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*From Refugees to Immigrants: The Legalization Strategies of Salvadoran Immigrants and Activists*¹

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The legalization strategies pursued by Salvadoran immigrants and activists from the 1980s to the present demonstrate that migrants' and advocates' responses to policy changes reinterpret law in ways that affect future policy. Law is critical to immigrants' strategies in that legal status is increasingly a prerequisite for rights and services and that immigration law is embedded in other institutions and relationships. Immigration law is defined, however, not only when it is first formulated but also as it is implemented, enabling the immigrants who are defined according to legal categories to shape the definitions that categorization produces. Immigrants and activists also take formal legal and political actions, such as lobbying Congress and filing class action suits. Through such formal and informal policy negotiations, immigrants seek to shape their own and their nations' futures.

Irrespective of its other goals, U.S. immigration law establishes the terms through which immigrants who are in the United States without authorization negotiate their legal statuses. Although it is primarily designed to regulate legal immigration and to prevent unauthorized entry or sojourn, U.S. immigration law also identifies various criteria, such as political necessity, labor skills, and family ties, that are used to decide which of the individuals who are illegally present in the United States can regularize their stay. Immigration law simultaneously establishes various proceedings, such as asylum hearings, labor certification, and family petitions, through which these criteria are applied. These criteria and proceedings enable unauthorized immigrants and their advocates to devise legalization strategies. These

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strategies in turn shape immigration policy in that efforts to legalize sometimes redefine not only individual immigrants but also the criteria and proceedings that determine legalization. Moreover, policymakers sometimes change policies to counter particular legalization strategies. Attending to the relationship between immigration law and legalization strategies therefore helps to account for the formulation, impact, and ongoing redefinition of immigration policies.

Examining the policy implications of immigrants' legalization strategies builds on recent public policy scholarship regarding the ways that private citizens participate in policy design on an ongoing basis. For example: Schneider and Ingram (1988, 1993) identify target populations and agents as key elements in the structure of policies; May (1991) suggests that the presence or absence of policy "publics" plays a critical role in policy construction; and Maloney, Jordan, and McLaughlin (1994) emphasize the consultative nature of policymaking in Great Britain. Identifying the roles of nonpolicymakers in shaping policy entails reexamining the various senses in which policy can be said to be "made," particularly during the implementation phase of policy design. For instance, the eligibility rules that define target populations are subject to negotiation, the "labels" that stigmatize those affected by policies (Schneider and Ingram, 1993) can be manipulated by these individuals for their own ends, the agents who carry out policies can be self-selecting, and both target populations and agents may pursue goals that differ from those of policymakers. The implementation phase of policymaking is contested, not only because interest groups act as "potentially powerful drags on policy design and implementation" (May, 1991:198), but also because these groups actively seek to shape and reinterpret policy. To do so, participants in such struggles manipulate and seek to redefine legal and political discourses and practices over time and in multiple contexts (Collier, 1973; Comaroff and Roberts, 1981; Mather and Yngvesson, 1980-1981; Merry, 1990; Yngvesson, 1988, 1993). Because those who define official policy do not fully control the process of administering policies, policy design does not end when policy is formulated (*see also* Calavita, 1992).

Examining how policy agents and targets participate in the ongoing redefinition of immigration policies makes two significant contributions to migration theory. First, this project provides a fresh perspective on the ways in which immigration law is powerful. The power of immigration law is often assessed by the law's ability to control the border. Because illegal immigration is not eliminated by criminalizing unauthorized entry, law

appears weak.² In contrast, shifting the focus from the law's ability to control entry to immigrants' attempts to negotiate their legal status in the United States suggests that, far from being powerless, law is critical to both immigrants' and authorities' political maneuverings. Second, a focus on immigrants' and activists' legalization strategies details one of the ways that immigrants attempt to shape their own identities and futures (*see also* Castles and Miller, 1993; de Wenden, 1994; Glick-Schiller and Fouron, 1990; Hammar, 1990; Miller, 1981). Since the development of dependancy theory during the 1970s (Kearney, 1986), migrants have often been depicted as pawns of global economic and political forces, buffeted about by state repression and capitalist penetration (*see* Hamilton and Chinchilla, 1991). Though they correctly note the structural causes of migration, such characterizations can depict migrants as largely lacking in agency (Castels and Miller, 1993; Miller, 1981). In contrast, examining immigrants' and activists' legalization strategies reveals that immigrants play a part in shaping the policies that affect their lives. The people who carry out immigration law – including not only government officials but also employers, Department of Motor Vehicle clerks, social workers, college admissions officials, and immigrants themselves – must formulate their own interpretations of immigration categories in order to assess others' legal statuses. By acting on these understandings, both the people being defined and the people doing the defining can influence the definitions produced, thus cumulatively “creating” law, in an informal sense. In addition to such informal negotiations, immigrants can seek to authenticate their understanding of U.S. immigration law in the formal legal arena through lawsuits, lobbying, and individual petitions for particular legal statuses. Because immigration law is embedded in other institutions and relationships, both the informal and formal negotiation of law can affect these institutions and relationships.

These issues of policy redefinition, legal categorization, and immigrants' agency are discussed in this article through an examination of the legalization strategies pursued by Salvadorans who immigrated to the United States from the early 1980s to the present. The case of Salvadorans is particularly appropriate for examining these issues given that the Salvadoran civil war made

²This “weakness” of immigration law has been attributed to U.S. government reluctance to muster the funding and personnel that would be needed to close the borders (Briggs, 1984; Harwood, 1985, 1986; Miller, 1985), the strength of the forces leading individuals to immigrate (Bach, 1978; Calavita, 1992; Hamilton and Chinchilla, 1991; Kearney, 1986; Poitras, 1983; Portes, 1978; Salt, 1992; Sassen, 1989; Wilson, 1993), and the fact that certain powerful sectors of U.S. society benefit from the presence of undocumented workers (Bach, 1978; Bustamante, 1990; Jenkins, 1978; Portes, 1978, 1981).

Salvadorans' legal status a focus of policy debate, Salvadoran immigrants have been highly organized since their arrival in the United States (Rodriguez, 1987), and Salvadorans have been in the United States long enough to revise their legalization strategies in response to shifts in policy contexts. The first section of the article describes the immigration policies that led Salvadorans to focus their legalization efforts on political asylum during the 1980s. The second section discusses how, by reinterpreting immigration law to define Salvadorans as refugees, religious activists supported Salvadorans' efforts to obtain asylum. The third section turns to the 1990s, focusing on how activists and immigrants obtained and implemented legislation granting temporary legal status to Salvadorans and a legal settlement allowing Salvadorans to reapply for political asylum. Finally, the article examines how the signing of peace accords in El Salvador in 1992 and the passage of more restrictive immigration legislation in the United States in 1996 led to a reformulation of activists' earlier goals; a reformulation that eventually resulted in the approval of the Nicaraguan Adjustment and Central American Relief Act in 1997. My analysis is based on eighteen months of fieldwork among Central American activists in California and Arizona in 1987–1988 as well as research among Salvadoran immigrants, community organizations, activists, and legal advocates in Los Angeles from 1995 to 1997.³ Throughout the paper, I analyze how activists' and immigrants' actions reshape immigration law and policy on an ongoing basis.

SALVADORAN IMMIGRANTS AND U.S. IMMIGRATION LAW

Salvadorans' initial legalization strategies were formulated in the early 1980s, when the outbreak of civil war in El Salvador led unprecedented numbers of Salvadorans to enter the United States. By the mid-1980s, there were 500,000 to 800,000 Salvadorans in the United States (Aguayo and Fagen, 1988; Ruggles, Fix and Thomas, 1985), and by the early 1990s, community activists estimated that this number had grown to approximately 1 million individuals. While the laws barring unauthorized entry did not prevent these individuals – most of whom entered the country without authorization –

³Including fieldwork conducted in the San Francisco East Bay and in Tucson, Arizona, within the U.S. sanctuary movement, a grassroots network of congregations that declared themselves "sanctuaries" for Salvadoran and Guatemalan refugees (*see* Coutin, 1993); participation in the legal services programs of several Central American community organizations in Los Angeles [CARECEN (Central American Resource Center), El Rescate (Spanish for "the Rescue"), and ASOSAL (Association of Salvadorans in Los Angeles)]; interviews conducted with members of these organizations and their clients; and attending meetings organized by CHIRLA, the Coalition for Humane Immigrant Rights of Los Angeles.

from coming to the United States, immigration law did make their stay in this country precarious. If apprehended, Salvadorans, like other undocumented persons, faced detention and possible deportation. Given the pervasiveness of civil war and human rights violations in El Salvador, many were willing to accept lengthy detention in the United States rather than agreeing to depart voluntarily (*see* Ferris, 1987; Mahler, 1995; Pirie, 1990). Even if they avoided apprehension, Salvadorans, again like other unauthorized immigrants, found their ability to live and work hampered by their lack of documents. As one Salvadoran who had entered the country clandestinely commented, "We need to be here legally or it's like we're not here." The passage of the 1986 Immigration Reform and Control Act, which imposed sanctions on employers who hired unauthorized workers, made life even more difficult for the undocumented (Mahler, 1995).

The only way for most Salvadorans to be in the United States legally in the early and mid-1980s was to apply for political asylum (Ferris, 1987; Ruggles, Fix and Thomas, 1985). Other means of legalization, such as family petitions, suspension of deportation, and labor certification, required having close family members with legal status, seven years of continuous residence in the United States, or specialized job skills, all of which were in short supply within this newly immigrated community. Political asylum, in contrast, was available to migrants who could demonstrate a well-founded fear of persecution in their homelands, a characteristic that, unfortunately, was all too common among these early Salvadoran migrants. Prior to the passage of IRCA, Salvadorans' primary legal need was to avoid deportation, not to legalize their stay (Mahler, 1995), therefore few Salvadorans applied for asylum unless they were first apprehended by the INS (Ruggles, Fix and Thomas, 1985). If they were apprehended, applying for asylum could delay or prevent deportation. Although only 2.6 percent of the asylum applications filed by Salvadorans were being approved during this period (United States Committee on Refugees, 1986), filing an application would allow applicants to remain in the United States while their original case and any appeals were pending, a process that could last several years (Ferris, 1987).

For Salvadoran activists, defining Salvadorans as "refugees" was part of a political strategy that sought not only to save lives and prevent deportations, but also to affect the course of the Salvadoran civil war. Among the Salvadorans who came to the United States in the early 1980s were members of the political groups that made up the FMLN (Farabundo Marti National Liberation Front), the force opposing the Salvadoran government. These activists formed political committees in the United States that corresponded

to their organizations in El Salvador. Initially, these political committees focused on aiding their counterparts in El Salvador; however, as immigration from El Salvador to the United States continued and as Salvadorans were apprehended and placed in deportation proceedings, political committees created refugee committees to address the social, economic and legal needs of Salvadorans in the United States. In addition to helping detained Salvadorans apply for political asylum, refugee committees lobbied for federal legislation that would grant extended voluntary departure (EVD) status to Salvadorans on the grounds that they were refugees. Activists hoped that if the U.S. government formally recognized Salvadorans as refugees, the U.S. government would be unable to continue sending military aid to the Salvadoran government, which would in turn promote either a guerrilla victory or a negotiated settlement (*see also* Pirie, 1990).

The legal and political strategies pursued by Salvadoran activists confronted powerful domestic and foreign policy interests in the United States. Illegal immigration was becoming a significant policy issue, with the formation of the Select Commission on Immigration and Refugee Policy in 1978 (*see* Fuchs, 1985) and calls for employer sanctions and other more restrictive immigration measures. The 1986 amnesty program notwithstanding, the early to mid-1980s was a difficult period in which to advocate legalization for hundreds of thousands of "feet people" (Simpson, 1984). Moreover, the Reagan administration, which by 1987 was supplying over \$1 million a day in military and other aid to the Salvadoran government (Hatfield *et al.*, 1988), adopted the stance that the human rights situation in El Salvador was improving and that the vast majority of Salvadorans in the United States were economic immigrants who did not deserve asylum. State Department officials favored resettlement in the region instead of asylum in the United States for those Salvadorans who did face danger in their homelands (Aguayo and Fagen, 1988; Comptroller General of the United States, 1984; Fiederlein, 1991; Committee on the Judiciary, 1983). The stage was set for a major policy confrontation in which the "social construction" (Schneider and Ingram, 1993) of Salvadorans as deserving refugees or undeserving illegal aliens was at issue.

SANCTUARY

During the 1980s, the large numbers of Salvadoran immigrants, the high profile of U.S. Central American policy, and the organizing efforts of Salvadoran activists gave rise to political movements that sought to define Salvadorans as refugees who deserved political asylum. One of the strongest

components of this activism was the sanctuary movement, a network of congregations that declared themselves "sanctuaries" for Salvadoran and Guatemalan refugees. The sanctuary movement began in 1982, when U.S. religious activists who had helped detained Salvadoran and Guatemalan immigrants file for political asylum decided to also help unapprehended Central Americans avoid being detected by U.S. immigration authorities. Activists took this step because the routine denial of Salvadorans' and Guatemalans' asylum petitions led them to conclude that the U.S. government was discriminating against asylum seekers from noncommunist countries. Movement members therefore assumed responsibility for enforcing U.S. and international refugee law by bringing Salvadorans and Guatemalans into the United States, sheltering them in participants' homes or places of worship, and transporting them to join relatives in other parts of the country. Some participants saw these practices not only as a means of fulfilling U.S. legal and moral obligations to refugees, but also as a way of criticizing U.S. support for the Salvadoran and Guatemalan governments. By 1986, there were approximately 400 congregations participating in the sanctuary movement (*Basta*, 1986).

The methods through which sanctuary activists sought to change U.S. refugee and Central American policy derived from U.S. immigration law itself. In seeking to define Salvadorans and Guatemalans as "refugees," sanctuary activists were taking advantage of the fact that, according to U.S. law, being a victim of political persecution is one of the grounds on which a person who has entered the United States illicitly can change his or her status from that of an illegal alien to an authorized resident. Movement practices drew on immigration law in three ways. First, when a Central American requested the movement's assistance in entering the United States, movement members "screened" the individual to determine whether he or she was a "refugee." In Tuscon, where I observed these screening practices in 1987 and 1988, activists who were informed of someone who needed the movement's aid gathered information about the person's reasons for immigrating, sometimes sending a counselor to meet with the individual on the Mexican side of the border. Border workers then used the 1967 U.N. Protocol Relating to the Status of Refugees (which was incorporated into U.S. law through the 1980 Refugee Act), the Geneva Conventions on refugees, and the principle of family reunification to evaluate individuals' asylum claims. Individuals who were deemed to be political refugees were brought into the United States, whereas those who were considered economic immigrants were either left to cross the border on their own or given some other sort of assistance.

Second, when they housed undocumented Central Americans, religious activists took advantage of the fact that U.S. immigration law increasingly holds private citizens accountable for the legal status of those around them. By publicly sheltering Central Americans, activists asserted that if they were required to assess the legal status of other individuals, then they also were entitled to act on their own understandings of immigration law. Therefore, rather than separating themselves from "illegal aliens," activists took undocumented Central Americans into their homes, churches, and synagogues, as well as into apartments or houses rented for this purpose. Such actions not only defined Salvadorans and Guatemalans as "refugees" but also reinterpreted this category, suggesting that refugee status is conferred by the experience of fleeing persecution, not by the decision of a judge or asylum official, and that private citizens as well as government authorities have the ability to recognize refugees.

Third, movement members publicized Central Americans' narratives of persecution and flight – the same narratives that are recounted in court or during an asylum interview as grounds for political asylum. In fact, the movements' term for these accounts, refugee "testimonies," evokes notions of legal truth. Within the movement, Central Americans gave testimonies to sanctuary congregations, high school and college classes, journalists, religious gatherings, and at meetings and other sanctuary-related events. Like sheltering Central Americans, refugee testimonies countered the separation between the documented and the undocumented that is promoted by laws that deny services to those whose presence is unauthorized. Activists promoted refugee testimonies because they believed that, just as they had been galvanized into action by hearing detained Salvadorans' and Guatemalans' accounts, other listeners' consciousness about events in Central American policy could be changed by these narratives. As one activist related, "Once I went to a testimony where a woman passed around a picture of her son and then described how he'd been captured, tortured, and finally killed. You could hear the shock in the room! That's when people are won over in an instant." Such accounts promoted the movement's contention that Salvadorans and Guatemalans deserved political asylum.

Movement members' efforts to define Salvadorans and Guatemalans as refugees defined movement members as criminals in the eyes of U.S. authorities. In 1984 and 1985, sanctuary activists were convicted in Texas on charges of transporting illegal aliens, and in 1986, eight movement members were convicted of conspiracy and alien smuggling in Tucson, Arizona (*see* Blum, 1991; Coutin, 1995; Pirie, 1990). Despite these convictions, activists continued to attempt to obtain some form of blanket legal protection for

undocumented Salvadorans and Guatemalans. Between 1983 and 1989, bills that would have granted Salvadorans temporary relief from deportation were proposed by Representative John Joseph Moakley and Senator Dennis DeConcini in the U.S. Congress (Aguayo and Fagen, 1988; Fiederlein, 1992; Rubin, 1991). In addition, in response to the indictment of sanctuary activists in 1985, sanctuary congregations and Central American service organizations sued the U.S. Attorney General and the INS Commissioner, charging that the prosecution of sanctuary activists violated activists' rights to freedom of religious practice and that the INS had discriminated against Salvadoran and Guatemalan asylum applicants in violation of U.S. and international refugee law. The lawsuit, advocates' legislative work, and religious activists' attempts to define Central Americans as refugees eventually produced policy changes permitting Salvadorans and Guatemalans to apply for temporary legal status in the United States.

TPS/DED/ABC

In 1990, hard work, strategic alliances, and changed circumstances resulted in legislation granting Salvadorans the right to apply for Temporary Protected Status (TPS) and an out-of-court settlement of the lawsuit filed by sanctuary congregations and Central American service organizations in 1985. Prior to 1990, efforts to obtain some form of blanket protection for Salvadoran immigrants had been defeated by Congresspeople who were not convinced that deportation endangered Salvadorans (*see* Ferris, 1987:124; Francis, 1986:37)⁴ and who worried that any such program would trigger more immigration from El Salvador to the United States (Fiederlein, 1992). In the late 1980s, however, the Salvadoran government, which was reeling from costs of the civil conflict, added its voice to those who advocated legal status for Salvadorans, arguing that mass deportations would further destabilize the Salvadoran economy (*San Francisco Chronicle*, 1987). In addition, indications that the Salvadoran government was involved in the assassination of six Jesuit priests in El Salvador in 1989 drew international censure and gave human rights activists renewed ammunition. Senator DeConcini and Representative Moakley, long-time proponents of safe haven for Central Americans, cut a deal with Senator Simpson, a sponsor of the 1990 Immigration Act. A provision allowing Salvadorans who had been in the United States since September 19, 1990, to apply for eighteen months of

⁴In 1987, a General Accounting Office report concluded that it was not possible to assess the safety of deported Salvadorans, given the limitations of human rights data collected on El Salvador (*see* General Accounting Office, 1987).

TPS⁵ was incorporated into the act in exchange for DeConcini's and Moakley's agreement to support neither an extension of TPS beyond the initial eighteen-month period nor a grant of permanent residency to Salvadoran TPS recipients (*Interpreter Releases*, 1990a). Blanket protection for most Salvadorans who were in the United States had become possible.

The TPS provision of the 1990 Immigration Act was a factor in advocates' second policy success – a negotiated settlement in what came to be known as the *ABC* lawsuit, after the American Baptist Churches, the lead plaintiff in the suit. After the suit was filed in 1985, defendants attempted to dismiss the charges on the grounds that plaintiffs lacked standing to assert their claims. The judge did dismiss certain claims, but allowed plaintiffs' allegation that Salvadoran and Guatemalan asylum seekers had been denied equal protection to stand. In 1989, extensive discovery proceedings began. Discovery proved burdensome for the defense, Congress had granted Salvadorans the right to apply for TPS, and, in response to heavy criticism by human rights activists, the INS had already revised its asylum procedures (*see* Anker, 1992; Fiederlein, 1992). For these reasons (Blum, 1991), the defense agreed to grant Salvadorans who had been in the United States since September 19, 1990, and Guatemalans who had been present since October 1, 1990, the right to *de novo* asylum interviews. To eliminate bias against applicants, asylum officers were to receive special training regarding conditions in El Salvador and Guatemala, previous denials were not to be held against applicants, and officers were to base their initial decisions solely on the most recently submitted asylum petition. To obtain these benefits, *ABC* class members had to either register directly with the INS or, in the case of Salvadorans, apply for TPS and then submit an asylum application before a deadline to be imposed by the INS (*American Baptist Churches v. Thornburgh*, 760 F. Supp. 796, N.D. Cal. 1991). Plaintiffs in the *ABC* case hailed this agreement as a victory (Blum, 1991).

The TPS program and the *ABC* agreement were clearly what May terms "polic[ies] with a public" (1991:188) in that Central American activists, immigrant rights advocates, community organizations, immigration attor-

⁵Section 244A of the 1990 Immigration Act "allows the Attorney General to provide nationals from designated countries (who have been continuously physically present in the United States since date of last designation and are otherwise admissible) with temporary protected status on account of ongoing conflict, natural disaster, or other extraordinary or exceptional circumstances that make their return unsafe" (*Interpreter Releases*, 1990b:1284). Once temporary protected status (TPS) was created, it became possible for immigrants from other countries to seek this status. In addition to Salvadorans, nationals of Bosnia, Kuwait, Lebanon, Liberia, Rwanda, and Somalia have been granted TPS (Frelick and Kohnen, 1994; Wasem, n.d.).

neys, and even notary publics who provide legal services in Latino communities were poised to implement the TPS program and the *ABC* agreement. This public faced three immediate implementation challenges: registering eligible Salvadorans for TPS, extending the eighteen-month period of TPS, and helping *ABC* class members apply for the benefits of the settlement agreement. Each of these challenges gave Central American activists and legal advocates the opportunity to influence the implementation of these new policies and thus to continue to “make policy” (*see also* Calavita, 1992; Hagan and Baker, 1993). Discussion of the third policy challenge will be more detailed than that of the first two, as I was able to personally observe how activists helped *ABC* class members apply for benefits during my fieldwork in Los Angeles in 1995–1997.

First, regarding TPS, both legal service providers and potential TPS applicants debated whether or not it was in Salvadorans’ interest to apply for TPS. For example, staff members at one community organization feared that when applicants’ eighteen months of protected status expired, the INS would then detain and deport applicants. One Salvadoran immigrant who had similar doubts but decided to apply explained his reasoning during an interview: “It is a risk that one has to take. That is, it was not a matter of choosing or not choosing, it was something that one had to do. Because you couldn’t just be hidden all the time.” Community activists reached a similar conclusion and decided to process TPS applications and to encourage eligible individuals to apply. One community organization in Los Angeles registered between 14,000 and 15,000 applicants, and 187,000 Salvadorans applied for TPS nationwide (Frelick and Kohnen, 1994).

Second, when the TPS registration period ended, community activists turned their attention to the major shortcoming of TPS – the expiration date. To address this problem, community organizations launched a national campaign that included protests, lobbying, letter-writing campaigns, and mobilizing the support of various sectors of El Salvador itself, including the Salvadoran government. The arguments that activists devised in favor of extending TPS and deferred enforced departure (DED) were complex and marked a shift in the rhetoric regarding Salvadoran immigrants’ legal identities. Peace accords between the Salvadoran government and the guerrilla forces had been signed in El Salvador in 1992, making it more difficult to argue that Salvadorans were “refugees” who faced persecution if deported. Therefore, while pointing out that the instability of the peace process could permit persecution to continue, activists also contended that the remittances that Salvadoran immigrants sent to relatives in El Salvador were critical to the Salvadoran economy, that cutting off these remittances and deporting

Salvadorans would plunge El Salvador into chaos, and that by sending remittances Salvadorans were reducing the amount of foreign aid that the U.S. government needed to send to El Salvador. Moreover, activists asserted, given the U.S. government's role in financing the war in El Salvador, the United States had a unique responsibility to aid Salvadorans who had been forced to emigrate due to the war. The alliances that had enabled Salvadorans to obtain TPS proved effective once again, and President Bush allowed TPS recipients to register for deferred enforced departure (DED) status. Salvadorans' DED status was extended until December 31, 1994; when the program expired, the work permits held by DED registrants were extended several times, until the final expiration date of April 30, 1996.

Third, as the expiration date of Salvadorans' DED status approached, community organizations turned their attention to the *ABC* agreement as a potential form of relief for TPS/DED recipients. Though TPS and *ABC* were connected, there were significant differences between the two programs. All Salvadorans who were in the United States as of September 19, 1990, were eligible to apply for TPS as long as they were not excludable for some reason, such as having committed a felony. In contrast, to be eligible to apply for asylum under the *ABC* program, applicants had to individually claim to have a well-founded fear of persecution on the basis of race, religion, nationality, membership in a particular social group, or political opinion (Frelick and Kohnen, 1994). In other words, to apply for asylum, an individual had to define himself or herself as a refugee using a rhetoric that differed from – but did not contradict – the arguments in favor of extending the TPS and DED programs.

As they had done during the TPS registration period, the community organizations whose activities I observed in Los Angeles encouraged TPS registrants to apply for *ABC* benefits, but not necessarily for the reasons envisioned by the policymakers who crafted the settlement agreement. Though the purpose of the agreement was to ensure that Salvadoran and Guatemalan asylum applicants had fair hearings, some applicants used the *ABC* asylum process to preserve their rights to remain in the country. As a service provider explained to potential applicants during a community presentation in September of 1995, Salvadorans had nothing to lose by applying, whereas if they did not apply, they could be placed in deportation proceedings upon the expiration of the TPS/DED program. While waiting for their cases to be decided, applicants would receive work permits, gain time in the country, and perhaps become eligible for other forms of legalization, such as being petitioned for by a family member. Moreover, the special rules governing *ABC* class members' asylum interviews with INS officials improved applicants' chances of obtaining asylum. Additional changes in INS asylum procedures

enhanced the advantages of being an *ABC* class member. In January 1995, the INS adopted a last-in/first-out policy in scheduling the interviews of asylum applicants and instituted a six-month delay in issuing work permits to asylum applicants. Because they were governed by the policies in effect at the time of the settlement agreement, *ABC* class members were not subject to the "fast-track" scheduling process and received work permits as soon as their applications were processed.

Though *ABC* class members may have had a variety of goals in applying for the benefits of the settlement, to apply they had to define themselves as refugees. Throughout the application period, community presentations, known as "charlas," were a key means of teaching class members how to view their experiences of the civil conflict as grounds for soliciting asylum, something which had not been necessary in order to apply for TPS. For example, at an *ABC* charla in July of 1995, an attorney told his audience that individuals who had come to the United States solely for economic reasons, who were never persecuted in any way, and who did not have family members who were persecuted were not eligible to apply for asylum. On the other hand, he said, individuals whose relatives were beaten or killed, who came from areas where the civil war was intense, or who belonged to organizations whose members were persecuted were eligible to apply for asylum. Similarly, the application process enabled service providers and clients to explain how applicants' life narratives were grounds for political asylum and thus to define applicants as refugees. At some organizations, this process began with intake forms that asked clients why they had come to the United States and whether they had been persecuted, feared returning to El Salvador, or belonged to political or social groups in El Salvador. Such questions helped clients perceive which of their previous experiences could be construed as grounds for asylum. To further substantiate applicants' asylum claims, legal workers questioned applicants about particular instances of persecution, connections between events, and clients' motivations for immigrating. By reordering clients' oral narratives, eliciting names, dates, and places, and "editing" clients' accounts, legal workers prepared narratives of persecution on their clients' behalf.

As they filled out asylum applications under the terms of the *ABC* agreement, community organizations not only negotiated the legal status of individual applicants but also the boundaries of the *ABC* agreement's target population (see also Schneider and Ingram, 1993) and thus the meaning of the "political asylee" category. Each of the organizations whose legal services programs I observed developed broad notions of eligibility, reflecting staffmembers' understanding of the arbitrary and pervasive nature of civil war and

human rights abuses in El Salvador. Legal workers at each of these organizations told me that, because persecution was so widespread in El Salvador, many Salvadorans took experiences like being forced off a bus by soldiers or being forced to give food to the guerrillas for granted and did not see themselves as victims of persecution. It was therefore necessary, I was told, to “dig” for information by repeatedly questioning clients who denied having been persecuted. A legal worker at one organization told me that if clients failed to check off any of the forms of persecution listed on the intake form, he categorized them as either unemployed by the war or as residents of a conflictive zone “as these are general categories that almost everyone fits into.” Though their definitions of eligibility were broad, organizations did refuse to submit applications for individuals who had belonged to organizations known to have committed human rights abuses or for individuals who, despite repeated questioning, insisted that they had immigrated solely for economic reasons. One staff member explained that such individuals were told, “Of course, we are not Immigration, so we are not judging your case, but we can’t help you here. The best thing for you to do would be to get a lawyer to work on your own particular case.” By submitting asylum applications that reflected their staffs’ understanding of the pervasiveness of persecution in El Salvador, community organizations were asserting that Salvadorans had been driven to the United States by the war and were also promoting a broader definition of the “refugee” category than that which INS officials seem to be using. If their clients ultimately obtain either asylum or another status, then community organizations will have succeeded in legalizing a group of people whom they consider deserving.⁶

Though it renegotiated the “political asylee” category, the *ABC* application process at the organizations with which I worked also demonstrated ways that government officials’ definitions of this category constrained activists’ actions. Alongside the broad definition of refugee that legal workers used in determining who they could serve existed a competing notion – that of the “strong case.” Legal workers were continually on the lookout for applicants with a “strong case,” that is, a case that would be recognized by Immigration judges and INS asylum officials as meeting the definition of refugee under the terms of the 1980 Refugee Act and the U.N. Convention relating to the

⁶In fact, this is more or less what has occurred. In November 1997, Congress passed the Nicaraguan Adjustment and Central American Relief Act, which enables *ABC* class members and certain asylum applicants to apply for suspension of deportation, which had been eliminated by the Illegal Immigration Reform and Immigrant Responsibility Act in September 1996. Suspension cases are not easy to win, so suspension eligibility does not ensure legalization for *ABC* class members. Advocates are continuing to pressure the White House to grant *ABC* class members residency.

Status of Refugees. During an immigration charla at one organization, an attorney described such a case as follows: "Suppose that I'm a member of party X – it doesn't matter what party – and I'm active. I'm dedicated for a number of years, I pass out flyers, and eventually I'm a candidate for political office. Suppose that the government doesn't like this party. I begin to receive threats, then I see that there are people following me, then there is a shooting and I flee for my life. That is political asylum." Allowing this notion of asylum to inform their assessment of cases enabled legal workers to use their own resources efficiently in that they gave extra care to preparing the cases of individuals who had the best chance of winning asylum. However, this notion of the "strong case" approach also reinforced the narrower definition of refugee that is common within immigration courts. Moreover, even when preparing the applications of individuals who fit a broader notion of eligibility, legal workers still attempted to make clients' narratives of persecution come as close as possible to fitting this classic notion of asylum.

When the period in which eligible Salvadorans could apply for asylum under the terms of the *ABC* agreement expired in January 1996, applicants and activists faced new implementation challenges. The passage of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) in September 1996 made it less likely that *ABC* class members who were denied asylum would be eligible for other forms of legalization. The asylum interviews for *ABC* class members commenced in April of 1997, making it necessary for activists to prepare applicants for their interviews, negotiate with asylum officials regarding procedures, and pursue other remedies for class members who are denied asylum. Finally, Salvadoran officials, again citing the contribution that remittances make to the Salvadoran economy (*see* Darling, 1996; *La Opinion*, 1996), have rallied around the cause of expatriate Salvadorans. In this context, a new campaign to secure legal residency for *ABC* class members was launched. For, although the *ABC* asylum process requires individuals to define themselves as refugees in order to obtain benefits, community activists have recently been defining themselves and their constituencies as "immigrants" who are a permanent part of U.S. society.

FROM REFUGEES TO IMMIGRANTS

The strategies that applicants and advocates pursued in implementing the TPS program and the *ABC* agreement looked toward a past in which activists had defined Salvadorans as refugees and a present in which activists define Salvadorans as immigrants. During the 1980s, Salvadoran activists had found it both empowering and politically necessary to define themselves and their community as refugees, given the Reagan Administration's contention

that Salvadorans were economic immigrants. By the 1990s, when many Salvadorans had decided to remain in the United States instead of returning to El Salvador, activists redefined this term, associating refugees with helplessness, dependency, and lack of control. For instance, one activist told me "[A] refugee could be a person who is expecting something that['s] gonna be given to them. You know, like if you are an Ethiopian in the field expecting for [from] the United Nation[s] help, food, and everything." As they rejected the term refugee as disempowering, activists claimed the notion of immigrant that is part of the American immigrant story, according to which self-reliant individuals who are interested in bettering themselves set down permanent roots in the United States (*see* Chock, 1991; Coutin and Chock, 1995). Like scholars who argue that there is an implicit contract between migrants and the states that benefit from their labor (Bosniak, 1991; Hammar, 1990, 1994; Holston and Appadurai, 1996), activists contend that Salvadorans are entitled to legal status in the United States, given their now lengthy period of residence, the ties they have created, the work they have performed, the taxes they have paid, and the role that the United States played in the conflict that caused them to emigrate. This argument manipulates the potentially stigmatizing category "immigrant" (*cf.* Schneider and Ingram, 1993) by suggesting that immigrants benefit rather than harm U.S. society.

As they redefined their community, Salvadoran activists and legal advocates devised new legalization strategies. In contrast to the early 1980s, when Salvadorans saw legalization as a means of preventing untimely and perhaps life-threatening deportations, by the 1990s the goal of legalization had become securing the legal rights enjoyed by citizens and legal permanent residents for Salvadorans who had made their lives in the United States. The TPS program and the *ABC* agreement advanced this goal in that they permitted formerly undocumented Salvadorans to obtain work authorization and other identity documents. Moreover, by the 1990s, the 1986 amnesty program, Salvadorans' marriages to U.S. citizens or legal permanent residents, and the amount of time that Salvadorans had been in the United States expanded the avenues of legalization available to Salvadorans. With U.S. citizen and legal permanent resident siblings, spouses, parents, and children, Salvadorans could qualify for family visa petitions. Those Salvadorans who had immigrated more than seven years ago were eligible to apply for suspension of deportation, which requires demonstrating seven years of continuous residence in the United States, good moral character, and that deportation would be an extreme hardship. Ties with employers made work-related visas and labor certification an option for some. Accordingly, community organizations whose legal programs had focused exclusively on political asylum

added suspension of deportation, adjustment of status, family petitions, and naturalization to services they offered clients. These expanded legalization options influenced service providers' implementation of the *ABC* agreement. Although the *ABC* application process focused on political asylum and although most class members had indeed fled El Salvador due to the civil conflict, service providers realized that the 1992 Peace Accords made grants of asylum unlikely for at least some of their clients. Advocates therefore devised a contingency plan, according to which those *ABC* class members who were denied asylum and placed in deportation proceedings would apply for suspension of deportation.

The 1996 passage of IIRIRA jeopardized these legalization strategies. IIRIRA replaced suspension of deportation with a new form of legalization called "cancellation of removal." Qualifying for cancellation requires demonstrating ten years of continuous residence in the United States, good moral character, and that being deported would cause "extreme and exceptional hardship" to an alien's U.S. citizen or legal permanent resident spouse, parent, or child. In addition, according to the terms of IIRIRA, the issuance of a Notice to Appear in court stops the clock on the accumulation of time for legalization purposes. As all TPS recipients were issued Orders to Show Cause (the document with which the INS charges an alien with having violated U.S. immigration laws) upon the termination of the TPS program, and as an Order to Show Cause was initially deemed the equivalent of a Notice to Appear (*see In re N-J-B- Int. Dec.:3309 1997*), advocates feared that TPS recipients would not be able to demonstrate the requisite ten years of continuous presence. Additionally, if IIRIRA were applied to *ABC* class members, those who did not have U.S. citizen or legal permanent resident spouses, parents, or children would not meet the hardship requirement of cancellation. A new 4,000 cap on the number of aliens who could be granted suspension or cancellation in a given year further reduced the viability of suspension and cancellation as means of legalization for the 260,000 Salvadorans and Guatemalans who make up the *ABC* class. Other avenues of legalization, such as family petitions or work-related visas, also have been made more difficult to obtain. Petitioning for a relative now requires demonstrating that one has an income that is 125 percent of the poverty level. If they are in the United States without legal status, the beneficiaries of family- or labor-based visas may be disqualified, as individuals who are illegally present in the United States for six months or a year face three-year and ten-year bars on immigration, respectively (ACLU Immigrants Rights Project *et al.*, 1996). In short, legalization would be impossible for most Salvadorans, including *ABC* class members, if IIRIRA were not amended or reinterpreted.

Fortunately for Salvadoran and Guatemalan asylum applicants, advocates have succeeded in exempting *ABC* class members from many IIRIRA provisions. By lobbying U.S. officials, organizing fasts and vigils, creating alliances with other affected groups (especially Nicaraguans), working closely with congressional allies, and securing the support of Salvadoran and Guatemalan officials, advocates were able to obtain legislative relief for *ABC* class members. In November 1997, the U.S. Congress passed the Nicaraguan Adjustment and Central American Relief Act (*see* H.R. 2607, November 19, 1997). This act creates an "amnesty" for Nicaraguans who entered the United States before December 1, 1995, and restores suspension eligibility for *ABC* class members, Salvadorans and Guatemalans who applied for asylum before April 1, 1990, and certain relatives of these individuals.⁷ Several factors were probably critical to the success of this initiative. First, activists continued to negotiate the social construction of Salvadorans, depicting *ABC* class members as documented immigrants who have been unable to adjust to permanent residency, rather than as illegal aliens with pending asylum applications. Second, certain Republican leaders seemingly saw this legislation as a way to avoid being characterized as "anti-immigrant" (Wilgoren and McDonnell, 1997). Third, activists cleverly manipulated security concerns by linking the situation of Salvadorans and Guatemalans to those of Nicaraguans and also emphasizing the potentially destabilizing effects of mass deportations (McDonnell, 1997). Despite their success, advocates are not pleased with the disparity between IIRIRA's treatment of Nicaraguans and that of Salvadorans and Guatemalans. At a rally in Los Angeles shortly after the act was signed, activists vowed to pressure President Clinton to stipulate that Salvadorans and Guatemalans would face hardship if deported. Such a stipulation would greatly facilitate the approval of Salvadorans' and Guatemalans' suspension cases, creating a *de facto* amnesty. With an eye toward the long haul, Central American organizations have also begun promoting naturalization, voter registration, and civic participation in order to mobilize enfranchised segments of the community on behalf of more legally marginalized Salvadorans.

The legalization strategies pursued by Salvadoran immigrants and advocates demonstrate that immigrants have some ability to shape not only their own legal situation but also conditions in their homelands. Just as foreign policies have domestic implications (Ingram and Fiederlein, 1988), domestic policies can affect foreign relations and political realities. During the 1980s, activists' efforts to obtain refugee status for Salvadorans addressed not only

⁷Specifically, all minor children, all spouses, and those unmarried adult children who entered the United States before October 1990 are eligible for suspension of deportation, which is actually referred to within the legislation as "special rule" cancellation.

the domestic problem posed by the sudden influx of Central Americans, but also foreign policy issues regarding human rights violations in El Salvador and the United States' stance regarding the civil war. Activists reasoned that, just as foreign policy considerations were influencing the asylum process (Ferris, 1987), so too could granting asylum to Salvadorans draw attention to human rights abuses committed by Salvadoran authorities and thus problematize continued U.S. support for the Salvadoran government (Pirie, 1990). Similarly, in the 1990s, activists argue that enabling Salvadorans in the United States to become legal immigrants would promote democratization in El Salvador by maintaining remittances, forestalling potentially destabilizing deportations, and increasing Salvadorans' political clout in the United States. In short, in defining themselves first as refugees and then as immigrants, activists and advocates have pursued policies that have transnational political and economic implications. Salvadoran immigrants' legalization strategies therefore have the potential to affect the conditions that caused Salvadorans to emigrate in the first place.

CONCLUSION

Because immigration law is embedded in other institutions and relationships, immigrants' legalization strategies have far-reaching implications. Arguments about Salvadorans' legal status in the 1980s were connected to debates over U.S. foreign policy, assessments of human rights violations in Central America, and even controversies about the boundaries of citizen and state authority in enforcing international law (Coutin, 1995). Similarly, current discussions of Salvadorans' legal rights negotiate the extent of democratization in El Salvador, the obligations of receiving states toward migrant workers, and immigrants' positions vis à vis their countries of origin. Transnational institutions, international relations, definitions of citizenship, and the significance of national boundaries are at stake in debates over immigrants' legal identities (Glick-Schiller, Basch and Szanton-Blanc, 1995). The outcomes of such negotiations affect not only receiving but also sending societies. In the case at hand, recognizing Salvadorans as refugees during the 1980s could have led to a reduction in U.S. aid to El Salvador, which in turn could have affected the course of the Salvadoran civil war. Denying legal status to Salvadorans in the 1990s could further marginalize these immigrants, jeopardize remittances, and increase instability in the region. Law is therefore critical to immigrants' efforts to shape their own and their nations' futures.

The diffuse and ongoing nature of policymaking enables immigrants and activists to influence immigration law over time. Policies take shape in multiple contexts, including lawmakers' offices, administrators' decisions, judges'

rulings, and the actions that policy agents and targets take as policies are implemented. Immigrants and advocates therefore have multiple opportunities to shape policy through both formal and informal legal and political institutions. The fact that citizens are held legally accountable for the immigration status of those whom they shelter and transport enabled sanctuary activists to act in ways that defined undocumented Salvadorans and Guatemalans as refugees. When they were convicted on alien-smuggling charges, sanctuary activists and other solidarity workers sued U.S. officials, charging that Salvadoran and Guatemalan asylum seekers had been denied equal protection under the law. The settlement reached in this lawsuit gave activists additional opportunities to argue that Salvadorans and Guatemalans deserved political asylum. The broad notions of eligibility used by the community groups that prepared *ABC* class members' asylum applications suggested that in addition to individuals who were singled out for persecution, those who were indirectly but deeply affected by civil conflict merited asylum. Changes in the current political context, including obstacles created by more restrictive immigration policies, have led to new political activism on behalf of Central Americans. Immigrants' responses to policy changes do not have to intentionally pursue political change in order to affect policy outcomes. For instance, immigrants who are confronted with restrictive policies can obtain false identity documents (Calavita, 1990), create backlogs by submitting large numbers of applications for particular forms of relief (Freeman, 1992), or alter their migration patterns (Bean, Edmonston and Passels, 1990). Because immigrants actively interpret and react to changes in immigration policy, it is not only policymakers but also immigrants themselves who "make policy."

As immigrants have the potential to influence policies in politically and economically significant ways, nuanced analyses of immigrants' legal strategies are critical to understanding the formulation, interpretation, and impact of immigration law and policy over time. Theoretical and methodological tools devised by legal ethnographers are particularly helpful in identifying the overt and implicit ways that immigrants and activists respond to and interpret policies. Observations of contexts in which legal identities are negotiated, such as court hearings, attorney-client interaction, job interviews, and so forth reveal ways that policy publics interpret and apply legal categories. Comparing these notions to those of "official" policymakers suggests ways in which targets and agents invoke and reinterpret existing policy discourses. Examining how policies and policy debates change over time as policies move from one context (*e.g.*, negotiations between *ABC* plaintiffs and defendants) to another (*e.g.*, the offices of community organizations that prepared asylum applications for *ABC* class members) indicates that policymaking is an ongoing

ing and multifaceted process. Situating arguments about and responses to particular policies within broader political contexts demonstrates the embeddedness of policies within local and even transnational institutions and discourses. Only through such on the ground yet broadly situated analyses of legal maneuverings will the extent of immigrants' participation in policy-making and the centrality of law to immigrants' agency become clear.

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