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Introduction

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A SYMPOSIUM ON THE SANCTUARY MOVEMENT

INTRODUCTION

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In 1980, Congress declared that "it is the historic policy of the United States to respond to the urgent needs of persons subject to persecution in their homelands . . . ."[1]

The statement above, enacted as part of the law of this land, reflects this country's tradition of humanitarian response to people in need of refuge due to persecution in their homelands. The nature of the response has varied and, indeed, continues to evolve as new situations and circumstances in the world compel humanitarian action.

The United States first initiated programs for the admission of refugees following World War II.[2] For the next thirty years, this country's response to the ever-increasing incidence of displaced per-

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1. Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102.

2. *See* Anaya, *Sanctuary: Because There Are Still Many Who Wait for Death*, 15 HOFSTRA L. REV. 101, 101 (1986) (discussing refugee bill in Congress regarding children from Nazi Germany).

sons consisted of ad hoc, piecemeal legislative initiatives enacted for the relief of individuals from specific countries for a designated period of time, or of the Attorney General's use of the discretionary parole power granted to him by Congress. Neither mechanism proved satisfactory in carrying out our refugee admission program in a consistent, uniform, and humane manner. Therefore, in 1980, Congress responded by enacting the Refugee Act of 1980.

The Refugee Act of 1980 for the first time codified refugee admissions policy. It eliminated the ideological and geographical focus of United States refugee policy, conformed that policy to United States obligations under international treaties, and established an orderly procedure for the annual admission and domestic resettlement of individuals who meet the definition of a refugee and are of special humanitarian concern to the United States.

In addition to establishing a procedure for the admission of refugees from abroad, the Refugee Act of 1980 provided a statutory right for individuals already present in the United States who fear persecution upon return to their homeland to apply for asylum in this country.

In situations where permanent refuge or asylum is not warranted, the United States government has responded by granting extended voluntary departure (EVD)[3] to individuals who, while not meeting the definition of a refugee, nevertheless would face hardship upon return to their homeland so that humanitarian principles compel temporary refuge.

Although the various humanitarian responses outlined above appear to provide a full range of options to this country in refugee crisis situations, in actual practice the response has too often been characterized by foreign policy and ideological dictates. Within months of enactment, the Refugee Act of 1980 was put to the test by the Cuban Boatlift and the Haitian influx. At the same time, civil unrest in Central America escalated, forcing tens of thousands to flee north.

The Immigration Service quickly became overwhelmed, and asylum backlogs grew at alarming rates. Despite litigation, the Immigration Service applied a restrictive standard of proof to asylum applications in general and almost categorically denied applications from Central Americans other than Nicaraguans for foreign policy

3. For a discussion of extended voluntary departure, see Schmidt, *Refuge in the United States: The Sanctuary Movement Should Use the Legal System*, 15 HOFSTRA L. REV. 79, 87 (1986).

considerations.[4] At the same time, public pressure was mounting to provide some type of humanitarian relief to individuals from Central America, with many organizations pressing for a grant of EVD. The Administration steadfastly refused, citing foreign and immigration policy considerations.

This refusal gave rise to the Sanctuary Movement and to legislative initiatives mandating temporary refuge for nationals of certain Central American countries. Such a legislative initiative passed the House of Representatives in the 99th Congress and is scheduled for processing again during the 100th Congress.

Recent developments may offer partial relief to these problems. On November 6, 1986, the President signed into law the Rodino-Simpson bill. Title II of this bill provides legalization to individuals who have resided continuously in the United States in an unlawful status since before January 1, 1982.[5] Many persons whose asylum applications were denied may be eligible for legalization under this provision.

In addition, the Supreme Court recently ruled that the standard of proof applied by the Immigration Service to asylum applicants was too restrictive and inconsistent with Congressional intent.[6] Therefore, several thousand asylum seekers may be able to re-adjudicate their cases under a less restrictive standard of proof.

In order to remain consistent with its humanitarian principles and traditions, this country must develop a full range of responses to refugee and asylum crises. Inflexible or restrictive responses only give rise to disregard for the law and government policies. This country's refugee and asylum policy must be governed foremost by humanitarian principles rather than foreign policy considerations and must be applied even-handedly to all individuals from all nations who demonstrate a well-founded fear of persecution in their homeland.

The following articles on the legal and social bases of the Sanctuary Movement are thought-provoking and will add greatly to the debate and discussion on these important issues.

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4. *See* Anaya, *supra* note 2, at 103 n.12; Colbert, *The Motion in Limine: Trial Without Jury—A Government Weapon against the Sanctuary Movement*, 15 HOFSTRA L. REV. 5, 34-35 nn. 144-54 (1986).

5. Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, secs. 201, 301, §§ 245A, 210, 1986 U.S. CODE CONG. & ADMIN. NEWS (100 Stat.) (to be codified at 8 U.S.C. §§ 1255A, 1180).

6. *See* Cardoza-Fonseca v. INS, 767 F.2d 1448 (9th Cir. 1985), *aff'd*, 107 S. Ct. 1207 (1987).