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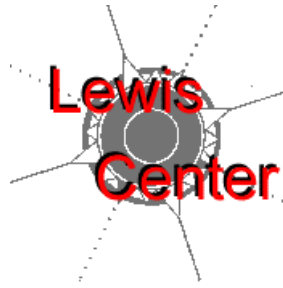
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***From Refugees to Immigrants: The Legal Strategies  
of Salvadorian Immigrants and Their Advocates***

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## **Introduction**

Since the mid-1980s, U.S. immigration law and policy have become increasingly restrictive (Freeman 1992). The 1986 Immigration Reform and Control Act (IRCA) attempted to eliminate illegal immigration by imposing sanctions on employers who hire undocumented workers.<sup>1</sup> The 1996 Anti-terrorism Act made individuals who enter the country without being inspected by a government official ineligible for certain defenses against being deported, restricted the circumstances in which legal permanent residents who are convicted of crimes can avoid being deported, and make it more difficult for immigrants to apply for political asylum. Immigration Reform Bills which are currently in conference committee propose to make legal immigrants ineligible for many forms of public assistance, prevent U.S. citizens from petitioning for their siblings to immigrate to the United States, and require the income of individuals who sponsor an immigrant to be at least 200% of the poverty level (*La Opinión* 1996b). One by one, "loopholes" that seemingly tolerate the presence of unauthorized persons within the U.S. borders, or that permit such individuals to legalize their presence, are being closed.

Or are they? The experiences of Salvadorans who have immigrated to the United States since the early 1980s, precisely when immigration law was being toughened, demonstrate that it is sometimes possible for immigrants to influence U.S. immigration law to their own advantage (cf. Bosniak 1991). During the 1980s, Salvadorans and their advocates waged a legal and political campaign to obtain recognition from the U.S. government that Salvadorans were political refugees entitled to asylum in the United States. By the 1990s, this campaign bore fruit in the form of legislation granting Temporary Protect Status (TPS) to Salvadorans who had been in the United States since September 19, 1990, and a court settlement that entitled Salvadorans and Guatemalans to apply for asylum under special rules to ensure fair adjudication of their claims. At the same time, while not abandoning their claim to political asylum, Salvadorans have begun referring to themselves as "immigrants" who are entitled to remain in the United States not only due to the turmoil in El Salvador, but also because of the roots and the record they have established in this country. The success of this new strategy has yet to be determined, however lobbying, protests, and other efforts to shape immigration-related legislation are already underway. In short, every effort to restrict immigration has led immigrants to act, individually and collectively, to reverse or mitigate the impact of policy changes.

Immigrants' abilities to defy, modify, and even create law derive both from immigrants' access to law-producing institutions and from the ways that immigration law is implicated within daily life. U.S. immigration law is not an esoteric juridical code, but rather a set of categories, practices, and relationships that pervades the lives of both citizens and non-citizens. Individuals are defined within immigration categories not only in formal legal proceedings, such as deportation hearings, but also in other, less official but not necessarily less significant, contexts in which statuses are judged. For example, social workers, employers, college admissions officials, and Department of Motor Vehicle clerks must often evaluate individuals' immigration statuses before rendering services. However, in evaluating others' immigration statuses, individuals do not simply apply law, but also negotiate the meaning of the categories they are using, leading both immigrants and those with whom they

interact to develop their own understandings of immigration law. 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.<sup>2</sup> Immigrants seek to authenticate their informal understandings 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. For example, defining Salvadorans as political refugees has the potential to affect U.S. relations with the Salvadoran government.

Immigrants seek to shape immigration law not because the law is "weak" or "powerless" but rather precisely because law is a powerful force in their lives. Their actions therefore counter the perspective of those who measure the power of law by its ability to stem illegal immigration. This "weakness" of U.S. immigration law has been attributed to the U.S. government's reluctance to muster the funding and personnel that would be needed to close the borders (Briggs 1984, Harwood 1985, 1986, Miller 1985), to the strength of the forces leading individuals to immigrate (Bach 1978, Calavita 1992, Hamilton and Chincilla 1991, Kearney 1986, Poitras 1983, Portes 1978, Salt 1992, Sassen 1989, Wilson 1993 ), and to 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). Though such analyses help to explain why immigration law fails to prevent unauthorized entry, depicting the law as relatively powerless fails to account for immigrants' own perceptions that the law is far from weak. A more complete account of the law's power, and of immigrants' agency, emerges from examining how individuals are categorized within immigration law. When individuals are defined within immigration categories they are materially constituted as subjects of these categories; that is, they become illegal aliens, citizens, conditional residents, and so forth. Such definitions can be reinforced outside of the context of formal legal proceedings, as individuals are denied or granted rights and services on the basis of the legal status others judge them to have.

Aware of the powerful role that immigration law plays in their lives, immigrants negotiate their own identities (Glick-Schiller and Fouron 1990), acting in ways that would define them according to the status that they desire. For instance, individuals who have applied for asylum may forego traveling to their home communities since doing so would call the validity of their asylum claims into question. Thus, the life narratives and trajectories associated with particular categories constrain and compel individuals' actions. Immigrants seek to manipulate these narratives and trajectories by claiming or rejecting particular identities, or by redefining categories according to their own experiences. By using and reinterpreting immigration categories, immigrants try to invoke the authority of a powerful discourse, while subverting this power to their own ends.

My account of Salvadoran immigrants' legal strategies is based on field work among Salvadoran immigrants and their advocates. During 1987 and 1988, I conducted 15 months of field work in the San Francisco East Bay and in Tucson, Arizona within the U.S. sanctuary movement. The sanctuary movement was made up of congregations that declared themselves sanctuaries for Salvadoran and Guatemalan refugees, most of whom were undocumented and therefore in danger of being deported

(see Coutin 1993). During the summer of 1993 and since June 1995, I have been participating in the legal services programs of several Central American community organizations in Los Angeles, as well as conducting interviews with members of these organizations and their clients. The groups I have been working with include CARECEN (Central American Resource Center), El Rescate (Spanish for "The Rescue"), and ASOSAL (The Association of Salvadorans in Los Angeles). I have also held discussions with private attorneys and have attended meetings of CHIRLA, the Coalition for the Humane Immigrant Rights in Los Angeles. Both my sanctuary research and the preliminary results of my on-going work in Los Angeles indicate that, even as immigration law influences immigrants' actions, immigrants are able to act in ways that reshape immigration law

### **Salvadoran Immigrants and U.S. Immigration Law**

Salvadorans began to arrive in United States in unprecedented numbers in the late 1970s and early 1980s, when civil war in El Salvador began to destroy lives, towns, and the Salvadoran economy (Mozo and Vasquez 1988, Aguayo and Fagen 1988, Chavez 1992, Ferris 1987, Hamilton and Chinchilla 1991, and Ruggles et al. 1985). By the mid-1980s, there were 500,000 to 800,000 Salvadorans in the United States (Ruggles et al. 1985, Aguayo and Fagen 1988), and by the early 1990s, community activists whom I interviewed estimated this number had grown to approximately one million individuals. While the laws barring unauthorized entry did not prevent these individuals -- most of whom entered the country without authorization -- from coming to the United States, the need to avoid border patrol agents did make crossings a harrowing, even life-threatening experience for many.<sup>3</sup> For example, Maria Bonilla,<sup>4</sup> a Salvadoran woman who entered the U.S. in 1984 with the assistance of one smuggler while her young daughters were being brought across elsewhere by another, related:

We went to the border and we were told that when we saw lights flash on the other side, we were to run. We saw the lights, and we ran, and I heard someone shouting, 'La migra! La migra!' ["Immigration! Immigration!"]. So we hid ourselves in some barrels that were there, and they went rolling down, and the dogs were barking, and I thought they were going to catch us. It was terrible! I thought, 'What if they catch me, and my daughters get through? What will happen?' I thought that it would have been better to have stayed in El Salvador and died than to go through this.

We got out of the barrels, and I was covered with poo-poo.<sup>5</sup> I don't know what kind. From dogs, or from something else. And I was full of thorns. And we began walking again. We had to walk -- [she counted the hours on her fingers, from the time they left until the time they arrived] -- for twelve hours. And all the time, I was worrying about my daughters. When we got across the border, the man said, 'Okay, sit down, here we can rest a bit.' And I said, 'But my daughters! No, we're not sitting down.' I wanted to keep going, but he pushed me down, and said, 'You're sitting.'"

And when we kept going again, you had to stay with the group, because if you didn't, you were on your own; no one would stop for you or come back and get you. We walked along the beach and through the mountains. And I saw the group up ahead of me, and I started running to catch up, and I fell into a hole. I was up to my waist, and I was stuck. I couldn't

get out. They were leaving, but my niece . . . came back for me and pulled me out of the hole. And we ran! I don't know how I did it, but I think that the thought of my daughters gave me the strength to run and to catch up with the rest of the group, because otherwise I wouldn't have made it. Lots of people die crossing the border.

Once they enter the United States, Salvadorans who cross the border illicitly or who overstay their visas find that have become "illegal aliens." The category "illegal alien" derives from granting people a juridical existence in addition to their physical existence (Coutin 1993, 1994).<sup>6</sup> In contrast to citizens, whose physical and legal existences usually coincide, illegal aliens are physically present but juridically non-existent. As one Salvadoran activist who had been undocumented and who had then obtained temporary legal status commented, "We need to be here legally or it's like we're not here."<sup>7</sup> Along with other undocumented immigrants, Salvadorans who enter the United States clandestinely are treated as if they are not here by being separated from those whose presence is authorized. If apprehended, such immigrants are physically set apart in detention centers, while their petitions for legal status are being adjudicated. If these petitions are denied, immigrants can be deported to their countries of origin. In addition, unapprehended immigrants are also set apart on occasions in which identification documents were a prerequisite for services. The similarity between deporting individuals and denying them services is suggested by the fact that, at a recent community presentation in Los Angeles, a Salvadoran paralegal referred to the laws which deny services to the undocumented as "another means of deporting us."<sup>8</sup> Taking this comment literally, to the degree that they are set apart from the rest of the population, the undocumented are socially "deported" even if they remain within U.S. borders and are never apprehended by U.S. Immigration authorities. Both deporting the undocumented to their countries of origin and separating these individuals from the documented are means of making the legal and spatial existences of illegal aliens coincide.

Salvadorans who entered the United States in the early 1980s resisted being defined as illegal aliens and instead sought to define themselves as political refugees. Among the Salvadorans who came to the United States between 1980 and 1982 were activists who had belonged to the political groups that made up the FMLN (Frente Farabundo Martí de Liberación Nacional), 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, opposing U.S. intervention in El Salvador, and advocating an end to the war. However, as immigration from El Salvador to the United States continued and as Salvadorans were apprehended and placed in deportation proceedings, political committees began to form refugee committees that would address the social, economic, and legal needs of Salvadorans in the United States. The legal services that refugee committees provided consisted primarily of assisting and representing asylum applicants, as political asylum was one of the few forms of legal relief for which Salvadorans were eligible (Ferris 1987, Ruggles et al. 1985). However, as their applications were being approved at a rate of only 2.6% (U.S.C.R. 1986), few Salvadorans voluntarily approached immigration authorities to apply for asylum (Ruggles et al 1985). Rather, most Salvadorans waited until they were apprehended by immigration authorities to apply for asylum,<sup>9</sup> as doing so would then allow them to remain in the United States while their original applications and any appeals were pending. Exhausting the appeals process could take several years

(Ferris 1987). In addition to helping detained Salvadorans apply for political asylum, refugee committees and U.S. activists lobbied for federal legislation that would grant extended voluntary departure status to Salvadorans on the grounds that they were refugees. As one activist explained, seeking refugee status was not only a means of preventing deportations, but also "a political strategy. . . It was a way of giving out information regarding the war, of obtaining recognition that a war was occurring, and that human rights violations were occurring." Activists hoped that if the U.S. government formally recognized Salvadorans as refugees, the U.S. government would stop sending military aid to the Salvadoran government, which would in turn force either a guerrilla victory or a negotiated settlement.

At the same time that Salvadorans were attempting to gain refugee status, the U.S. government was adopting increasingly restrictive immigration policies. Along the U.S.-Mexico border, the federal government sought to make unauthorized entry more difficult. Border patrol agents used "seismic and electronic sensors[,] . . . helicopters, all-terrain cycles, horses, spotter aircraft, and vans" (Harwood 1986:49) to detect immigrants, and the National Guard became increasingly involved in efforts to police the border (*La Opinion* 1996a). In the interior, individuals who are not immigration officials have been made increasingly responsible for detecting and denying services to the undocumented. For example, in 1978, the government began confiscating vehicles used to bring illegal aliens across the border, even if the driver was unaware that the passengers were undocumented and if criminal charges were never filed (McDonnell 1988, Harwood 1986). The 1986 Immigration Reform and Control Act (IRCA) required employers to document the work authorization of every new employee, and subjected non-compliant employers to fines. Immigration statutes make it illegal to knowingly house, transport, or further the presence of an illegal alien. As of 1994, California Department of Motor Vehicle clerks have to verify the legal presence of individuals who are applying for their first driver's license. In 1994, California proposition 187, which has largely been suspended through court injunction, required public school employees, publicly funded health care providers, and clerks who determine eligibility for public benefits, to verify individuals' legal status and to report suspected illegal immigrants to government authorities (Martin 1995). It should be noted that, though denying services to the undocumented is ostensibly meant to deter illegal immigration, there is a sense in which such continual evaluations of individuals' legal status simply define people as illegal aliens ever more effectively. As a result, restrictive immigration policies may in some ways create the phenomenon they seek to bar.

Like those of other undocumented immigrants, Salvadorans' legal strategies were affected by these increasingly restrictive immigration policies, though not necessarily in the ways that law makers envisioned. In the early 1980s, Salvadorans' primary legal concern had been to avoid deportation. However, after the passage of the 1986 Immigration Reform and Control Act, it became increasingly important for Salvadorans living in the United States -- few of whom qualified for IRCA's amnesty provisions<sup>10</sup> -- not only to avoid deportation, but also to acquire work authorization. As a result, the interest of unapprehended Salvadorans in applying for political asylum increased. For example, one Salvadoran, who had reentered the United States in 1985 after being deported in 1984, related that in his own case,

The problems began after 1988 with the matter of amnesty and all that, and I was

greatly affected. . . . And that is where I decided it would be better to begin my asylum case. . . . The company for which I work was one of those affected in this regard, because there were many of us who didn't have papers.

Salvadorans were not alone in their sudden need to obtain work permits. A paralegal who had been working in immigration law since the 1970s told me that before IRCA, immigrants usually approached him in order to find out how to obtain a green card, but after IRCA was passed, "everyone wanted a work permit." In response to this increased need for work permits, public notaries who offer immigration services began encouraging immigrants to apply for asylum as a means of obtaining a work permit. In addition, the intensification of the Salvadoran civil war in 1988 and 1989 led to a new stream of immigrants to the U.S. This helped to magnify the pressing need for legal status in the U.S.

Throughout the 1980s, legal efforts to obtain asylum for individual Salvadorans were connected to political efforts to obtain refugee status for all Salvadorans in the United States. Another way that the law was used as a means of political advocacy during this period was the creation of public "sanctuaries" for Salvadoran and Guatemalan refugees.

### **Sanctuary**<sup>11</sup>

The sanctuary movement began in 1982, when U.S. religious activists who had sought to help 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 low approval rates of Salvadoran and Guatemalan asylum petitions led them to conclude that it was futile for unapprehended Central Americans to reveal their presence to U.S. immigration authorities by soliciting asylum. Having heard Salvadorans' and Guatemalans' accounts of events in their home countries, activists were convinced that these immigrants risked death if deported to their home countries. As a result, while activists continued helping detained Central Americans apply for asylum, they also in 1981 and 1982 began to help other Central Americans cross the U.S.-Mexico border. When movement members learned that Immigration authorities were considering indicting them, they decided to publicize their activities by announcing that their congregations were "sanctuaries" for Central American refugees. About a dozen congregations declared themselves sanctuaries in 1982, and by 1986, there were approximately 400 congregations participating in the movement around the country. Members of these congregations brought Central Americans into the United States, transported them to places of safety around the country, gave them housing and other assistance, publicized their stories of persecution, and performed other advocacy work. Movement members were indicted on conspiracy and alien-smuggling charges in 1985, and eight of the eleven activists who stood trial were convicted in 1986.<sup>12</sup> The movement nonetheless continued through the 1980s.

In giving "sanctuary" to Salvadorans and Guatemalans, movement members were invoking and reinterpreting U.S. immigration law in ways that defined Central Americans as refugees rather than as illegal aliens.<sup>13</sup> Though sanctuary was often characterized as a form of civil disobedience by the press, and as criminal activity by the U.S. government, activists saw themselves as carrying out federal and international laws that the U.S. government was failing to enforce. Participants became



familiar with U.S. and international refugee law in the early days of the movement, when religious workers were filling out Central Americans' asylum petitions and attending deportation hearings with applicants. Activists argued that the routine denial of Central Americans' asylum applications violated the 1980 Refugee Act<sup>14</sup> by discriminating against asylum applicants from non-Communist countries. Activists also concluded that the United States was failing to observe international conventions prohibiting deporting persecuted individuals to their place of persecution.<sup>15</sup> Reasoning that international law applied not only to the relationships between states but also to citizens of those states, movement members concluded that they were legally, morally, and religiously obligated to provide the asylum that the U.S. government ought to have been providing to Central Americans. Therefore, on occasions when they were legally liable for the status of those with whom they associated, movement members did not deny services to undocumented Salvadorans and Guatemalans, but rather treated these individuals as though they had a legal existence within the United States. In so doing, movement members in practice constituted Central Americans as "refugees" rather than as "illegal aliens," though this designation was not recognized as official by government authorities. Defining Salvadorans as refugees was intended not only to prevent Salvadorans from being deported, but also to influence U.S. foreign policy, and thus events in El Salvador. In other words, sanctuary practices were aimed at changing the conditions that caused Salvadorans to become refugees in the first place.

One of the ways that sanctuary activists have defined certain Salvadorans as "refugees" was the practice of screening individuals who requested the movement's assistance in crossing the U.S.-Mexico border. I observed these screening practices in Tucson, Arizona in 1987 and 1988. When contacts in Mexico, El Salvador, or Guatemala informed them of someone who needed the movement's aid, Tucson activists 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 United Nations Refugee Protocols (which were 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 determined to be political refugees were brought into the United States, whereas those who were deemed economic immigrants were either left to cross the border on their own or given some other sort of assistance. Through these screening procedures, Tucson sanctuary activists sought to authenticate their claim that the individuals aided by the movement were political refugees, and thus to defend themselves if indicted for their activities. In 1987, one year after Tucson activists had been convicted on alien-smuggling charges, a borderworker told me,

After the trial, Trsg (the Tucson refugee support group) began reformulating their position and . . . they began using a stricter definition of who is a refugee. . . . All the stories that people were told were so *awful*, and yet it got to a point where people were saying, "Oh, only one murder and three rapes. Come on, you'll have to do better than that. . . ." I now agree with the more restrictive policies. I need more confirmation before I'm willing to cross someone. I want to be convinced that immediate help is needed, and I want to know why they can't just stay in Mexico.

In preparing for their legal defense, border workers sought not only to avoid fines and jail time, but also to change U.S. refugee policy. Activists reasoned that if they were tried and acquitted of alien-

smuggling, then the movement's claim that Salvadorans and Guatemalans were refugees who deserved asylum would be legitimated, leading to changes in the INS's implementation of refugee law.

A second practice through which sanctuary activists defined Salvadorans and Guatemalans as refugees was by sheltering them in the homes, church buildings, and synagogues of movement members, as well as in apartments or houses rented for this purpose. Before taking this action, congregations usually declared themselves "sanctuaries" for Central American refugees, and these declarations, as well as the congregation's assistance to a Central American individual or family, often received local press attention.<sup>16</sup> The Salvadorans and Guatemalans who were placed in public sanctuary sometimes had been brought into the country by movement members, and other times had for the immigration status of those whom they become involved in the movement after entering the country on their own. Like Tucson activists' screening procedures, housing Central Americans shelter, as harboring illegal aliens is a violation of Federal law. Movement members, however, did not deem Salvadorans and Guatemalans to be illegal aliens, because they believed that these manipulated notions that are part of U.S. immigration law. Individuals are legally accountable individuals had valid asylum claims. Therefore, instead of separating themselves from undocumented Salvadorans and Guatemalans, sanctuary activists took these individuals into their homes. By publicly sheltering undocumented Central Americans, and by declaring that their actions were legal, movement members used their actions to define Central Americans as refugees rather than as illegal immigrants.

A third sanctuary practice that defined undocumented Salvadorans and Guatemalans as legal refugees was refugee testimonies. To give testimonies, Salvadorans and Guatemalans publicly recounted their experiences of persecution and flight to sanctuary congregations, high school and college classes, news reporters, religious gatherings, and at meetings and other sanctuary-related events. According to movement members, testimonies had the potential to change listeners' consciousness about events in Central America and about U.S. policy, and to thus compel listeners to become involved in the solidarity movement. 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." Sanctuary activists' desire to publicize Central Americans' testimonies was rooted in their own experiences being galvanized into action by hearing the accounts of detained Salvadorans and Guatemalans during the early 1980s. A Tucson border worker recalled, "I was working typing the English into the [asylum] forms, and as I did it, I was getting the story of the people. . . . When I heard the personal stories of the Central Americans, I got hooked." Like screening procedures and sheltering Central Americans, refugee testimonies drew on existing legal categories to define undocumented Salvadorans and Guatemalans as legal refugees. By calling refugees' stories "testimonies," sanctuary activists evoked courtroom testimony and legal truth.<sup>17</sup> Moreover, the content of refugee testimonies was similar to the narratives of persecution that form the basis of a legal asylum claim. By publicizing these stories, sanctuary activists sought to validate their claim that Salvadorans and Guatemalans merited political asylum. Testimonies also countered the separation between the undocumented and the documented by enabling the latter to hear the words of individuals whose very presence was forbidden.

Sanctuary practices demonstrate both the power of immigration law and the ways that law creates potentials for agency. On the one hand, when they interacted with undocumented Salvadorans and Guatemalans as though these individuals had refugee status, sanctuary activists were taking advantage of the fact that the enforcement of immigration law has increasingly been displaced from government officials to private citizens. In effect, activists asserted that if citizens were to judge the legal status of those around them, then citizens were also entitled to act on their own understanding of immigration law. Thus, as they acted in ways that defined Salvadorans and Guatemalans as "refugees," sanctuary activists reinterpreted the meaning of this category, suggesting that refugee status is conferred by the experience of being persecuted, not by a court ruling, and that private citizens as well as government officials have the ability to judge individuals' asylum claims. On the other hand, even as they reinterpreted its meaning, movement members inevitably reinforced some of the notions and relationships that are part of immigration law, such as the distinction between economic and political immigrants, and the asymmetrical relationship between individuals who judge and individuals who are judged.

Sanctuary activists' informal negotiation of U.S. immigration law moved into the formal legal arena in 1985, when the U.S. government indicted eleven movement members from around the country on conspiracy and alien-smuggling charges (see Coutin 1995). After being indicted, movement members devised new ways of legitimizing their interpretation of U.S. immigration law. 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 the first amendment right to freedom of religion, and that the INS had discriminated against Salvadoran and Guatemalan asylum applicants in violation of U.S. and international refugee law. Though eight of the eleven sanctuary workers who stood trial in 1985 and 1986 were convicted, the lawsuit that sanctuary congregations had filed was settled in 1990, thus vindicating some of the movement's claims.

The settlement agreement -- which came to be known as the ABC agreement, after the American Baptist Churches, one of the plaintiffs in the lawsuit -- granted Salvadoran asylum applicants the opportunity for a new asylum hearing on the grounds that their previous hearings may not have been fair (Wilkinson 1990). Also during 1990, Salvadorans finally obtained legal status as a group when Congress passed legislation allowing Salvadorans who had been in the United States since September 19, 1990 to apply for eighteen months of Temporary Protected Status or "TPS" (Frelick and Kohnen 1994, Wasem n.d.). The TPS program and the ABC agreement created new ways for Salvadorans to negotiate their legal identities within the United States.

### **TPS, DED, and ABC**

Like other laws and legal agreements (Calavita 1992), the ABC settlement and the TPS program were defined in part through their implementation, making it possible for both applicants and legal service providers to influence these laws' significance (see also Hagan and Baker 1993). Initially, both legal service providers and potential TPS applicants debated whether or not it was in Salvadorans' interest to apply for TPS. For example, an attorney from El Rescate told me that the

city was initially reluctant to process TPS applications because staff members 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 encourage as many eligible individuals to apply for TPS status as possible. For example, the CARECEN office in Los Angeles registered between 14,000 and 15,000 applicants, which CARECEN's director noted was more than any other office for any other nationality nationwide.

While registering applicants, community organizations lobbied for an extension of the TPS program. A member of ASOSAL, an organization which grew out of the extension effort, described this campaign:

There was a small Salvadoran network that was called the Salvadoran National Network. . . . And each one of these organizations, when there was a protest or something specific asking for legal status or for an extension of a permit like TPS, would do it on the level of a network. This would take place in different places on the same day. Here we have Houston, Dallas, Washington, New York, New Jersey, Chicago, San Francisco, here, Los Angeles.

The arguments that activists devised in favor of extending TPS and 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 and of the country 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 once more, 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.

Through protests, lobbying, letter-writing campaigns, and mobilizing the support of various sectors of El Salvador itself, including the Salvadoran government, activists succeeded in persuading the U.S. government to allow TPS recipients to register for Deferred Enforced Departure Status, or DED. The significance of this name change was not lost on TPS/DED applicants, one of whom told me, "The initials [of DED] give me a chill. That is, they say, 'Deferred Deportation.' That is, it's like one is in a process of deportation." The DED program was extended until December 31, 1994, and when the program expired, the work permits held by DED registrants were extended several times, until the final expiration date of April 30, 1996.

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. An El Rescate

paralegal explained that in September of 1994, he and his coworkers "were facing the problem that there had been no response regarding whether or not DED was going to be extended. We saw that if it wasn't extended, then in only a short time, all of the people who were in this program would be without status." The ABC agreement allowed the 187,000 Salvadorans who had applied for TPS status to apply for asylum under rules designed to ensure that they had a fair hearing (Frelick and Kohnen 1994).<sup>18</sup> (TPS-recipients who applied for asylum before the TPS program were also eligible for ABC benefits, even if their asylum petitions were denied by INS officials.) 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 demonstrate 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 him- 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.<sup>19</sup>

Through studying the terms of the agreement and meeting with attorneys involved in the ABC lawsuit, the community organizations that I worked with decided to urge as many TPS registrants as possible to apply for ABC benefits.<sup>20</sup> As an attorney who was involved in the ABC lawsuit explained 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, the attorney noted, 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.<sup>21</sup> After deciding to register as many Salvadorans as possible, the problem for community organizations became how to reach Salvadorans who were eligible to apply for ABC benefits, how to explain the nature of the program and the advantages of applying, and how to process large numbers of applicants while documenting each applicant's asylum claim.

To process large numbers of asylum applications, community organizations hired and trained extra staff members and created their own application procedures. One organization divided the application process into specialized stages in which separate groups of legal workers recorded clients' biographic information, filled out asylum and work permit applications, took applicants' fingerprints and photos, reviewed each application packet, and gave the completed application packet to clients along with advice about what would happen after applying. The service fees which organizations charged applicants funded the application process (generally, indigent applicants were not required to pay). By the Spring of 1995, organizations were being overwhelmed by large numbers of applicants, many of whom erroneously thought that the deadline for applying for asylum under the ABC program was June 30, 1995. After this date, the numbers of applicants dropped considerably, and the sizes of ABC staff were decreased. Throughout this period, community organizations were uncertain as to the deadline for applying for ABC benefits, as the INS was required to send TPS/DED recipients written notice of their eligibility for ABC benefits before

setting such a deadline. By demonstrating that the INS had failed to update its list of these immigrants' addresses, advocates succeeded in postponing the mailing of these notices. Finally, on July 31, 1995, the INS notified TPS registrants that the final deadline for applying for benefits under the terms of the ABC program was January 31, 1996.

Throughout the application period, community organizations publicized the ABC program through press conferences, paid and public service advertisements in the Spanish language media, informative flyers, and community presentations, known as "charlas," about ABC. The charlas were also a key means of conveying community organizations' understanding of the ABC agreement, instructing potential ABC applicants about the nature of asylum claims, and preparing them for the application process. Though their applications processes differed in other respects,<sup>22</sup> each of the three organizations with which I worked required individuals to attend a charla before allowing them to submit an ABC asylum application through the organization. During the Spring of 1995, CARECEN's weekly ABC charlas were attended by approximately 700 people. In that they explained that having registered for TPS and being afraid to return were requirements for applying for asylum under the terms of the ABC agreement, charlas were an initial means of screening out individuals who were ineligible for ABC benefits. In addition, however, charlas taught individuals how to view their experiences of war and political unrest in El Salvador as grounds for soliciting political asylum, something which had not been necessary to do in order to apply for TPS. For example, at one of CARECEN's ABC charlas 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 that were persecuted were eligible to apply for asylum. During charlas, community organizations also attempted to correct popular misconceptions about immigration law, such as the belief that notaries public are attorneys and the idea that it is possible to apply for a work permit without first obtaining an immigration status that entitles one to work.

Like charlas, the process of filling out asylum applications was a way for individuals to reconstruct their life events as grounds for political asylum, and thus to define themselves as refugees. When I say that asylum applicants "reconstructed" life events, I do not mean to suggest that they were "inventing" stories of persecution. On the contrary, the organizations with which I worked were concerned about the accuracy of the information on the forms, and were extremely critical of public notaries who submitted fraudulent asylum claims in order to enable individuals to obtain work permits. Rather, I am pointing out that in filling out asylum forms, clients and legal workers had to make a case that clients did indeed deserve asylum, and that making this case entailed constructing a narrative of persecution, based on the clients' life experiences. At CARECEN and El Rescate, this process of construction began with intake forms that asked clients why they had come to the United States, whether or not they had been persecuted, whether they feared returning to El Salvador, and whether or not they had belonged to any of a number of different groups in El Salvador, such as student groups, political parties, unions, the guerrillas, the Salvadoran army, or residents of conflictive zones. Such questions helped clients perceive which of their previous experiences were relevant to their asylum claim. Based on clients' answers to these questions, legal workers classified applicants according to the kind of persecution they had experienced, and determined whether or not

clients' had participated in activities (such as having committed human rights violations) that made them ineligible for organizations' assistance. To further construct applicants' asylum claims, legal workers questioned applicants about particular instances of persecution, about connections between events, and about clients' motivations for immigrating. By reordering clients' oral narratives, eliciting names, dates, and places, and "editing" clients' accounts, legal workers helped clients negotiate their eligibility for refugee status. Legal workers' faith in the power of words and narratives to define clients' legal identities was shown by the care they took to include certain statements, such as references to the instability of the Salvadoran peace process, in each application.

Applicants themselves sometimes resisted reconstructing their lives and identities within the terms of immigration law. For example, I was involved in preparing the application of one client who insisted that it was not him but rather his mother who feared that he would be persecuted if he returned to El Salvador. In another case, a client asserted that he did not fear the individuals who had killed his brother, rather, he feared what he would do to these individuals if he were to encounter them in the future. Some applicants' reluctance to define themselves as political refugees may have stemmed from what one activist described as "the fear of applying for political asylum. . . . Some people say, 'If I apply for asylum, the authorities are going to investigate me. I'm not going to be able to return to my country.'" Similarly, another activist commented that "when someone mentions political asylum to you, you feel like this word is betraying your homeland." Moreover, though applicants were defined as refugees during the application process, outside of this context many defined themselves in other ways. Interviews with ABC applicants revealed that some applicants considered "ABC" simply another extension and renaming of the TPS/DED program. Others had constructed life narratives that did not match the classic notion of political asylum but that instead put forward their own understanding of who merited legal status in the United States. For example, one ABC applicant believed that her application would be approved because "I'm working and I've always worked and so has my husband, so we fit the requirements. . . . And because of the time I've been here."

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 meaning of the category "political asylee." To fill out asylum applications for TPS registrants, community organizations had to decide which individuals had asylum claims and were therefore eligible to apply. Through interviews with legal workers and by participating in the ABC application process, I learned that CARECEN, El Rescate, and ASOSAL had each developed a broad notion of eligibility, a notion that reflected staff members' understandings of the arbitrary and pervasive nature of civil war and of human rights abuses in El Salvador. For example, legal workers at each of these organizations told me that, because persecution was so widespread in El Salvador, many individuals took experiences like being forced off of a bus by soldiers and 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 himself 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." When I asked what he did if clients insisted that these categories did not describe their experience, the legal worker answered that you had to continue explaining these

categories to clients until they understood. For instance, he pointed out, if they had witnessed battles or seen dead bodies, then they had been residents of a conflictive zone. An ASOSAL staff member told me that the ABC agreement itself said that "no case from a Salvadoran is frivolous," therefore, his organization had no authority to tell a potential applicant that they could not apply. 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 individuals who, despite repeated questioning, insisted that they had immigrated solely for economic reasons.

A CARECEN 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 immigration officials seemed to be using. If their clients ultimately succeed in obtaining either asylum or another status, then community organizations will have succeeded in legalizing a group of people whom they consider deserving.

Though it renegotiated the category "political asylee," the ABC application process at the organizations with which I worked also demonstrated ways that immigration law constrains activists' actions. For instance, alongside the broad definition of "refugee" which legal workers used in determining whom 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" of political asylum. During an immigration charla at El Rescate, 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." By allowing this "classic notion" to inform their assessment of cases, legal workers were using 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" also reinforced the narrower definition of "refugee" that is common within immigration court. 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. Finally, regardless of how legal workers themselves define immigration categories, their assessments of clients' cases were influenced by their understanding of the INS's interpretation of legal categories. Attorneys who worked with community organizations told me that they could face legal difficulties if their organizations submitted what the INS would consider to be frivolous asylum applications.

As ABC applicants await interviews with INS officials, community organizations and the attorneys involved in the ABC lawsuit are continuing to negotiate with the INS and with U.S. politicians regarding both the agreement's implementation and the new laws which will affect ABC applicants.

A campaign to secure legal residency for ABC applicants is already underway. The outcomes of these negotiations will shape Salvadorans' next strategy for legalization. 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.

### **Legalization: From Refugees to Immigrants**

According to Salvadoran community activists, during the late 1980s and early 1990s, the Salvadorans in the United States were transformed from a refugee to an immigrant community (see also Mozo et al. 1988). A San Francisco activist who had come to the United States in 1980 and who had helped found one of the original political committees explained,

At the beginning, the idea [of most immigrants] was to acquire certain material items and then return. But most of these people were campesinos. We're speaking of people who didn't have anything in El Salvador, and here, they'd managed to acquire a car, etc. And when they acquired these material goods, their mentality began to change.

Similarly, an activist from El Rescate related that,

When one comes here, one brings the idea of being here for only a certain time. But as time passes, this perspective changes so that it's not just a period of time one plans to be here; due to the very same roots that one is creating. Years ago, at the time when people spoke of refugees, everyone imagined that when the country was at peace, everyone would return.

Another activist stated emphatically,

We're calling ourselves immigrants because that's what we are; we're no longer refugees. There's no longer a war in El Salvador. We can't justify using that term, as we could during the war. "Immigrant" implies that we're staying here, which is the reality. And what's more, we were never awarded refugee status. We are an immigrant community.

Reflecting their sense that their community has changed, Salvadoran activists now reject the term "refugee" which they had claimed during the 1980s. As early as 1988, some Salvadorans characterized the term "refugee" as disempowering. For example, a Salvadoran man living with a sanctuary congregation in Oakland, California told me that he preferred relationships that were "person to person instead of person to refugee." He added, "I would prefer . . . to free myself from the word, 'refugee'. . . . I left my country due to the violence and due to the fear and danger of disappearing, not in order to become a refugee. To me, the word 'refugee' implies inferiority and superiority." By the 1990s, Salvadorans' disenchantment with this term had become stronger. For instance, one of the founders of ASOSAL 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 the United

Nation[s] help, food, and everything. . . . They are taking cover from whatever. But right now we are not taking cover from anything. We are on the street. We are demanding, we are fighting, we are organizing.

Another ASOSAL member noted that in contrast to "legal people" who pay taxes, refugees receive government assistance. Another CARECEN staff member noted that discarding the term "refugee" was not meant to negate either the persecution that Salvadorans had experienced, or the contention that they deserved asylum. Rather, she said, this redefinition was intended to indicate that Salvadorans had control over their own lives. She noted, "'pobrecito refugiado' [poor little refugee] implies that one has no election whatsoever over where one will end up."<sup>23</sup> One organization went so far as to change its name in 1993 from the Central American Refugee Center to the Central American Resource center.

In defining themselves as "immigrants" rather than as "refugees," Salvadoran activists also claimed particular definitions of the term "immigrant." In contrast to the 1980s, when Salvadorans sought to distinguish themselves from "economic immigrants" who were not entitled to legal status in the United States, activists now associate "immigrant" with empowerment, self-reliance, agency, and permanence. As one activist explained, a person is an immigrant when "you define what you want, what you expect, what you are willing to do." It is striking that Salvadoran leaders have chosen to define themselves and their community as "immigrants" precisely when anti-immigrant sentiment is high. There are several reasons why it has now become empowering for Salvadorans to define themselves as immigrants. First, as noted above, defining themselves as "refugees" has become less viable since the end of the civil war. Second, for some, the term "refugee" was embedded in patronizing relations between Central Americans and Anglo solidarity workers. Third, defining themselves as "immigrants" expressed Salvadoran activists' sense that they are entitled to legal status in the U.S., given their now lengthy stay in the United States, the ties they have created here, the work they have performed, the taxes they have paid, and the role the United States played in causing them to emigrate. Significantly, when it was revived in 1995 to seek legal residency for ABC applicants, the Salvadoran National Network which had been founded to advocate for the extension of TPS, was renamed the Salvadoran-American National Network. Fourth, activists see permanent legal status as key to shaping political reality in both the United States and in El Salvador. Permanent legal status, activists noted, would enable Salvadorans to run for office, vote in U.S. elections, and continue sending remittances to El Salvador. In other words, activists reason, as "immigrants," Salvadorans' political and economic clout both in the U.S. and abroad would increase.

Community activists' contention that Salvadorans are immigrants rather than refugees has prompted community organizations to expand their legal services from political asylum in particular to legalization in general. This redirection of resources from traditional asylum work to other forms of legalization began with the TPS registration effort, as a CARECEN legal worker noted: "Before [TPS], we'd been working representing individuals who had asylum claims, and basically we saw our work as focusing on individuals. With TPS, we redefined that work and sought to represent a class of people." Community organizations began to add suspension of deportation, adjustment of status, family petitions, and naturalization to the services they provided to clients. This was a significant shift. According to an El Rescate attorney, "trying to help a family stay together or to help someone keep what they've acquired here in the U.S." seemed less exciting to some than did

working on asylum and human rights issues. When it became less viable to apply for asylum for Salvadorans, the attorney related, El Rescate began representing asylum seekers from other countries, such as Ethiopia and Peru, in order to maintain the asylum work that was El Rescate's original mission.

Their focus on obtaining permanent legal status in the United States has led Central American community organizations to promote naturalization for those immigrants already eligible for citizenship. In the wake of Proposition 187, legal permanent residents from many countries have been applying for citizenship in large numbers, overwhelming the naturalization staff at the INS (Paral 1995). This drive for citizenship arises in part from fear of discrimination and the denial of services based on legal status. As an ASOSAL staff member told me, "[Proposition 187] awoke the Latino community to the necessity of being able to decide, to exercise its rights, because it has felt directly affected by the passage of this law. The moment this law passed, everyone wanted to become a citizen." Immigrant organizations are also promoting citizenship in order to give more immigrants and ethnic minorities the right to vote (Hastings 1995). ASOSAL members, including undocumented individuals, ABC applicants, and permanent residents, have manned voter registration tables outside of the Los Angeles Convention Center during mass swearing-in ceremonies in order to empower those who they believe will vote in their interests. ASOSAL members have also encouraged ABC applicants to call and write to their senators and representatives regarding pending immigration legislation. At a recent community meeting, an ASOSAL member told those present that even though they could not vote, they could influence policy through their voices and their economic force.

Like Salvadorans' efforts to define themselves as refugees during the 1980s, the current emphasis on legalization renegotiates the meaning of legal categories. On the one hand, Salvadorans' definition of immigrants as self-reliant individuals who are interested in economic betterment and who have set down permanent roots in the United States claims the "American immigrant story" that is part of U.S. popular culture (see Chock 1991, Coutin and Chock 1995). On the other hand, as "immigrants," Salvadorans also revise the American immigrant story by positioning themselves between two nations. The Salvadoran constitution permits Salvadorans to hold dual citizenship, therefore, becoming U.S. citizens does not require giving up Salvadoran citizenship. Dual citizenship defies the notion that U.S. citizenship implies an exclusive commitment to the United States, as critics of the recent proposal to allow Mexicans to hold dual citizenship have noted. For instance, Ron Prince, who helped organize the campaign to approve Proposition 187 commented, "If Mexican nationals in the United States do not want to become U.S. citizens and give up their Mexican citizenship, we do not want them to immigrate to the United States. . . . If they are granted double citizenship, then they are not really legal immigrants" (*La Opinion*, 1995, translation mine). In contrast to Ron Prince's essentialist depiction of citizenship, an ASOSAL member told me that in the case of Salvadorans, obtaining U.S. citizenship was a strategic action that did not actually transform individuals.<sup>24</sup> He said, "If you become a [U.S.] citizen, that doesn't mean that you're not a Salvadoran anymore. It's a convenience. . . . You can choose who you gonna represent to you and when you have a community who can vote, you have a power, and according to your power you can make your demands."

Examples of ways in which Salvadoran activists seek to be binational abound. El Rescate is organizing a binational credit union that will have an office in El Salvador and in the United States. Numerous "hometown" associations composed of immigrants from the same town or region and dedicated to raising money for projects in their hometown have formed in Los Angeles and elsewhere. (One activist told me that these organizations grew out of the effort to define Salvadorans as "immigrants" rather than as "refugees.") Remittances also position Salvadorans binationally. For example, one activist noted that when the Salvadoran government raises taxes, he is affected here in Los Angeles because he has to send relatives in El Salvador more money to cover the same expenses. The same individuals who are now lobbying the U.S. Congress regarding immigration matters have also sent delegations to El Salvador to propose amendments in the Salvadoran National Assembly.<sup>25</sup> Some community groups have ties to labor unions that are attempting to draw connections between difficulties experienced by labor in both the United States and Central America.<sup>26</sup> In order to inculcate a binational identity within the next generation of Salvadorans in the United States, CARECEN is advocating that Salvadoran culture and history be taught within U.S. schools, and has also launched a "Learning Across Borders" program to send college students from the United States to El Salvador for a summer of research. Several CARECEN clients whose temporary legal status would be jeopardized if they left the United States cited freedom to travel freely between the United States and El Salvador as the greatest benefit of U.S. citizenship. At ASOSAL, community meetings at which ABC applicants discuss the campaign to achieve permanent residency begin with the singing of the Salvadoran national anthem. In short, as immigrants, Salvadoran activists see themselves as within and between two nations, though physically, they are in the United States.

## **Conclusion**

Most of the Salvadorans who have come to the United States since the early 1980s were initially undocumented, yet by now, approximately 40-60% of these immigrants have obtained either temporary (19-24%) or permanent (25-31%) legal status in the United States.<sup>27</sup> These legalization rates have been achieved despite increasingly restrictive immigration policies on the part of the U.S. government. Of course, the ultimate fate of those Salvadorans who are undocumented or who have temporary status remains to be determined. It is yet unclear what stance INS officials and immigration judges will adopt toward the asylum claims of ABC applicants. Nor has there yet been a response to activists' petitions for permanent residency for ABC class members. Immigration bills that are currently in conference committee may make it more difficult for ABC applicants and other Salvadoran immigrants to obtain legal status through family petitions and suspension of deportation. The uncertainty of their situation is troubling to Salvadorans whose cases are pending. Martin Padilla, a CARECEN client and ABC applicant, saw no point in continuing his education here in the

United States. He told me that just as he had had to abandon his studies in El Salvador before finishing, if he began going to school in the United States, his asylum case could be decided at any time and he could be deported before his studies were concluded. Another CARECEN client who could not leave the United States while his case was pending described how difficult it was being separated from family members in El Salvador, whom he had not seen for six years. Although he had permission to remain in the United States until his asylum case was decided, this man referred to himself as "undocumented" and distinguished himself from legal residents. For this man, at least,

having legal status in the U.S. meant having freedom to travel and being able to make long-term plans, neither of which he was able to do.

Though many Salvadorans have not yet obtained permanent legal status in the United States, Salvadorans' legal history and current efforts suggest that these immigrants will continue to influence U.S. immigration law. As members of immigrants' rights coalitions, Salvadorans and other immigrant advocates are seeking to influence legislation that is now pending in the U.S. Congress, and are planning to take court action against aspects of these laws that they find particularly objectionable. The example of Proposition 187, which was approved by the California electorate and then largely forestalled by the courts, has proven instructive to many. Current proposals for permanent residency for ABC applicants, and even another general amnesty, may yet be approved. Community organizations are also developing strategies to prepare ABC applicants for their asylum interviews and court hearings. In addition, regardless of the course the law takes within formal legal institutions, immigrants will continue to negotiate the meaning of immigration law as they interact with those around them.

Salvadorans' relative success in influencing U.S. immigration policies has been due in part to the social and historical position occupied by Salvadorans. Salvadorans came to the United States with political experience and with ties to community organizations overseas (Rodriguez 1987). After arriving in this country, Salvadoran activists were also able to mobilize a solidarity movement that had the resources and expertise to advocate for Salvadorans both within and outside of formal legal institutions. It is probably not a coincidence that it was in 1990, after the final offensive in the Salvadoran civil war and when the end of the cold war began to restructure international relations, that the ABC lawsuit was settled and that TPS was granted to Salvadorans. Moreover, Salvadorans have not been unique in obtaining nationality-based immigration relief. Cubans and Nicaraguans have been among those who have also obtained some form of temporary legal status (Frelick and Kohnen 1994).

While the particular circumstances of Salvadorans improved their ability to negotiate immigration law, the policies designed to restrict immigration also gave rise to particular legalization strategies. Efforts to displace the enforcement of immigration law on private citizens enhanced sanctuary activists' ability to define Salvadorans as political refugees. The imposition of employer sanctions fostered an increase in affirmative asylum applications. By submitting asylum applications in large numbers, Salvadorans (along with other immigrant groups) overwhelmed the asylum system and gained valuable time in the United States. In addition, proposals to deny public benefits to legal permanent residents have led to a rise in citizenship applications. Proposed increases in border patrols which make it more difficult to cross the U.S.-Mexico border can lead immigrants who would otherwise have returned periodically to their home countries to remain in the United States and bring family members here (Bean et al. 1990). Because neither the processes that define individuals within immigration categories nor the meaning of categories themselves are fixed, the individuals being defined can attempt to shape the definitions being produced, creating novel interpretations of immigration categories. Thus, the application procedures at organizations that helped Salvadorans and Guatemalans apply for asylum under the ABC agreement suggested that, in addition to individuals who were singled out for persecution, those who had seen dead bodies in the street or whose relatives had been tortured merited political asylum. Likewise, the argument that

Salvadorans are immigrants contends that despite their lack of a permanent legal status, Salvadorans have become a permanent part of U.S. society. When taken collectively, immigrants' responses to particular immigration policies have the potential to shape future policies. For instance, immigrants who are confronted with restrictionist policies can opt to obtain false identity documents (Calavita 1990), apply in large numbers for forms of legal relief (Freeman 1992), or simply remain in the United States without legal status until apprehended by government officials. Because immigrants actively interpret and react to changes in immigration policy, efforts to restrict illegal immigration often have unpredictable consequences. In short, it is not only policy makers but also immigrants themselves who are able to manipulate the power that derives from U.S. immigration law.

## NOTES

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1.

IRCA required employers to verify job applicants' work eligibility and imposed fines, and for repeat violations, imprisonment on non-compliant employers. In addition, IRCA allowed immigrants who could prove that they had been continuously and illegally present in the United States since January 1, 1982 to apply for legalization or "amnesty." IRCA also increased the number of border patrol agents.

2.

See also Calavita 1992 for a discussion of ways that the INS has informally "made law" as it has implemented Congressional statutes.

3.

Immigrants' accounts of illicit crossings contrast with scholarly accounts that characterize entry without inspection as relatively easy. For example, Edwin Harwood (1985:89) characterizes the fees that immigrants pay to alien-smugglers as a "unofficial tariff" on entering the country without authorization, and states repeatedly that immigrants who are deported can simply try again the following day. Such comments imply that being deported and having to cross the border illicitly are not traumatic experiences (Cf. Chavez 1992, Americas Watch 1993, American Friends Service Committee 1992). The fees charged by alien-smugglers are high for immigrants who are generally low-paid. One CARECEN client told me that it took him three and a half years to save the \$2,000 to \$3,000 needed to hire a smuggler to bring his younger brother from El Salvador to the United States.

4.

All names of individuals who participated in this study are pseudonyms.

5.

The reason that Maria used the word "poo-poo" here is probably because she was speaking Spanish, and she thought that I would be more likely to understand this term than another of its Spanish equivalents. All translations of Spanish sources are mine.

6.

<sup>6</sup> See also Gupta and Ferguson 1992 regarding the seemingly "natural" relationship between citizens and territories.

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7.

The ambiguity of undocumented individuals' existence is reflected in the terms used to talk about them. For example, the undocumented are often referred to as "shadow people" (Hull 1985:14) living in the "underground" (Harwood 1986) or in a "netherworld" (Hull 1985:14). Since the undocumented live a flesh and blood existence like other people, such terms refer to their legal, rather than physical, state. The undocumented are also referred to as "wet" ("mojado") and illegal immigration is often described as a "flood" (Shields and Morris 1987:1A) or a "torrent" (Harwood 1986:50) -- but never as a "lake"; the water is always moving. These "aquatic" terms reflect the notion that the undocumented are intrinsically mobile, "unrooted" (see Malkki 1992), and not of this "land" (which is dry).

8.

Bosniak (1991) makes a similar point regarding the relationship between denying rights to the undocumented and excluding the undocumented. See also Rouse 1991 and Shapiro 1994.

9.

Note that those Salvadorans who had no information about U.S. immigration law or about their right to apply for political asylum often signed deportation papers and were returned to El Salvador.

10.

IRCA allowed individuals who could demonstrate that they had been continuously and illegally present in the United States since January 1, 1982 to apply for legalization or "amnesty." Seasonal Agricultural Workers who had been in the United States for certain periods of time were also eligible for legalization. Because many Salvadorans came to the United States after the 1/1/82 deadline, most were not eligible for legalization, although informants have related that fraudulent applications were not uncommon.

11.

This section of this paper draws on my previously published work. See Coutin 1993, 1994, and 1995 for a more detailed discussion.

12.

These were not the only indictments of sanctuary activists, but because of the number of individuals indicted and the scope of the investigation that preceded the indictments, sanctuary activists saw this effort to prosecute movement members as an all-out attack on the movement. See Coutin 1995 for an account of the 1985-1986 sanctuary trial.

13.

Movement members did, however, distinguish their own tactics from those used by lawyers who, they believed, would be less willing to take the legal risks that sanctuary work entailed.



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14.

The 1980 Refugee Act states that individuals may apply for asylum in the United States regardless of their country of origin. Prior to the 1980 Refugee Act, asylum was specifically for individuals who were fleeing Communist countries. See Kennedy 1981.

15.

This is known as the principle of non-refoulement.

16.

In addition to public sanctuary, some congregations and individuals provided private sanctuary to individuals who did not wish to publicize their presence.

17.

Of course, this term also draws on the religious notion of giving testimony or bearing witness to religious truth, as well as to the Latin American practice of giving testimonies regarding oppressive conditions. See Coutin 1993 for a further discussion of the movement's use of this term.

18.

The ABC agreement also granted benefits to Guatemalans, however, these differ from those granted to Salvadorans in that Guatemalans never received TPS, and the dates for, and methods of, registering for ABC benefits were different for Salvadorans and Guatemalans.

19.

Note however that the arguments in favor of extending the TPS and DED programs can also be used to advocate that, as a group, ABC class members deserve permanent legal status in the United States.

20.

This decision was not reached automatically, but rather entailed some discussion and debate within each organization. According to one attorney who was involved in this process, the decision to try to serve as many individuals as possible was the result of pressure from the Salvadoran community in Los Angeles.

21.

Most activists are pessimistic about applicants' chances of receiving asylum, given the changes in conditions in El Salvador, the narrow definition of "refugee" within U.S. immigration law, and the INS's historic reluctance to grant refugee status to Salvadorans.

22.

It is beyond the scope of this paper to discuss differences in organizations' strategies and methods.

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23.

This staffworkers' conclusion is born out by a comment from a priest who worked with Mayan immigrants in Florida: "They [the Kanjobal] were literally just responding to the terror behind them. That defined 'refugee' for me all over again. People with absolutely no goal, no place to go, but just simply something to be running from" (quoted in Burns 1993:17). Salvadorans' negative assessment of the term "refugee" is not unique. The anthropologist Liisa Malkki, for example, concludes that within international discourses about personhood, "the refugee" is "a deeply problematic, a chronically suspect figure" (Malkki 1994:45).

24.

Two recent campaigns in which Central American activists have been involved also emphasize the artificiality of the distinctions that immigration categories create. The first of these, whose slogan is "Ningún ser humano es ilegal," or "No human being is illegal," asserts that individuals' rights derive from their intrinsic humanity rather than from their membership in the state (see also Soysal 1994). The second, whose slogan is "Todos somos ilegales," or "we are all illegal" advocates non-compliance with Proposition 187 and with the employer sanctions provisions of the 1986 Immigration Reform and Control Act as a way for U.S. citizens to enter the illicit realm occupied by undocumented immigrants.

25.

As part of the campaign to extend TPS, a delegation of Salvadorans from the United States went to El Salvador and asked members of the Salvadoran National Assembly to approve a resolution asking President Clinton not to deport Salvadorans.

26.

Some CARECEN members participated in an effort to influence the labor practices of U.S. companies that have assembly plants in Central America by picketing their stores in Los Angeles.

27.

It is difficult to determine the number of Salvadorans in the United States and the percentage of these individuals who hold legal status. Agencies that work with Salvadoran immigrants estimate that there are one million Salvadorans in the United States. Reports published during the mid-to-late 1980s estimated the Salvadoran immigrant population in the United States at 500,000 to 800,000 (Ruggles et al 1985, Aguayo and Fagen 1988), and even as high as one million (Mozo and Vasquez 1988). The 1990 census identified 465,000 individuals as Salvadoran born (U.S. Bureau of the Census, 1993). I obtained figures on the number of Salvadorans who have obtained temporary or permanent legal status in the United States since 1980 from the U.S. Immigration and Naturalization Service. These figures, which do not include the Salvadorans legalized before 1980, totaled 434,293.

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