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Central American Asylum Seekers: Impact of 1996 Immigration Law

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SUMMARY

In enacting the Illegal Immigrant Reform and Immigrant Responsibility Act (IIRIRA) of 1996 (Division C of P.L. 104-208), Congress rewrote provisions in the Immigration and Nationality Act (INA) that pertain to the circumstances under which certain aliens subject to expulsion from the United States may become legal residents. How aliens are affected by these statutory changes is being played out most vividly in the cases of Central Americans who first came to seek asylum the United States in the 1980s. As many as 300,000 Nicaraguans, Salvadorans, and Guatemalans are potentially affected by these revisions.

The Attorney General has the discretionary authority under the INA to grant relief from deportation and adjustment of status to otherwise illegal aliens who meet a certain set of criteria. This avenue, formerly known as suspension of deportation, is now called cancellation of removal. In addition to changing the name, IIRIRA established tighter standards for obtaining this relief. IIRIRA also established a cap on the number who could receive cancellation of removal — 4,000 each fiscal year.

It appears that the Nicaraguans, Salvadorans, and Guatemalans were fleeing civil conflicts in their native countries throughout the 1980s. Nonetheless the Central Americans came as “illegal” immigrants crossing the southern U.S. border without proper documents; most were denied asylum and placed in deportation proceedings. Yet, policy decisions — notably the creation of the Nicaraguan Review Office in 1987 and an out-of-court settlement of the *American Baptist Churches v. Thornburgh* case in 1990 — enabled these otherwise deportable aliens to remain in the United States with employment authorizations.

A significant portion of the Central Americans affected by the IIRIRA revisions still have asylum cases pending and may obtain legal permanent residence by that avenue if they demonstrate a well-founded fear of persecution. The Attorney General also has the discretionary authority to grant blanket relief from deportation, but the discretionary forms of relief do not entail legal permanent residence.

There is considerable interest in this issue in the 105th Congress, and the Senate passed by a vote of 99 to 1 an amendment to provide relief for certain Central Americans to the D.C. appropriations bill (S.1156). Representatives Diaz-Balart (H.R. 2302) and Meek (H.R. 2442) also introduced bills. These bills were in keeping with Attorney General Janet Reno’s request that Congress enact legislation to “grandfather” the Central Americans under old procedures. Representative Lamar Smith, concerned that the “grandfather” proposal would amount to amnesty for thousands of Central Americans, introduced a more narrowly framed bill (H.R. 2533).

Compromise language was included in the District of Columbia appropriations bill (H.R. 2607, P.L. 105-100) that enables Nicaraguans and Cubans in the United States since 1995 to adjust to permanent resident status, and permits certain Salvadorans, Guatemalans, and nationals of the former Soviet Union and Eastern

Bloc countries in the United States by 1990 to seek suspensions of deportation under the pre-1996 Act rules.

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Introduction

In enacting the Illegal Immigrant Reform and Immigrant Responsibility Act (IIRIRA) of 1996 (Division C of P.L. 104-208), Congress rewrote provisions in the Immigration and Nationality Act (INA) that pertain to the circumstances under which certain aliens subject to expulsion from the United States may be permitted to stay here as legal residents. How aliens are affected by these statutory changes is being played out most vividly in the cases of Central Americans who first came to seek asylum the United States in the 1980s.¹ For the most part, these Central Americans — fleeing civil conflicts in their native countries — came as “illegal” immigrants lacking proper documents. While most of these Central Americans were denied asylum and placed in deportation proceedings, policy decisions (including an out-of-court legal settlement) enabled these otherwise deportable aliens to remain in the United States with employment authorizations.

There was considerable interest in this issue in the first session of the 105th Congress. Attorney General Janet Reno had requested that Congress enact legislation on the matter, and Senators Connie Mack, Bob Graham, and Ted Kennedy introduced legislation (S. 1076) as did Representative Lincoln Diaz-Balart (H.R. 2302) addressing her concerns. The chair of the House Committee on the Judiciary Subcommittee on Immigration and Claims, Representative Lamar Smith reportedly was skeptical of assurances that the administration’s proposal would not result in amnesty for thousands of Central Americans. Smith introduced his own bill (H.R. 2533) and was reportedly involved in crafting the compromise language with Mack and Diaz-Balart, among others, that was ultimately included in the District of Columbia appropriations bill, H.R. 2607 as passed. President Clinton signed H.R. 2607 on November 19, 1997.

The report is organized into five sections: an overview of the asylum and cancellation of removal procedures; three sections describing the situations of the

¹The other noteworthy group of asylum seekers affected by the 1996 law are the Haitians who attempted to enter the United States following the military coup in September 1991. For the first 6 months after the coup, the Coast Guard took intercepted Haitians to the U.S. naval base at Guantanamo, Cuba, and the Immigration and Naturalization Service (INS) pre-screened them for plausible asylum claims. INS paroled approximately 10,490 Haitians into the United States before President George Bush issued an executive order in May 1992 to forcibly return all intercepted Haitians. The Haitians, however, have not been in the United States long enough to petition for suspension of deportation, and many still have asylum claims pending.

Nicaraguans, Salvadorans, and Guatemalans; and, finally a section discussing legislative issues.

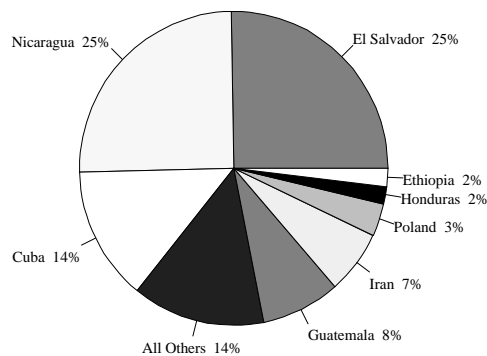
Overview of Asylum and Cancellation of Removal

Asylum Process and Trends in the 1980s²

To receive asylum, aliens must show a well-founded fear that if returned home, they will be persecuted based upon one of five characteristics: race, religion, nationality, membership in a particular social group, or political opinion. An alien may apply for asylum with INS anytime after arrival into the country or may seek asylum before an Executive Office for Immigration Review (EOIR) immigration judge during exclusion or deportation proceedings. INS may hold asylum seekers without legal immigration documents in detention or may release them under their own recognizance while the case is pending. The release criteria include whether the asylum claim is frivolous (i.e., manifestly unfounded or abusive) and whether the alien may pose a danger to security.

The INA makes clear that the Attorney General can exercise discretion in the granting of asylum. Asylees who participated in the persecution of other people are excluded from admission. The regulations state conditions for mandatory denials, including when: the alien has been convicted of a serious crime and is a danger to the community; the alien has been firmly resettled in another country; or there are +reasonable grounds for regarding the alien as a danger to national security.

Figure 1. Top Asylum Seeking Countries, FY1981 to FY1991*



*Data series ends in March 1991 when new regulations went into effect. 10 and 1/2 year total of asylum applicants is 501,457. Source: CRS analysis of INS data.

²At the close of the decade, the Bush Administration made regulatory reforms to asylum procedures that, among other things, created an asylum corps in INS with special training and resources in country conditions and ended the State Department's role providing advisory opinion on cases. The Clinton Administration made further reforms in 1995, notably regarding work authorizations and time lines. IIRIRA codified many of these regulatory changes as well as making further changes that tightened up the asylum process. Since the aliens in question sought asylum under the old rules, this discussion is based on the procedures in place then.

Foreign policy considerations as well as the practical reality of traveling from the country of origin to the United States are among the factors that bear upon who — among the millions of persecuted people in the world — ends up seeking asylum in the United States. As **Figure 1** depicts, most of the asylum seekers in the 1980s fled countries in this hemisphere that had repressive governments or have experienced political turmoil. In some instances a history of friendly relations, educational exchanges, and other ties with the United States, prompted many — Iranians and Ethiopians, for example — to seek asylum in this country after governments hostile to the United States came to power.

Central Americans constituted the overwhelming portion (about two-thirds) of asylum seekers to the United States in the 1980s.³ Indeed, Salvadoran and Nicaraguan asylum applicants totaled over 252,000 and made up half of all aliens who applied for asylum with the INS from FY1981 through part of FY1991. Since the data reported here are limited to asylum seekers who reported to the INS to request asylum, these numbers are thought to understate the number of Central Americans estimated to have fled to the United States in the 1980s.

Many of the Central Americans who sought asylum in the United States in the 1980s remain here, though most of them were denied asylum. For circumstances unique to the particular countries, certain undocumented migrants from El Salvador, Guatemala, and Nicaragua were permitted to stay and work in the United States. Many of these Central Americans hoped to obtain a suspension of deportation. Indeed, immigration lawyers and U.S. government officials encouraged them to do so when they had exhausted their asylum appeals.⁴

Cancellation of Removal

The Attorney General has the discretionary authority under the INA to grant relief from deportation and adjustment of status to otherwise illegal aliens who meet a certain set of criteria. Generally, aliens seeking this type of relief are those who have established “deep roots” in the United States and who can demonstrate good moral character as well as hardship to their family here if they are returned to their native country. Decisions to grant relief are made on a case-by-case basis. This avenue, formerly known as suspension of deportation, is now called cancellation of removal as a result of IIRIRA.

In addition to changing the name, IIRIRA established tighter standards for obtaining this relief. The hardship threshold previously was “extreme” hardship to the alien, the alien’s citizen or permanent resident alien spouse, children or parent. Now the language states “exceptional and extremely unusual hardship.” The length of time the alien had to be physically residing in the United States was increased

³Since the passage of the Refugee Act, the INS Statistical Analysis Division has collected data on the asylum cases handled by the INS district directors. The analysis that follows uses INS district level data and, thus, does not reflect statistics from cases before immigration judges in the Justice Department’s Executive Office of Immigration Review.

⁴One example is: U.S. Department of Justice, Immigration and Naturalization Service, *Fact Sheet*, Phase Out of Nicaraguan Review Program, July 27, 1995.

from 7 to 10 years. Moreover, the time span used to calculate the 10 year physical presence requirement now terminates when the alien receives a notice to appear (the document that initiates removal proceedings) or when the alien commits a serious crime. IIRIRA also established for the first time limits on the number of people who could receive cancellation of removal — 4,000 each fiscal year.⁵

The implications of these changes — and the court decisions affecting the implementation of these statutory changes — make many of the Central Americans ineligible for cancellation of removal. Most notably, the Board of Immigration Appeals (BIA) ruled that time requirements conditioned on the “notice to appear” in the IIRIRA applies to “orders to show cause” (i.e., deportation proceedings) under the old law.⁶ Most of the Central Americans had received deportation orders before they had lived in the United States the requisite number of years. Moreover, the Central Americans who may wish to seek cancellation of removal number in the hundreds of thousands, far exceeding the numerical limit of 4,000 set by IIRIRA.

Some Members of Congress who supported these changes may not have realized the new provisions would be applied retroactively. The Speaker of the House, Newt Gingrich, stated that Nicaraguans should be afforded special relief and that the new law should not be retroactive.⁷ Others, including members of the Hispanic Caucus, have requested that President Clinton and Attorney General Janet Reno take action to prevent the deportation of certain Salvadorans and Guatemalans as well as Nicaraguans. Attorney General Reno responded on July 10, 1997, by vacating the BIA decision and sending legislative language to Congress to amend certain provisions on cancellation of removal.⁸

It bears noting that a significant portion of the Central Americans affected by the IIRIRA revisions still have asylum cases pending and may obtain legal permanent residence by that avenue if they can demonstrate a well-founded fear of persecution. The sheer number of years that have passed since many of them first fled, however, may make it harder to present documentary evidence, and reported improvements in country conditions may make it more difficult for them to make their cases. The Attorney General also has the discretionary authority to grant blanket relief from deportation, such as “deferred enforced departure” or “temporary protected status” (the later is more appropriate if conditions worsen in any of the countries), but these discretionary forms of relief do not entail legal permanent residence.

⁵For a fuller discussion of the provisions, see CRS Report 97-606, *Suspension of Deportation: Tighter Standards for Canceling Removal*, by Larry M. Eig and CRS Report 97-702, *Suspension of Deportation: Effect of § 309(c)(5) of IIRIRA on Pending Deportation Cases*, by Larry M. Eig and Andre O. Mander.

⁶*In re N-J-B*, Int. Dec. 3309 (BIA, Feb. 1997).

⁷Speaker Urges U.S. Reprieve for Nicaraguan Immigrants, *Washington Post*, June 8, 1997.

⁸In *ad* applied and whether the “stop-time” rules are retroactive. *Barahona-Gomez v. Reno*, No. C-97-0895 CW (N.D. Cal) and *Tefel v. Reno*, No. 97-0805-CIV-King (S.D. Fla).

A review of the circumstances that resulted in so many Nicaraguans, Salvadorans, and Guatemalans living in the United States without proper documentation — yet legally working and ultimately being encouraged to seek suspension of deportation — follows.

Nicaraguans

Conditions in Nicaragua During the 1980s⁹

For almost 50 years, the Somoza family ruled as dictators in Nicaragua. In January 1978, the editor of *La Prensa* who was a vocal critic of Anastasio Somoza Debayle, Pedro Joaquin Chamorro, was assassinated, and Somoza's son as well as National Guard members were implicated in the murder. The United States suspended all military assistance in response to the murder. In 1979, formal unification of the Sandinista¹⁰ guerillas occurred, heavy fighting broke out across the country, and within a few months a five-member revolutionary junta assumed power. Somoza fled first to Miami, then to Paraguay where he was later assassinated.

Although the United States initially gave economic (but not military) aid to the Sandinista government, the United States suspended all aid to Nicaragua in January 1981. By the end of the year the United States was supporting groups trying to overthrow the Sandinistas, working with former National Guard members in Honduras. These U.S.-backed Nicaraguans in Honduras ultimately formed the Contras.

In 1984, about 75% of registered voters participated in elections, and the Sandinistas won with over 60% of the vote. Within a few months, the Congress banned military aid to the Contras. The Reagan Administration then ordered a total embargo of U.S. trade with Nicaragua. The Sandinista government subsequently suspended all civil liberties, and the Congress resumed aid to the Contras. The Nicaraguan economy deteriorated, both from the embargo and from the diversion of money from economic development to defense against the Contras.

At the initiation of Costa Rican President Oscar Arias Sanchez, a peace process began in 1987 and an accord was reached in 1989. However, in 1988, hurricane Joan had struck, leaving 432 people dead, 230,000 homeless and \$1 billion in damages. By then Nicaragua was bankrupt. When elections were held in 1990, Violeta Chamorro (widow of the slain *La Prensa* editor) — with a campaign calling for

⁹*Nicaragua: A Country Study*, edited by Tim L. Merrill; CRS Report 87-855, *Nicaragua: An Overview of U.S. Policy*, by Mark P. Sullivan; *CRS Review*, The U.S. Response: the Problem of Nicaragua, by Nina M. Serafino, Apr. 1988; *CRS Review*, Nicaragua: Possibilities for Mutual Accommodation?, by Nina M. Serafino; CRS Report 91-183, *Latin America: An Overview of U.S. Policy Challenges in 1991*, by Nina M. Serafino, K. Larry Storrs, and Maureen Taft-Morales.

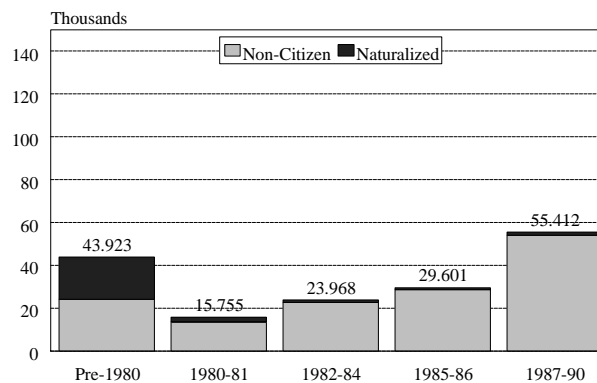
¹⁰The establishment of the Sandinista movement can be traced back to 1961 by a group of men who were Marxist student activists in the late 1950s.

peace and prosperity — defeated incumbent President and Sandinista leader Daniel Ortega with 55% of the vote.

Estimated Numbers of Nicaraguan Migrants

According to the 1990 Census of Households, there were 168,659 residents of the United States who were born in Nicaragua.¹¹ Almost three-fourths of these Nicaraguan-born residents reported that they had come after 1980. Data on legal immigration from INS indicates that 44,139 Nicaraguans immigrated from FY1981 through FY1990, including about 15,000 who adjusted status through the legalization provisions of the Immigration Reform and Control Act (IRCA) of 1986 which required evidence that the alien had been residing in the United States prior to 1982. The 1990 Census of Households, however, reported that 124,736 Nicaraguans migrated to the United States during that period. While a portion of these differences in numbers may be due to methodological differences in how these two federal agencies collected data — and how people respond to these agencies' data collection efforts — it is

Figure 2. Nicaraguan-Born Residents of the United States in 1990 by Period of Arrival



CRS presentation of data from U.S. Bureau of Census, 1990 Census of Population (CP-3-1).

reasonable to assume that many of the Nicaraguans who migrated during the 1980s came outside of the legal immigration system, and thus are undocumented immigrants commonly referred to as “illegal aliens.”

Most Nicaraguans who came to the United States in the 1980s may best be described as asylum seekers. From FY1981 to mid-FY1991, about 126,000 Nicaraguans applied for asylum, making them 25% of all asylum applicants during that period. Only the Salvadorans matched the Nicaraguans in terms of numbers applying for asylum at that time. The apex of Nicaraguan migration occurred when almost 18,000 Nicaraguans, along with about 19,000 other Central Americans, crossed the border at Brownsville, Texas, from June 1988 through March 1989. This period of mass asylum is surpassed only by the Mariel boatlift in 1980 in terms of sheer numbers of asylum seekers arriving in the United States over several months.¹²

¹¹This number is based on a sample of those responding to the 1990 census, which some demographers maintain undercounts immigrant populations.

¹²CRS Report 93-233, *Asylum Seekers: Haitians in Comparative Context*, by Ruth Ellen Wasem.

Policy Response to Nicaraguan Asylum Seekers

As the Somoza government was losing control in 1979, some Nicaraguans came to the United States as tourists on B-2 nonimmigrant visas. When Somoza fell to the Sandinistas, they were granted “extended voluntary departure” (EVD) under the discretionary authority of the Attorney General. Although their EVD status only lasted from July 3, 1979 to September 28, 1980, there appears to have been little effort to deport those who stayed beyond that period. In addition to applying for asylum, they would have been eligible to legalize their immigration status under provisions in the IRCA, but it is not clear that all of them took advantage of this opportunity.

During the 1980s, about 13,200 Nicaraguan asylum cases were approved (and are included in the legal immigrant numbers cited above). For several years, the Nicaraguans had a high asylum approval rate — peaking at 84% in FY1987.¹³ A spokesman for the State Department, which at that time offered an advisory opinion on asylum cases, stated: “The Sandinistas, however, have developed Nicaragua’s legal system, mass organizations, and armed forces into instruments of repression. The State Security Directorate in the Ministry of Interior has institutionalized human rights abuse with the national police system and the security prisons.”¹⁴ As the decade drew to a close, however, their asylum approval rate fell. The denials were based on the view that many of these Nicaraguans were now fleeing the depressed economic conditions or were coming to join relatives. By FY1990, asylum approval rates for Nicaraguans dropped to 19%.¹⁵

Nicaraguan Review Program. Although most aliens denied asylum by INS were then bound over to the Executive Office for Immigration Review (EOIR) for deportation proceedings, the Nicaraguans denied asylum received unique treatment. Former Attorney General Edwin Meese established the Nicaraguan Review Program (NRP) in July 1987 to consider the cases of Nicaraguans denied asylum by INS. In part a response to the U.S. Supreme Court’s *Cardoza-Fonseca* decision, Meese issued a statement that encouraged Nicaraguans, especially those denied asylum prior to the *Cardoza-Fonseca* ruling in March 1987, to re-apply for asylum.¹⁶ He also instructed INS to facilitate the processing of Nicaraguans’ claims, to advertise asylum

¹³This percentage is reportedly skewed upward because the INS District Director who served in Miami at that time maintained he did not have the staff resources to process asylum denials.

¹⁴Statement of Michael G. Kozak, Acting Assistant Secretary, Department of State, before the Senate Committee on the Judiciary Subcommittee on Immigration and Refugee Affairs, June 21, 1989.

¹⁵CRS Issue Brief 87205, *Immigration Status of Salvadorans and Nicaraguans*, by Ruth Ellen Wasem; and CRS Report 91-530, *Asylum and Temporary Status Under U.S. Immigration Law*, by Ruth Ellen Wasem.

¹⁶The *Cardoza-Fonseca* ruling (480 U.S. 421 (1987)) held that the “well-founded fear” of persecution standard for obtaining asylum does not require that the applicant show a “clear probability” of persecution, as INS had been requiring; rather a showing of a reasonable possibility of persecution was adequate.

procedures in communities with concentrations of Nicaraguans, and to issue work permits to Nicaraguans as soon as they registered with INS.¹⁷

The Reagan and Bush Administrations were reluctant to deport anyone to Nicaragua as long as the Sandinistas were in power, and reportedly only Nicaraguans known to be criminal aliens were likely to be returned. Although INS denied the asylum claims of over 31,000 Nicaraguans from FY1981 through FY1989, it deported only about 750 Nicaraguans. In February 1990 when Violetta Chamorro was elected President of Nicaragua, she asked President Bush to grant extended voluntary departure (EVD) to Nicaraguans in the United States. While the Administration did not do so, the Nicaraguan Review Program continued, leading some to conclude Nicaraguans had *de facto* EVD.

Then, in December 1993 Attorney General Janet Reno announced the Nicaraguan Review Program was no longer needed because Nicaragua had experienced 3 years with a democratically elected government and, she maintained, the U.S. asylum procedures had improved. “With the discontinuation of the NRP, Nicaraguans are now subject to the same procedures and appeals of asylum adjudication as individuals from other countries.” The fact sheet INS distributed to explain the phase out of the NRP also described the application process for suspension of deportation.¹⁸

As the NRP was beginning to be phased out in June 1995, the INS estimated that there were 33,914 Nicaraguans in deportation or exclusion hearings and 10,950 with final orders of deportation. Meanwhile, 20,760 Nicaraguan asylum cases were still pending in the INS backlogs as of September 30, 1996 (most recent year available). Groups representing the Nicaraguans in the current legal efforts not to keep IIRIRA from being applied retroactively report that about 40,000 Nicaraguans are subject to removal.

¹⁷By the end of the decade, as a result of judicial rulings, it became standard practice to issue employment authorizations to all asylum applicants. The Clinton Administration issued regulatory changes to end this practice in 1995, maintaining it created a magnet for asylum abuses, and Congress codified this change in IIRIRA.

¹⁸U.S. Department of Justice, Immigration and Naturalization Service, *Fact Sheet*, Phase Out of Nicaraguan Review Program, July 27, 1995.

Salvadorans

Conditions in El Salvador during the 1980s¹⁹

As the 1970s were drawing to an end, the government of El Salvador was increasingly repressive, and insurgencies were springing up on both the left and the right. Political violence abounded, and when the United States conditioned the receipt of aid upon the improvement of human rights, the government of Colonel Arturo Armando Molina refused the aid. Fearful that El Salvador would go the way of Nicaragua, there was what was characterized at the time as a “reformist coup” in 1979. The United States responded to the efforts at reform with an economic aid package.

Over the course of 1979-1980, however, El Salvador had a series of four ruling juntas, and the political violence continued. The violence peaked in March of 1980 when Catholic Archbishop Oscar Romero was murdered, allegedly by right-wing extremists. Later that year, four church women from the United States were also murdered, sparking public outcry in the United States and prompting President Jimmy Carter to suspend military aid to the junta. Nonetheless, when the left-wing guerrillas began their offensive in January of 1981, Carter immediately approved “nonlethal” military aid, and when Ronald Reagan became President a few weeks later he stressed the need to further shore up El Salvador against communism.

Throughout the 1980s, El Salvador moved toward democracy. In March of 1982, elections were held for a legislative assembly which then wrote a new constitution and prepared for direct presidential elections in 1984. When Jose Napoleon Duarte was elected in 1984, he became the first constitutionally elected President of El Salvador in half a century. Legislative elections were held in 1985 and 1988, and presidential elections in 1989.

The political violence and civil conflict nevertheless continued during the 1980s. It was estimated that by 1988 63,000 people had been killed by a combination of leftist guerrillas, right-wing death squads and government military actions. At least one-quarter of the population was uprooted or displaced by the conflicts.²⁰ The civil strife also took its toll on the economy. By 1988, unemployment hovered at 50%, and 75% of the population was in poverty. When right-wing candidate Alfredo

¹⁹*El Salvador: A Country Study*, edited by Richard A. Haggerty, Nov. 1988; *CRS Review*, El Salvador: Prospects for Peace and Political Stability, by Mark P. Sullivan, Apr. 1988; *CRS Review*, El Salvador: New Challenges for U.S. Policy, by K. Larry Storrs, Feb. 1989; CRS Report 91-183, *Latin America: An Overview of U.S. Policy Challenges in 1991*, by Nina M. Serafino, K. Larry Storrs, and Maureen Taft-Morales.

²⁰In October 1987, about 4,500 Salvadorans in the Honduran refugee camp of Mesa Grande announced their plan to return to their villages in El Salvador. Salvadoran officials feared this was part of a plan by the leftist guerrillas to rebuild popular support and initially opposed the repatriation. The return did occur, however, and the government closely monitored the border crossing. At that time the UNHCR indicated there were about 20,700 Salvadorans in Honduran refugee camps.

Cristiani won the presidential election in 1989, he promised to revive the economy and negotiate a peace accord with the guerrillas.

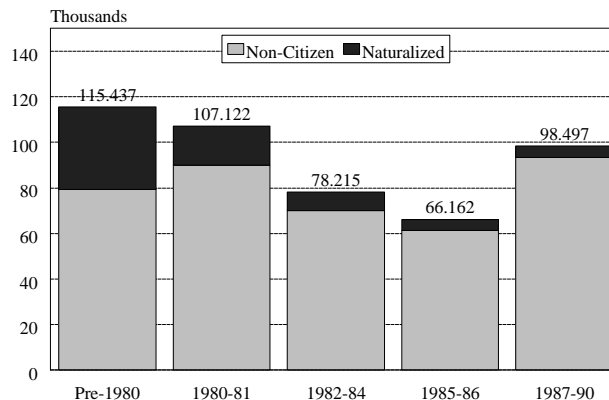
The situation, however, deteriorated in late 1989 as polarization and violence escalated again. The guerrillas launched an offensive. At that same time, six prominent Jesuit priests with ties to the United States were assassinated, and members of the military — including officers — were charged in the murder. In January 1991, guerrillas admitted shooting down a helicopter with U.S. military advisors, then killing two who had survived the crash.

Estimated Numbers of Salvadoran Migrants

There were 465,433 persons residing in the United States in 1990 who reported that they had been born in El Salvador. Only 15% indicated that they had become

U.S. citizens. Three-fourths of these Salvadoran-born residents reported that they had come after 1980 (**Figure 3**). Data on legal immigration from INS indicate that 213,539 Salvadorans became legal permanent residents from FY1981 through FY1990; however, 136,073 of these had adjusted status as a result of IRCA (documenting that they had been residing in the

Figure 3. Salvadoran-Born Residents of the United States in 1990 by Period of Arrival



CRS presentation of data from U.S. Bureau of Census, 1990 Census of Population (CP-3-1).

United States illegally since before 1982). The 1990 Census of Households reports that 349,996 Salvadorans migrated to the United States during that period.

As with the Nicaraguans, it is reasonable to assume that many of the Salvadorans who migrated during the 1980s came outside of the legal immigration system, and though they may be asylum seekers, they also are considered “illegal aliens.” From FY1981 to mid- FY1991, over 126,300 Salvadorans applied for asylum, making them one-quarter of all asylum applicants during that period (**Figure 1**). There were more asylum applicants from El Salvador than any other country, though Nicaragua was a close second.

Policy Response to Salvadoran Asylum Seekers

Throughout the 1980s, Salvadorans had a low asylum approval rate — typically 2-3%. The State Department argued that the primary motivation for Salvadoran migration to the United States was economic. It pointed to the overpopulation, poverty, and unemployment in El Salvador, and the longstanding policy of that nation to encourage the emigration of its populace to relieve overcrowded conditions. “Generalized conditions of poverty and civil unrest do not entitle people who leave

their homelands to settle here,” then-Assistant Secretary of State Elliott Abrams explained during congressional hearings in 1985. Abrams went on to say that if the asylum standard was not based upon individualized cases of persecution, but rather on generalized violence, “half the 100 million people living between the Rio Grande and Panama would meet it, as would hundreds of millions more people living in other parts of the earth.”²¹

Unlike Nicaraguans, Salvadorans who were unsuccessful in obtaining asylum were often deported. When Amnesty International documented the case of Santana Chirino Amaya, deported back to San Salvador and subsequently found decapitated, human rights groups at home and abroad expressed outrage. The United Nations High Commissioner for Refugees concluded in a 1981 investigation that the U.S. had followed a “systematic practice” of returning Salvadorans regardless of the merits of their asylum claims. Despite the international criticism, INS deported several thousand Salvadorans each year during the decade, totaling about 26,280 from FY1981 through FY1989.

Early in 1982, the Southside Presbyterian Church in Tucson, Arizona, declared itself a public sanctuary for Salvadorans fleeing the civil strife. This action rippled around the country, beginning what became known as the “sanctuary movement.” Not only did congregations of various religious beliefs adopt this position, but elected bodies of dozens of towns and cities across the United States voted to become sanctuaries, stating they would defy efforts by INS to deport Salvadorans who sought refuge in their communities.²² Subsequently, the Government began prosecuting leaders of the sanctuary movement, and the Reverend John Fife of Southside Presbyterian Church and several other religious leaders were convicted for their role in violating federal immigration law.

When Jose Napoleon Duarte became President of El Salvador, he requested that the United States not return the Salvadorans. Duarte based his position not on human rights grounds, but on economic considerations. He cited both the country’s dependence on the remittances the Salvadorans working in the United States send back to El Salvador and the inability of the faltering Salvadoran economy to absorb any more workers.²³ In April 1987, the State Department reversed its longstanding position in response to Duarte’s request and urged the Attorney General to give the Salvadorans extended voluntary departure (EVD) as had been done in the past for groups such as the Poles, Nicaraguans, Iranians and Vietnamese. Nonetheless, Attorney General Meese held firm to the Administration position that such action was unwarranted and would have created a magnet for further flows of undocumented Salvadorans.

²¹*National Journal*, Jan. 18, 1986, p.151.

²²*National Journal*, Jan. 18, 1986, p.150.

²³In 1987, the Salvadoran government estimated that the remittances totaled \$350 million to \$600 million annually. Now, a decade later, the Salvadoran government estimates the remittances to be worth \$1 billion annually.

Meanwhile, some Members of Congress were growing concerned about the treatment of Salvadorans who were returned to their native country and the Attorney General's refusal to grant them EVD. Beginning in the 98th Congress (1983-1984), legislation was introduced to grant a temporary stay of deportation to Salvadorans. Nicaraguans were added to the bills in the 99th Congress, and the House passed the measure. During the 100th Congress, the House again passed legislation granting stays of deportation to Salvadorans and Nicaraguans. Finally, the 101st Congress included in the Immigration Act of 1990 (P.L. 101-649) language creating new provisions in INA for temporary protected status (TPS), and granting TPS to Salvadorans for 18 months.²⁴

The courts also began weighing in on INS treatment of Salvadorans. In 1982, U.S. District Judge David V. Kenyon issued a preliminary injunction which enjoined INS from deporting any Salvadoran without fully informing them of their rights, including the right to an attorney and the right to apply for asylum. When Judge Kenyon granted a petition for a permanent injunction in 1988, he ordered the INS not to use coercion to keep the Salvadorans from applying for asylum.

American Baptist Churches (ABC) court case. Legal action on this issue culminated in the class action suit brought against the Attorney General (Richard Thornburgh at the time of settlement) by the American Baptist Churches and others on behalf of Salvadoran and Guatemalan asylum seekers. The lawsuit began in May 1985 in response to the arrest of the sanctuary movement leaders. They initially claimed that the Justice Department was violating the first amendment rights of the sanctuary proponents and was discriminating against Salvadorans and Guatemalans. After the judge dismissed the claims of the sanctuary leaders, the case was re-drafted as a class action suit on behalf of the Salvadorans and Guatemalans denied asylum. They charged that the Justice Department was overly influenced by foreign policy considerations when deciding the asylum claims of Salvadorans and Guatemalans, arguing that these cases were not being decided on an individual basis because the United States supported the governments of El Salvador and Guatemala. In pre-trial rulings, Federal District Judge Robert Peckham held that the low asylum approval rates of Salvadoran and Guatemalan applicants made it futile for them to pursue the usual administrative process. In December 1990, the Bush Administration reached an out-of-court settlement, agreeing to reconsider *de novo* the Salvadoran and Guatemalan asylum cases.²⁵

Although media accounts during the decade estimated the number of Salvadoran asylum seekers to be about half a million, only about 190,000 registered for TPS and as *ABC* claimants. When their TPS status expired in 1991, the Bush Administration opted not to renew it, but to give them deferred enforced departure (DED), a blanket

²⁴The TPS provisions permit the Attorney General to grant time-limited blanket relief from deportation to nationals of countries determined by the following conditions: physical danger due to armed conflict; environmental disaster; or U.S. national interest, considering international, humanitarian, and immigration concerns. §244A(h) of INA.

²⁵The Administration also agreed no longer to have the State Department offer an advisory opinion on asylum claims, since it was perceived that the State Department was exercising a veto over claims from certain countries.

form of relief from deportation like EVD.²⁶ The DED was extended until December 1994 so that the ABC claimants could be phased into the asylum system.²⁷

Guatemalans

Conditions in Guatemala during the 1980s²⁸

While Guatemala has a Gross National Product (GNP) that makes it one of the wealthiest nations in Central America, its income distribution is highly skewed. During the 1980s it had one of the lowest wage levels in Latin America. The disparities in wealth helped fuel the insurgency which began in the 1960s. Almost half of Guatemala's population is indigenous, yet, the Hispanic elite has traditionally dominated. Although Spanish is the official language, there are about 20 indigenous languages spoken as well. About 54% of the population is illiterate.

Guatemala had a long tradition of authoritarian rule, and its record of human rights abuses swelled in the late 1970s. When Congress, as it had done to El Salvador, conditioned the receipt of military aid on improved human rights conditions, the Guatemalan military opted to not seek U.S. aid. In 1982, General Efraim Rios Montt led a coup and stepped up efforts to quell the leftist insurgency. Rios Montt appeared to succeed in combating the insurgency, but reports of human rights atrocities increased. Economic and social problems prompted another coup in 1983, this time placing General Omar Mejia Victores in power.

Mejia seemed willing to relinquish the role of governing to civilians given the military's lack of success with social and economic policy, and a constitutional assembly was elected in 1984. In 1985, presidential and legislative elections were held, and a Christian Democrat was elected President on a reform platform. Prior to the inauguration of President Vinicio Cerezo, the out-going military government declared an amnesty that barred prosecution of military personnel for human rights violations and death squad activities. The military continued to treat the leftist guerrillas as armed subversives rather than belligerents in a civil war. Although it appeared that most people in Guatemala supported the broadening of political freedoms and the move toward democracy under Cerezo, the extreme right attempted a coup against him in 1988. Despite the failure of the coup, military repression

²⁶President Bush had previously given DED to Chinese students in the U.S. during the Tiananmen Square demonstrations and crackdown. Among other things, DED differs from TPS in that it does not require a determination that conditions are unsafe in the home country and it did not (at that time) bar aliens from receiving public assistance if they were otherwise eligible.

²⁷INS extended the employment authorizations for the Salvadorans in the ABC class and encouraged all of them to apply for asylum by January 31, 1996.

²⁸CRS Report 88-586 F, *Guatemala: Country Background Report*, by Maureen Taft-Morales; *CRS Review*, Guatemala: Development of Democracy and U.S. Influence, by Maureen Taft-Morales, Feb. 1989; and CRS Report 91-183, *Latin America: An Overview of U.S. Policy Challenges in 1991*, by Nina M. Serafino, K. Larry Storrs, and Maureen Taft-Morales.

seemed to increase as did rightist paramilitary group activity. Both the left and the right were blamed for reported escalations in kidnapping, torture and murder in the late 1980s.

The United States supported the Cerezo government, resuming military aid when he took office. This aid was consistent with U.S. policy to help combat communist-backed insurgencies throughout the region. In December 1990, however, the Bush Administration suspended military aid over human rights concerns, notably the implications that Guatemalan security forces were involved in the murder of U.S. citizen Michael Devine.

Estimated Numbers of Guatemalan Migrants

According to the 1990 Census of Population, there were 225,739 persons residing in the U.S. who reported that they had been born in Guatemala. Only 17% indicated that they had become U.S. citizens. About 68% of these Guatemalan-born residents reported that they had come after 1980 (**Figure 4**). Data on legal immigration

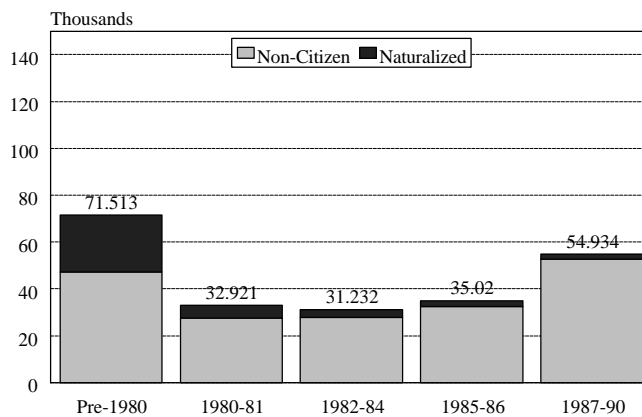
from INS indicates that 87,939 Guatemalans immigrated from FY1981 through FY1990; however, about 50,000 adjusted status as a result of IRCA (documenting that they had been residing illegally in the U.S. prior to 1982). The 1990 Census of Households reported that 154,226 Guatemalans migrated to the United States during that period.

As with the Nicaraguans and Salvadorans, it is reasonable to assume that many of the Guatemalans who migrated during the 1980s came outside of the legal immigration system, and thus are “illegal aliens.” And as the Nicaraguans and Salvadorans, they also may be considered asylum seekers. From FY1981 through mid-FY1991, there were 41,942 Guatemalans who applied for asylum with INS.

Policy Response to Guatemalan Asylum Seekers

Guatemalan asylum seekers were treated much like the Salvadorans during the 1980s, though the Salvadorans received greater public attention. The Guatemalan asylum approval rates were quite low — some years under 2% — and averaged lower than the Salvadorans over the course of the decade. The number of Guatemalans deported rose steadily from 549 in FY1981 to 3,454 in FY1989 and totaled 14,346 for the entire period.

Figure 4. Guatemalan-Born Residents of the United States in 1990 by Period of Arrival



CRS presentation of data from U.S. Bureau of Census, 1990 Census of Population (CP-3-1).

The sanctuary movement soon embraced the Guatemalans as well as the Salvadorans, and — as discussed above — the Guatemalans were part of the *ABC* class action case. INS reports that about 50,000 Guatemalans have filed new asylum cases as a result of the *ABC* settlement.

Legislative Issues

Policy Questions

The particular circumstances of the Nicaraguans, Salvadorans, and Guatemalans and the complex immigration situation in which they are caught raises a series of policy questions. The following discussion considers the major questions arising in this debate, but is not meant to be exhaustive.

Should the 4,000-person annual limit on cancellation of removals be waived or raised to accommodate the Central Americans? Those who favor lifting the 4,000 limit point out that it was exceeded last year prior to the new law and, thus, maintain that cap is unrealistic.²⁹ They also argue that it arbitrarily restricts the discretionary authority of the Attorney General to grant relief to people who meet the terms of the law.

Supporters of the cap say that it is realistic, given the tighter standards for cancellation of removal. They also point out the annual number of suspensions of deportation granted was once much lower, only recently soaring into the thousands. They support the current threshold and numerical limits because they do not want the provision to be a vehicle for granting permanent legal status to large classes of foreign nationals. Rather, they view the Central American issue as a matter to be addressed within the context of legal immigration reform.

Does the special situation of Central American asylum seekers warrant legislation “legalizing” their immigration status? Some have argued that special legislation making the Central Americans legal permanent residents is the most efficient and fair solution. They cite past precedents of special provisions for Hungarians, Cubans, Poles, Ethiopians, Ugandans, and Chinese who fled to the United States and were subsequently given legal permanent residence by acts of Congress. Some argue further that U.S. foreign policy during the 1980s indirectly spawned the outpouring of asylum seekers and that the United States, thus, has a moral obligation to these displaced people. They contend that U.S. policy encouraged them to remain here and establish roots in their communities.

Opponents of such legislation argue that the public does not support another “legalization” program like the 1986 Immigration Reform and Control Act (IRCA)

²⁹Over the years, the annual number of suspensions of deportations have ranged from lows of 17 in FY1980, 8 in FY1983, and 17 in FY1985. The numbers rose to 413 in FY1986 and then jumped to 2,441 in FY1987 and 3,772 in FY1988. Though the numbers went down in the early 1990s (889 in FY1990 and 782 in FY1991), they went back up again, hitting 3,168 in FY1995 and peaking at 5,812 in FY1996.

created and that doing so would not be in the national interest. They state that temporary relief from deportation should remain **temporary**, noting that when Congress established the TPS provisions in the 1990 Immigration Act, it required a supra-majority vote of the Senate to adjust beneficiaries to legal permanent residents because it only should occur in the most exceptional situations when there was a broad base of support to do so. They maintain that U.S. efforts to support democracy in this hemisphere does not guarantee a permanent home in the United States to foreign nationals fleeing civil strife that may result from the struggle for democracy.

Should Congress enact legislation to “grandfather” the Central Americans under the old suspension of deportation provisions? Advocates for the Central Americans say “yes,” arguing that it is the fair way to treat people who were already in immigration proceedings when the new provision was enacted. They assert that U.S. government officials and immigration lawyers already informed them of the suspension of deportation option if they were denied asylum. The rules, they assert, should not be retroactively applied to people, especially those who can demonstrate “deep roots” in the community and extreme hardship to their families if deported.

Proponents of the current law say that the suspension of deportation provision were changed for just this type of reason — to prevent from being used to provide blanket relief to large groups of aliens. Since Congress certainly has the prerogative to revise laws, there is no reason, they maintain, not to apply the new standards to those who had not yet received suspension of deportation. They argue that exempting the Central Americans from the new, more restrictive provisions might well result in *de facto* amnesty for them.

Legislation³⁰

The Clinton Administration favored the option to “grandfather” the Central American asylum seekers under the previous law. The legislative initiative proposed by Attorney General Reno, the “Immigration Reform Transition Act of 1997,” would: have 1) applied the standards of suspension of deportation in effect prior to IIRIRA to those applicants who were in the “administrative pipeline” before April 1, 1997; 2) clarified that the provision in IIRIRA requiring that an applicant for suspension of deportation meet the 10-year physical presence rule only applies to cases filed after April 1, 1997;³¹ 3) applied the 4,000-person annual cap only to cases filed after April 1, 1997; and 4) enabled the ABC class aliens to apply for suspension of deportation under the pre-IIRIRA rules. This legislation was introduced as S. 1076 by Senators Connie Mack, Bob Graham, and Ted Kennedy.

Attorney General Reno asserted that the legislation would not constitute an amnesty program for thousands of illegal aliens and maintained that each alien would

³⁰For further discussion and legal analysis, see: CRS Report 97-911, *Suspension of Deportation: Tighter Standards and Their Application to Central Americans and Other Long-Term Residents*, by Larry M. Eig.

³¹This is commonly referred to as the “stop-time” provision. For more information, see: CRS Report 97-702, *Suspension of Deportation: Effect of § 309(c)(5) of IIRIRA on Pending Deportation Cases*, by Larry M. Eig and Andre O. Mander.

still have to appear before an immigration judge and prove that they are eligible for suspension. The chair of the House Committee on the Judiciary Subcommittee on Immigration and Claims, Representative Lamar Smith, reportedly was skeptical of these assurances, positing that the Clinton Administration's proposal bore the "strong influence of foreign governments" on the Administration.³²

Senator Mack initially offered language drawn from S. 1076 as an amendment (No. 1253) to the bill appropriating funds to the District of Columbia (S. 1156) on September 25, and the amendment passed by a vote of 99 to 1 on October 7, 1997. The Mack amendment would have extended coverage to members of the following classes: Salvadorans who entered on or before September 19, 1990 and registered for benefits under *ABC* or sought Temporary Protected Status (TPS) on or before October 31, 1991; and, Guatemalans who entered on or before October 1, 1990, who registered for benefits under *ABC* on or before December 31, 1991; and those Nicaraguans, Salvadorans, or Guatemalans who filed an asylum application prior to April 1, 1990 and whose case had not been granted, denied or referred as of April 1, 1997. Additionally, the original Mack amendment would have included the spouses and unmarried sons or daughters of the protected Salvadorans and Guatemalans, so long as the Salvadoran family members entered the United States on or before September 19, 1990 and the Guatemalan family members entered the United States on or before October 1, 1990. Grants of relief to these aliens would have been exempt from the annual cap 4,000.

In terms of relief granted, the original Mack amendment would have applied almost all of the "suspension of deportation" standards — as opposed to IIRIRA's more restrictive "cancellation of removal" standards — to hardship applications filed by the protected class of Central Americans specified above. While the original Mack amendment expressly excepted those specified Central Americans from IIRIRA's "stop-time" rules, it was silent on whether IIRIRA's "stop-time" rules apply in pre-IIRIRA deportation cases of other aliens (e.g., Mexicans, Haitians).

In the House, Representative Lincoln Diaz-Balart introduced legislation, the "Immigration Technical Revisions Act of 1997" (H.R. 2302) that was comparable but not identical to the Administration's proposal. H.R. 2302, like the Mack amendment, did not strike the paragraph in IIRIRA that states that the accumulation of time "shall apply to notices to appear issued before, on, or after" the date of enactment (September 30, 1996), commonly referred to as the "stop-time" provision. As a result, some question whether H.R. 2302 would have resolved the confusion over whether the provision in IIRIRA requiring that an applicant for suspension of deportation meet the physical presence rule only applies to cases filed after April 1, 1997. Representative Carrie Meek introduced H.R. 2442 which was identical to H.R. 2302 except that it also included Haitians who applied for asylum prior to October 15, 1994, or who were paroled into the United States prior to October 15, 1994. Representative Luis Gutierrez, a co-sponsor of H.R. 2302, also introduced legislation (H.R. 1545) that would eliminate the annual 4,000-person numerical limit on cancellations of removal.

³²*Interpreter Releases*, v. 74, n. 3, August 11, 1997.

Representative Lamar Smith introduced legislation (H.R. 2533) that would have been more narrow in its relief. The Smith bill would have clarified the confusion over when the provision in IIRIRA requiring that an applicant for suspension of deportation meet the 10-year physical presence rule by applying the rule to all cases pending before IIRIRA's effective date of April 1, 1997 — with some exceptions. In other words, the Smith bill would not have broadly “grandfathered” aliens with cases pending under the old law; rather, it would have applied the stricter hardship standards and 10-year physical presence rule to aliens in the pipeline. The notable exceptions (if the aliens have not been apprehended trying to enter the United States illegally after December 12, 1990) were for members of the following classes: Salvadorans who entered on or before September 20, 1990 and registered for benefits under *ABC* or sought TPS on or before October 31, 1991, and applied for asylum on or before February 16, 1996; Guatemalans who entered on or before October 1, 1990, who registered for benefits under *ABC* on or before December 31, 1991, and applied for asylum before January 3, 1995; and, Nicaraguans who first entered the United States on or before April 1, 1990. For these classes of aliens, H.R. 2533 would have deemed that physical presence would have terminated on April 1, 1997. In contrast to the original Mack amendment, H.R. 2533 included among its “protected class” a broader group of Nicaraguans, but a more limited group of Salvadorans and Guatemalans. The Smith bill, furthermore, would have allowed the 4,000 numerical limit to be exceeded by 10,000 annually to accommodate the Central Americans.³³

Compromise language entitled the “Nicaraguan Adjustment and Central American Relief Act” was included in the District of Columbia appropriations law, H.R. 2607 as passed and which was signed by President Clinton on November 19, 1997.³⁴ The compromise, which was crafted by several of the key sponsors of the earlier proposals (reportedly including Diaz-Balart, Mack, and Smith) has several key features. Foremost, it enables Nicaraguans and Cubans physically present in the U.S. since 1995 to adjust to permanent resident status, a much more generous provision than in earlier proposals. Secondly, it does not apply the stricter hardship standards and the 10-year physical presence rule of the 1996 Act to the *ABC* class of Salvadorans and Guatemalans, much like the earlier proposals. It also does not apply these post-1996 rules to nationals of the former Soviet Union and Eastern Bloc countries who arrived in the United States by December 31, 1990 and who applied

³³The 10,000 additionally allotted for grants of relief from deportation would be taken from the subsequent year's visas allocated for unskilled legal immigrants. For an explanation of the unskilled visa category, see: CRS Report 95-1210, *Immigrant Skills: Trends and Policy Issues*, by Ruth Ellen Wasem and Linda Levine; and CRS Report 94-146, *Immigration: Numerical Limits on Permanent Admissions*, by Joyce C. Viallet and Molly R. Forman.

³⁴H.R. 2607 passed the House on October 9, 1997, without any provisions for the Central Americans. H.R. 2607 then passed the Senate on November 9, 1997 with the compromise language. The rule on the legislation, H.Res. 324, passed the House on November 12, 1997, though Congresswoman Meek opposed the rule on the floor because the Haitians were not included. The bill was cleared for the White House November 13, and President Clinton signed it on November 19, 1997 (P.L. 105-100).

for asylum by December 31, 1991.³⁵ Spouses and minor children of the eligible aliens are also covered by these benefits.

Although the Nicaraguan and Cubans adjustments will not be offset by a reduction in legal immigration visas, the adjustments resulting from successful cancellation of removal appeals of Salvadorans, Guatemalans, and nationals of the former Soviet Union and Eastern Bloc countries will be offset by temporary annual reductions of 5,000 each from the diversity visa program and the other worker (unskilled) preference category, according to formulae specified in the Act.³⁶

The compromise language in H.R. 2607, however, sparked new controversies. The agreement to move up the arrival date of Nicaraguans to December 1, 1995, and to add Cubans (not already eligible to become legal permanent residents through the Cuban Adjustment Act of 1996) led those sympathetic to the Haitians paroled into the United States in the early 1990s after the 1991 coup to seek inclusion of the Haitians as well. President Bill Clinton sent a letter to House Speaker Newt Gingrich on November 4, 1997, urging that the Haitians be treated similarly to the Central Americans. Efforts to add such language to H.R. 2607 were unsuccessful. In addition, supporters of the ABC class are critical of the differential treatment the Act affords the Nicaraguans and Cubans in contrast to the Salvadorans and Guatemalans. While some are now arguing for the Haitians, Salvadorans, Guatemalans, and Eastern Bloc asylum seekers to be eligible for the same benefits as the Nicaraguans and Cubans, others are criticizing the agreement as a legalization program that back slides from the reforms made by the 1996 immigration act.

³⁵The language specifies nationals of the Soviet Union, Russia, any republic of the former Soviet Union, Latvia, Estonia, Lithuania, Poland, Czechoslovakia, Romania, Hungary, Bulgaria, Albania, East Germany, Yugoslavia, or any state of the former Yugoslavia.

³⁶Currently, there are 55,000 visas annually allotted to the diversity program and 10,000 annually allotted to the other worker preference category. For more information about these legal immigrant admission categories, see CRS Report 94-146, *Immigration: Numerical Limits on Permanent Admissions*, by Joyce C. Vialet and Molly R. Forman, June 25, 1997.