would pose a serious threat to their personal safety;
 - (B) the Attorney General finds that—
 - (i) there has been an earthquake, flood, drought, epidemic, or other environmental disaster in the state resulting in a substantial, but temporary, disruption of living conditions in the area affected,
 - (ii) the foreign state is unable, temporarily, to handle adequately the return to the state of aliens who are nationals of the state, and
 - (iii) the foreign state officially has requested designation under this subparagraph; or
 - (C) the Attorney General finds that there exist extraordinary and temporary conditions in the foreign state that prevent aliens who are nationals of the state from returning to the state in safety, unless the Attorney General finds that permitting the aliens to remain temporarily in the United States is contrary to the national interest of the United States.

8 U.S.C.A. § 1254a(b)(2) (West Supp. 1991).

²⁶² *Id.* § 1254a note (West Supp. 1991).

²⁶³ The bill as introduced by Rep. Moakley would have made "Salvadoran, Lebanese, Liberian, and Kuwaiti nationals" eligible for TPS, by stating that those countries would be designated upon enactment. Thus, as originally drafted, the bill took the initial designations out of the hands of the Attorney General. H.R. Rep. No. 253, 101st Cong., 2d Sess. 4 (1990). The companion Senate bill, S. 358, did not contain a TPS provision. S. 358, 101st Cong., 1st Sess. (1989). Rep. Berman had supported Moakley's original bill on the ground that it dealt with "people from four countries where civil war and major conflict is now going on." 136 Cong. Rec. H8717 (daily ed. Oct. 3, 1990) (statement of Rep. Berman).

The bill was signed into law on November 29, 1990. 8 U.S.C.A. § 1254a (West Supp. 1991). On March 27, 1991, the Attorney General designated Lebanese, Liberians and Kuwaiti nationals as eligible for TPS status for a twelve month period. *See* 56 Fed. Reg. 12745-46 (1991). And on September 16, 1991, Somalis were also designated. 56 Fed. Reg. 46804-05 (1991).

²⁶⁴ The Conference committee bill provided for the establishment of TPS under the House amendment but limited mandatory TPS only to Salvadorans. H.R. Conf. Rep. No. 955, 101st Cong., 2d Sess. 127 (1990), *reprinted in* 1990 U.S.C.C.A.N. 6784, 6792.

²⁶⁵ *See* Committee on the Judiciary, S. Rep. No. 241, 101st Cong., 2d Sess. 4-5 (1990) (accompanying bill S. 458, a predecessor of P.L. 101-649).

A stay of deportation would be achieved by granting extended voluntary departure ("EVD") status to

a stay of deportation for Salvadorans were introduced in the House, and five in the Senate.²⁶⁶ In 1989, the House Judiciary Committee noted that the administration had granted EVD to nationals from various countries and stated that the Committee “strongly believes that the circumstances and conditions in El Salvador . . . are as compelling” as in those countries.²⁶⁷ “The United States has a humanitarian and moral duty to extend temporary protected status to Salvadoran nationals currently residing in this country.”²⁶⁸ In support of a similar measure, one Representative pointed out that Salvadorans were model citizens: “These are not people who have been problems for us. We are not talking here about populations that have contributed to difficulties in this country, but . . . [about] courageous[] people who have initiative, people who work very hard.”²⁶⁹ However, none of these measures persuaded the executive branch to temporarily suspend the deportation of Salvadorans.

The Bush administration, like the Reagan administration before it, took the position that a special status for Salvadorans was unnecessary because the asylum provisions of the Refugee Act provided appropriate and adequate protection for Salvadorans.²⁷⁰ However, Congress had noted in a report accompanying a predecessor bill, that “very few Salvadorans . . . are being afforded the protection of asylum During [1988] INS District Directors . . . have considered 12,579 cases of Salvadorans requesting political asylum. Only 255 or 2 percent of these cases have been granted.” The Committee compared this low rate of asylum approvals for refugees

Salvadorans. Voluntary Departure status is granted at the discretion of the Attorney General, 8 U.S.C. § 1254(e), and instituted by the INS upon recommendation of the State Department. Austin T. Fragomen, Jr. & Steven C. Bell, *Immigration Primer* 218 (1985). The Attorney General’s grant is based on the Attorney General’s prosecutorial discretion not to enforce the deportation of the particular alien(s) in question, rather than on a statutory or regulatory authority. *Id.* EVD status temporarily delays the voluntary return of aliens to certain countries that are in periods of civil conflict dangerous to their lives or safety and allows those citizens to obtain permission to work. ACLU Report, *supra* note 84, at 5. Once it is safe for the alien to return to his or her country, the EVD status is revoked. *Id.*

266 In 1984, H.R. 4447, IRCA, included a provision stating a sense of the Congress that extended voluntary departure status be granted to Salvadorans. H.R. 4447 was designed to temporarily suspend deportation of Salvadorans. In 1986, it was reintroduced as H.R. 822. Although later incarnations of H.R. 4447 did not contain relief for Salvadorans, a 1989 bill, H.R. 45, stated as its purpose, “to prevent the forced departure of aliens to the war-torn nations of El Salvador and Nicaragua” by granting them EVD. The Judiciary Committee examined the “civil war, random violence, and politically motivated murder” in El Salvador as background for the bill. Legislative History of H.R. 45 as printed in the Committee on the Judiciary, H. Rep. No. 244, 101st Cong., 1st Sess. pt. 1, at 5-8 (1989).

In 1983, Senate Resolution 156 expressed the sense of the Senate that extended voluntary departure should be granted to Salvadorans whose safety would be at risk if they were forced to return to El Salvador. S. Rep. 241, at 4-6. Also in 1983, S. 2131 was introduced to suspend the deportation of Salvadorans. *Id.* In 1985, seven Senators introduced S. 377 aimed at protecting Salvadorans in the United States. *Id.* In 1987, S. 332, an identical bill, was introduced. *Id.* In 1989, Senator DeConcini and 26 cosponsors introduced S. 458 to grant temporary stay of deportation to nationals of El Salvador.

267 See H. Rep. 244, *supra* note 266, at 8.

268 *Id.* at 10 (discussion of the bill). This conclusion of the Report resulted from testimony of various human rights groups, Salvadoran politicians, and a review of the violent history of El Salvador.

269 135 Cong. Rec. H7,504 (daily ed. Oct. 25, 1989) (statement of Rep. Frank).

270 H. Rep. 244, *supra* note 266, at 8. Elliott Abrams, Assistant Secretary of State for Human Rights and Humanitarian Affairs had made this same argument. See ACLU Report, *supra* note 84, at 6-10 for discussion of Abrams’ position, as articulated in a letter, press guidance, and at a House Judiciary Committee hearing on the Refugee Act. See *supra* notes 208-12 and accompanying text for discussion of the Refugee Act.

from a pro-U.S. government to the 53.2 percent from Sandinista Nicaragua.²⁷¹ The report cited Cardoza-Fonseca and Orantes-Hernandez²⁷² as evidence that the manner in which INS adjudicated Salvadoran asylum applications violated statutory, regulatory, and treaty requirements. “[R]eview of INS treatment of asylum applicants from El Salvador . . . establishes a clear pattern of discrimination, arbitrary treatment and arbitrary denials of asylum claims.”²⁷³ In fact, Representative Joseph E. Brennan (D-ME) supported TPS because he rejected the contention that asylum was the appropriate remedy. “This kind of individually based test is simply inadequate . . . Overall we need to address current inconsistencies.”²⁷⁴ In adopting TPS, Congress voiced both its disapproval of INS’s handling of Salvadoran asylum claims and its frustration with the arbitrary nature in which the executive branch had, in the past, selected certain national groups for temporary stays of deportation.²⁷⁵

In enacting TPS for Salvadorans, Congress finally took it upon itself to remedy the intolerable status quo of the 1980s, in which hundreds of thousands of Salvadorans lived in the United States without legal status, were prejudicially treated by INS and were at risk of being sent back to a country where ongoing armed hostilities posed a serious threat to their personal safety.

3. The Application of TPS: The D.C. Experience

TPS had an immediate and significant impact. As of December 13, 1991, 193,819 Salvadorans had been granted TPS status nationwide, as had approximately 35,354 in the Washington area.²⁷⁶ However, the law did not completely achieve its purpose. Due to problems in the statutory provisions themselves and in INS administration of TPS, only about half of the eligible Salvadorans in the United States, and approximately the same number in the D.C. area, received its benefits.²⁷⁷

271 H.R. Rep. No. 244, 101st Cong., 1st Sess., pt. 2, at 3-7 (1989) (Legislative History to H.R. 45, the 1989 predecessor to the 1990 Act). DeConcini repeated similar statistics in discussion of the TPS bill enacted into law. 136 Cong. Rec. S17,108 (daily ed. Oct. 26, 1990) (statement of Sen. DeConcini).

272 For review of these cases, see *supra* notes 215-26 & 254-58 and accompanying text.

273 H.R. Rep. 244, *supra* note 271, at 5. The Report followed with a detailed description of the grave situation in El Salvador. *Id.* at 5.

274 135 Cong. Rec. H7,507 (daily ed. Oct. 25, 1989) (statement of Rep. Brennan) (“This kind of individually based test is simply inadequate to the situation we face. Citizens of war-torn nations rarely have the ability to demonstrate that they have been singled out by forces in their native countries . . . Overall, we need to address current inconsistencies regarding who may find temporary refuge in our country, for how long, and with what privileges and restrictions.”).

275 *Id.* at H7,503 (see statements of Reps. Fish and Richardson regarding EVD).

276 Letter from E.B. Duarte, Jr., Director, Examination Operation Facilitation Program, U.S. Department of Justice, Immigration and Naturalization Service, to Ezra Borut, Arnold & Porter (Jan. 13, 1992). The nationwide statistics reflect applicants approved; the latter statistic reflects the number of applications received in the Baltimore and Virginia INS offices, which cover Maryland, Virginia and the District of Columbia. (Very few applications were rejected; the number of applications approved locally was not available.) The vast majority of Salvadorans applying at the Virginia and Maryland INS offices reside in the greater Washington, D.C. area.

277 See 1989 INS Yearbook, *supra* note 92, at 47.

TPS for Salvadorans required a more difficult and expensive application process than does the general TPS provision.²⁷⁸ While generic TPS requires only one registration, TPS for Salvadorans required reregistration every six months.²⁷⁹ At the initial registration for TPS, Salvadorans also had to apply for work authorization. Then, every six months, the TPS Salvadorans were required to register again for work authorization.²⁸⁰ The last registration ended on January 1, 1992.

Next, while the fee under generic TPS was set by Congress at \$50, for Salvadorans, the fee was left to the discretion of the INS.²⁸¹ At first, the INS set the cumulative registration fees for Salvadorans at \$405.²⁸² In San Francisco an immigrant rights group, the Central American Refugee Center, challenged that fee.²⁸³ The new lower fees that finally went into effect in the last week of May 1991 remained much higher than those for generic TPS and proved unaffordable for many families.²⁸⁴ Although INS was supposed to waive fees for those who could not afford to pay them, INS often refused to waive fees for applicants who lived under the poverty level.²⁸⁵ Thus, people who could not afford the fees for TPS sometimes chose not to register. One local community leader explained the problem:

[A] large problem that we confronted at the beginning of the TPS process was the cost of TPS. Many persons, especially large families, were not able to pay for everyone in the family to receive TPS. As an agency, we assisted Salvadorans for free, in terms of help, but we could not pay their application costs. TPS was very expensive. Additionally, we did not find out about fee waivers for TPS until very late in the process and it was a lot of work to do in terms of filling out the waiver. Even though there were fee waivers, many Salvadorans did not understand the waivers and could not produce the necessary documentation in order to evidence that they were eligible for the fee waiver.²⁸⁶

278 8 U.S.C.A. § 1254a note (West Supp. 1991).

279 *Id.* § 1254a(c)(1)(A)(iv) and note (b)(1)(C).

Under the regulations, an individual had to register with the INS District Office in his or her jurisdiction. 56 Fed. Reg. 23,498 (1992) (to be codified at 8 C.F.R. § 240.17). An individual registered by submitting Forms I-821 and I-765 within thirty days prior to expiration of the registration period. *Id.* This could be done by mail, but the individual had to appear in person to renew his employment authorization. *Id.* If the individual failed to register without a good cause, he lost his TPS status. *Id.*

280 The registration period was thirty days before the beginning of each six-month period. 8 U.S.C.A. § 1254a note (c)(3) (West Supp. 1991).

281 *Id.* § 1254a(c)(1)(B).

282 The INS was directed to establish fees so that "[t]he amount of the fee shall be sufficient to cover the costs of administration of this section." *Id.* § 1254a note (b)(2). Anne Hazard, *INS Waiver Troubles: Protected Status Program Proves Bittersweet for Central Americans*, *The Ariz. Daily Star*, June 30, 1991, at A7.

283 See Katherine Bishop, *U.S. Policy on Salvadoran Immigrants Is Attacked*, *N.Y. Times*, May 20, 1991.

284 *Salvadorans, Victims of a Glitch*, *N.Y. Times*, June 26, 1991, at A22 ("The \$255 total has inhibited Salvadorans from registering").

285 While under the generic regulations any fees may be waived if the alien is "unable to pay them," 8 C.F.R. § 103.7(c) (1990), the Salvadoran TPS regulations only allow a fee waiver if (1) the applicant's *essential* expenditures for the three months prior to the application exceed the applicant's gross income, and (2) the applicant does not have any assets that would cover the fee. 56 Fed. Reg. 32,500, 32,501(1991)(to be codified at 8 C.F.R. § 240.48)(emphasis added). See Bishop, *supra* note 283 (INS refused to waive the fee for a family of nine whose monthly income was \$983).

In the midst of the controversy about the fees, congressional sponsors of TPS—Senator DeConcini and Rep. Moakley—protested INS’ handling of the application process and “told commissioner Gene McNary of INS that in passing the measure, Congress envisioned a registration program that was a ‘simple, efficient, one-step process’ and clearly intended that the ‘reasonable fee’ not exceed \$50.”²⁸⁷ In the end, INS’s delay in establishing a systematic, affordable application process forced Congress to extend the application deadline by four months.²⁸⁸

TPS implementation was also hampered by the complexity of the immigration laws. Often, Salvadorans who were already work-authorized because they were in the process of applying for asylum did not apply because they were deterred by the costs and did not think it was necessary. A representative from AYUDA, one of the main community organizations assisting D.C.’s TPS applicants, reviewed these problems:

For a period of six months, from December until June, we had a total of 2,314 Salvadorans apply for TPS. TPS applicants were all undocumented. Some did not apply because they feared being placed in deportation proceedings. Many of those who had asylum claims pending chose not to apply for TPS because they felt there was no advantage to it since they already had working papers that they received under the asylum claims. Unfortunately, what they did not realize is that only two or three percent of Salvadorans were receiving political asylum in the U.S. which meant that without TPS, and once their asylum claims were rejected, they could be placed immediately in deportation proceedings.²⁸⁹

Another organization that played a critical role in TPS registration stated that the two primary problems were cost and fear. “Our clients feared that by giving the INS their name, address and fingerprints they were going to later be identified and probably deported. The other basic problem was cost. It was extremely expensive.”²⁹⁰

Nonetheless, local legal service providers were inundated with Salvadorans in search of assistance, were short of Spanish-speaking staff, and had to turn many away. One attorney at a community-based organization noted that:

[C]ommunity-based legal aid agencies were inundated with people asking for information. While they did an extraordinary job of pooling their resources and supervising volunteers, and working furiously through the entire process of registration, because of the lack of resources it was very difficult to reach the entire community.²⁹¹

286 Canjura Statement ¶ 15.

287 Bishop, *supra* note 283, at A10.

288 See Carlos Sanchez and Al Kamen, *Illegal Salvadoran Immigrants Win Reprieve*, Wash. Post, June 29, 1991 (registration extended until October 31, 1991).

289 Martinez Vega Statement ¶ 15.

290 Aviles Statement ¶ 18.

291 O’Day Statement ¶ 22.

Others involved with administering TPS in D.C. also voiced these concerns:

We worked very hard with Salvadorans to assist them in acquiring temporary protected status so that they would have more stability in their lives. . . . [W]e could only handle a certain number of persons. We had to turn away a lot of Salvadorans because we did not have enough assistance, especially lawyers, to help everyone.²⁹²

Finally, those who came to register for TPS waited for hours, and sometimes all day, in the chill of a February winter day outside the Washington, D.C. center that was opened to process their applications.²⁹³ The acting director of the D.C. Office of Latino Affairs commented on the long lines: "It's incredible. More than 100 people waiting outside for hours in subfreezing weather."²⁹⁴ One woman's experience reflected the chaos and the frustration it wrought. She arrived at the center early one morning with her application in hand, waited all day without being seen, signed up on a list to ensure she would be seen the next day, but on that day the INS could not find her name on any of the lists.²⁹⁵

4. The Future of TPS

Those who braved the long lines, the high fees and the fear of registering with the INS and thus received the benefits of TPS are now about to lose all they gained. In fact, at the final re-registration period Salvadorans are being served with "orders to show cause," the official INS document used to initiate deportation proceedings.²⁹⁶

a. The Final Stage: Problems of TPS Expiration

In January, 1992, the INS began notifying TPS recipients that they will face deportation after June 30.²⁹⁷ INS stated that the deportation notification received by Salvadorans seeking to renew their six-month work permits under the program "does not mean that anyone will be deported immediately."²⁹⁸ According to an INS official, it will not be possible to begin deportation hearings for Salvadorans in the Washington, D.C. area until March 1993.²⁹⁹

292 Canjura Statement ¶ 13.

293 Reuben Castaneda, *Long, Cold Line Leads to a Better Life*, Wash. Post, Feb. 14, 1991, at E1, E5.

294 *Id.*

295 *Id.*

296 Al Kamen, *U.S. Warns Salvadorans of Deportation*, Wash. Post, Jan. 11, 1992, at A12.

297 *Id.*

298 *Id.*

299 *Id.* Regions other than Washington, D.C. "might be able to act sooner, but because others may take longer to begin the procedure . . . there was a built-in extension to the program." *Id.* However,

[R]efugee advocates say the notifications are causing great concern because they do not indicate other options the Salvadorans might have for staying beyond June 30. "They are scared to death," said Frank Sharry, executive director of the National Immigration Refugee and Citizenship Forum. "They think they are going to be put back on a plane on July 1."

Id. Sharry explained that a recent court ruling (the ABC case, *see supra*) allows Salvadorans a 90-day window to apply for political asylum after June 30 and entitles them to a new hearing on their claims. *Id.*

In addition to the renewed threat of deportation, TPS expiration on June 30 means that those Salvadorans who had been work authorized will now resume undocumented status and lose the right to work. They have the right to apply for asylum, accompanied by a work authorization application.³⁰⁰ The INS has 90 days after the filing of an asylum application in which to determine whether or not to issue a work authorization.³⁰¹ This will mean that Salvadorans risk being without work authorization for an extended period of time — both the period between TPS expiration and when they are required to file an asylum application, and then an additional period of time pending the INS determination.³⁰²

The ABC settlement provides a benefit for those Salvadorans who had previously been denied asylum.³⁰³ Upon TPS expiration, they are entitled to file a new application for political asylum, notwithstanding the previous denial.³⁰⁴ Salvadorans who had not applied for asylum before, may now apply with the benefit (accorded all applicants) of new asylum regulations issued in October, 1990, which are intended to ensure a uniform and fair adjudication of asylum claims.³⁰⁵

Applying for political asylum is a difficult, complicated and time consuming process. One asylum attorney, quoted in a District Court decision, described the gathering of information necessary to complete the basic asylum application form as follows: "In understanding the actual process of putting together an application, it required interview, re-interview, cross examination, extracting details, and patience."³⁰⁶ The Court also noted that the process involves

obtaining letters from persons remaining in foreign countries, newspaper articles, or information showing a historical pattern of persecution in a country. Obviously, this process takes time and the amount required varies depending on the country from which asylum is sought . . . [S]ome countries present a greater problem because of poor communications, inadequate mail service, or restricted travel.³⁰⁷

300 See 8 C.F.R. §§ 208.4(a), (b) & 208.7 (1991) (listing procedures to applying for asylum and work authorization).

301 *Id.* § 274a.13(d).

302 Under the ABC settlement, the process is triggered by written notice, from the INS, of a person's right to apply for *de novo* asylum adjudication. ABC, 760 F. Supp. at 800-01. This notice must be provided no sooner than thirty days before the expiration of the TPS status. The party will then have ninety days in which to submit a new asylum application. *Id.*

ABC provided for an optional shortened sixty day review process; however, this shortened review process requires a sixty dollar fee. See ABC, 760 F. Supp. at 805. Thus, Salvadorans applying for asylum are left with an expensive choice: either to be without work authorization for ninety days and risk losing a job and/or be unpaid for the period; or to commence work thirty days earlier and pay a sixty dollar fee. If Salvadorans do not apply for *de novo* asylum at least sixty days before expiration of TPS, *i.e.* by May 1, 1992, they will be without work authorization for some period of time.

303 See ABC, 760 F. Supp. at 801.

304 *Id.* at 800-01.

305 See *supra* note 261.

306 Haitian Refugee Ctr. v. Civiletti, 503 F. Supp. 442, 522 (S.D. Fla. 1980), *aff'd as modified*, 676 F.2d 1023 (5th Cir. 1982).

307 *Id.* at 523 (citations omitted).

TPS registration severely taxed the resources of D.C.'s community based organizations; the mission of assisting up to 35,000 area Salvadorans in applying for political asylum is well beyond the means of the "six lawyers affiliated with non profit organizations [that] serve the entire Latino community . . . in Washington, D.C."³⁰⁸

b. TPS Extension: The Political Context

(i) El Salvador

On December 31, 1991 an initial peace agreement was signed between the Government of El Salvador and the rebel front, overseen by the United National Secretary General, Javier Perez de Cuellar.³⁰⁹ Final agreement on the peace accord was reached January 14, 1992, "ending El Salvador's 12-year civil war, which claimed 75,000 lives and caused extensive economic damage."³¹⁰ Included in the 85-page agreement is provision for reduction of the Salvadoran armed forces by half over a two-year period to a number of about 31,000; the estimated 8,000 rebel guerrillas will be required to demobilize in five stages by the end of October.³¹¹ The United Nations will send a force of 600 police and 400 military observers to monitor the cease fire and ensure the maintenance of order while a new national civilian police is created.³¹²

Reports from El Salvador in the initial period were guarded. A Washington Post reporter surveying the situation in a guerrilla stronghold in eastern El Salvador noted that for rebel fighters facing a February 1, 1992, cease fire "the morning after is marked by two questions: will it be physically safe to lay down their weapons, and if so, what kind of life awaits them as civilians?"³¹³

[I]t is unlikely to be a smooth transition. The FMLN [the guerrilla front] is composed of five factions. United by war, they presented a united front. Staying united in peacetime may be more difficult if the only common denominator is a leftist political agenda. But . . . many of the FMLN's troops may be ready to continue taking orders from their old commanders.³¹⁴

Another report from the capital of San Salvador reflected skepticism and unease about the lengthy transition period:

Salvadorans are looking to the future with a mixture of great optimism and fears about random violence and the economy

308 Martinez Vega Statement ¶ 2.

309 *Salvadoran Foes Conclude Accord*, N.Y. Times, Jan. 15, 1992.

310 Trevor Rowe, *Salvadorans Reach Final Accord*, Wash. Post, Jan. 15, 1992, at A18.

311 *Id.*

312 *Id.*

313 Lee Hocksbader, *Peace Finds Guerrillas Off Guard*, Wash. Post, Jan. 13, 1992, at A12.

314 *Id.*

[P]eople are concerned about whether the complicated disarmament plan will work out

As a sign of the physical insecurity that many Salvadorans fear in the lengthy transition period to a new police force, a television personality recently told of someone he knew who went to the police to report the theft of his car. The policeman, after expressing anger at plans to disband the present force, recommended that the man get a gun and take care of any future thefts himself

Support for the peace accord seems virtually universal, but among Salvadorans not directly involved in the process, both rich and poor, there is skepticism about the sincerity of the two sides

Others question whether the country has really seen the end to the impunity of the armed force and the death-squad activity that dominated the early years of the war.³¹⁵

On January 16, thousands of FMLN supporters flooded the capital's main plaza "in a rousing political rally that would have been unthinkable just a month ago." Two blocks away, in another downtown square, conservative opponents of the rebels were busy preparing [their own] rally scheduled for that evening.³¹⁶ However, that report included a rather sobering counterpoint to the celebratory scene:

Few believe the transition will be smooth. Some in the military and among the guerrillas are said to be unhappy with the peace accord. Small right-wing extremist groups, suspected of operating with a handful of army officers, have circulated death threats, targeting churches, international organizations, leftist groups and journalists.

As if to underscore the threats, the body of an unidentified man was found bound, gagged and shot on a roadside near the capital Wednesday in what appeared to be a death squad-style hit of the sort that marked the early 1980s.³¹⁷

(ii) Experts Call for TPS Extension

In early January, Rep. Moakley called on the Bush Administration to extend Temporary Protected Status for Salvadorans in the U.S. for another 18 months.³¹⁸ Rep. Moakley sent letters to the Secretary of State and the Attorney General stating that "there are compelling reasons to extend TPS at this very delicate moment in time" and urging the Administration to grant an 18 month extension.³¹⁹

315 Shirley Christian, *In Salvador, Peace Has Worries, Too*, N.Y. Times, Jan. 16, 1992, at A8.

316 Lee Hockstader, *Guerrillas Celebrate Opening in Capital*, Wash. Post, Jan. 12, 1992, at A27.

317 *Id.*

318 Kamen, *supra* note 296, at A12.

319 Letter from Rep. Joseph Moakley to Hon. William P. Barr, Attorney General, Department of Justice (Jan. 9, 1992) (identical letter sent to Hon. James A. Baker, III, Secretary of State, Department of State).

. . . First, an extension will help promote the very difficult and complicated task of implementing a lasting peace in El Salvador Forcibly sending back thousands of refugees at the beginning of this process can only do damage to the prospects for a durable peace.

Second, given El Salvador's tragic history, it may well be that elements of the extreme right or elements of the extreme left might try to sabotage the important peace accords through acts of violence

Third, in the coming weeks, Congress and the Administration will have to decide on future aid levels for El Salvador [I]t is estimated that remittances from Salvadorans now in the United States back to El Salvador are as high as \$700 million annually

Finally, it is my understanding that President Cristiani, leaders of every political party represented in the Legislative Assembly, and the opposition FMLN all agree that an extension of TPS is critical. They realize, as I hope the Administration does, that terminating TPS in June of this year would have a devastating impact on the refugees forced to return to El Salvador, the Salvadoran economy, the human rights situation, and the chances for a real and lasting peace.³²⁰

The Salvadoran National Network, a national organization representing Salvadoran refugees, voiced its concerns in a press release on January 16, the date the peace accords were formally signed in Mexico City:

When the peace accords are signed in Mexico today, Salvadoran refugees will be celebrating in a tone of happiness yet scepticism. This community believes that peace in El Salvador will not be based solely on the signing of a piece of paper but rather on economic stability and respect for human rights. While they believe the accords are important steps in the process, they know it will take many months, if not years, to secure a real and lasting peace

Concerns of this community include the economic stability of El Salvador and pockets of radical government forces who are unwilling to conform to the provisions of the accords.

Compounding these concerns is a large amount of misinformation being disseminated regarding Temporary Protected Status and the possibility of deportation We continue to work for an extension and for an official commitment from the INS to the continued protection of Salvadorans without the continual threat of deportation.³²¹

Several experts on the situation in El Salvador and Central American refugees also were not sanguine about the prospect of repatriating Salvadorans at this time. Cynthia Arnson, Associate Director of Americas Watch, made the following comment on the current situation:

It is much too early to determine whether or not it is safe for Salvadorans to return *en masse*. There is every chance that the implementation of the peace accord will be accompanied by ongoing political violence,

320 *Id.*

321 Press release of Salvadoran National Network (Jan. 16, 1992).

including assassinations. While the accord is very promising, there is much to be done to achieve reconciliation in Salvadoran society and to undertake the basic institutional reforms that would ensure respect for human rights in the future.³²²

The Washington Representative of a church-related organization involved in refugee policy commented on January 6, 1992 that: "given the history of the conflict in El Salvador, the tenuousness of the peace agreement and the difficulties in implementing it — it is not yet a *fait accompli* — a delay in the return of Salvadoran nationals would be beneficial to the peace process."³²³ An attorney who directs an international human rights group voiced similar concerns:

The situation in El Salvador today is very tense and unstable. It is about to enter a transitional phase, in which people who are armed will be losing jobs and will have little stake in the system. It is quite possible that these people will be involved in targeted political killings at the regional or local level. It may well be that some people from the right wing who are opposed to the peace agreement will retaliate against some of those who would be returning to the country. During this interim period, an extension of protected status for Salvadorans in the U.S. is warranted, to allow for the transition in El Salvador to take place and for the situation to stabilize.³²⁴

(iii) Washington, D.C.

In Washington, D.C. a reporter interviewing area residents in early January found that "Salvadoran refugees and the groups that assist them are united in their hopes for peace. They are also in agreement that the United States should extend its Temporary Protected Status program."³²⁵ The local director of the Salvadoran Refugee Committee "cautioned that the country needs time — and U.S. humanitarian aid — to recover from war's wounds."³²⁶

The reporter interviewed several Salvadorans who said they wanted to go home immediately, but others expressed "a cautious attitude toward the accord," with one stating that "so far it's only signatures" but that should the peace prove lasting, he would "without question" return home to El Salvador.³²⁷ The director of a social service agency that assists Salvadorans said that many of her clients fear that although a peace agreement has been reached, reprisals may continue.³²⁸ AYUDA's representative put it rather bluntly:

322 Telephone Interview with Cynthia Arnson, Associate Director, Americas Watch (Jan. 21, 1992).

323 Telephone Interview with John Fredericksson, Washington Representative, Lutheran Immigration and Refugee Services (Jan. 6, 1992).

324 Telephone Interview with Michael Posner, Executive Director, Lawyers Committee for Human Rights (Jan. 6, 1992).

325 Karlyn Barker & Stephanie Griffith, *For Salvadorans, Peace Brings Hard Decisions*, Wash. Post, Jan. 6, 1992, at B1, B5.

326 *Id.*

327 *Id.*

328 *Id.* (statement of Lael Parish, executive director of CASA de Maryland).

When TPS expires, Salvadorans are not going anywhere. I doubt that they will go home. They will stay here. Despite their mistreatment here, they think that it is safe here. They still do not understand what is happening in El Salvador. Reports from newspapers and friends and family in El Salvador are that even though there is a Peace Accord signed, shooting still continues in many of their towns, and they fear going back home.³²⁹

One local Salvadoran community activist who obtained political asylum only after thirty Members of Congress championed his case stated:

I am one of the few Salvadorans who has been granted asylum in the United States. Despite the recently signed peace accord, I and other Salvadorans like me still cannot return safely to El Salvador. Those of us who fear persecution by the right wing members of the armed forces are concerned about how and when they will be disarmed and if the government in power can and will ensure the safety of people like me.³³⁰

Finally, the words of one man who worries that after TPS expires his asylum application — which was granted but is on appeal and will be reopened — will be rejected:

I still fear being forced to return to El Salvador even though the Peace Accord has been signed. The guerillas still exist in the countryside and the various small towns and it will cost them nothing to kill me. There are still a lot of army soldiers and guerillas who do not want peace and will not let there be peace.

Life here in the U.S. is difficult, it is not easy to earn a lot of money, but it is all worthwhile because I can live without having to fear persecution. At least here, although I live in a very small apartment, I do not have to worry anymore that someone is going to place a bomb in my house, or someone will detain me as I get off a bus, or that my life will be in danger. For these reasons, I can finally sleep well at night. This is why I, and perhaps other Salvadorans who fear being returned to El Salvador, will live in apartments that are over crowded, dirty, and broken down, without complaining. Despite the mistreatment of Latinos in the community here, I would rather stay here than return to El Salvador and constantly fear for my life.³³¹

329 Martinez Vega Statement ¶ 20.

330 Centurion Statement ¶ 20; *see* appended letter signed by 30 Members of Congress to Mr. William Carroll, District Director, INS (April 3, 1990) (Salvadorans denied asylum were difficult to locate and when located, were unwilling to provide statement for this report).

331 Rodriguez Statement ¶¶ 15, 16; *see supra* note 330 parenthetical.

V. Conclusion

There is no doubt that the Peace Accord signed in Mexico City in January 1992 is a ray of light in the long, bloody war that has ravaged El Salvador over the past twelve years. At the same time, the jury is out as to whether the Accord will be implemented in a fashion that means not only that the war itself will end but that a government will be in place that can protect the human rights of its citizens.

This report has documented the suffering of the Salvadorans who now reside in the District of Columbia. They fled their home in terror; they live in the United States with the daily fear of deportation and the daily experience of being exploited. The rationale for the legalization program under the Immigration Reform and Control Act of 1986 — to bring an underground community into the light — is as applicable today to Salvadorans as it was to undocumented U.S. residents in 1986. However, most Salvadorans did not qualify for legalization because they did not arrive before the cutoff date of 1982. In addition, the discriminatory treatment of Salvadorans who sought asylum under the Refugee Act of 1980 has meant that many Salvadorans whose immigration status should have been resolved long ago are still far from seeing the light. The long-term problems of such underground community can best be addressed through the grant of permanent legal status.

This situation was somewhat alleviated — and its most acute manifestations muted — by the Temporary Protected Status that now protects 35,000 area Salvadorans who registered. After June 30, 1992, those who have benefited from this temporary reprieve will be back to where they started. And they will join the estimated 65,000 other Salvadorans in the area who are currently undocumented.

It is clear that the lot of the documented and the undocumented Latino in the District of Columbia has been made worse by the imposition of employer sanctions. These sanctions have fostered discrimination against all Latinos — U.S. citizens, temporary residents and undocumented alike. Moreover, undocumented Salvadorans who do find jobs — and who theoretically are protected by labor rights laws, but fear standing up for their rights — find themselves exploited in ways that are reminiscent of what most Americans would assume are the horrors of a bygone era. Employer sanctions have also meant for all Latinos, and most acutely those without permanent residence status, that they are harassed in their daily dealings with landlords, banks, hospitals, educational institutions and government offices. It has been repeatedly demonstrated that the employer sanctions provisions of the Immigration Reform and Control Act of 1986 have led to unlawful discrimination. In 1990 the General Accounting Office concluded that employer sanctions had resulted in a “widespread pattern of discrimination.” This report has also demonstrated that in the Washington, D.C. area, employer sanctions have exacerbated the exploitation of the vulnerable Salvadoran community. The repeal of employer sanctions is now long overdue.

If employer sanctions were intended to deter "illegal" migration to the United States, in the case of the Salvadoran community it has not had that effect. Salvadorans came to the United States in flight from a country where armed warfare and a government infamous for its human rights abuses made life untenable. They came here and found that the protections of the Refugee Act of 1980 were applied in a discriminatory way to deny asylum to Salvadorans who had "well-founded fear[s]" of persecution. Congress finally passed legislation in 1990 that afforded temporary protection to Salvadorans, by replacing individual INS determinations with the across-the-board determination that sending Salvadorans back to El Salvador would jeopardize their safety.

Congressman Moakley, the author of that provision, has urged the Bush Administration to "extend" that temporary status because it is not yet safe for Salvadorans to return. Human rights experts in this country agree. Salvadorans and their advocates in the D.C. area have voiced their fear of the renewed prospect of deportation and the expiration of their work authorization at a time when return to El Salvador is not a realistic option. They have also voiced their determination not to return to El Salvador until it is safe for them to live there.

In 1990, Congress recognized the inadequacy of the asylum laws and the need for temporary protected status in situations where the deportation of thousands of people to a country like El Salvador would put their personal safety in jeopardy. Unfortunately, even with the signing of the Peace Accord, El Salvador continues to be such a place. Accordingly, the Bush Administration should move expeditiously to assure Salvadorans that Temporary Protected Status will be extended until it is safe for them to return.

The disturbances that took place in Northwest Washington almost a year ago were, in part, an expression of the frustration of a community that has suffered repeated injustices. As the Mayor's office understood, it was a strong statement by members of that community that they have been left out and excluded from government decision-making and that they feel themselves to be without power to control their lives. Washington, D.C. area Salvadorans are without this access and without this power largely because of their tenuous immigration status. If these immigration issues remain unaddressed, it will be at the increased risk that the Mount Pleasant, Adams Morgan and Columbia Heights neighborhoods could again erupt with violence — and one can only hope that there will not be more severe consequences than last time.

Statement of Jose Hondora

1. I am appearing today under the pseudonym of Jose Hondora. I am a 41 year old Honduran man. I do not feel comfortable revealing my identity, because I fear that I will be deported and/or that my employer will seek revenge for my testimony. I arrived in the United States in 1988. I came to Washington, D.C. primarily to earn money to support my family in Honduras. Currently, I do not have any type of permanent or temporary immigration status, nor do I have working authorization.

2. Because I do not have any documentation, my present employer pays me three to five dollars less than what my documented coworkers (those with temporary or permanent status) earn. I have the same amount of job experience as the documented workers and we all work the same number of hours, yet I earn seven dollars per hour and the others receive between ten and twelve dollars per hour.

3. Because some of my Latino counterparts and I are undocumented, we cannot complain about our unequal pay. I know from personal experience that those Latinos who complain to their employers run the risk of being fired from their jobs.

4. In addition to receiving unequal pay, undocumented Latinos such as myself are usually assigned to the tasks which require the most strenuous work and the most unsafe working conditions.

5. When I first arrived in the United States, I took a three-day course approved by the Occupational Safety and Health Administration ("OSHA") and the Environmental Protection Agency ("EPA") to learn about the safe removal of asbestos. At the end of the course, I earned a certificate for my participation.

6. In the past two-and-one-half years, I have been employed as a remover of asbestos. I was recently fired from my last job for my refusal to remove my protective respirator with filter while performing asbestos removal. The following events eventually led to my dismissal.

7. Three of my coworkers and I, who are all undocumented Latinos, were assigned to remove asbestos from buildings. The supervisor always ordered us to work quickly, and as a consequence appropriate safety measures were not complied with. Because we hammered asbestos wrapped around pipes and pulled asbestos out of the ceiling without observing appropriate safety measures, dirt and asbestos dust filled the job site, building, and surrounding area outside.

8. My coworkers and I were instructed to take the asbestos outside and to throw it onto a truck in the alley that was not protected according to EPA regulations. Police cars often passed by the alley and my supervisor started to worry that the police

officers would suspect that we were removing asbestos from the building because we had on respirators with filters.

9. In addition, my supervisor had recently been warned that OSHA and EPA inspectors were scheduled to come and inspect the job site. One day, prior to inspectors arriving at the job site, the supervisor ordered me and my three coworkers to remove our protective respirators with filters and to replace this gear with paper masks. The supervisor hoped to camouflage the fact that removal of asbestos was occurring on the job site. The supervisor then ordered us to work quickly throughout our job.

10. I refused to comply with the supervisor's demand that I remove my respirator, and I was fired as a result. I noted, however, that my coworkers resignedly followed the supervisor's orders, despite the fact that this seriously endangered their health. I believe the only reason my coworkers followed the supervisor's orders and put their lives in danger was because they felt that because they were undocumented Latinos they did not have any other choice. I am currently in the process of filing a claim against this employer.

11. On January 24, 1992, I came to sign this statement. I was asked whether I would have any problems taking off a half day of work from my new job to participate in the Commission's hearing on Wednesday January 29, 1992. I replied no. I will not have any problem taking off Wednesday because today my employer fired me because I was undocumented. He told me that I could return to work for him when I got legal documents to work. He told me that if he didn't fire me, he could be fined \$10,000.

12. Why is it that in this country the government protects the employer and not the worker?

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: January 23 1992

JOSE HONDORA
Jose Hondora

I hereby certify that I am fluent in both Spanish and English and that I read the attached statement to Jose Hondora in Spanish and he understood the contents thereof before signing.


Tracey Friedlander

Statement of Simon Mendez

1. I am appearing today under the pseudonym of Simon Mendez and I am from El Salvador. In 1989, I left El Salvador because the war had destroyed my country and its economy and I could not find work to support my family. I left my family, including my common law wife and two young children, in El Salvador.

2. I arrived in the United States in April 1989. A few months later, in December 1989, I came to live in Washington, D.C. where I had a few Salvadoran family members. My friends and family helped me to find a job so that I could eat and find a place to live. I send as much money as I can back to my family in El Salvador so that they can survive.

3. I worked from December 1989 until April 1991 without having any type of immigration documentation. In April 1991, I applied for and received Temporary Protected Status ("TPS") thanks to the help of AYUDA, Inc., a community service agency located in Adams Morgan. When TPS expires, I understand that the INS may deport me back to El Salvador, but I do not think that I will leave the U.S. on my own accord.

4. When I first came to Washington, D.C., in 1989, it was very difficult to find a job without work authorization or a green card. Almost a month after my arrival, a friend of mine took me to a new marble company ("The Company") where he said they were looking to hire employees. The manager did not ask to see work authorization so my friend and I were "hired" as marble workers. The manager handed each person a card on which each person was to write his name. On this card, each worker's hours were recorded on a daily basis.

5. Approximately half of the workers in the factory were Italians and Mexicans who had permanent residency. The other half of the workers, mainly Latinos, were undocumented.

6. At first, the manager told me to start out as an assistant laborer and told me that I would be paid \$8.00 an hour, and I would be paid weekly. I worked 11 hours each day, 6 days a week, but I was only paid \$350.00 and paid every two weeks (instead of each week) in cash, which meant that my employer was only paying me around \$5.30 per hour. At \$8.00 an hour, I should have been paid around \$528.00 per week. I did not complain about my pay, however, because I did not have working authorization and I feared that if I did complain, I would lose my job.

7. After working at the Company for six months, the manager said that my salary was increased to \$400.00 per week, which still was not the original amount that I was

promised, and the manager continued to pay me every two weeks. At this time, I was still working 11 hours each day, 6 days a week.

8. In October 1990, the manager told me that I would only be paid once a month.

9. In June 1991, the manager said he was promoting me to marble worker and said that I would now be paid \$500.00 a week. Still, he only paid me \$450.00 for the week and paid me once a month. I was paid at the end of June for that month's work.

10. I worked through the end of July but at the end of that month, the manager refused to pay me the \$2,000 he owed me for July.

11. The first week of August, I went and asked the manager for my July wages but he still refused to pay me. He promised to pay me my July wages on August 5, 1991. However, on August 5, 1991 he refused to pay me again.

12. As a result, two other co-workers (they were also Latino and undocumented) and I left the job because the company would not pay us for our work done in July.

13. Fifteen days later, I went back to the job site to talk to the manager about my unpaid wages, but he was very angry and told me to leave the factory premises. He told me to never come back to the marble workshop. The manager said that he would rather take the money he owed me to buy a pistol to kill me.

14. Approximately a week later, however, my roommate told me that the manager called me at my home to say he had changed his mind. The message reassured that the manager would pay me all of the money he owed me and that he would pay me at the end of the week. The manager also asked me to return to work for him. I thought that the only reason he wanted me back was because he could not find anyone to do the work for so little money.

15. On August 25 I went back to work at the factory and the manager paid me \$500.00. When the end of the week arrived, however, I was not given my money for my work in July, or for my last week in August. Hoping that the manager would eventually pay me, as he again promised to do, I continued working until October. In October, he refused to pay me my back pay for my four weeks of work in July, one week of work in August, and four weeks of work in September. At this point, I calculated that the company owed me over \$4,500.

16. I formally quit working at the Company on November 8, 1991. The manager began to constantly harass me. Day after day, he would have people from the factory call me and urge me to come back to work. He also sent workers from the factory to my apartment to urge me to come back to work. They told me that the manager was sorry and promised to pay me if I would return.

17. One day, when I was not home, my house-mate received a telephone call from the manager. The manager's message said that he was going to come to my apartment to get me so that he could cut my head off.

18. During the first few weeks of November, I continued receiving threatening telephone calls at home and messengers at my apartment. They told me that the manager was willing to pay me and that I should go and talk to him.

19. On the morning of November 18, 1991, I went to the marble factory to talk with the manager. I went in to talk with him but he told me that I was to "Work!" "Work!" and not to talk (this discussion took place in Spanish). When I asked him for the money owed to me in back wages, he told me that he would pay me \$3,500 on November 30. I followed him into his office, which is on the second floor above the workshop, and told him that I had to be paid, but he said he would not pay me until the end of November. He started to leave his office and began to walk down the stairs to the work area. I followed him still trying to talk to him.

20. We walked into a large room on the bottom floor that was like a garage. There were five others in the room: two Italian workers, a Nicaraguan worker, and another person who I did not recognize.

21. The manager shut the large door. He grabbed me by my coat collar and threw me across a high table. My back slammed against the table surface. He then smashed his fist against my head several times. The inside of my mouth was cut open. As I was lying on the ground, he threw a large box of tools at me. The manager was about to jump on me again when one of the workers grabbed him from behind. Until this time, none of the other workers did anything to intervene or to help me. I do not know how I managed to get up and run but I did. The manager then chased after me for more than a block.

22. Afterwards, I went to the emergency room at Holy Cross Hospital and was treated for contusions on multiple sites. The emergency room record states that I had been assaulted multiple times by unspecified means. While I was at the hospital, I relayed my story to a bilingual hospital official.

23. This hospital official accompanied me to the police station to report the incident. He helped me fill out a complaint. I submitted the complaint to an officer but the officer said that my account was not in correct English and was not coherent. The officer would not accept my complaint.

24. Since I felt that the police would not help me, I went to talk to Sharon O'Day, an attorney who works for a nonprofit organization. I showed her the complaint that the police officer refused to accept. She said that the complaint could be easily understood and should have been accepted by the officer. After she made a few

changes and additions to the complaint, she attached her card to it and told me to submit it once again to the police. She said that if the police had any questions, they were to contact her.

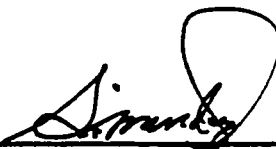
25. I submitted the complaint again and this time the complaint was filed without any comments or questions. The police officer told me not to have any contact with the company, and especially not with the manager. The police served the employer with the complaint which had a hearing date for December 30, 1991. The hearing has since been postponed at the employer's request until February 1992.

26. Soon after receiving the complaint, the manager sent another to my home to give me a message. The worker told me that the manager would pay me money if I would withdraw my complaint. He also told me that he was scared of the manager and did not want to get involved.

27. I refused to drop the complaint and a little while afterwards, the manager sent me an invitation, via another coworker messenger, to have dinner with him at El Torito restaurant in Rockville, Maryland. The messenger told me that the manager wanted to discuss dropping the suit and would pay me in full. I did not respond to the message. At that point, I was more upset about having been beaten than concerned about getting my back wages.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: January 27, 1992



Simon Mendez

I hereby certify that I am fluent in both Spanish and English and that I read the attached statement to Simon Mendez in Spanish and he understood the contents thereof before signing.



Tracey Friedlander

Statement Of Sharon O'Day

1. My name is Sharon O'Day and I am an attorney and director of Casa of Maryland's Day Laborer Assistance Project. Casa of Maryland is a private, non profit agency which assists the Latino refugee community living in Maryland and the surrounding D.C. metropolitan area. The project's address is 648 University Boulevard East, Silver Spring, Maryland.

2. We work out of a trailer located on the parking lot of a "7-Eleven" store where for the last seven years Latinos gather to look for employment in day labor jobs such as construction, gardening, and other semi-skilled areas. The number of Latinos on the lot looking for work has grown from about 30 seven years ago, to approximately 100 to 150 a day now. In the first two months of operation, the project has registered over 460 Latinos who are seeking employment.

3. Casa of Maryland began informally assisting the day laborers in response to Immigration and Naturalization Service ("INS") raids on the parking lot. In 1990, the INS raided the lot three times: in July, August and September. Once the INS actually came sweeping onto the parking lot in their cars and started rounding up the Latinos asking to see their work authorization, for no other reason than the fact they looked Latino. The first two raids occurred when the INS was stationed near the parking lot watching the Latinos board employer trucks. The INS would follow the trucks, pull the trucks over, and ask to see the work authorization of each Latino on the truck. If one did not have the documents required, INS took the truck from the employer, prosecuted the employer for violation of employer sanctions, and arrested the Latino employees for allegedly entering the U.S. without documentation. Most of the Latinos were transported to the Wycomico federal detention facility, near Ocean City, where they were detained until they could post a \$500.00 bond. During these INS raids, approximately 60 Latinos were arrested for alleged immigration violations. After transporting the men to Baltimore for processing, we found that four of them turned out to actually have documentation of their legal status. In these cases, the INS released the men from the INS facility in Baltimore without providing transportation back to Washington, D.C.

4. The formal project started in May 1991 in response to the community's concern over the growing number of Latino men gathering on the parking lot seeking employment. Casa of Maryland was called to assist the community because of our ties with the Latino community. It was agreed that a solution had to be found to the growing number of men looking for day labor in an unorganized manner, often waiting for several hours for employment, without bathroom facilities, without a method to

distinguish potential employers from 7-Eleven customers. The community agreed to allow myself and an assistant, Allison Becker, to come to the parking lot to assist the Latinos and to establish a center for Latino employment and education.

5. Throughout the summer we worked out of the trunk of my car using a milk crate to hold the legal cases. With the assistance of Montgomery County and others in the community, a trailer was donated by Montgomery College and on November 1, 1991 we opened the trailer to assist the great number of individuals who desperately needed assistance.

6. We attempt to provide three kinds of assistance: First, we assist all Latinos with finding employment. We act as a liaison between the Latinos and potential employers by helping them with translations to establish salaries, to inform them of their rights, and to assist them with any problems they may have as a result of their immigration status. Second, we have an educational program that provides certain informal seminars for workers concerning their legal rights when dealing with law enforcement officials and their rights to have licenses, bank accounts, and other services. We also provide legal services to Latinos whereby we represent those employees who, for example, have not been paid wages or have been discriminated against due to their immigration status. Currently we have 106 pending cases.

7. I am the sole attorney at the project. I have one part time legal assistant and one employment coordinator.

8. My clients' stories are very typical of the type of exploitation that occurs within the Latino community in the Washington, D.C. metropolitan area. Almost every Latino with whom I have talked has worked for a day or a longer period of time without receiving full payment for their work or without receiving compensation for injuries received on the job, or both. The standard response by the employer to the Latino employee who objects has been: "If you try to do anything to get your money, I am going to turn you in to the INS." This was true up until Salvadorans obtained TPS status, and is still a very standard response with other Latinos that are undocumented.

9. This exploitation of Latinos is creating a hostile and volatile situation between employers and employees. Where I work I see that the tensions created by the employer and employee relationships easily heat up. For example, in the parking lot there are many persons who have had the experience of working and not getting paid for that work. Sometimes employers who have not paid other workers may show up again on the lot and immediately a level of hostility escalates. When an employer shows up at the parking lot to pick up new workers after failing to pay former employees, the employee who has not been paid will spot the car and start to tell everyone on the lot that the employer owes him money. All of the other men start to

gather around the employer and soon everyone is standing in front of a car, and the employer is yelling back and trying to race away.

10. The police, if bilingual (and most are not), can be very effective in such situations, sometimes more effective than I can be in getting employers to pay up quickly. First they attempt to diffuse the hostilities. If the employer admits to owing money, the police will require the employer to pay the employee or set up a meeting in a short time to pay. They also can obtain the address of the employer by running a computer check on the license plate to assure that the employee can pursue legal actions if the employer does not pay.

11. The employment relationship, regardless of immigration status, is a contractual relationship which states that if one person does work for another person, as an employee and for a promised wage, the employee is entitled to that wage. The employee is also entitled to minimum wage. An employer cannot pay less than minimum wage just because of someone's immigration status. Someone with TPS cannot be treated differently because he or she does not have a green card. These individuals all have the same rights as someone who has work authorization documents, which includes U.S. citizens. When it comes to protecting employees for worker's compensation, receiving a fair and just wage, having a safe working environment, etc., all of the applicable laws apply regardless of immigration status.

12. Although it is very difficult to find employers who are willing to say outright that they treat Latinos in a discriminatory manner due to their immigration status or because they are Latino looking, discrimination motivated by the Immigration Reform and Control Act ("IRCA") sanctions is obvious. The employers, who are risking sanctions by employing undocumented Latino employees, feel that they, in turn, have the right to treat the Latino employee as a lower class employee who is "lucky to have a job." In turn, this discriminatory treatment is extended to all "Latino-looking" employees.

13. Even the documented Latinos, with temporary status like Temporary Protected States ("TPS"), remain vulnerable to the discriminating way U.S. employers treat them because of their immigration status. Some employers treat Latinos with temporary status this way because they realize that these individuals are still in a tenuous situation, in that their ability to stay in this country is only temporary, and they are therefore afraid to "rock the boat" in any way.

14. An example of the discrimination that is perpetuated against the Latino community was articulated to me by one employer who used our services. The employer told me that did not want to hire someone to do general maintenance and clean up at his apartment building unless they had a "green card or they were a U.S.

citizen." I told him that such statements were discriminatory and thus illegal under IRCA, but he said, "That is what I want, I do not want to train someone and have them deported in six months or a year. That is why I am only going to hire someone who is a U.S. citizen or has a green card."

15. Many of these employers do not even know the differences between a green card and a "permiso" (Spanish term for an INS issued work authorization document) and they are angry when I inform them that it is illegal for them to hire only persons with green cards or U.S. citizenship. Often the only thing these employers have heard about IRCA is that they are going to be fined \$5,000.00 a day for every undocumented person that they employ, that their cars are going to be taken, and that they are going to have to hire a lawyer. When I tell them that it is illegal for them to discriminate based on the type of documentation presented or on nationality of the job applicant and that they face fines for discrimination under IRCA as well, they are confused and often angry. They feel they will lose either way.

16. On many occasions I have had the experience of employers asking to see the Latino applicant's documents, and when they are shown the "permiso," or a driver's license and social security card, the employer discriminates between the types of documentation which s/he deems appropriate. Under IRCA, employers are not permitted to discriminate among documents and base their choice of employees on the type of documentation presented. Under the law the individual is permitted to select from a number of documents which s/he wants to show the employer. For example, if a Latino employee shows the employer a driver's license and a social security card, then it is illegal for the employer to ask for another type of document.

17. Employers assert that it is too easy for Latinos to get a social security number and driver's license without being authorized to work and therefore they do not believe they can rely on such documents. However it is not the employer's right to scrutinize how an individual receives a social security number and driver's license. These employers would not be asking a black or white employee to present proof of work authorization or proof that the employee's documents are valid.

18. The Latino employees often do not know that the one who is violating the law is the employer and that the employer is subject to sanctions, not the employee. However, the Latino with temporary status here is still fearful of the INS so they often will not stand up for their rights against the employer. They fear that a government funded agency or the court will have a record that they brought a case and that the record will be turned over to the INS for purposes of deporting them. In some cases this is a legitimate fear. Due to budget cuts, Maryland does not have an agency to pursue wage and hour complaints therefore all cases of Latinos employed in Maryland,

regardless of where the employee lives (approximately 20 per cent are residents of the District) must be presented before the federal Department of Labor office in Baltimore if we wish an investigation to be conducted of the employer. However, the Department of Labor has a direct line to the INS, and if a claim is presented for an undocumented worker, the Department may turn such person over to the INS. My clients therefore have a legitimate fear of bringing forth a claim for unpaid wages or for unfair working conditions. Many of my clients have a general fear of going into any sort of court because of a perception based on the courts in the country they fled (60-70 per cent are from El Salvador) that all courts are biased and dangerous. Many others will not explain their fears; they "do not want to make trouble."

19. Immigration status also affects Latinos on the firing end of employment. It is well known in this community that Latinos are often fired because of their immigration status. An example of this involves a major construction company that is notorious for hiring and exploiting Latinos, paying Latinos less, requiring employees to work in awful working conditions, hiring nasty supervisors, and firing Latinos the day their work authorization expires. This is done even if the employee shows other acceptable documentation and in spite of the fact that the work authorization expired due to bureaucratic inefficiency of the INS and not the negligence of the employee. However due to IRCA and the sanctions that this company has received many times before, it has become a great target for the INS. The company's lawyers therefore have told the company that the day work authorization expires they should fire that employee. This is just one example of how IRCA works terribly against the Latinos.

20. Recently I had a long discussion about IRCA with the employers of a local university that actually brought me in to talk to a group of their Latino employees doing mainly groundwork and maintenance. I told the group of Latino employees that the university was not allowed to ask for specific documents: the employees could elect to show work authorization, a driver's license and/or social security card. The university stated that they give their Latino employees with work authorization (1) notice when their work authorization is going to expire and (2) a day off to renew it. I explained to the university that although it is very nice of them to write a note stating that the work authorization is going to expire and to give the employee time to renew it, they cannot demand to see new work authorization document. Rather, they must accept the type of employment authorization document that the employee wishes to provide. The university stated that in order to protect themselves from sanctions under IRCA they believed they needed to see the new work authorization document.

21. Because between 60-70 percent of the Latino community which I assist are Salvadoran, I am aware of the many problems that arose in the Temporary Protected

Status ("TPS") program. There are three main reasons why many Salvadorans who should have TPS do not: (1) the high cost of registration and problems with fee waivers, (2) the lack of resources for the community outreach, particularly Salvadorans who had pending political asylum claims, and (3) high documentation/proof requirements imposed by the INS. Some of those who have political asylum claims pending did not quite get the word that they should have signed up for TPS anyway. They believed that their "permiso" which was given to them as a result of their political asylum claim would be enough and that they did not need to sign up for TPS. This misunderstanding was the result of insufficient funds for the community agencies to conduct an extensive information campaign and the poor advice given by "notarios" and other persons who claim to offer assistance to the community but in reality take their money and offer incorrect advice.

22. Also, the community-based legal aid agencies were inundated with people asking for information. While they did an extraordinary job of pooling their resources and supervising volunteers, and working furiously through the entire process of registration, because of the lack of resources it was very difficult to reach the entire community.

23. One of the largest outreach problems to the Latino community was telling them that they would have to pay a large fee for TPS. Throughout the registration process, the INS was discouraging and often denying requests for fee waivers by indigent Salvadorans. Halfway through the registration process, INS changed the regulations to make it even more difficult to have the fee waived. Thus people who could not afford to pay the INS fees for TPS sometimes decided not to register. The main reason for not advertising the fee waiver for people who deserved it was because the INS believed that all Latinos would come forth and request fee waivers.

24. A lot of Salvadorans with TPS status do not know what they are going to do when TPS expires in June. Many of them fear returning to El Salvador, even though the peace accord has been signed. Many Salvadorans are very fearful of being forced to return to their country, until they see that peace has been achieved for more than a temporary period of time.

25. In addition to the TPS program, another problem that has been brought to my attention through conversations with my clients are the discriminatory policies in Maryland and in Virginia regarding the issuance of driver's licenses and state identification cards. Historically, the Maryland Motor Vehicles Administration ("MVA") would only give licenses to individuals if they were provided with certain documents. The MVA was functioning under the mistaken belief that they were an

extension of the INS and could demand to see Latinos' valid visitor visas (for more than six months) or other documents to show that they are in the country legally.

26. In addition to government agencies, such as the MVA, banks have also become institutions that believe it is their right to screen Latinos and determine whether they are properly in this country. For example, banks do not need to have a social security number for non-interest bearing accounts, or checking accounts. However all local banks in Maryland require a social security number in order to open an account. This policy led to the situation in Adams Morgan known as the "Latino Investment Scandal" where thousands of local Latinos were forced to use an organization which had all the trappings of a bank but was not insured. When the "bank" failed, everyone lost their life savings causing havoc in the Latino community.

27. Also, there are banks as in Maryland, which in order to cash a check require a Maryland driver's license or a Maryland ID, and the sign at the bank requiring such documents is only written in Spanish. Thus, because the Latino community often cannot open an account or cash checks made out to them, they are forced to live in a solely cash economy and not save money in a secure manner.

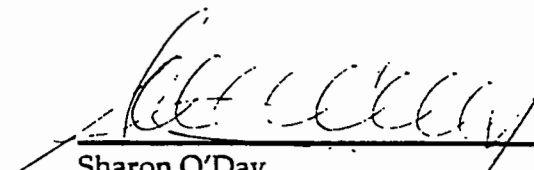
28. Finally, I want to explain that there is a dramatic difference in the standard of living between those persons who have a green card or permanent legal status as opposed to those who have TPS, or some other temporary legal status. It is very rare that I see anyone with a green card out on the parking lot, looking for day work. Those with green cards, and thus with permanent status, have an easier time finding work. They are often relaxed about that one element of their life—which is that there is no need to worry about being forced to return to a dangerous country—and can get on with various other aspects of work and family life. Latinos with permanent status are committed to making their lives work here and to contributing to society in a way that those who have only temporary status are not able to do.

29. The Latinos who are not documented, or have temporary status, have a much different type of life style from those with permanent legal status. We see a lot of Latinos who are suffering from health problems, who cannot afford to pay doctors, and do not go to doctors until the health situation becomes very serious. They are fearful that if they go to a hospital, their names will be on a record and that information will be submitted to the INS. They live in constant fear that the INS will deport them. One good aspect of TPS is that it brought Latinos into community service agencies who had not gone there before. Once a Latino visits a place like Casa of Maryland, it gives us the opportunity to explain to them their rights and we can tell them that other services exist such as food distributions and medical clinics.

30. Because the community agencies must spend so much of their time and resources assisting the Latino community with TPS registration and other immigration matters, they often do not have the resources to address the other issues that the community encounters living in the D.C. metropolitan area, including employment, health care, housing, general discrimination and education.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: January 2, 1992


Sharon O'Day

Statement of Omar Centurion

1. My name is Omar Centurion. For the past five years I have been an advocate in Washington, D.C. for the human rights and immigration rights of Salvadorans and other Central Americans. Through these years, I have worked with several community agencies, including CARECEN (Central American Refugee Center), CRECEN (Salvadoran Refugee Committee), Amnesty International, and the D.C. Latino Civil Rights Task Force. I have travelled across the United States, speaking about human rights and persecution against El Salvadorans in the U.S. by the Immigration and Naturalization Service. I have appeared extensively in the U.S. media, including television and radio.
2. Even with the signing of the current peace accords, I would fear for my safety if forced to return to El Salvador. During my time in the U.S., I have openly criticized the Salvadoran government and repression by the Salvadoran security forces. In El Salvador, this exercise of free speech can constitute a crime under recent anti-terrorist legislation passed by the Salvadoran legislature.
3. I was born and grew up in El Salvador. In early 1979, at the age of 15, I joined the High School Student Movement of El Salvador. My activities in this organization included organizing other students to join the movement, denouncing the human rights violations by the Salvadoran government, and joining with other people in demonstrations calling for democracy and an end to military repression.
4. By late 1979 my high school organization was known nationwide as one of the most outspoken anti-government groups. The Salvadoran army called us "terrorists and communists," despite the fact that we never used arms or violence. As a result of this, my organization became a target of government repression.
5. In early 1980 my friend Elisandro and I were in a peaceful demonstration in the capital city of San Salvador. The government security forces opened fire. My friend Elisandro was killed.
6. After this, the situation became very difficult for me. Several times I and other student activists at my school were detained and beaten. The local army civilian patrols told us that if we did not stop our "subversive" activities we would all end up like Elisandro.
7. The threats became a painful reality. One night in mid 1980 a couple of cherokee jeeps with dark windows pulled into my home town. Several heavily armed men in civilian clothes rushed into several houses, including mine. Two friends and I were able to escape because we were warned by neighbors. Within fifteen minutes the armed men had taken four other friends who, like me, were activists in our high school.

About fifteen days later the mutilated and tortured bodies of these friends were found along the Pan American Highway.

8. After this I left my home town and went to live in Nueva San Salvador. There I enrolled in a public high school where the student movement was particularly strong. Several times government troops surrounded the school and harassed the students.

9. I was detained and threatened along with other student activists at different military checkpoints in late 1980 and early 1981. We were victims of forced searches and beatings. We were told that our school was full of terrorists and that we should be careful.

10. In mid 1981 two friends from our group at the school were taken in broad day light by an army unit. After two weeks one of them turned up in a hospital in San Salvador. I went to see him with other students.

11. My friend told us they had been taken to the local army headquarters where they were tortured every day. The interrogators gave them poisonous acid injections in the arm. He regained consciousness in a dump. Our other friend was near him. He tried to move his body, but he was dead. There were 10 or 15 other bodies around.

12. My friend crawled out of the dump and made his way to a residential area. Someone found him and saw that he got to the hospital. My friend told us to hide because the soldiers had a "hit list" with all our names, including mine, and had promised to kill us all. I personally went to the dump to pick up my other friend's body.

13. In late 1981 two more students, whose names also appeared in the "list" were disappeared. Until this day they have not been found.

14. In late 1982, after spending several months in hiding with different relatives and friends, I decided to leave the country. I went back to my home town to say good-bye to my grandfather and family. When I was getting into town the bus in which I was riding was stopped by the local civilian patrol.

15. The civilian patrol tied me and drove me to a big coffee plantation they guarded. There they forced me into an old warehouse, which was their headquarters. They stripped me naked and tied me to a big wooden post. They started questioning me about my "subversive and terrorist activities," which I denied. Angrily they beat me in my ribs, stomach, legs, and threatened to kill me.

16. Several times, after hours of intense interrogation, and between beatings and threats, one of the soldiers would walk towards me, and almost facing me, he would point his gun right at my face. Then he would pull the safety while other soldiers fired shots on the ground, making me believe they had shot me. Sometimes they untied me and along with questions they submerged me in a concrete tub of cold water almost drowning me.

17. Because several people in the bus knew me, it only took a few hours for my family to find out what had happened. My father and some other relatives came to where I was being held and demanded that I be released; they even threatened to bring lawyers from San Salvador. Finally, after two days, I was released to my family and they drove me out of town.

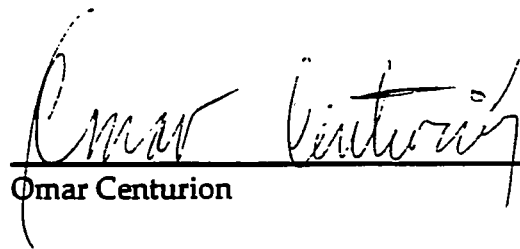
18. Immediately after this incident I left and went to Mexico. In late 1983, illegally, I came to the United States, where since 1984 I have been speaking against the terror that has forced me and thousands of other Salvadorans out of our country. In late 1987, after a lot of thinking, I decided to apply for political asylum. My interview before the INS asylum officer lasted for only a few minutes.

19. In January of 1990 I received a letter from the Immigration and Naturalization Service telling me that they intended to deny me asylum because in their view I failed to show a "well founded fear of persecution" if returned to El Salvador. Thirty members of the U.S. Congress and Amnesty International publicly supported my case and wrote INS on my behalf. Finally, in April of 1990 I was granted political asylum.

20. I am one of the few Salvadorans who has been granted asylum in the U.S. Despite the recently signed peace accords, I and other Salvadorans like me still cannot return safely to El Salvador. Those of us who fear persecution by the right wing members of the armed forces are concerned about how and when they will be disarmed and if the government in power can and will ensure the safety of people like me.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on: January 23 1992


Omar Centurion

CONSTANCE A. MORELLA

8TH DISTRICT, MARYLAND

COMMITTEES:

POST OFFICE AND CIVIL SERVICE

SCIENCE, SPACE, AND TECHNOLOGY

SELECT COMMITTEE ON AGING



Congress of the United States
House of Representatives

April 3, 1990

Mr. William Carroll
District Director
INS
4420 North Fairfax Drive
Arlington, VA 22203

Dear Mr. Carroll:

We, the undersigned Members of Congress, are writing to express our concern regarding your intention to deny political asylum to Omar Centurion (A28-071-448). We believe that he has clearly established a well-founded fear of persecution should he return to El Salvador.

Mr. Centurion has been given sanctuary by a church in Montgomery County, Maryland. In the only case to our knowledge in which a Salvadoran in church sanctuary in the United States returned to El Salvador, Miguel Antonio Mejia Cruz, who was in sanctuary at the same church as Omar, has twice been detained by security forces since he returned to El Salvador in 1987. On both occasions, he was beaten and tortured, held without charges, and eventually released for lack of evidence; significantly, he was also informed by his abductors that the government had monitored his activities in the United States. Reports of other cases of official harrassment, unjustifiable detention, and inhumane treatment of Salvadoran opposition members are well-documented by Amnesty International and Americas Watch.

During his time in the United States, Mr. Centurion, like Mr. Mejia Cruz, has been outspoken in his criticism of the Salvadoran government and repression by the Salvadoran security forces and in his support of a negotiated settlement to the war in his country. Mr. Centurion has been an advocate for Salvadoran refugees through his work with the Central American Refugee Committee (CRECEN) in Washington, D.C., and has been quoted by local and national media, including the Washington Post and National Public Radio. We would like to draw your attention to the possibility that this exercise of free speech rights, which is indispensable to the functioning of a free and democratic society, may constitute a crime under recent anti-terrorist legislation passed by the Salvadoran legislature.

Having examined the evidence for Mr. Centurion's political asylum application, we believe that, based on his student activities and consequent repression against him in the early 1980's, his work with CRECEN, and his role as an outspoken critic of the Salvadoran government, Mr. Centurion has clearly demonstrated a justifiable and well-founded fear of persecution should he return to El Salvador. We hope that you will carefully consider his application.

WASHINGTON OFFICE

1024 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-6341


DISTRICT OFFICE

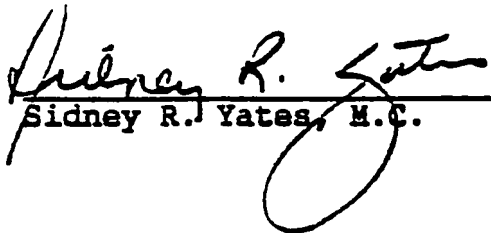
141 GEORGIA AVENUE
SUITE 302
WHEATON, MD 20902
(301) 946-6801

Thank you for your consideration.


Sincerely,


Constance A. Morella, M.C.

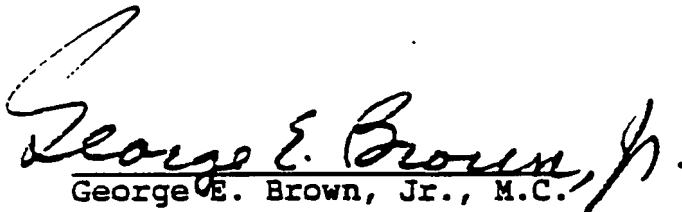

Frank Horton, M.C.


Sidney R. Yates, M.C.


Peter Smith, M.C.



James H. Scheuer, M.C.


David R. Nagle, M.C.



George E. Brown, Jr., M.C.

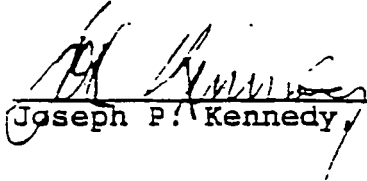

Thomas McMillen, M.C.

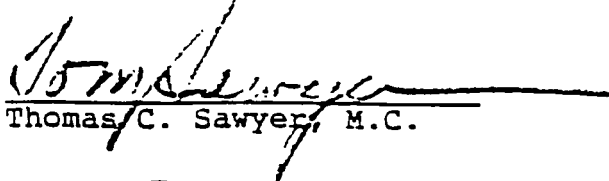

Kweisi Mfume, M.C.


Jim Moody, M.C.

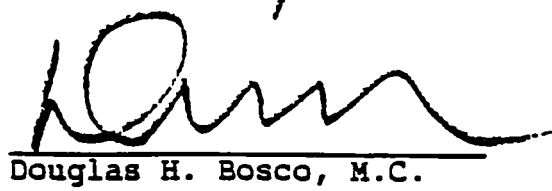

Les AuCoin, M.C.

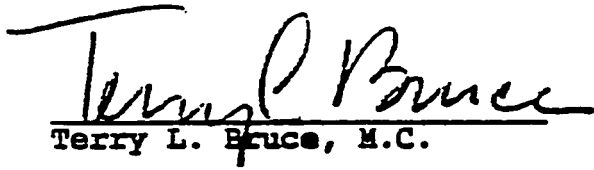

Timothy J. Penny, M.C.


Joseph P. Kennedy, II, M.C.

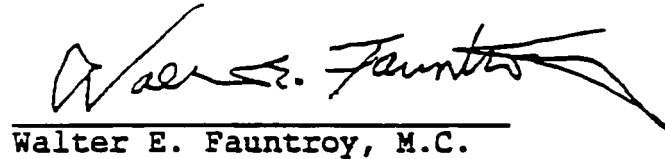

Thomas C. Sawyer, M.C.

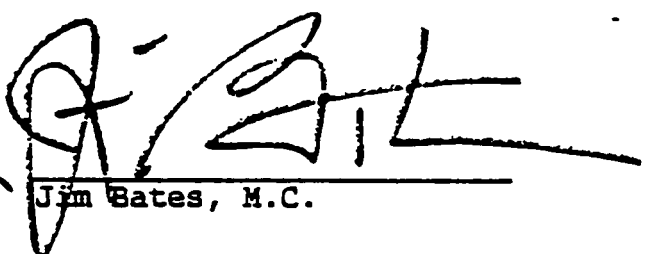

Jim Jontz, M.C.


Douglas H. Bosco, M.C.


Terry L. Bruce, M.C.

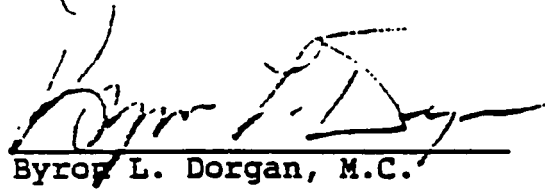

Peter A. DeFazio, M.C.


Walter E. Fauntroy, M.C.

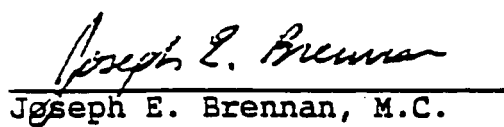

Jim Bates, M.C.

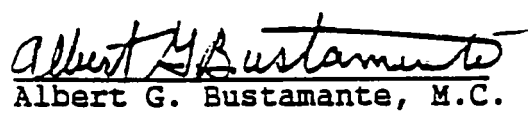

Edolphus Towns, M.C.


Robert J. Mrazek, M.C.


Byron L. Dorgan, M.C.


Jaime B. Fuster, M.C.


Joseph E. Brennan, M.C.


Albert G. Bustamante, M.C.

Nancy Pelosi
Nancy Pelosi, M.C.

Barbara Boxer
Barbara Boxer, M.C.

~~Thomas E. Foglietta~~
~~Thomas E. Foglietta, M.C.~~

Gerry Sikorski
Gerry Sikorski, M.C.

Statement of Eusebio Rodriguez

1. I am appearing today under the pseudonym of Eusebio Rodriguez. I am twenty-nine years old, and this is my testimony of what happened to me when I was living in El Salvador.

2. I grew up in the village of Canton San Carlos el Amante, where there was substantial guerilla influence. There were approximately fifty guerillas living in this tiny village, with the majority of the guerillas surrounding the city. Many of my friends were recruited by the guerillas and, on numerous occasions, my friends tried to recruit me. I refused and decided to join the Salvadoran armed forces because it was obligatory (under Salvadoran law) to serve at least two years in the army and, because I wanted to serve my country instead of joining the guerillas.

3. I joined the army in 1981 and I served in the San Miguel Third Brigade Infantry. During my first two years in the army, the guerillas did not give my family or I any problems. In 1983, after my two year obligatory term expired, the guerillas continually tried to recruit me. I continued to refuse and remained in the army until 1988. However, because I kept refusing to join the guerillas, in 1983 they started harassing both my family and me.

4. Our troubles began in 1983, in the village of Canton San Carlos el Amante, where I grew up, and where my parents still resided. I kept in close contact with my mother, and she told me that on numerous occasions the guerillas, many of whom were friends that I had grown up with, had told her that if "Eusebio knew what was good for him he would leave the army and join us." They told my mother that if they caught me, they would kill me.

5. Four years later, in June 1987, the guerillas told my parents that they had twenty-four hours to move out of their house and move out of the village, or the guerillas would kill them. I could not go to my parents and help them move because I would have put all of our lives in jeopardy. I immediately went to my Commander and asked him for his help. He complied by sending some thirty soldiers into the village to help my parents get out of the village and to relocate. After this incident the guerillas stopped harassing my parents, but continued to look for me.

6. In 1987 I got married and my wife and I lived in the village of San Miguel. I was still in the army, and was told that the guerillas were still looking for me. Because of this, my wife and I lived in constant fear of the guerillas, and would not stay in our house for long periods of time. We would move among our friends' houses to sleep at night.

7. One afternoon in mid 1988, as my wife was getting off a bus, she was detained by three men carrying small handguns. They asked her name, and inquired as to my whereabouts. She told them a different name because she was scared, and did not know who they were. They told her that she was lying, and that they were looking for me. She told them she did not know what they were talking about. They told her that they were going to take her away and interrogate her if she did not tell the truth. Usually, when a guerilla threatens to "take you away and interrogate" you means that they will torture and kill you. She insisted that she did not know me. They told her to warn me to be careful because they were looking for me. They also told her not to say a word to anyone. When she came home and told me about the incident we immediately left our home and went to stay at a friend's house, because I feared that they had followed her home.

8. In mid 1984, during military exercises, I was put in charge of a group of soldiers. Someone who saw this reported it to the guerillas. Because of my position, the guerrillas thought I was an officer. Word got back to a senior guerilla officer, Comandante Soto, who ordered other guerillas to bring me in to him "dead or alive." In 1988, four men in civilian clothes carrying machine guns came to my house. Luckily I was not home. The four men inquired as to my whereabouts by asking the neighbors. After this incident, I fled our home in San Miguel and travelled to a much larger city, San Salvador. Generally, you are much safer when you live in a large city. My wife remained in San Miguel with a friend. A week later I went back to San Miguel, and would sleep at different houses in order to avoid the guerillas. I saw my wife only occasionally as I was trying not to expose her to the danger. I remained in the Army until August 1988. After my discharge, I stayed in San Miguel working odd jobs on nearby farms trying to make a living for my wife and child. Between jobs I would hide in the mountains to avoid being spotted by the guerillas. I knew that life in El Salvador was becoming too dangerous for my family but I did not have enough money to leave for the United States. For over six years, my family and I lived in constant fear of the guerillas.

9. On or about the night of January 9, 1989, I was walking on the streets of San Miguel on my way to a friend's house to sleep. All of a sudden two men started walking behind me. One man passed me and started walking in front of me. The other man remained behind me until he said something that sounded like the word "now." With that said, the man behind me put a machine gun into my back, and told me not to move or to speak or they would kill me. I was so scared that I did not move a muscle. All of a sudden, a car pulled up and they threw me in the car. They blindfolded me,

and tied my two thumbs together behind my head. As we drove I could hear one of the men tell the others: "He finally fell."

10. This comment made me believe that these men who were abducting me were guerillas because the guerillas were looking for me (waiting for me to "fall") for about six years. I remember the car driving for a long time. It was approximately three hours before we stopped. We then walked on a dirt road and down a lot of stairs. I was put in a cell and detained for approximately six hours until the guerillas came to interrogate me. They sat me in a chair and asked me for whom I worked. I told them that I worked for no one, that I only worked the land to provide for my family. The guerillas kept asking me if I was in the army. I kept telling them that I was not in the army. This interrogation went on for ten to twelve days. To try to make me speak the guerillas would tighten the strings that held my fingers together and burn my arms with cigarette butts. During those ten to twelve days of interrogation the guerillas did not feed me and continued to abuse me physically and psychologically as well, by telling me they were going to kill me.

11. I believe it was in the afternoon of one day when a guard came and took me out of the cell and told me that they were going to kill me now. I told them that if I died I would die unjustly because I had done nothing wrong. They threw me into a car again and started to drive away. I thought that I was driving to my death. The car finally stopped. They said that they were not going to kill me this time, but that I should be careful because they knew my whereabouts at all times of the day and night. They told me they knew where I slept each night and knew where my wife and child were at all times. They also told me that I might laugh at them, but if I did they would find out and the next time I was caught I would be executed. They threw me out of the car onto a dirt road. They told me not to take off the blindfold until five minutes had passed, and not to tell anyone what had happened. If I was hurt, they told me that I should remain inside my house until my wounds healed and not tell anyone because it would be the "end of me."

12. After approximately five minutes had passed, I pulled off the blindfold and saw that I was in the middle of the woods on a dirt road. I was lucky enough to get a ride into San Miguel by a man driving down the dirt road. I never told him what happened. When I got home, I told my wife what happened and told her that I had to leave El Salvador because my life was in terrible danger. However, it took me approximately a month to recover from my wounds. I left my wife behind because she was expecting our second child and it would have been too hard for her to travel. I got as far as Mexico but was detained by the Mexican police and had to return to

El Salvador a few months later. In July 1989, I left El Salvador again for the United States.

13. I am truly afraid to go back to El Salvador. In addition to what happened to me previously, when an ex-soldier leaves El Salvador for the United States, the guerillas believe he is receiving intelligence training by the United States government. If an ex-soldier returns and is caught, he is killed. I have not lived in peace and safety since I joined the army. Should I return to El Salvador my life would be in danger again.

14. On May 26 I went before the Immigration Court and told the judge why I feared returning to El Salvador. I was granted political asylum in the U.S. because the judge also believed that I had a "well-founded fear of persecution." After my long and difficult struggle to get asylum, the government appealed my case. Now I do not know what will happen to me.

15. I still fear being forced to return to El Salvador even though the Peace Accord has been signed. The guerillas still exist in the countryside and the various small towns and it will cost them nothing to kill me. There are still a lot of army soldiers and guerillas who do not want peace and will not let there be peace.

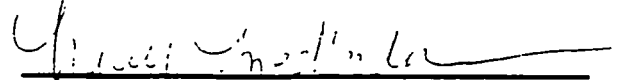
16. Life here in the U.S. is difficult, it is not easy to earn a lot of money, but it is all worthwhile because I can live without having to fear persecution. At least here, although I live in a very small apartment, I do not have to worry anymore that someone is going to place a bomb in my house, or someone will detain me as I get off a bus, or that my life will be in danger. For these reasons, I can finally sleep well at night. This is why I, and perhaps other Salvadorans who fear being returned to El Salvador, will live in apartments that are over crowded, dirty, and broken down, without complaining. Despite the mistreatment of Latinos in the community here, I would rather stay here than return to El Salvador and constantly fear for my life.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: January 27 1992

Eusebio RODRIGUEZ
Eusebio Rodriguez

I hereby certify that I am fluent in both Spanish and English and that I read the attached statement to Eusebio Rodriguez in Spanish and he understood the contents thereof before signing.

A handwritten signature in black ink, appearing to read "Tracey Friedlander", written over a solid horizontal line.

Tracey Friedlander

Statement of Yvonne Martinez Vega

1. My name is Yvonne Martinez Vega and I am the Director of Ayuda, Inc., a legal service clinic located on Columbia Road in Adams Morgan. Ayuda primarily handles immigration and domestic relations, domestic violence, child support and custody for the Latino and foreign born community of Washington, D.C. The majority of Ayuda's clients are from Central America and Latin America. I would say 85 percent of our clients are from El Salvador, the other main communities are from Ecuador and Guatemala. The majority of our current clients are "documented," although many of our Salvadoran clients are temporary protected persons who fall under TPS.

2. Ayuda has had a presence in the Latino community in Washington, D.C. for 21 years. Latinos hear about our clinic through the Latino grapevine, the local press, and other local agencies. A lot of Latinos are referred to us when they are seeking legal assistance. For example, we generally try to assist a Latino seeking political asylum if it is a case that we think has merit, despite the backlog or the number of cases that we have. If it is someone for a type of a labor suit then perhaps we will send them to a different agency, such as the Spanish Catholic Center. In terms of additional legal assistance, if they are here legally, then we will send them to Neighborhood Legal Services or the Legal Aid Society. (These organizations are prohibited from assisting undocumented Latinos). If nothing else works, many times we wind up referring them to private attorneys. However, because there are only six lawyers affiliated with non profit organizations to serve the entire Latino community, it is obvious that Latinos in Washington, D.C. do not have sufficient resources to address the problems that occur.

3. Despite our efforts, we are finding that we are having to turn people away every single day because we have a long waiting list. We are one of the agencies that the INS has on their referral lists when someone is detained and we receive an inordinate number of telephone calls and people who are just coming and spending their mornings waiting here at the office. Unfortunately, as the Latino community continues to expand and the demand for assistance continues to grow, our money does not increase to allow us to hire more people to really handle the problems of the Latino community.

4. Many of our Latino clients come to the United States by foot through Mexico. Many come by themselves. It is customary that we see a lot of people coming alone because it is often the case that the one family member arriving in the U.S. is fleeing persecution for his/her political affiliation and staying in their home country will endanger their own life as well as the lives of their family; or the family member arriving in the U.S. is hoping to come to the U.S., legalize their status, obtain some type

of housing and employment, and then eventually ask for their family members to ensure the families safety. Many come with the hopes of sending money back to their family members to assist them with survival or with the trip to the U.S. They are willing to separate from their families because they believe that it is only temporary, and that it is necessary to make those sacrifices in order to eventually secure the safety of their family by bringing their family to the U.S.

5. They come to the United States thinking that they are coming to the land of golden opportunities, that this is a melting pot, and that they will be safe here. They come to D.C. because in Latin America moving to the capital is a step up, and because there is a large Salvadorian community here in the District. Also, they move to the capital because here there are jobs which are more easily accessible. For example, some of our clients are unskilled workers and as a result many of them work in the hotel and restaurant industry.

6. Before coming to the U.S. most Latinos do not know that they can apply for working papers, political asylum, or TPS. I think that they hear that they can apply for some "papers", but they really do not understand what type of papers, or what working papers are all about. Many of our clients do not understand what the U.S. legal process is, period. They fear that if they go before a government agency like the INS to find out how to apply for political asylum, they may be forced to return to their countries even though the situation in their home country may still be dangerous.

7. As a result of our clients having faced so many physical, emotional, and economic problems coming to this country, they try to "lay low" and avoid any type of "process." They have lived in military regimes and they live in constant fear of the government because in their home country, the government is repressive. As a result, they feel that they are fortunate to be here in the U.S. where they do not have to fear for their physical safety; as a result they feel that they should not complain about the living and working conditions here. In addition, Latinos, both documented and undocumented, do not believe it is worthwhile to pursue claims because they do not feel that they will get satisfaction from the legal systems.

8. Many of our Salvadoran clients wanted to apply for Temporary Protected Status ("TPS") because it would provide them with some type of legal status here in the U.S., despite it only being temporary, and would allow them to obtain work authorization. The unfortunate thing is that a lot of the Latinos who applied for TPS without assistance from any agency like ours were not familiar with the whole deportation process which would go into effect after the 18 month period expired.

9. Our clients have found that it is more difficult to find work with TPS than with permanent status. First of all, for those employers who are not aware of the differences

between permanent status versus TPS, they see a Latino as either a citizen or not. If you are not a citizen these employers simply do not want to hire you. For those employers who know the difference between permanent status, temporary status, and undocumented status, they will choose the employee with permanent status over the applicant with TPS or undocumented status. It is also more difficult for Latinos with TPS to obtain work because they have only recently arrived and they lack English language skills.

10. In addition, many employers are reluctant to hire undocumented Latinos or Latinos with TPS because of the whole focus on employer sanctions. We have had many circumstances where an employer has told undocumented Latinos that she/he was paying them less because of the risk of sanctions. Undocumented or temporary documented Latinos have been willing to accept such exploitation only because they need the work and have no right to complain.

11. Ayuda made a substantial effort to reach out to the Latino community to assist in TPS registration. We assisted other community based organizations by giving seminars about TPS; we trained several staff persons from various community agencies how to identify potential TPS applicants and how to assist TPS persons with filling out the necessary applications. We spoke on a radio program and taped a video explaining TPS. We also prepared a package which was distributed to the Salvadoran Community that included information on the application process for TPS with TPS forms translated in Spanish so that our clients would be able to read the material. On a one-on-one basis, we assisted clients in taking fingerprints and photos, and in helping them fill out the TPS applications and deliver them to INS.

12. We encountered a mountain of problems assisting clients with applying for and receiving TPS. First of all, the cost of TPS was outrageous. It is an outrage that there was differential treatment in terms of the fees requested from Latinos (\$75 registration fee and \$60 working authorization fee) versus the other groups that were eligible to obtain TPS, such as the Kuwaitis and Liberians (\$50 which included the costs of the registration fee and the work authorization fee). The fact that the fees were outrageous and it took a long time for INS to acknowledge that there would be waivers available was also unfair and intolerable. A lot of Salvadorans could not pay the costs of TPS and what we saw was that only 32 percent of our client population that applied for TPS were women. Because of the expense, only one head of the household would apply. Toward the end of the program, once we were able to mention the fact that waivers were available, we really made every effort (and succeeded in) trying to reach out to more Latino women to apply for TPS.

13. Moreover, the INS should not have been permitted, in implementing the TPS program for the first five months, to insist that not for profit community agencies assist the INS in implementing the TPS program. These community based clinics do not receive INS financial support, yet the INS had Latinos meet to fill out their TPS documents at these agencies. The result was that, due to cost and long lines, many of our clients got tired, and some chose not to apply for TPS.

14. Another difficult problem that we found while assisting Salvadorans with TPS was the fact that many of them did not remember their dates of entry, or could not prove that they were Salvadorans because when they came into the country they got rid of their documentation. Many of them, whether they came in legally or illegally, discarded their documentation proving nationality so that the burden of proof would be on the INS if they were to be picked up.

15. For a period of six months, from December until June, we had a total of 2,314 Salvadorans apply for TPS. TPS applicants were all undocumented. Some did not apply because they feared being placed in deportation proceedings. Many of those who had asylum claims pending chose not to apply for TPS because they felt there was no advantage to it since they already had working papers that they received under the asylum claims. Unfortunately, what they did not realize is that only two to three percent of Salvadorans were receiving political asylum in the U.S. which meant that without TPS, and once their asylum claims were rejected, they could be placed immediately in deportation proceedings.

16. Last year we assisted 10,000 Latinos. Of that, 80 percent were Salvadorans; we assisted 35 percent of them with applying for political asylum. A lot of those cases are still pending but a lot of clients were denied asylum.

17. I believe that immigration status affects every aspect of a Latino's life. In Washington, D.C., Latinos experience difficulty with obtaining public services. In order to apply for many types of public services with a particular government agency, a Latino has to prove that she/he has some type of legal status. Most district government workers do not understand what a green card is nor how it differs from a work permit. The Latino is often told by the government agency that they are not considered legal residents here in the District if they cannot present a green card. Thus, if a Latino walks in with a new identification document (such as a driver's license, work authorization, or TPS) that may not be what the government employee thinks is acceptable or legal. The government employee's whole mentality is that a green card is legal documentation and a document that is not a green card is not legal, and thus will deny public services to an applicant without the green card. Even people that

obtained legal status under the Immigration Reform Control Act ("IRCA") have had this problem when applying for certain benefits or government assistance.

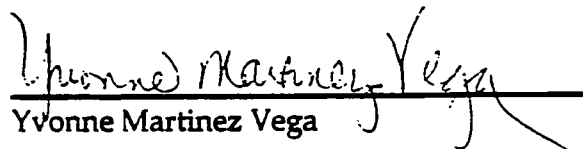
18. I feel there is a lot of animosity toward the Latino community here in the District. In fact, the attitude of the District Director of Immigration here in Washington in terms of comments that he has made regarding Salvadorans as "these people" is atrocious. Even politicians make comments about "these undocumented Latinos." It appears that even our local representatives seem to have this perception that Latinos are here in the District running and applying for different government programs that they are not entitled to because they are not citizens of the United States.

19. Latinos are also discriminated in employment in relation to how other employees of other races are treated. They are made fun of because of their physique and because of their accents. I think they are made fun of generally. Many times there is no upward mobility because they are told that they are not familiar with the job; or they do not know the language or they are not properly documented. All Latinos whether documented or undocumented, have employers who are more willing to hire someone that is a non-Latino citizen than an undocumented or temporary documented Latino. It is less paperwork for the employer, less hassle of having to fill out "I9" forms and verifying someone's legal status in the country, and less risk of sanctions.

20. When TPS expires, Salvadorans are not going anywhere. I doubt that they will go home. They will stay here. Despite their mistreatment here, they think that it is safe here. They still do not understand what is happening in El Salvador. Reports from newspapers and friends and family in El Salvador are that even though there is a Peace Accord signed, shooting still continues in many of their towns, and they fear going back home. The reality is that until their whole country is restructured in terms of the economy and safety you are not going to have people that are going to return home. However, the other reality is that our clients generally hope to eventually return home.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: January 27, 1992


Yvonne Martinez Vega

Statement of Boris Canjura

1. My name is Boris Canjura and I work with the Salvadoran Refugee Committee in Washington, D.C. The Salvadoran Refugee Committee was created in 1982 for two main purposes: (i) to assist the Salvadoran community in Washington, D.C. with learning their rights as individuals in the United States, and (ii) to educate North Americans about the situation in El Salvador and about the problems and exploitation that Salvadorans face in the United States due to their immigration status. I am also the national coordinator of the Salvadoran National Network, a nationwide organization of Salvadoran refugees.

2. El Salvador has a history, especially in the 1980's, of substantial persecution of its citizens, including death squads and human massacres. Salvadorans were fleeing from El Salvador in masses to Central American countries as well as to the U.S. By the late 1980's, there was a continual flight of Salvadorans coming to the U.S. because the war had ruined their towns, killed many of their friends and family, and destroyed their economy.

3. Ninety percent of the Latinos we work with are from El Salvador. The majority of Salvadorans at this point, are temporarily documented with Temporary Protective Status (TPS).

4. Many Central Americans do not understand the basics of how the U.S. legal/government systems work. We all come to the United States (I came to the U.S. from El Salvador in 1980) very naive.

5. My experience is that refugees from El Salvador have to take, and do take, whatever they are offered, in terms of jobs, in order to have work. For example, we have had many cases where our clients are offered work in a shop or in a liquor store and in the same building the employer rents to them a room to live. However, the conditions that the employees are living in are usually horrible. For example, two to three women employees are forced to live together in the same room.

6. I believe that many Salvadorans, as well as Guatemalans, did not apply for political asylum because (i) there is a misunderstanding of what it is to be a refugee, and (ii) such a small percentage of them actually receive political asylum. Because the percentage of Salvadorans receiving asylum is so low, a Salvadoran would rather not risk the chance of affirmatively applying for political asylum for fear that such application would give the INS a record on them, and once asylum was denied, the INS would deport them.

7. Salvadorans and North Americans generally appear to misunderstand what it means to be a refugee. Many believe that a refugee is someone who is poor, not

educated, and poorly dressed. The "picture" of a refugee is not well accepted in the U.S., nor understood by the Central American people. Moreover, Salvadorans believe that once an individual applies for asylum, he/she will never be able to return to their own country. This misunderstanding is mainly due to a lack of resources to educate Salvadorans.

8. Salvadorans are also afraid of applying for asylum, being refused asylum, and then being deported because they believe (and they are right) that the Salvadoran Government will label them as communists. For El Salvador, such a label means your life is in danger.

9. For these reasons, the Salvadoran Refugee Committee tries vigorously to educate our own people to understand refugee status, the asylum process, and U.S. Government assistance programs. This task has proven very difficult. The Salvadoran community still does not trust the District of Columbia Government agency officials. They believe that if they go to a government agency to ask for assistance, that agency will report their names to the INS.

10. A current problem that the Salvadoran Refugee Committee is experiencing is the lack of integration of Latinos in the public education system. Because many Salvadorans have their family members here, there are more and more children being born in the District. This is creating a problem because their children are now entering schools in the District of Columbia and are encountering various difficulties. Their parents cannot help them with their homework because the parents do not speak the language; the other children make fun of them because they cannot speak English very well; or they fall behind in their studies because of an unstable family situation. Although the children are U.S. citizens because they were born in the U.S., the parents are often not, and therefore the parents immigration status affects the child.

11. We need to create social programs that can help both the parents and the children and orient and mainstream them into the educational system. Many Latino parents do not get involved in the schools because they do not feel comfortable due to their immigration status. Undocumented parents fear that their participation in the educational programs may jeopardize their children's ability to attend the school.

12. Additionally, Latino kids in the District's public school system are often treated badly. They feel as if they are treated as second class citizens because their parents are undocumented. This causes problems for both the parents and children, and it appears that these children are increasingly dropping out of the school system.

13. We worked very hard with Salvadorans to assist them in acquiring temporary protective status so that they would have more stability in their lives. First, we organized and conducted a half hour show on Hispanic Television during January

when TPS was announced. We also spoke on a variety of radio shows and counseled volunteers at a number of different organizations. We found, however, that we could only handle a certain number of persons. We had to turn away a lot of Salvadorans because we did not have enough assistance, especially lawyers, to help everyone. Our office was trained by lawyers to counsel and assist Salvadorans with filling out their applications for TPS.

14. Often we had to refer potential clients to other agencies. These other agencies, unfortunately, were also working with small staffs and few lawyers, and inundated with TPS applications.

15. Another large problem that we confronted at the beginning of the TPS process was the cost of TPS. Many persons, especially large families, were not able to pay for everyone in the family to receive TPS. As an agency, we assisted Salvadorans for free, in terms of help, but we could not pay their application costs. TPS was very expensive. Additionally, we did not find out about fee waivers for TPS until very late in the process and it was a lot of work to do in terms of filling out the waiver. Even though there were fee waivers, many Salvadorans did not understand the waivers and could not produce the necessary documentation in order to evidence that they were eligible for the fee waiver.

16. I believe that TPS registration was a success thanks to the outreach and counseling that all of the community-based organizations have done nationwide. However, in the beginning, Salvadorans thought that the TPS program was an asylum application process. Once they understood that TPS gave them temporary status for 18 months, they began to ask what was going to happen to them after the 18th month—whether or not they were going to be able to stay here. Once they realized that we did not have an answer for them, our clients started to doubt the program itself. They knew they were going to have to deal with the INS after their TPS expired and they did not have a lot of confidence in the INS protecting them.

17. Once TPS is over, it is my feeling that Salvadorans will not go home for a long time. Many came to the U.S. because of persecution—political, physical and emotional—and because of other effects that the war caused, such as destroying their economy. It is going to take a while, at least a year, before they feel that the situation in El Salvador is peaceful and safe enough for them to return. They will not return back to El Salvador until the country demonstrates that, at least in terms of human rights, the situation there has changed. Despite the Peace Accord, there is no guarantee that the war will not continue—it is important to remember that there still exist two armies in El Salvador, the guerillas and the army. There is a feeling in the Salvadoran community that this Accord is being signed solely because of the international pressure that is

placed on the Salvadoran Government and the guerillas. There are still a lot of military individuals and extreme right wing groups that do not agree with the signing of the Accord and who do not want peace. In this sense, the peace in El Salvador is still a very fragile concept; it is still delicate; a very delicate situation.

18. Now that the Accord has been signed, there is an obvious worry among my people. They are already worried about being deported. They do not believe that they can go back to El Salvador at this point. It is an emotional thing that people say, "I'm ready to go home tomorrow." "I'm going home next week." Or, "I'm going home." In actuality, they still fear returning. When TPS expires, if the U.S. Government decides that Salvadorans should go home because there is a peaceful situation, I do not think that Salvadorans will go, they will stay.

19. They may lose their documented status, as TPS will have expired, but they will learn to survive in the U.S. without documents. They will just change their address and change their jobs. If they do not want to go home, they cannot be forced to go home. If they fear returning home, they will stay in the U.S. no matter whether TPS is extended or not. After all, I was here eight years as an undocumented person and I realize that, if someone does not want to go back to their country, they cannot be forced to go back.

20. Unfortunately, going back to being undocumented when TPS expires means that we will have no protection at all. Perhaps one of the worst results will be that exploitation, especially in terms of employment situations, will increase. In other words, even though undocumented persons will be able to find jobs, they will have to take whatever they are offered and will have to receive whatever the employer wants to pay them because they will fear being deported.

21. The conditions that I also fear are the human conditions; health conditions deteriorate when you are an undocumented person living here in the District. Many Salvadorans already do not go to hospitals because they are afraid of being deported. In many cases hospitals ask a Latino to document their immigration status. The feeling here in the District is that the conditions that a Latino lives in as an undocumented person are simply unbearable. Undocumented people feel there is nowhere to go in the U.S. where they will not be exploited. Yet people are resigned to being exploited so that they do not have to return to El Salvador.

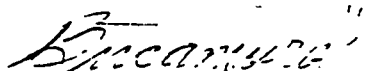
22. To be an undocumented Latino is frightening. In terms of housing, the fear is that the owner of the building or house who rents an apartment to you will threaten to call the police if you complain about heating problems or windows breaking. And once TPS is eliminated, we know that the INS will even be tougher in terms of controlling and deporting the undocumented persons. Once TPS expires, the problems will only increase in terms of housing, employment, and public services.

23. Perhaps more importantly, however, I fear that one of the main problems that will occur will be crime. Crime is already a problem. Latinos will not call the police when they are robbed. Or, if they see a crime occur, they fear calling the police because they are undocumented. They do not trust the police, not only because the police have generally not treated Latinos in the community well, but also because the police sometimes involve the INS. In fact, if the police are abusive, they are afraid to stand up to them. An undocumented person fears taking someone to court, because he/she is worried that the accused will take advantage of the fact that the Latino is undocumented. I know of cases where the accused has threatened to call the INS and notify the INS of where the Latino "trouble-maker" lives. So, I think that crime is one of the most dangerous problems that an undocumented person will be forced to face.

24. The Salvadoran community believes that peace in El Salvador will not be based solely on the signing of a piece of paper but rather on economic stability and respect for human rights. While the Accords are an important step in the process, it will take many months, if not years, to secure a real and lasting peace. The Salvadoran community still fears the pockets of radical government forces who are unwilling to conform to the provisions of the Accords. The fragility of the current situation is reflected in the voices of Salvadorans who believe that a coup by these forces, like the one that recently took place in Haiti, is possible.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: January 27, 1992



Boris Canjura

Statement of Lori Kaplan

1. My name is Lori Kaplan. I am the Executive Director of the Latin American Youth Center located in Adams Morgan. The Latin American Youth Center seeks to provide comprehensive services to Latino and other multi-cultural youths and families. We provide employment training, job development, job placement, skills training, tutoring English as a second language, crisis intervention, social services, individual group and family counseling, leadership development, art programs, and teen health projects, for Latino and other multi-cultural youth in Washington, D.C.

2. The youth center's clients certainly reflect the majority of the Latinos living in the District of Columbia, but we also have a much broader clientele. We work with youth from Central America (with the largest number from El Salvador), the Caribbean and Latin America. We serve non-Spanish speaking Haitians, Jamaicans, as well as a multi-cultural population including African Americans and members of the Indo-Chinese community, whether documented or undocumented.

3. Latinos find out about the Latin American Youth Center because it has been around for many many years. Young people who enter the community just seem to find out about us through word of mouth. Also, young people are referred to us by police, school counselors, teachers, workers inside the Department of Human Services, or from other youths. Parents know about us from their children, so we also have a lot of walk-ins. We do a small amount of advertising in local papers for very specific programs such as our skills training in word processing and typing.

4. After the Temporary Protected Status program ("TPS") was established, the majority of our clients became documented. Those with permanent residency are in the minority. There is still a segment of the youth that we serve who are undocumented but it is very difficult for me to give actual percentages of those undocumented.

5. Those who travelled to the U.S. arrived with the idea that they would send money home once they became stabilized here. Often, however, because of the difficulty of establishing stable immigration status, it takes people a really long time to get established here and they cannot send money home until they are somewhat stabilized.

6. Latino youth are willing to leave their families because they feel that they have no future in their country. They feel this way because they fear that they will be recruited in the military, forced to become involved in the war, the war has destroyed their economy, and their school systems are weak. Many have received threats that their own lives are in danger. They leave their country out of fear as well as in hopes that they can be safer somewhere else.

7. They come to D.C. because there is a large Latino refugee community here which draws other Latinos. Originally, this was the area that jobs were very easy to find in construction, landscaping, office cleaning, the tourist industry and restaurants.

8. The local community has done a good job advertising the different options available for the Central Americans. I would say very few of the Central Americans who come to the U.S. understand the whole legal process, including asylum or TPS, and they are therefore very dependent on finding either community organizations, individuals in their churches, or perhaps even lawyers who can explain it to them and give them leads on where to go to get help.

9. In general there is a feeling that these refugees are fearful of INS and thus are reluctant to pursue their claims. I think particularly for Latino young people, the INS has a reputation of not being sensitive to their needs and is viewed as just looking for people to deport. Latinos who are undocumented fear the INS more so than those with permanent status or with those with TPS.

10. Undocumented people worry about deportation; it is the cloud that sort of looms over their head. I do not know that they worry about it every single minute, but I think it consistently interferes with their efforts to try to stabilize their situation—whether it is finding a place to live, finding a job, or filing complaints about a job. They are not willing to take a whole lot of risk yet they are willing to accept deplorable conditions in many cases because of their fear of deportation and their fear of speaking out.

11. Latinos generally try to steer clear of the police. One of the things we have done at the youth center is to have friendly police come in and get to know many of the kids so that if and when the police run into the kids on the street they know each other, rather than just being an unknown face in the crowd. The police also have a reputation for not really respecting the Central American community. As a result, the police and INS are not people that the young people would be inclined to go to if they had a problem or a claim to pursue.

12. In the past, I think it was easier for Latinos to find employment without work authorization. Now, because of employer sanctions and because of the recession, it is much more difficult for undocumented people to find work. It has become very difficult to find work at all now, whether a Latino has temporary status or no status. But if an employer has a choice between a candidate who has legal residency and TPS, the employer will be more apt to go with the person with permanent status.

13. Latinos are very exploited on the job. Sometimes the manner in which they are treated really depends on the integrity of their supervisor. I hear a lot of stories from my clients about how the job conditions for them are terrible. I think that employees

who are U.S. citizens or who have white skin are less apt to be treated poorly than are Latinos. Also, whenever there is a language obstacle, an individual is much more vulnerable. The low income Asians and low income Latinos are treated poorly because of the language and cultural differences.

14. In some cases the discrimination is more general against "Latino-looking" persons. I have heard stories where Latinos have been asked to show certain documents simply because they have an accent or do in fact look different.

15. We participated in TPS by encouraging Latino youth to apply, and so we started outreach efforts, identified the kids in counseling and made appropriate referrals. We had a lawyer come in one day a week, meet with the young people, explain TPS to them, and then we tried to do some on-site counseling with the youth.

16. One of the primary problems with TPS for Latinos was its cost. Most of the Salvadorans who applied for TPS were undocumented. Some did not apply because of the cost, their concern about making themselves known to INS, and what was going to happen after June 30, 1992.

17. I am very concerned about what is going to happen to the Salvadorans after June 30, 1992. As I said, we had some concern, a great concern about encouraging kids to sign up because we knew they were taking a risk by making their names and addresses known to INS. We were not sure, and we still are not sure, what was on the other side of that. If these persons' status reverts to "undocumented" any small advances that were made during TPS will immediately be lost, and their situation will become as desperate as it was prior to TPS.

18. The main advantage of having TPS was that, at least temporarily, it provided Salvadorans with employment authorization which lifted the black cloud of undocumented status. We were also hopeful that by signing up for TPS, if some alternative to expiration developed after June 30th, that option would be made available to those individuals who registered. We feared that if they did not sign up, they definitely would not have that option.

19. In my view, when TPS expires many Salvadorans will simply go back to their undocumented status and begin the very difficult existence that they were dealing with before TPS. They will not go home as a result of the expiration of the TPS. Neither Guatemalans nor Salvadorans feel it is safe to return to their countries. I think the Salvadorans are taking a wait and see attitude, but even so, I think very few of them will actually return.

20. Reports from those who do return to El Salvador—depending on what happens there over the next year, and I do not think it will be many, —will be the only way to tell whether it is safe for others to return home. Even if the Peace Accord proceeds on

course over the next few years, many of these youths have lived and grown up in D.C. for as many as ten years. In fact, many of them have had children here in the District who are U.S. citizens; have married here, and have entered the work force. Choosing to return to El Salvador, for the above reasons, may be unlikely. Basically, they have nothing to return to in El Salvador. These young people have made their homes here.

21. Once TPS expires, Latinos will continue to look for whatever avenue they can to stabilize their legal status—be it political asylum or work authorization. I think they will try to use whatever avenues are open to them and when they have exhausted every possibility, they will probably stay in their undocumented status and hope that some employer will hire them.

22. When a Latino is undocumented, their immigration status truly contributes to a much lower and poorer quality of life. Whether it is housing, employment, skills training, or education; everything becomes an issue. For example, in housing, you are subject to much worse living conditions in real slum kinds of housing. On the job, a Latino is constantly subject to exploitation.

23. Immigration status affects every single living condition for a Latino and I think it is the main issue that permeates that person's existence.

24. A perfect example is the situation that caused the Latin Investment Bank scandal. I was in another bank the other day standing next to a Latino who was not permitted to cash a check that someone had written out to him. The bank was asking for all kinds of documentation just for this young man to cash his hard earned check.

25. People who ask for elaborate documentation simply do not understand the intricacies of whether a Puerto Rican is a citizen, or the difference between a green card, work authorization, and temporary work authorization. Latinos often do not receive services or documents because the people asking them for proof of legal status do not know what the law permits the individual to present, or even if the law requires them to prove their status. Latinos are thereby refused certain services and opportunities.

26. When people are undocumented, the chances for a good quality of life are much dimmer. Undocumented status has created a whole disenfranchised sector of our community that in many ways is really struggling to survive. While some people have regularized their status through the 1986 law (IRCA) and others who at least felt some relief as a result of TPS, there are still many people in the community who are undocumented, or will perhaps revert back to undocumented status after TPS ends. Their situation is very, very difficult.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: January 27 1992

Lori M. Kaplan
Lori Kaplan

Statement of Pedro Aviles

1. My name is Pedro Aviles and I am the Executive Director of the Central American Refugee Center (CARECEN). I am a permanent resident and came to this country in December 1979. CARECEN assists Central American refugees with immigration, legal, and basic health care issues. Ninety-nine percent of our clients are from El Salvador.

2. The majority of our Salvadoran clients are recently documented since most of them signed up for Temporary Protective Status ("TPS"). Only a few received amnesty under legislation passed in 1986. We do, however, have a large number of undocumented clients who did not qualify for amnesty or could not apply for TPS.

3. The majority were willing to leave their families because they knew that it was better for them to leave them as opposed to facing the danger of leaving them forever by being assassinated or killed and not being able to help rear the children for the rest of their lives.

4. Another reason why some choose to leave their families is that they hoped that by coming to the United States they would be able to send money to their family to buy food and clothes and send some of their children to school, at least up to the sixth grade. Salvadorans who have relatives in El Salvador send, on the average, \$120 every month to the relatives that they have left in El Salvador.

5. Most Central Americans, and particularly Salvadorans, come to the U.S. because of the political situation in their country. A secondary reason is economic survival, which, because of the war and political situation, is very difficult in El Salvador. But I would say that by far the primary reason as to why people have left El Salvador is because of the political upheaval and the war itself.

6. Washington, D.C. is the only city in the United States where Salvadorans make up the **largest** single Hispanic nationality. I know that in the late 1960's Salvadorans from the **eastern** part of El Salvador came to this city and over the years have brought their **relatives**. That has helped to establish a network of support, either family or church, which makes it easier for other Latinos to come directly to Washington, D.C. and find a network of support, jobs, housing and a group of friends that can help them make the transition from one country to another.

7. Undocumented workers in the United States are constantly worried about deportation. As a matter of fact, I consider that the primary fear confronted by the Hispanic community in the District of Columbia.

8. Central Americans find it much more difficult to find work without documents, especially in a recession and in a time when employers fear sanctions. Most employers

in the area do require a work permit and as a consequence those Latinos who do not have a work permit find it extremely difficult to find work.

9. I have heard from our clients that their employers have told them that without documents the Latino would be paid less. We have had some cases where the employer did not pay an undocumented Latino at all after they worked a couple of weeks or months for the employer.

10. In addition to undocumented Latinos having difficulty obtaining work, it is also more difficult to find work with temporary protective status than it is with permanent status. This is because employers know that at a certain time, the employee's TPS permit will expire and the employer will fire this person, bring in somebody else, and train the new person. On the other hand, if an employer wants to continue employing this individual, the employer is apparently concerned that he/she does it at the risk of violating employer sanctions.

11. It is my understanding that individuals have not been hired, have been fired, have been paid less or otherwise exploited because they only have TPS. Latinos have told me that they have been discriminated against because they have TPS. Some Salvadorans have said that when they did not have TPS they had a job, but now that they have TPS it is very hard to find a job. Perhaps this is due to the recession, perhaps it due to the fact that the employer feels that with documents, a Latino might complain about differential treatment.

12. I know that many of our clients have been discriminated because they are "Latino looking" in spite of the fact that they are documented. I have heard the accounts of Mexican-Americans who were born in the U.S. but discriminated against because they sound or look foreign.

13. I know that Central Americans have a reputation of being hard workers but I will say that because they are foreigners they probably are treated much differently from whites coming from Europe or North American blacks.

14. **Most of the refugees** that I come into contact with are reluctant to pursue any claims **regarding housing and employment problems** because they fear that getting in touch with the authorities may jeopardize their immigration status here in the U.S. The primary reason why they are afraid is that they fear being sent back to El Salvador or to Central America.

15. When Latinos experience problems here or need assistance, they do not turn to the police, because they have an extreme fear of the police. Their fear is legitimate given the many incidents of police brutality against Latinos and the threats to refer the Latino to the INS made by some members of the police.

16. However, now that many of our clients have obtained TPS, more Salvadorans are coming forward with problems about housing and complaints about discrimination. We have seen a small increase in the number of Salvadorans who are speaking out about wage and hour problems. This is most likely the result of their having some type of documentation and thereby feeling more secure.

17. Most of the TPS applicants were undocumented, that is, they did not have any type of documentation. Most of the people who applied for TPS do not have asylum claims pending. That is because only a few Salvadorans knew of the possibility of applying for political asylum claims, and because many people knew that only that small number of those Salvadorans who applied for political asylum were receiving asylum. They did not think they had a chance to get asylum due to the INS continually denying Salvadorans asylum, so many did not bother to apply.

18. The two primary problems that our clients had in getting TPS were fear and cost. They feared that by giving the INS their name, address and fingerprints they were going to later be identified and probably deported. The other basic problem was cost. It was extremely expensive.

19. One of the problems that we had as an organization assisting Latinos with getting TPS was that we were understaffed. We did not have enough people to assist as many people as we had hoped. However, I think that in conjunction with the other organizations (such as Ayuda and the Indochinese Center) we were able to help 35,000 Salvadorans apply for TPS in the D.C. metropolitan area.

20. To a certain degree we can say that TPS was a success because it gave approximately 200,000 Salvadorans across the United States the opportunity to have some proper documentation and to stop fearing (for at least eighteen months) being deported by INS. TPS gave CARECEN clients the opportunity to stop living in a clandestine fashion. It gave them the opportunity to stop living as second-class citizens. However, they still continue to suffer from more discrimination than people who have permanent resident status.

21. Once TPS expires, I do not think that Salvadorans will go home to El Salvador. Many of them do feel it is not yet safe to go back to El Salvador because of their memories of torture and persecution. They still hear reports of continuing violence. Just because a peace treaty has been signed does not mean that the military abuses and the culture of death and torture have disappeared. The culture of torture and persecution is still prevalent in El Salvador and Salvadorans know that very very well.

22. Additionally, I would say that only a small number will go home given that they have already fled from their country out of fear and come here with their children

when they were small. Now their kids have grown up here (or others have had children born in the United States) and as a consequence will probably decide to stay here.

23. If they decide to stay here, and I think many of them will, they will stay here undocumented just as they stayed and worked here before TPS was granted to them. I think that if it is a choice between going back to their home country where the situation has not really changed substantially, most of them will decide to stay here even if they do not have legal status in this country. I believe that given that choice, Salvadorans would choose to stay here and live a clandestine life.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: January 27, 1992



Pedro Aviles

■ Acknowledgements

This story is more than a documentation of the civil rights and immigration struggles of the D.C. Latino community. It is a story lived by the community, told by the community, and written by the community. It began during the May 1991 disturbances in the Washington, D.C. neighborhoods of Mt. Pleasant, Adams Morgan, and Columbia Heights.

The Latino leadership lives and works in these neighborhoods where they know and are known by the community; they are an integral part of the community. As the riots developed, they took to the streets in an effort to restore the peace. They held public forums with microphones and with people acting as scribes right in the middle of the disturbances. The Mayor invited this group to meet with her. They continued to meet together on their own. During the next few days a structure developed that evolved into the D.C. Latino Civil Rights Task Force.

Task Force committees documented discrimination in housing, employment, health, social services, recreation, and police practices. In September the Mayor received a summary of their findings; she was given a detailed Blueprint during an October meeting with city officials and 400 residents. Liaison meetings between Task Force committees and government agency heads began and the Task Force is monitoring the implementation of the Blueprint.

The Task Force asked the U.S. Commission on Civil Rights to hold hearings on the discrimination and abuse the community faces. As Task Force committees began to prepare reports and witnesses for the hearings they realized the need for an additional report not covered by any Task Force standing committee: immigration. Initially no single Task Force committee focused on immigration alone because immigration issues underlie and are interwoven through the issues of every single committee. The recreation committee, for example, dealt with a summer youth jobs program not available to many Latino youths because of the interplay of employer sanctions and discriminatory application of asylum laws. But it made sense to pull together in one report the immigration overlay that confronts people in our community every day.

Brainstorming sessions were held with Task Force members, community activists, asylum attorneys, and human rights advocates to bring together the legal analysis with the story of this community. Larry Schneider of Arnold & Porter committed the resources of his firm to write the report. Arnold & Porter has long been involved with this community, having "adopted" Ayuda, Inc., after the 1986 amnesty law was passed and provided

hundreds of hours of volunteer "hands on" work during the ensuing years. This law firm/agency relationship has served as a model locally and nationally. Arnold & Porter has worked with the Washington Lawyers' Committee for Civil Rights to write three immigration manuals, conduct trainings for other volunteers, draft a series of formal comments protesting unfair immigration policies, and represent hundreds of immigration clients on a *pro bono* basis. Most importantly, they have been a faithful source of guidance and support for my Asylum and Refugee Rights Law Project as each new immigration hurdle has emerged.

Community agency heads drafted statements about the problems they see. First-hand witnesses told their harrowing stories. A group of Arnold & Porter attorneys, legal assistants, secretaries and other staff worked non-stop for an entire month to turn the story into this document. Drafts were widely circulated.

As we worked our story kept evolving. We celebrated the signing of the Peace Accords. We heard the fear and confusion as Salvadorans who had received Temporary Protected Status were given work re-authorization that expires this summer and papers initiating their deportation. One of our first hand witnesses who feared losing his job if he testified before the Civil Rights Commission lost his job instead when his employer decided to check for "documents."

As often happens in my work at the Washington Lawyers' Committee, the lines between attorney and client, mentor and protegee, teacher and student, helper and helpee blur and then reverse. Our barriers, our roles, our labels fall and we are colleagues, co-workers and friends on the journey together. And so it is again with this report.

I slipped into getting the wording of a "statement" "just right." No, this is not a "statement" my friend gently reminded. This is his life. The memory of each of his friends who died is sacred. The telling of their deaths and his own torture is painful every time. But he hopes the telling will help to bring better lives to people in the community.

I am accordingly grateful for the people who carefully shared their lives and their stories. This telling joins an important stream in the struggle for civil rights in this country. I am blessed by the hearing and telling of many stories, a few of which are included in this report.

Omar Centurion, Jose Hondora, Simon Mendez, and Eusebio Rodriguez tell their first hand experiences. Community agency heads put into context these individual stories and confirm that they are part of a pattern. At the same time, they direct agencies that have more needs than they have resources, Pedro Aviles of CARECEN, Boris Canjura of the Salvadoran Refugee Committee, Lori Kaplan of the Latin American Youth Center, Sharon

O'Day of Casa de Maryland's Day Laborer Assistance Project, and Yvonne Martinez Vega of Ayuda documented what they daily confront.

Our brainstorming meetings formed and guided this report. People left with commitments to research particular problems and returned to us with information and materials. Thanks to Armando Amaya of the Salvadoran Refugee Committee, Rod Boggs of the Washington Lawyers' Committee for Civil Rights Under Law, Sarah Branch of the Washington Lawyers' Committee for Civil Rights Under Law, Boris Canjura of the Salvadoran Refugee Committee, Hugo Carballo of the Alice Hamilton Center, Michael Coughlin, Julio R. Cruz of CARECEN, Enid Gonzalez Aleman, Bruce Hake of Interpreter Releases, Lori Kaplan of the Latin American Youth Center, Angela Kelley of the National Immigration, Refugee & Citizenship Forum, Yvonne Martinez Vega of Ayuda, Inc., Ivan Menjiva, Juan E. Milanes of the Washington Lawyers' Committee for Civil Rights Under Law, Cecilia Munoz of the National Council of La Raza, Sharon O'Day of the Day Laborer Assistance Project, Maggie Prieto of Ayuda, Inc., Jose Ramos of CARECEN, Cathy Sarri of the Alice Hamilton Center, Kathleen Sullivan of the American Council for Nationalities Service, U.S. Committee for Refugees, Anya Sykes of Ayuda, Inc., and William Van Wyke of Martin, Bodley & Kraft. Two of those people, Kathleen Sullivan and William Van Wyke edited and helped shape sections of the drafts.

People across the city and country fed us information. We appreciate: Maurice Belanger of the National Immigration, Refugee & Citizenship Forum, Linton Joaquin of the National Immigration Law Center, Priscilla Labovitz a D.C. immigration lawyer, Antonio Melus of the D.C. Office of Latino Affairs, Sergio Mundo of Covington & Burling, and Debbie Smith, counsel on the American Baptist Church case.

The report was written by Arnold & Porter:

Tracey Friedlander, an associate, undertook the enormously challenging task of interviewing the persons whose statements appear in the Appendix. This report could not have told the story of Washington, D.C.'s Latinos without her total commitment to that project, which included countless conversations and meetings to ensure that their statements accurately told their stories. Thanks to Tracey, her bilingual talents and her creative approach to many logistical hurdles, their voices are here and ring true.

Annemarie O'Shea and Elana Broitman, both associates, contributed to this report as well. To Annemarie we owe thanks for all the information about the situation in Central America, and then some. Elana had the difficult task of conquering the case law on asylum and drafting the section on Temporary Protected Status; she did both with enthusiasm.

Ezra Borut, a legal assistant, pulled together the very rich material that now constitutes the stories in the employer sanctions sections of the report; he wrote and wrote and re-wrote. He also became the statistics person on the team; tracking down numbers from community organizations, federal and local government offices, national organizations and anywhere else he could find them. His commitment to this report was unswerving.

Anna Gomez, a law clerk, was persistent in tracking down critical legal information and ensuring that it was accurate. She was at Arnold & Porter before and after law school classes, on long weekend days and even longer nights, and it is to her credit that the footnotes in the text are as good as they are. She commandeered a group of willing (and not so willing) law clerks and the team worked hard and long and well and they too, deserve our thanks.

Yiba Ng, a legal assistant, wrote the factual summary of the disturbances of May, 1991. She, too, spent countless hours and late nights working on the report. From start to finish — Yiba did it all; she gathered and synthesized information, assisting in interviewing witnesses and transcribing and translating their statements, and checked and re-checked when checking and re-checking was called for.

The long nights and days were productive only because of the unflagging work of Arnold & Porter's top-notch secretaries, Bertha Flores, Michael Goldstein, Nan Packard, Kathy Rhyne, and Barbara Thorne. Gary Bione in Computer Services turned a long unruly document into the printed report you have before you.

Jerome Levinson, of counsel, and Robert Raben, an associate, were extensively consulted on this project, attended our meetings and read drafts of the report. This project was much enriched by their wisdom and the team members were grateful for their encouragement.

Larry Schneider, the supervising partner, enthusiastically guided this project with a calm and steady hand and piloted it through some rocky waters. He asked difficult questions, offered useful insights, worked closely on the text of the report and kept the team moving forward. He provided that rare combination of both being available and accessible and yet trusting and encouraging the team to take the ball and run with it. And he, too, was at the office many a late night to make this report happen. It goes without saying that without Larry, this report would not have been produced.

Finally, this report would not have happened without Susan Benda, an associate at Arnold & Porter. She not only orchestrated the many different pieces, she played first chair

for several instruments. She painstakingly wrote and rewrote drafts. She listened carefully to feedback from the community. Her incredible expertise and contacts from her days at the ACLU, the Congress, and a fact finding trip to El Salvador made it possible and fun.

We also gratefully acknowledge the substantial contribution of NightRider Overnight Copy Service in printing hundreds of copies of this report without charge.

Acknowledgments usually end with someone offering to take the blame for mistakes that slip through. That is a small price indeed for the blessings, friendships, and encouragement I have received.

With gratitude,

Debi Sanders
Asylum and Refugee Rights Law Project
Lawyers' Committee for Civil Rights
Under Law