Central Americans in America: Arguments for Policy Adjustment

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Introduction

The U.S. prides itself as a nation of immigrants. It is a country built by immigrants. Its identity is shaped by immigrants. It is a beacon of hope for immigrants. These statements all help to comprise the “myth” (Johnson 2004) of U.S. national identity as a nation constructed from its immigrant roots, a myth that is commonly employed to represent its outstretched humanitarian arm. Yet the U.S.’s historical treatment of immigrants has failed to accurately portray this myth (Smith 1995). Many nationalities have been targeted under highly restrictive policies, from the Chinese and Japanese during the mid-nineteenth and twentieth centuries, to Jews, Italian, and other southern Europeans during the first half of the twentieth century (Ong Hing 2004). Numerous cases evidence how discrimination towards targeted immigrant groups is reflected in immigration policies. As a result, the U.S. often fails to welcome “your tired, your poor, your huddled masses yearning to be free, the wretched refuse of your teeming shore” as inscribed upon its symbolic Statue of Liberty, the epitomized figure of immigrant hope.

U.S. immigration policy is a highly complex, convoluted, and interwoven web of policies. It addresses the needs of immigrants, non-immigrants, refugees, and asylum-seekers\(^1\), as well as factor into how these individuals are integrated into American society. Different immigration policies are formulated for and affect different categories of immigrants. However, the inherent complexity of immigration in the U.S. often results in the cross- or misapplication of policies. Sometimes policies overlap and address several categories of immigrants, despite the

\(^1\) It is important to note the distinction between the four categories of immigrants. Refugees or asylees are essentially forced migrants who enter the U.S. seeking humanitarian relief, though “humanitarian relief” is a contested term, as will be discussed later in this paper. Refugees apply for refugee status from within their home country before entering the U.S.; asylum-seekers are already present in the U.S. when they apply for asylum. Immigrants are those who enter the U.S. seeking semi-permanent or permanent relocation based on non-humanitarian motives, such as seeking increased work or economic opportunities. Non-immigrants are foreign nationals who enter the U.S. for temporary stays, including such reasons as tourism, study, and business travel (Wasem & Ester 2011). For the sake of this paper, the term “immigrant(s)” will be used to signify any one of these categories of entrants, rather than the specific “immigrant” category just defined, unless otherwise noted.
varying needs of each group; sometimes policies outside of immigration policy affect the
incorporation of these entrants into the U.S.; and sometimes immigrants are labeled, mislabeled,
or categorized differently depending on a variety of factors, thus entailing which policy or
policies are employed for an individual. This convoluted mix of policies and categories of
immigrants creates a highly complex and complicated system that attempts to balance the needs
of immigrants with the needs of the U.S., a sovereign state with the right to control its borders in
the political, economic, and sociological interests of its people (Ong Hing 2004). Unfortunately,
sometimes the end result fails to address the needs of immigrants, the U.S., or both (Martin et al.
1998).

This paper will examine the immigration and refugee policies applied to Central
American nationals from the 1980s, marking the initial surge of migrants from this region to the
U.S., to the present. By examining the contextual circumstances of these immigrants under the
Refugee Act of 1980, Temporary Protected Status (TPS), the Illegal Immigrant Reform and
Immigrant Responsibility Act (IIRIRA), and the Nicaraguan Adjustment and Central American
Relief Act (NACARA), one can see how U.S. political considerations have repeatedly
outweighed the humanitarian needs of this population. Through continuously discriminatory
policies and practices, Central American immigrants have been forced to live as a marginalized
population in the U.S., often without documentation and thus subject to economic, occupational,
health-related, and psychological vulnerabilities. Here is but one population adversely affected
by the current broken immigration system. By re-analyzing the balance of the components and
needs that impact these schizophrenic immigration policies, the U.S. can take its first step
towards effective immigration reform.
Historical Background

The 1980s witnessed an unprecedented surge of immigrants from Central America to the U.S. Guatemalans and Salvadorans, in the midst of civil war, fled to the U.S. Nicaraguans, enduring intense domestic conflict due to the leftist Sandinista revolution, also began to emigrate in mass numbers (Gzesh 2006, Mahler & Ugrina 2006). This surge in numbers is evident in Table 1, depicting a trend of entries into the U.S. that almost tripled during the 1980s.

<table>
<thead>
<tr>
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<tr>
<td>El Salvador</td>
<td>119,145</td>
<td>369,615</td>
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<tr>
<td>Guatemala</td>
<td>72,835</td>
<td>171,000</td>
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<tr>
<td>Nicaragua</td>
<td>42,460</td>
<td>116,275</td>
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This initial spike in migration trends marked the beginning of an ongoing flow of migrants from these three countries (Mahler & Ugrina 2006). As of 2009, El Salvador and Guatemala respectively represented the 6th- and 10th-largest foreign-born nationalities residing in the U.S., ranking just below the Indian and Chinese populations, and alongside the Cuban population (MPI Data Hub, accessed Nov 22, 2011). The fact that these two nationalities, representing two relatively small populous states, comprise significant communities in the U.S. just slightly smaller than those from India and China (the two most populous states in the world) and similar to that of Cuba (one of the most influential immigrant communities in the U.S.) demonstrates the need for the U.S. to be cogniscent of their incorporation into American society. Relevant immigration policy is one major avenue of ensuring positive incorporation.

However, such policy was not utilized in incorporating the majority of Central American migrants during the 1980s. Many immigrants from Guatemala, El Salvador, and Nicaragua
unlawfully entered the U.S. and applied for asylum, expecting to be protected under the Refugee Act of 1980. Conversely, the U.S. utilized these applications for asylum not as a demonstration of its humanitarian outreach but rather as a tool of foreign diplomacy during the Cold War (McBride 1999, Coffino 2006, Davy 2006, Gzesh 2006, Mahler & Ugrina 2006, Smith 2006, Salehyan & Rosenblum 2008). Because the U.S. backed the conservative governments of Guatemala and El Salvador, it denied the majority of asylum applications from nationals of these two countries. The U.S. labeled these immigrants “economic migrants”, stating that their claim to enter the U.S. was economically motivated rather than political (Hamilton & Chinchilla 1991, Smith 2006). Between 1984-1990, the U.S. approved a dismally low amount of asylum applications from Guatemalans and Salvadorans, hovering around 3% annually (Davy 2006, Gzesh 2006, Segerblom 2007). Due to the fact that the majority of Salvadorans and Guatemalans had entered the U.S. unlawfully, coupled with the denial of their asylum claims, they were left to reside in the U.S. as undocumented immigrants, or under the more politically salient label “illegal aliens”, thus subjecting them to deportation and removal proceedings.

Conversely, the Nicaraguan migrant population was subject to a considerably more favorable disposition for asylum claims due to U.S. foreign policy objectives in Nicaragua. Because the U.S. was seeking to overthrow the leftist Sandinista regime in power at the time, asylum seekers from Nicaragua were blatantly favored over those from Guatemala and El Salvador; an estimated 25-50% of Nicaraguan asylum applications were approved during the 1980s (Davy 2006, Gzesh 2006).

The U.S. was able to politicize these claims for asylum in part due to the terminology of refugee law. In order for individuals to claim asylum or refugee status, they must demonstrate their “well-founded fear of persecution in their own countries and that their race, religion,
nationality, political opinion, or membership in a particular social group is at least one central reason for the threatened persecution” (Ramji-Nogales, Schoenholtz, & Schrag 2009:11). This “well-founded fear” is difficult for persons feeling civil war or domestic conflict to evidence, though the perceived intrusion of their personal safety is generally understood. However, the malleability of refugee law is what allowed U.S. foreign policy concerns to trump the humanitarian concerns of Central American migrants; Nicaraguans coincidentally benefitted from this power trump, whereas Guatemalans and Salvadoreans got caught in the crossfire.

Left to survive as undocumented immigrants, the large number of Guatemalans and Salvadoreans signified a population subject to deportation. However, the government of El Salvador pleaded with the U.S. to not deport the undocumented Salvadoran population, stating that the sudden repatriation of such a large number of citizens would further disrupt and destabilize its shaky economy and political system (Weitzhandler 1993, Anchors 2007). This came alongside criticism from the United Nations High Commissioner for Refugees (UNHCR) towards the U.S. for employing such high politicization of refugee law, as well as U.S. lobbying groups pushing for fair treatment of refugees whose asylum claims were denied (Salehyan & Rosenblum 2008). Resultantly, as part of the Immigration Act of 1990, Congress enacted the first Temporary Protected Status for Salvadoran migrants.

**Temporary Protected Status (TPS)**

*The Basics*

TPS is an immigration measure designed to protect individuals of a particular nationality from being deported or forcibly removed from the U.S.:

“The Secretary of Homeland Security may designate a foreign country for TPS due to conditions in the country that temporarily prevent the country’s nationals...
from returning safely, or in certain circumstances, where the country is unable to handle the return of its nationals adequately” (USCIS, accessed November 21, 2011).

This is the definition of TPS according to the U.S. Citizenship and Immigration Services (USCIS, formerly INS – Immigration and Naturalization Services) as of 2011. The only difference between the current definition and the definition stated at its inception in 1990 lies in the designator; previously, the Attorney General was the sole individual who could designate a foreign country for TPS. Once the Department of Homeland Security was formed in 2002, the responsibility of deeming a country eligible for TPS switched hands from the Attorney General to the Secretary of Homeland Security.

Thus, one important distinction between TPS and refugee law is that blanket protection is potentially offered to all nationals of a particular country, rather than on an individual, case-by-case basis where the subject must prove his claim for asylum.

“Temporary Protected Status (TPS) is the statutory embodiment of safe haven for those aliens who may not meet the legal definition of refugee but are nonetheless fleeing—or reluctant to return to—potentially dangerous situations. TPS is blanket relief that may be granted under the following conditions: there is ongoing armed conflict posing serious threat to personal safety; a foreign state requests TPS because it temporarily cannot handle the return of nationals due to environmental disaster; or there are extraordinary and temporary conditions in a foreign state that prevent aliens from returning, provided that granting TPS is consistent with U.S. national interests” (Wasem & Ester 2011:2).

TPS provides a means for protection for those who are otherwise not explicitly included in refugee law, such as persons fleeing their country of origin due to civil or armed conflict as well as natural disasters. The original enactment of TPS in 1990 thus gave Salvadorans an outlet to protect themselves from deportation, as the logic for granting TPS was due to the ongoing civil war in El Salvador (Weitzhandler 1993).

The benefits administered under TPS are somewhat minimal. Persons deemed eligible
under TPS are, as already mentioned, protected from deportation or forced removal. They are also typically granted work authorization (Employment Authorization Documents, or EADs). However, despite paying federal and state taxes as well as Social Security, as their EADs permit and require, immigrants under TPS are not eligible for public benefits, such as Social Security payments or Supplemental Security Income (Segerblom 2007). TPS also does not grant the individual permission to travel outside the U.S. While the individual may apply for travel documents separately, there is no guarantee that they will be granted. As a result, an individual protected under TPS is typically forced to remain in the United States.

Furthermore, TPS is exactly what it claims to be – temporary. Once a country is deemed eligible for TPS, the nationals of that country are only designated to receive TPS for a period of 6-18 months as deemed by the Secretary of Homeland Security. Within 60 days of the expiration date, the Secretary of Homeland Security may opt to renew a country’s status. If TPS is renewed, then it will again protect eligible nationals for another 6-18 month period, after which it may be continually renewed. If TPS is not renewed, then the nationals previously covered under TPS return to the legal status that they held before being granted TPS. Given that most TPS-eligible individuals were typically undocumented immigrants prior to receiving TPS, termination of this status again leaves them as undocumented immigrants, vulnerable to deportation proceedings and unauthorized to work in the U.S. TPS, unlike refugee or asylum status, does not provide a direct path to change in residency status and typically does not result in an individual being granted legal permanent residency (Coffino 2006, Holmes 2008, Wasem & Ester 2011).

Finally, TPS, while seemingly providing blanket protection to nationals of a particular country, only provides this protection to a point. TPS protects only a portion of the nationals of
eligible countries, most notably those who entered the U.S. prior to a specific cutoff date as determined by the Secretary of Homeland Security. The individual consequently must register for TPS, exhibiting his eligibility through a set of requirements. The individual must prove that he/she:

“1. is a national of the designated country;
2. has been continuously physically present in the United States since the effective date of the most recent designation;
3. has continuously resided in the United States since such date as the AG may designate;
4. the alien is admissible as an alien except for grounds not applicable or waivable including:
   a. has not been convicted of a felony or of two or misdemeanors committed in the United States
   b. is not an alien as described in INA 243(h)(2), relating to aliens involved in persecution of others or aliens who pose national security risk; and
5. timely registers for TPS” (Seltzer 1992:789).

The individual must also pay an application fee in order to register for TPS. Additionally, if an individual does not qualify for TPS or if a country’s TPS is terminated, any information provided with his application may be used as evidence necessary for his deportation or forced removal (Wasem & Ester 2011).

Summarily speaking, the basic statutes of TPS alone provide a number of caveats to its humanitarian objective. The next section will further analyze some of the drawbacks in the designation process, applicability, and personal implications of TPS and how these points impinge on the humanitarian purpose it seeks to serve.

*Humanitarian Flaws of the TPS Statute*

As Anchors (2007) demonstrates, it is quite plausible that TPS was formulated to serve a humanitarian purpose. It is intended to provide a complementary approach to refugee law, granting protection to individuals otherwise deemed ineligible for asylum (Martin et al. 1998, Wasem & Ester 2011). However, TPS still falls under the premise of U.S. immigration law
rather than international human rights law (Havard 2007), and as such, must incorporate the political, economic, and sociological needs of the U.S. in formulating immigration policies. Sometimes these policies are too heavily weighted in the needs of the U.S. rather than the humanitarian needs of immigrants, and the humanitarian aspects of such policies are consequently swept aside. The following attributes demonstrate how such an effect has been waged on TPS.

1. **Implementation and Designation**

From its initial enactment, TPS has provided less than optimal humanitarian relief. TPS was formulated to protect undocumented Salvadoran immigrants residing in the U.S. who were deemed unable to safely return to El Salvador due to civil war. At the same time, a similarly large number of undocumented Guatemalans were also residing in the U.S., also fleeing domestic conflict in Guatemala, yet these nationals were not granted TPS. This blatant discrepancy in designation prompts the question of why some countries are deemed eligible and others not.

The arbitrary nature of TPS designation is perhaps its most highly critiqued flaw (Martin et al. 1998, Segerblom 2007, Anchors 2007). Because TPS is designated by one individual, the Secretary of Homeland Security (previously the Attorney General), there is little transparency in the logic behind why one country is deemed eligible and another not, or why a country’s status may be renewed or allowed to expire (Anchors 2007). The Secretary of Homeland Security may consult with other heads of state, notably the Secretary of State, but this is not a requirement in designating a country’s status. Once the Secretary makes his/her decision, he is not required to provide a reason for his decision, nor is his decision subject to judicial review (Freeman & Birrell 2001, Anchors 2007).
Thus, many countries have subsequently applied for TPS; some have been granted, others have not. In totality, 17 countries have been granted TPS at one time or another. The majority of TPS recipients lie outside of the Western Hemisphere, with the exceptions of Montserrat, El Salvador, Nicaragua, Honduras, and Haiti. This is evident of the concern for geographic proximity in TPS designation and the “magnet effect” (Martin et al. 1998), a concern stemming from the notion that granting blanket protection to the nationals of a country will prompt further migration from the source country. Indeed, those countries in the Western Hemisphere with TPS have only been deemed eligible due to catastrophic natural disasters. El Salvador’s TPS designation was revived in 2001 following a major earthquake; Nicaragua and Honduras were granted TPS following Hurricane Mitch (Harris 1993, Anchors 2007).

On the other hand there is Guatemala, which, though suffering from similar natural disasters such as Hurricane Mitch and Hurricane Stan, volcanic eruptions, earthquakes, landslides, and flooding, has not been granted TPS. The strength of these natural disasters, though repeated and numerous, have been relatively smaller, less dramatic, and impacted a lesser number of people than those affecting the other countries in the Western Hemisphere. There also exists the argument that the effects of these disasters have been chronically underreported, deeming them “neglected crises” (International Federation of Red Cross and Red Crescent Societies 2006). There is no specific requirement in TPS legislation as to how pervasive or damaging a natural disaster need be in order to grant TPS. This begs the question of what catastrophic event must occur in already impoverished Guatemala in order for the U.S. to deem it eligible for TPS.

Though Guatemala has never been eligible for TPS under environmental conditions, then surely the presence of civil war should have met the necessary TPS criteria. “Guatemala has been
called the worst violator of human rights in the Western Hemisphere” (Harris 1993:291).

Though this statement is perhaps more pertinent to the chronological context of the early 1990s when Guatemala was in the throes of civil war, it still begs the question as to why Salvadorans were granted TPS in 1990 and Guatemalans, though enduring similar domestic instability, were not. Unfortunately, the literature gives little insight into why this is, again noting the arbitrariness of and lack of transparency in TPS designation (Anchors 2007). Perhaps the reasoning lies in foreign pressures, or lack thereof; one of the main reasons cited for granting TPS to El Salvador in 1990 was due to the pleas of the Salvadoran government due to its inability to repatriate hundreds of thousands of citizens in a tumultuous political economy (Weitzhandler 1993, Anchors 2007). There is no similar mention of the Guatemalan government pleading the same case. This again ties TPS, similar to the politicization of refugee law during the 1980s, to domestic politics and foreign policy objectives. Such an outcome is really of no surprise: “foreign policy and politics play an important role when an entire nationality is determined to be eligible for temporary protection” (Martin et al. 1998:569). This discrepancy in designation alone alludes to TPS as a political tool, counter-intuitive of the humanitarian function originally sought.

2. Logistics of Applicability

Even after a country is designated for TPS, some serious obstacles exist in making this statute applicable to its intended population. The most obvious hurdle lies in the established date mandated by the Secretary of Homeland Security. As previously mentioned, the U.S. is concerned that by providing blanket protection for nationals of a particular country, such protection will create a “magnet effect” prompting further (unwanted) migration from the source country. One of the U.S.’s methods of deterring this, aside from heavily weighing geographical
considerations, is by establishing a cutoff date by which an individual from the designated country must have entered the U.S. Establishing a cutoff date thus solidifies a certain number of persons eligible for TPS and nullifies protection for any national of a designated country entering the U.S. after said date.

This measure is strictly prompted by U.S. concerns for immigration and numbers control and has little concern for humanitarian relief. If one of the logistics behind TPS is to provide relief for nationals of a designated country, then establishing a cutoff date – which is often arbitrarily set and chronologically irrelevant – may actually hinder the humanitarian relief it seeks to give (Yakoob 1999). Consider the case of El Salvador, for example. TPS was designated in 1990 as a measure to provide relief to Salvadoran nationals fleeing civil war. Any Salvadoran individual wishing to apply for TPS needed to establish proof of his residency in the U.S. prior to September 30, 1990 (Seltzer 1992). Anyone who entered the U.S. after this date was ineligible for TPS. Yet the civil war in El Salvador did not officially end until 1992, and so, as expected, immigration from El Salvador was still ongoing as of the TPS deadline. Thus, such an arbitrary cutoff date essentially negated relief to individuals simply based on their date of entry though they were fleeing the exact same cause (Frelick & Kohnen 1995, McBride 1999).

In recognizing the undocumented status of many individuals eligible for TPS, this also highlights one of the obstacles in establishing TPS eligibility for those individuals – proof of residency. As stipulated by the requirements necessary for an individual to be granted TPS, he must prove a continuous, established residency in the U.S. (Seltzer 1992). Yet, without proper documents and the lawful right to be in the country, providing the necessary paper trail becomes an arduous, if not impossible, task. This requirement turned many otherwise eligible individuals ineligible for TPS during the initial enactment for Salvadorans (Coffino 2006), as well as targets
for harassment and discriminatory enforcement measures (Self 1993).

Several other implications deter individuals from registering for TPS or deny status to seemingly eligible recipients. The complex legal lingo of TPS requirements, benefits, and statutes is difficult to read and fully understand, often times prompting the individual to hire an attorney (Segerblom 2007). This can be disproportionately costly and thus inaccessible to the individual, who may be economically vulnerable. If the individual is unable to hire an attorney, he may register incorrectly and not be granted TPS, or may not even register at all. The initial enactment of TPS for El Salvador in 1990 was noted to have been poorly publicized and not available in Spanish, making knowledge of its existence amongst the targeted beneficiaries somewhat obsolete (Weitzhandler 1993). This has since been rectified, and announcement of TPS must be made in the language of the designated country (Segerblom 2007). However, other factors, most notably the fact that information given in an individual’s application can be used to deport that individual, can and has effectively discouraged otherwise eligible individuals from applying for TPS.

Between arbitrary cutoff dates, logistical difficulties in applying, and the need to provide necessary evidence, it is arguable that TPS places noticeable hurdles for its designated recipients to jump. While TPS must balance the humanitarian needs of foreign nationals with the immigration needs of the U.S., these logistical obstacles again seem to place the political needs of the U.S. ahead of humanitarian concerns.

3. Personal Implications

The previous examples of political concern trumping humanitarian ones are very much drawn from the literature focusing on the aggregate or state level that depicts how humanitarianism may fall at the wayside. However, the literature focusing on the personal implications of neglected
humanitarianism in immigration policy is much more tangible. After all, humanitarian concerns are based on the needs and wellbeing of human beings as individuals.

The negative effects of TPS are perhaps most greatly felt by the affected individuals. As commonly asserted, “there is nothing as permanent as a temporary refugee” (Krikorian 1999). The “temporary” nature of these affected individuals needs to be re-examined (Segerblom 2007), as many of them 1) have already been living in the U.S. for a significant amount of time, 2) plan to continue residing in the U.S., and/or 3) are covered under a TPS designation that has been ongoing and continuously renewed for years on end. There is a very real need to stop perceiving these immigrants as a temporary population imposed on the otherwise permanent American demographic and start seeing them as a population that needs to be permanently incorporated into American society. Creating a viable immigration policy that realistically acknowledges this population – and not just those who entered the U.S. prior to a specific date, but all of them – and does not just continuously deem them “temporary” is the first step in overcoming this myth of temporality.

Overcoming this myth has very significant implications for the humanitarian concerns of individuals under TPS. As previously mentioned, recipients of TPS cannot leave the U.S. This stipulation often translates into the separation of families. Individuals in the U.S. granted TPS cannot return to their home country to visit loved ones, and often times loved ones in the home country do not have the economic or legal means to visit the individual in the U.S. When a country such as Honduras or Nicaragua has been granted continuously renewed TPS for a period going on 13 years, the individual recipients of TPS are subsequently separated from their families or loved ones. This is, ironically, contradictory to one of the main premises that Bush pushed in the Immigration Act of 1990 (under which TPS was first enacted) – to create a set of
immigration policies heavily favoring family reunification (Anchors 2007, Segerblom 2007). Furthermore, individuals protected under TPS, unlike U.S. citizens or legal permanent residents, are not eligible to apply for family members to join them in the U.S. (Holmes 2008). This is another extension of TPS legislature to limit the “magnet effect”, but further exacerbates the role of TPS in dividing families.

TPS also does not provide a direct path for change of residency status, so an individual is essentially stuck as a temporarily protected individual. This leaves him in, as Mountz et al. (2002) so perfectly phrased, a perpetual “in limbo” mentality. The individual is subject to continuous concern about his legal status once the current TPS period expires. If TPS is not renewed, then his legal status will return to what it was before TPS was designated for his nationality; if he was undocumented beforehand, he will be undocumented again, thus making him vulnerable to deportation and a plethora of other economic, political, and social realities. If TPS is renewed, he must again apply for status and EAD. A fee is incurred each time an individual applies for TPS, making it potentially costly, particularly if an attorney is involved. The individual must always wait for his documents to arrive in order to renew other documents, such as a driver’s license or vehicle registration, which in many states require an EAD or other proof of legal residency in the U.S. For an individual to be subject to this “in limbo” mentality year after year, often for years on end, out of concern for his legal status is psychologically exhausting. This should be a humanitarian concern for policy-makers to consider when deeming an immigrant population perpetually “temporary”.

The final point refers to the previously mentioned fact that TPS recipients, despite paying taxes and Social Security, are ineligible for public benefits. This fact is blatantly unfair, especially when considering that many of these “temporary” migrants have been working and
paying taxes for many years. As a part of the system that legally works and contributes to the system, these immigrants should also be eligible to receive similar benefits, particularly after paying into the system for so long (Segerblom 2007). This is simply a gross measure of the TPS statute, again demonstrating the U.S. outweighing its own economic concerns over the humanitarian concerns of the immigrant population.

All the points that have been raised out of concern for the individual are connected to the notion that these individuals should cease to be seen as a “temporary” population. Policies in several states in Europe provide an outlet for temporary migrants and refugees to change their status to permanent residents (Yakoob 1999); there is no reason that the U.S. is not capable of enacting a similar set of policies to effectively incorporate the same population within its own borders. Its failure to do so thus far has resultantly left a significant portion of the immigrant population in perpetual “liminal legality” (Menjívar 2006). This quasi-legal status denies them full access to economic, occupational, political, and personal opportunities. Essentially, the U.S. utilizes TPS as a sort of consolation prize for permanent residency – it provides marginal benefits for those who would otherwise be left undocumented. However, by relying too heavily on the TPS statute, the U.S. fails to effectively integrate a rather permanent immigrant population; it essentially uses band-aids to heal bullet wounds. This long-term use of policy application entices criticism of the discrimination that is reflected in immigration policy.

The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and Nicaraguan Adjustment and Central American Relief Act (NACARA)

1996 was a prominent year for Central American migrants. It marked the end of civil war in Guatemala. Peace treaties had been drafted and signed in Guatemala and El Salvador. The fact that peace was now established made it increasingly difficult for nationals fleeing these two
countries to claim the need for asylum in the U.S., despite the economic and political instabilities that still lingered. The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 exacerbated their difficulties in establishing residency within the U.S. IIRIRA grew out of the American public’s perception that the undocumented population was a burden on American society, substantially contributing to the crime rate and leaching on public systems such as welfare. IIRIRA made requirements and proof needed for establishing residency even stricter, making it more difficult for Salvadoran and Guatemalan nationals already within the U.S. to ground their claims for residency (Escobar 1999).

Such strict measures subsequently prompted criticism from immigrant advocacy groups, who petitioned Congress for reform (Coffino 2006). Also, the growing need to “remedy the administrative problems” (Holmes 2008:440) from a backlog of previous claims for asylum prompted a much-needed comprehensive reform to immigration policy. In 1997, President Clinton signed into law the Nicaraguan Adjustment and Central America Relief Act (NACARA). Though the general aim of this law was to provide legal permanent residency to certain groups of Central Americans, a measure of duality and exclusivity also applied (Holmes 2008). Certain groups were favored over others, and some nationalities were left out altogether.

NACARA addresses two main groups of nationalities. Section 202 includes Nicaraguans and Cubans. Section 203 includes Salvadorans, Guatemalans, and Eastern Europeans (Holmes 2008). The differentiation between the two sections includes 1) the procedures for procuring legal residency, and 2) the ultimate provisions granted. “Cubans and Nicaraguans are granted almost automatic asylum while Guatemalans, El Salvadorans, and Eastern Europeans must essentially prove everything immigrants had to prove pre-IIRIRA” (Escobar 1999:470). The grounds for Nicaraguans and Cubans to claim legitimacy were far more lenient than those
established for Salvadorans, Guatemalans, and Eastern Europeans. Nationals of the first group could legitimately apply for legal residency regardless of personal situation (date of entry in the U.S., length of continuous stay in the U.S., or proof of previous applications for asylee or immigrant status). Contrastingly, the second group had to fit into one of five categories eligible to apply for residency, depending on date of entry, proof of continuous stay in the U.S., proof of previous application for TPS or political asylum, or proof of a specific familial relation to an eligible petitioner (Coffino 2006). Also, Nicaraguans and Cubans were granted more inclusion in applying for family members and relatives living abroad to come to the U.S., while only specific familial relationships were targeted for those in the second group (Coffino 2006).

Exacerbating the difficulties for Salvadorans and Guatemalans to qualify as protectorates under NACARA was a sub-clause related to the criteria of their need to establish previous continuous residency in the U.S. Unlike Nicaraguans, Salvadorans and Guatemalans needed to establish proof of 7 years’ residency in the U.S. upon applying, similar to the criterion needed in applying for TPS. However, “time spent under a protected period neither counts toward fulfillment of the seven year residency” (Weitzhandler 1993: 269). Essentially, anyone previously granted TPS could not count the time under protection towards their period of established residency, which could potentially have a devastating effect on an applicant’s qualification. Furthermore, the ultimate benefit granted through NACARA, legal permanent residency, was not directly applied to the undocumented migrants addressed in section 203 – Salvadorans, Guatemalans, and Eastern Europeans. Whereas Nicaraguan and Cuban applicants enjoyed a more direct route to legal permanent residency, the majority of the second group was only granted “relief in the form of suspension of deportation or cancellation of removal, if
specific requirements [were] met” (Weitzhandler 1993:269), rather than legal permanent residency.

The relationship between NACARA and reason behind its arbitrary assignments remain officially unexplained in its statute (Holmes 2008). However, there is an inherently discriminatory practice evident within the confines of NACARA, not only in preferential treatment of Nicaraguans/Cubans over that of Salvadorans/Guatemalans/Eastern Europeans, but also in the complete dismissal of other nationalities also undergoing similar hardships. This arbitrary granting or denial of asylum is reflective of the situation between the U.S. and varying Central American countries in the 1980s. The reasoning for this variation in NACARA, however, is strongly linked to the political ties between the lobbying groups for Nicaragua and Cuba and the GOP at the time (Escobar 1999). Again, political ties and U.S. external focus played a heavy role in the determination of immigration policies, though similar hardships were experienced less by a specific population and more across the board.

**Current Implications**

No policies specifically targeting Central American immigrants have been formulated since the 1997 enactment of NACARA. Simultaneously, TPS is increasingly utilized as a permanent solution while only providing temporary benefits. Proposals for immigration reform have been on the table numerous times. Talks between former President George W. Bush and then-President of Mexico Vicente Fox in early September 2001 leaned towards reform measures (Rosenblum 2004). However, the September 11th attacks quickly deterred this notion, turning American sentiment towards immigration in the restrictive, xenophobic direction. Comprehensive Immigration Reform bills were introduced in both 2006 and 2007, but were
never enacted. President Barack Obama campaigned on a platform pushing immigration reform, but this interest has taken a repeated backseat to other issues such as the national economy and health care reform (Lopez & Livingston 2009). In summation, the awareness exists that changes to the current immigration system are necessary; proposals and discussions have been repeatedly prompted and rescinded over the course of the last ten years. Unfortunately, the urgency of the issue is also repeatedly overlooked in favor of more “pressing” national interests; the economy and unemployment as pertaining to U.S. citizens (i.e. voters) take rather permanent precedence over concerns for outsiders. The pervasive mentality is that the U.S. needs to take care of its own through improving its economy and lowering unemployment rates before it can be concerned with taking care of “others”. On the contrary, initializing and utilizing and more effective and integrative immigration system would partly alleviate the pressure on some of these larger national interests.

The resulting lack of policy formulation has left the Central American population, as one of many, in the margins. The track of policies and policy applications towards this community has always been a temporary, responsive fix implemented in a long-term, permanent fashion. The absence of truly effective and integrative policy measures denies the presence of this community in the U.S.; what was originally seen as a temporary refugee population during the 1980s has become a permanent fixture of the American demographic over the last 30 years, and this trend has no indication of stopping. Yet the Central American community still has few tangible policies to fully integrate into U.S. society. The negation of policy reform further projects their marginalization.

Furthermore, the ongoing migration flow and presence of Central Americans in the U.S. has given rise not only to a continuous stream of 1st-generation immigrants, but also a 1.5- and
2nd-generation. Hurdles in discriminatory policies have mutated into further integrative hurdles for the younger generation, particularly in the form of educational opportunities. Undocumented youth who may have lived in the U.S. for the majority of their lives are left with practically no viable options for secondary education (Menjívar 2008). Similarly, documented youth with undocumented parents may hesitate in furthering their education due to questions on college applications in reference to legal residency and fear of “turning their parents in”. Financial aid and the need for parental financial information may also negate a student the monetary means to attend school (Gonzalez 2011). State-specific restrictionist policies, such as those recently enacted in Alabama, are now targeting the primary education system to determine the legal status of students and their parents. Aging policies that obstruct the avenues of obtaining legal residency now further obstruct the educational opportunities of a rising generation. Limiting the educational opportunities of youth and/or immigrants severely limits their economic integration into U.S. society, thus further propelling the socio-economic discrimination of this group.

Conclusions

By tracking the evolution of policy formulation targeting the Central American immigrant community, it is evident that these policies have been largely responsive to the current context and only marginally beneficial for immigrants. Subsequently, this community has been continuously marginalized for going on 30 years; with discriminatory policies providing few opportunities for obtaining legal residency status, even fewer economic integrative opportunities are afforded. The U.S.’s inability to effectively acknowledge this population within U.S. society is a severe oversight that not only adversely affects this population, but U.S. society as a whole. In short, neither the needs of the U.S. or the needs of the immigrant community are being met.
By re-examining the contributing factors of these aging policies, the U.S. may begin to take its first step towards formulating more effective policies in hopes of ending the continual evolution of immigrant discrimination. Such policy reform is necessary to better integrate not only the Central American immigrant community, but the entire immigrant population.
Bibliography


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