

**GUATEMALAN ASYLUM IN THE UNITED STATES:
HISTORICAL FOUNDATIONS AND INDISCRETIONS**

By

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A Thesis Submitted to The Honors College

In Partial Fulfillment of the Bachelors degree
With Honors in

International Studies

THE UNIVERSITY OF ARIZONA

May 2010

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Abstract

This paper seeks to establish, using the historical development of Guatemala as context for understanding, the legitimacy of the asylum claims of Guatemalans who immigrated to the United States during the Guatemalan Civil War. The history will show that Indigenous groups have suffered for centuries under the oppression of non-Indigenous peoples in Guatemala. As concentration of non-Indigenous power grew and economic interest became the primary concern, their loss came with the seizure of their ancestral land. During the 36 year Civil War, Indigenous groups experienced a loss of Indigenous identity, cultural relevance, and dignity. The Guatemalan Government systemically executed acts of terror and cruelty against rural, native peoples. As a product of this violence, thousands of Guatemalans sought safety in the United States but were met with rejection. This paper will establish that Indigenous peoples of Guatemala have irrefutably suffered enough. By providing legal frameworks for the determination refugee status, this work will show that Guatemalans qualify for asylum. Evidence combining the history of Indigenous groups in Guatemala and conditions of present day Guatemala will combine to elucidate why those who entered the US between 1960 and 1996 because of persecution should be granted permanent residence.

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I. Introduction

Words like violence, revolution, and oppression are common descriptors of Guatemalan history. The patterns of conquest and domination began with the arrival of the Spanish, who established a control over Indigenous groups that would never relinquished over centuries. The next period in Guatemalan history after Independence from Spain is remembered by the frenzy for land, rise of coffee, and increased depreciation of Indigenous rights. When the status quo of wealthy land owning business and political elites was interrupted by a reformist revolution, the country entered its third era in history; the era of terror. Ten years of reform ended with a succession of military dictatorships, Cold War fever, and United States influence. Thousands of Guatemalans were brutally killed by the Government and Guerilla forces, paralyzing Guatemalan society. The primary targets of this depravity were Indigenous peoples and dissenters. When faced with the choice of death or displacement, thousands escaped to foreign nations. One of the destination countries was the United States, who despite the human rights violations raging across Guatemala, denied asylum applications. The 1980s until today has been a battle to earn comprehensive legal protection for War refugees. Obstacles to asylum have been numerous, and include the force of President Ronald Reagan's foreign policy and legal intricacies that unfairly block vast numbers of Guatemalans from their due protection. Although Guatemala is officially at peace, that does not mean Indigenous rights are now protected in Guatemala. Because of the historical treatment of Indigenous peoples, the unfair policies of Reagan's Administration, and exclusionary legal parameters for Guatemalan asylum cases, those who fled the Civil War need to be given permanent residency in the United States. It is unfair for the mistakes of the United States Government to be left unreconciled, and the case of Guatemalan immigrants more than warrants status as a permanent resident.

Little by little heavy shadows and black
night enveloped our fathers, grandfathers,
and us also, oh my sons...! All of us were
thus. We were born to die!
Anales de los Cakchiqueles
(ca. 1550-1600)

II. Conquest, colonization, and country-hood

The country of Guatemala has had a long history of conquest and unrest, dating back to pre-Columbian Mayan civilization. The area inhabited by the ancient Mayans is known as Mesoamerica, which ranges from parts of modern day Mexico to Costa Rica (Coe, 31). Archeological research of the Maya estimates that Mayans had one of the world's largest populations during the height of the civilization (Lovell and Lutz, 401). The once thriving population quickly deteriorated in what is known as the Classic Maya Collapse; the cause of which is often debated by academics and professionals. Vast temples and cities like Tikal, Coba, Uxmal, and Palenque were abandoned, and the surviving populations dispersed into surrounding areas. They left behind a legacy of astronomy, mathematics, scientific knowledge, the Mayan calendar, and monumental structures. The Mayans of the following centuries, the Postclassic period, are the early ancestors of the majority of the Indigenous population in present day Guatemala. (Coe, 151-155).

During the time of the Spanish conquest, the explorer Pedro Alvarado was sent by commander and conquerer of Mexico, Hernán Cortéz, to control these fractured kingdoms. The years of the conquest and eventual control of the area were marked by violence, disease, and large scale decimation of the Mayan peoples (Jones, 17-31). The Spanish Friar Bartolomé de Las Casas accompanied the conquistadors, the Spanish word for conquerer, during their exploration. He was horrified by the brutalities committed against the native population. In his disillusionment, he chronicled the behavior of the Spaniards in his book, *A Short Account of the Destruction of the Indies*, written in 1542 to Prince Phillip II of Spain. De Las Casas describes the conquest of present day Latin America as, "an uninterrupted series of Spanish plunderers who have done nothing but sail there, attack, murder and rob

the people, steal their gold...overrun the area, causing untold harm and a monstrous death-toll, and perpetrating countless atrocities” (80-85). Evidence suggests that in the years following first contact with the Spanish over 700,000 Mayans died from either warfare or disease. In the next century, almost a million more Mayans did not survive exposure to European disease (Perera, 5).

In the pre-colonial period, Guatemala was not a formal country or unified territory. There were no arbitrary boundaries to define the area as a country or region. Mesoamerica was comprised of various indigenous kingdoms and city states but it was not a unified body. This represented challenge to conquest, “Alvarado had no single incumbent state to overcome” (Lovell, *Surviving Conquest*, 28). Even at the time of conquest and colonization, the area was an *audiencia* or Superior Court and later a Kingdom under the Spanish Crown, not a country. During the pre-colonial and colonial period, there was no concept of the Guatemalan nation (Jones, 31-58). For the purposes of this paper, the region, pre-independence, will be referred to as Guatemala. It is understood that until 1821, there was no true Guatemala. To be clear, Guatemala will describe the land area from pre Spanish contact in the 1500s until present. At this time, Mayan peoples existed throughout Central America and Mexico but for all intents and purposes, this paper will only discuss the inhabitants living within the present-day borders of Guatemala.

In Guatemala the Indigenous peoples are not one homogeneous group. Indigenous culture is rich and diverse across Guatemala. Many communities have distinct traditions and languages. There are three varieties of Indigenous peoples, those of Mayan descent, the Garífuna, and the Xinka. The Mayans are the largest Indigenous population in Guatemala by a vast majority. Xinka and Garífuna populations are small and geographically concentrated. In total, there is an estimated 22 different Mayan languages and over 30 different Mayan tribes. Indigenous peoples are typically rural and agrarian, but also participate in the trade of goods in cities. Although they are unique, Indigenous groups have shared a similar history (IWGIA, 1-4). It would be unfair to classify the multifaceted Indigenous peoples of Guatemala as one group but to avoid complication in this paper, they will be

referred to as Indigenous peoples, Indigenous groups, or natives.

Since the time of conquest, the natives of Guatemala and surrounding peoples of Mayan descent have not been able to escape the violence, oppression, and domination at the hands of the non-Natives. Widespread disease and a lack of a unified Mayan front or political center allowed the Spanish to take control of the area (Lovell, 28-29). It was during this time that the *ecomienda* system was established, and remnants of that structure can still be seen today. The system allowed Spaniards, in the name of the Spanish Monarchy, to command several Indigenous people and force tribute and labor (Himmerich y Valencia, 3-18). In addition, the indoctrination of Christianity upon the Mayans was a fundamental part of the system. Despite the pressure, the Indigenous peoples were able to retain some of their traditional religious beliefs and combine them with Catholicism (Perera, 5). This syncretic belief system endures in Guatemala, persisting for centuries. The hierarchy created by the early Spanish conquistadors became part of the foundation of Guatemalan society.

Ecomienda life was harsh on the Indigenous people. Although not the original intention of the practice of *ecomiendas*, the system closely resembled slavery. The exploited Mayans worked difficult manual labor positions, without pay, suffering countless abuses. Over time, the *econmienda* system was formally ended, but a similar labor land structure persisted in the form of a *hacienda*. *Haciendas* gave the *Ladinos*, non-indigenous Guatemalans, a right to obtain large pieces of land used for agriculture and ranching (Himmerich y Valencia, 3-18). On the *haciendas*, Indigenous people worked a designated area of land, and in return were required to give a percent of their output to the land owner. Both the *econmienda* and *hacienda* systems prevented natives from land ownership and formal land rights. This systematic oppression became an institutionalized part of Guatemalan society (Guitar, 1-15). Control of the land allowed the *Ladinos* to first control Guatemala as a colony, and later as an independent country. The land and labor grants given by the Spanish Monarchy resulted in a legacy of non-native landed elite (Perera, 12-15).

Spanish colonial domination lasted in Guatemala for almost 300 years. Guatemala served as the

colonial capital of the Spanish empire, the capital city shifting three times due to attack and natural disasters. Guatemalan exports were not as valuable as its neighboring countries and therefore the area, because of its strategic location, was designated as the capital. Most importantly, “colonial Guatemala was... the center of political, economic, social, cultural, and religious life between Mexico City and South America” (Jones, 266). Because of its function as the center of the Spanish Empire in the Americas, Guatemala had the densest concentration of peoples in Mesoamerica. The economic health of colonial Guatemala was entirely contingent upon and fueled by Europe's needs (Sifontes, 122-125). Centuries later, the export-oriented economic structure centered around demand from Western nations prevails.

Under colonial rule, Guatemala exported several different natural resources. The principal exports from Guatemala were cacao and indigo. “Cacao beans provided and currency,” and “indigo financed the bulk of Guatemala's export trade”, making these two raw materials the most financially viable for colonial Guatemala (Smith, Robert, 181). The labor force driving the agricultural output was comprised of Indigenous peoples and slaves from Africa. In order to meet European demand, land was either “granted” by royal colonial authorities, or taken from Indigenous peoples. The desire for land was “largely for economic reasons but also for prestige, respect, and advancement in society” (Jones, 119). The three components crucial to a financially successful land holding were: a vast expanse of land with productive potential and profitability. In addition, land was also the preeminent status symbol in colonial Guatemala, where land was tantamount to power. If land was not granted by the Crown, then *Ladinos* often relocated to rural areas outside royal authority. Land acquisition outside legal means was often forcefully taken from natives who had been there for centuries. They were not only relegated from their traditional homes, they became servants of the land that was once theirs. Displacement and relocation of indigenous peoples is a historical pattern in Guatemala that developed during the colonial period and is still an issue today. (Sifontes, 100-180)

Towards the end of the colonial period, in the 1760s, Archbishop Pedro Cortéz y Larraz

orchestrated a population survey undertaken by the churches in Guatemala. In his report, the Archbishop admits the margin of error in the survey, since the church was unable to compile data on populations living outside the reach of the church. Modern studies on colonial demographics, using the Archbishop's findings as well as recent data which calculates fringe settlements, estimate that Mayans constituted almost 70 percent of the populace in the area (Lovell and Lutz, 401). This figure is significant because it shows that although Indigenous peoples were the predominant group, they were still subservient to *Ladinos*. Despite an overwhelming population majority, natives had no control over the economic and political sectors outside Indigenous villages. Power in colonial Guatemala was concentrated in the hands of a few, not reflecting the largest ethnic group in society (Smith, Carol, 611). This demographic-power imbalance created fundamental problems in the foundation of Guatemala society that extended beyond the colonial era.

When the conquistadors came, led by Alvarado, they brought more than European disease and a thirst for land and natural resources. "Spain brought to the province and kingdom of Guatemala its language, culture, university, books, missionaries, Christianity, juridical system, artisans, new crops, livestock, and an "injection of new blood"" in the forming of a new country (Sifontes, 170). This clash of civilizations, changed the culture, politics, economics, social structure and future of the Mesoamerican region and the Mayan people. The traditions and practices of the Indigenous peoples were irrevocably altered. Spain created new society: the Ladino sector of the population developed, *mestizos* (Spanish and Indigenous mix) were born, and slaves from Africa were brought over. This rich and diverse mix created a complex racial structure (Guitar, 11-13).

Before continuing the analysis, an important predisposition should be noted. In the United States it is often said that Christopher Columbus "discovered" the New World, referring to the Americas. In fact, there is a national holiday commemorating the day the Spanish landed in America called Columbus Day. Even a page from the United States Library of Congress website detailing the history of the holiday discusses, "his valuable discovery". Although Columbus Day is about American

history, the same perceptions surround Central American history.

This perception of historical events is one that has been perpetuated since the first official recognition of the day in 1892. Terms like “discovered” and “New World” are ethnocentric and historically inaccurate. The Americas were not a New World, people had been living on both continents for thousands of years. The Mayans and other indigenous groups did not have a similar society to that of Europe but that does not make them “uncivilized” or “primitive”, as is often said about their populations. These popular myths about a “savage” society only contribute to the oppression facing such groups. If historical norms about the Mayans are contested, a more accurate and positive representation of them will develop.

There is a “historical image of Indians as a submissive, backward, and anachronistic group”. Dispelling common thought on indigenous identity is important to understanding the framework of this paper. It is necessary to view the Indigenous peoples of Guatemala not through the lens which society typically uses, characterizing them with stereotypes. Indigenous identity and rights cannot be discussed without first acknowledging the negative bias towards Indigenous peoples from the Americas. Even words such as “New World” and “discovery” are harmful because they devalue native legitimacy in their own home. Terminology such as this, which is not overtly prejudicial, is still detrimental because it implies that the Indigenous are lesser. Even if these words only create a distinction at a subconscious level, they still have a negative impact.

The preconceived notions discussed in the previous paragraphs refer to a Western point of view, specifically from the United States. This bias does not include the prejudices of the non-Indigenous Guatemalans toward their native countrymen. Rather, these inclinations are pointed out so the reader may understand Indigenous rights knowing they might interpret the information from a certain viewpoint. Noting the stereotypes might also shed light later in the paper on the Indigenous situation in the United States. There needs to be a change in dialogue about indigenous peoples to eliminate these simplistic characterizations. Deconstructing deprecatory images of native identity will go a long way

towards the future of Indigenous rights.

In *Indians in Colonial Yucatan: Three Perspectives* Nancy Farriss furthers this point by asserting:

Mesoamerican indians must be viewed properly as independent subjects rather than as anachronistic vestiges of a pre-Columbian past or as passive objects of colonial or neocolonial rule. This perspective... allows indigenous peoples to be seen not so much as relicts or victims... but as actors who have responded to events in ways that help determine no small part of their cultural reality. (2, 19)

The stereotype of Indigenous peoples in the colonial era goes beyond misperceptions discussed in former paragraphs. Mayans have been labeled as instantly submissive and often docile. They have been portrayed as accepting their circumstance without struggle, when in fact, the reverse is true. When Alvarado and his soldiers arrived, many tribes fought the Spanish, and fought fiercely. After the outsiders overtook Guatemala, many fled to the highlands or remote areas to avoid forced labor (Yashar, 35-40). Evidence of settlements in the mountains and remote highlands prove their active resistance. Other groups adapted to conquest to “preserve essentials” and found creative coping mechanisms. The history of the colonial period cannot be idealized or reduced to one point of view, the Spanish point of view (Farriss, 15).

Guatemala formally declared independence from Spain in 1821, around the time when many neighboring countries also sought nationhood. Guatemala was able to declare independence without war or violence (Tax, 32). The impact of the colonial era is inseparable from modern Guatemala. Conquest, colonization, and country-hood formed the basis for Guatemalan society. Throughout the ebb and flow of post colonial history, the consequence of colonization never ceased. The colonial era is historically classified as one time period but that does not mean it was static. The three hundred years of Spanish rule were “characterized by dynamic changes, controversies, conflicts, growth, and development” (Jones, 259). Along with many characteristics produced by colonialism, a “heritage of

conquest” has affected Indigenous groups profoundly (Tax, 35).

III. Land, Coffee, and Poverty

The Mayans of Guatemala “are an introverted people, consumed by internal fires which they cannot or dare not express, eternally chafing under the yoke of conquest and never for a moment forgetting they are a conquered people” (La Farge, 100). This “heritage of conquest” is an inescapable facet of life for Indigenous peoples. This burden of inheritance ties Guatemalans of today to their ancestors (Tax, 35).

In Guatemala, the pattern of subjugation is a familiar one. The:

Cycles of conquest the Maya of Guatemala have been subjected to since the early sixteenth century... are conquest by imperial Spain, conquest by local and international capitalism, and conquest by state terror. Each of these cycles has reinforced or produced certain geographical patterns that reflect basic and irresolvable fissures in the nature of Guatemalan social, economic, and political life. (Spicer, 283)

The next conquest that Spicer identified, the conquest by capitalism, started in the colonial era but really expanded in the 1800s.

If you visit Starbucks.com and click on their Guatemalan coffee blend, the slogan advertising the coffee reads, “Antigua may be to coffee what the regions of Burgundy and Champagne are to wine.” Antigua is an idyllic city in Guatemala, a former colonial capitol seemingly frozen in time, that still retains its colonial structures. The particular blend of Guatemalan coffee featured on the Starbucks' website is grown near Antigua, hence, Starbucks' Guatemala Antigua blend. The label for this “quintessentially Antiguan” coffee features an unmistakably Indigenous woman. She is smiling ear to ear, wrapped in bright, colorful, traditional clothing called a *huipil* (Guatemala Antigua). Today, Guatemala is synonymous with coffee. Images such as this can be seen at American coffeehouses

everywhere. This connection between Guatemala and coffee, began in the 1800's.

The Guatemalan coffee empire started at the turn of the 19th century. Coffee began growing in the early 1800's but began to prosper in the 1830s, especially in the western highlands (McCreery, *Coffee and Class*, 439). While the amount of coffee exports in Guatemala were rising, Guatemala was undergoing rapid political change. Shortly after independence, Guatemala joined with neighboring Central American territories that also gained Independence from Spain. From 1823 until 1840, these countries were part of the United Provinces of Central America. Due to irreconcilable differences, the governing body abrogated in 1840 (Karnes, 64). In an 1830 revolt, Rafael Carrera took control of the Presidency and ruled for 30 years before he was removed from office by a Liberal revolt. "In the ensuing decades, a series of Liberal dictators passed laws that increasingly favored coffee planters in their struggle to attain sufficient land and labor," including the influential Dictators Justo Rufino Barrios and Manuel Estrada Cabrera (Handy, 8). Liberal rule was a, "a succession of strong presidents who developed stable and enduring regimes" which lasted until 1944 (Handy, 8).

With the power of the military and militia Liberal Governments were able to increase control of the countryside. (Laguardia, 221). The army both forced Indigenous groups off their land and ensured that they would comprise the labor force. When attempts to bring in other sources of labor failed, the Guatemalan ruling elite focused on the large Indigenous population. There was even laws specifying farming requirements to increase the number of workers. (Lovell, *Surviving Conquest*, 39). These actions were admissible because coffee plantations, "demanded large-scale, cheap labor" (McCreery, *Coffee and Class*, 456). At this time Indigenous peoples were still considered a lesser, submissive race. The labor requirement and their lower status in society made natives perfect candidates for coffee laborers (Handy, 8). The Indigenous in Guatemala lost even more territory than they had in the colonial era. During this time coffee exportation drove the economy of Guatemala, coffee being their number one export (Lovell, *Surviving Conquest*, 38). The amount of Guatemalan coffee was so substantial and successful that just before the 20th century, the country became a top five exporter internationally

(McCreery, *Coffee and Class*, 459) .

Another industry giant besides the coffee plantations was growing in Guatemala at this time, the United Fruit Company (UFCO). Like coffee plantations, the harvesting of bananas also “entailed both an attack on native land and an assault on native labor” (Lovell, 38). The UFCO was an American company concerned only with American interests. UFCO had power over ships, ports and railroads in Guatemala. The company also became a major landholder in Guatemala (Bucheli-44-59). The governing policy during this time dictated, “that little real protection was given to village land, the structure of peasant villages, or Indian culture” (Handy, 9). Other Central and South American countries were growing fruit for UFCO. These countries, including Guatemala, earned the famous nickname, “banana republics”. The economy was export-based economy producing only raw materials such as coffee and fruit. Relying entirely on international markets made the Guatemalan economy unstable (Bucheli, 44-59).

Even though the coffee trade was lucrative, none of the wealth benefited the workers or the majority of the population. Coffee kept land owners extremely wealthy. Because the land and plantation owners had most of the wealth, they also had political, social, and economic control. Coffee production created a sharp income distribution gap between the elite and the laborers who made them rich (McCreery, 438-60). Inequality became increasingly widespread, even more than in the colonial era. In the final page of *Coffee and Class: The Structure of Development in Liberal Guatemala*, McCreery concludes his analysis of coffee's effects. He says, “in sum, 'development' for the ruling coffee elite necessitated the active 'underdevelopment' of the economic and social position of the indigenous majority” (460). Oppression and impoverishment of natives was most beneficial for the maximum return on coffee production.

1821 until 1944 marks the second conquest of Indigenous groups in Guatemala, “conquest by local and international capitalism” as identified by Spicer (238). “The racist/positivist attitudes of the coffee elite, their determination to force cheap labor from Indian villages, and their dominance of the

instruments of the state”, allowed this cycle of conquest (Handy 15). The more the Liberal governments pushed for the growth of capitalism, impoverishment of natives worsened (Smith, 610). This in turn, was a major factor in the reign of violence in the coming decades (McCreery, Debt Servitude, 758). The only reprieve from the cycle of conquest came during 1944 to 1954, known in Guatemalan history as the “Ten Years of Spring”.

IV. A Ten Year Revolution and the Seeds of Violence

The year 1944 was a watershed moment in Guatemala. The Dictator General Jorge Ubico Castañeda resigned after intense pressure from the populace and even some military men. Other Latin American countries had similar changes of power and so the surge of activism is referred to as the “October Revolution”. Foreign investors, especially the United States, the bureaucratic elite, and factions of the military were intensely anti-Revolution (Sifontes, Historia de Guatemala). The ideals and goals of the Revolution sought to undermine the methods that kept them wealthy and in power. One change brought about by the Revolution was elections, and in 1945 Juan José Arévalo was elected. The second President of the “Ten Years of Spring” was Jacobo Arbenz (Jonas, 18-20). Both administrations improved Indigenous rights, labor rights and voting rights. Arbenz's revolutionary platform removed several powerful military officers, allowed for greater political freedoms, and enacted sweeping land reform. Indigenous rights, workers rights and voting rights were improved (Gleijeses, Shattered Hope: the Guatemalan Revolution and the United States, 1944-1954).

The 1952 Agrarian Reform designated agricultural sections of land held by some powerful interests, including UFCO, for workers, mostly Indigenous groups. “Until the fall of Ubico, the Guatemalan state allowed UFCO to operate as a private fiefdom, never interfering on behalf of the workers,” which only

furthered the company's dominance. "UFCO had a special advantage: because of its power and the power of the American flag" the produce giant flourished unchecked (Gleijeses, 92). UFCO with the help of the United States government contest the legality of the reform (Bucheli, 80). The United States Government was also worried about the growing Communist party in Guatemala under Arbenz. He allowed broader political freedoms in his reforms which enabled the Communist Party to organize in Guatemala. US officials were acutely aware of the Party as the threat of Communism and Cold War tensions started to develop. The mistrust of Communism gave the anti-reformist even more support in Guatemala and abroad (Jonas, 17-24)

Despite the initial popularity of the Reform among the general populace, many people became skeptical of the changes. The gains for rural workers, although substantial, did not erase the memories of oppression and exploitation. With the more progressive laws and increased Indigenous rights, native groups were starting to organize more. They even started to actively fight for their rights (Gleijeses, *Shattered Hope: the Guatemalan Revolution and the United States, 1944-1954*). In *Revolution in the Countryside* Handy describes the mounting fears:

Landowners and the rural Ladino middle class had an entrenched interest in the maintenance of the prevailing systems of land tenure, labor recruitment, and market and credit arrangements. But opposition to reform in the countryside was not exclusively a reflection of the economic interests of a dominant Ladino elite. An almost paranoid fear of Indian uprising had been deeply ingrained in the psyche of rural Ladinos, a fear that had been purposely fostered during the Liberal decades. (48)

Security concerns outweighed the moral and ethical issues of the Revolutionary platform.

Even before the Agrarian Reform, the acquisition of land was not a simple process, free of struggle. Because of the value of land, battles were constant. There was a multitude of causes for these clashes, ranging from ethnic conflict to rural immigration. A variety of actors participated in these conflicts, spanning an individual level to disagreeing local governments (Handy, 12-14). Pre-existing

land conflicts were amplified by the new laws. The most important topic during this time was land ownership and rights. The land in question was land that could be used for economically viable crop and resource production. Agriculture was the main source of income for a majority of the population, making land critical to survival. Revolution reform policies began to create dissident within the population (Jonas, 20). On both sides, strikes, protest, out right violence and general discontent spread throughout Guatemala. The divided, “countryside was beginning to change in fundamental and radical ways (Handy, 75). When the amount of class and ethnic clashes began to escalate, the animosity became undeniable. In 1954 after years of intensified pressure from opposition groups, Arbenz was overthrown by a military operation. The seizure of power was supported by the US, including direct CIA involvement (Gleijeses, *Shattered Hope: the Guatemalan Revolution and the United States, 1944-1954*). His departure ended the “Ten Years of Spring” and signaled Spicer's the third wave of conquest, the “conquest of terror” (238).

V. The Immeasurable Cost of the Civil War

From the onset of the exile of Arbenz, violence in Guatemala increased exponentially. Over next three decades, political power shifted rapidly and often. A majority of those who assumed power were military men, some gained power by a coup d'état, others were elected, but all of them electrified the static air that charged the country. The Guatemalan Civil War was 36 years of harsh dictators, capacious bloodshed, unthinkable human rights abuses, and overt terror. The Civil War is officially recognized from 1960-1996, but for those who had been suffering under Liberal oppression and reformist reactionaries, the war began much earlier (Grandin, 912). After 1954, the policies established under Arévalo and Arbenz ceased in favor of policies that resumed the previous status quo. Efforts notwithstanding, Guatemala could not just return to Liberal rule, “the legacy of the Revolution...and its

violent termination was to compound the social polarization already characteristic of Guatemala, throwing the country into permanent crisis” (Jonas, 19). In response to the new regimes, four guerilla groups emerged and eventually merged into a larger force, Guatemalan National Revolutionary Unity (URNG). (Jonas, 23)

The War was fought across the nation, from countryside to city centers. No one was safe or removed from the violence. Fear became the greatest weapon of the army as opponents of the government, moderate and progressive thinkers, students, and other civilians began to disappear. At first, the army persecuted the aforementioned groups but in the latter half of the war, expulsion efforts shifted towards Indigenous groups (Davis, Hodson, and Norton, 20-38). Torture, in conjunction with disappearances, became a main consternation tactic of the army. Terror allowed the dictators to retain authority, and authority allowed them a wealth and dominance they were willing to preserve at all costs (Gleijeses, 171-175). One of these costs was the murder of an unimaginable number of Indigenous people. These were seemingly inconceivable acts yet, “the Guatemalan government, at the command and in the service of a powerful few, declared war on its own citizenry, especially its indigenous peoples” (Lovell, *Mayan Survival*, 45).

For two thirds of the war, the Guatemalan economy improved undeterred by the transnational strife. Even though the amount of exports increased, that did not translate to more money for those who toil the land. At this time, “2 percent of the population continued to control 67 percent of the arable land”, an obvious and immense inequality (Jonas, 19). The government methodically kept the poor impoverished, breeding resentment and mistrust. The disparities that remained unchanged and flagrant inequality, “contributed to the conditions of present-day violence” (McCreery, *Debt Servitude*, 758). Peaceful protest by indigenous groups for land rights were met with indiscriminate army guns, killing even the innocent women and children. Any form of social organizing was considered a serious threat. (Davis, Hodson, and Norton, 95). While these groups were slain for their uprising, other Indigenous tribes were targeted and decimated simply because of their ethnic identity (Yashar, 37).

The atrocities committed during the war were gruesome and devastating. The army invaded rural communities and threatened, terrified, or killed the inhabitants. In some instances, the army eradicated entire villages. One way the army did this is through a method called scorched earth warfare. This military strategy involved the burning crops, and often houses and village structures. This left the natives without food, shelter, resources or viable land and furthermore, it denied them their culture a means to thrive (Grandin, 1-19). Support of guerilla groups (believed or actual) was punishable by death. The government often labeled the natives as communist or insurgency sympathizers although most of these claims were false (Lovell, 46). With the uttering of one word: communism, violence and torture became justifiable. When in actuality, most peasants had zero understanding of communist ideology. Under the blanket of communism, the US supported both directly and indirectly years of the Guatemalan Civil War. (Handy, 168-190)

When attacking an Indigenous village, the army killed and tortured without distinction; men, women, children, and elders were all victims. Often neighbors and family members were killed as an “example”. The use of extreme fear was a scare tactic that quickly eroded community unification. Their options were to conform or die. These death threats were a successful tool in controlling the will of the majority of the population (Davis, Hodson, and Norton, 103-105). The The Commission for Historical Clarification (CEH) describes the blatant and disturbing human rights violations:

The CEH has noted particularly serious cruelty in many acts committed by agents of the State, especially... Army, in their operations against Mayan communities... these crimes were committed with particular cruelty, with massacres representing their archetypal form. In the majority of massacres there is evidence of multiple acts of savagery...such as the killing of defenseless children, often by beating them against walls or throwing them alive into pits where the corpses of adults were later thrown; the amputation of limbs; the impaling of victims; the killing of persons by covering them in petrol and burning them alive; the extraction, in the presence of others, of the viscera of victims who were still alive; the confinement of people who

had been mortally tortured, in agony for days; the opening of the wombs of pregnant women, and other similarly atrocious acts (Massacres and the devastation of the Mayan people)

In a staggering and saddening statistic calculated by the CEH, around 200,000 people died directly from the 36 year war. Over 80 percent of these people were of Mayan descent and 17 percent considered Ladino. In publications on the historical reflections of the Guatemalan Civil War, this sad reality has been likened to slaughter and mass butchering. Using the definitions from U.N. document the Convention on the Prevention and Punishment of the Crime of Genocide, CEH determined that in the years 1981-1983, “agents of the State of Guatemala...committed acts of genocide” (Acts of genocide).

For most of the War, the Indigenous people remained a majority, a repressed majority, but still the main demographic. This figure changed when systematic violence substantially reduced the native population. After the mid 1960's “the maya have no longer constituted the majority of the Guatemalan population. They have assumed, instead, status as a demographic minority, one to which, socially, they have been relegated for centuries.” (Lovell, Lutz, 403). Population statistics have shown that within the short time frame of 1981 until 1985, one and four Indigenous people were either forcibly removed from their land or went into hiding in remote areas. In these five years alone, that is equivalent to the migration of over a million natives. Not represented in this figure are populations movements before 1981 and after 1985, and the number of people who left Guatemala (Lovell, 47). The magnitude of death and dislocation is incomprehensible. What the data cannot calculate is the cultural displacement, damaging psychological effects, and the loss of humanity suffered by the Indigenous groups.

Guatemala had not seen such barbaric and heinous deaths since conquest and colonization. The military executed the majority of death sentences, but the left-wing insurgents were not inculpable. A cornerstone of the Guatemalan guerilla philosophy, inspired by the Cuban revolution, was social revolution through arms (CEH, The tragedy of the armed confrontation). The military might of the URNG was not even remotely equal to the immense power of the military. Several rural communities

provided the URNG with food and supplies, which brought the army into their village. When the URNG exhausted its resources, it would retreat, condemning those who had helped to a death sentence. URNG also murdered a select number of civilians associated with their enemy (Lovell, 46).

The URNG and army conflicts were mostly rural while other battles raged within the cities. Right-wing supporters of the government began to form vigilante groups in their neighborhoods. These paramilitary organizations soon became the infamous death squads (Grandin 1-19). The government effectively manipulated the judicial system, and virtually none of the crimes were tried or punished by the courts. There was no protection under the law. The army-led police force was also corrupt, participating in the violence (CEH, The tragedy of the armed confrontation). Guatemala effectively became a military state during the Civil War.

“The biggest step towards restoring- 'normal life' and thereby ending the war- was restoring civilian rule”, which happened with an election in 1985 (Wilkinson, 314). Finally the international community could not ignore the gross human rights violations, and the United Nations and several countries became integral players in Guatemalan conflict resolution. In 1994 the Accord of Oslo created the Commission for Historical Clarification (CEH), commonly referred to as the truth commission, to detail the human rights abuses of the war. After years of negotiations, the Peace Accords were signed in 1996. Although this was a historic day in the history of Guatemala, it in no way signaled the end of suffering (Jonas, 37-92).

I have been made to understand in the
depth of my soul what discrimination means.
My life story is a tale of exploitation.
I have worked and suffered hunger...
When looking back at a life such as mine
and when taking in the stark reality of it,
a hate for the suppressors who have brought
so much suffering to a people begins to grow.
-Rigoberta Menchu
First Indigenous Noble Peace Prize winner

VI. Immigration Laws and Scope

Immigration has been an important social, economic, political, and legal issue in the United States for centuries. In 1790, the Nationalization Act was passed. It was the first act to stipulate terms of citizenship. Since then, scores of acts have been proposed, passed, amended, and replaced. Immigration acts have been modified to encourage immigration, set immigration quotas, limit the immigration of certain groups, curb immigration, define classifications of immigrants and much more (Kurzban, 51-60). The result is a massive, complex, and complicated piecemeal approach to immigration law. There is no single, comprehensive body of immigration law, making the process confusing and often unclear. Until 2003, immigration was under the jurisdiction of the Immigration and Naturalization Service (INS), a branch of the Department of Justice (DOJ). Now this bureau is called United States Citizenship and Immigration Services (USCIS), and a division Department of Homeland Security (DHS) (Gordon-Troy, 243).

The primary international treaties protecting the rights of refugees were established by the United Nations. The 1951 United Nations Convention Relating to the Status of Refugees, or the UN Conventions, set benchmarks on international human rights. Later, an amendment was made, resulting in the 1967 United Nations Protocol Relating to the Status of Refugees, referred to as the UN Protocol. The Convention and/or the Protocol has been ratified by almost 150 countries. The United States is a signatory to the UN Protocol, which incorporated the UN Convention (Goodwin-Gill,1). The UN Convention and UN Protocol are widely referenced in the fight for Guatemalan asylum status. The United States Congress adopted the Refugee Act of 1980 for the purpose of conforming US refugee and asylum to the UN Convention and the UN Protocol (Gordon-Troy, 118).

Before the discussion on Guatemalans living abroad can continue, some key terms must be defined. In 1952 the United States Government passed the Immigration and Nationality Act (INA). The 1952 INA established the basic structure of current immigration law. Since then, the INA has been

substantially amended in 1965, 1976, 1990, 1991, 1994, 1996, and 1997. The INA is a Federal Law that governs the legal status of non-citizens in the United States (Kurzban, 145-156). Under INA S101(a)(3), an “alien” is defined as “any person not a citizen or national of the United States”. An “asylee” is considered, “a person seeking asylum who is physically present in the United States” (INA S101(a)(3)). “Asylum” is, “a status sought by a person physically present in the United States or a person requesting admission at the United States port of entry who has a well founded fear of persecution if forced to return to his or her country of nationality because of race, religion, nationality, membership in a particular social group, or political opinion”, found in INA S101(a)(4a)208. A “refugee” is deemed as someone who is, “unable or unwilling to return to country of nationality because of a well founded fear of persecution on account of race, religion, nationality, member in a particular social group or political opinion” as specified in INA S101(a)(42). “A proceeding to enforce departure or inadmissible persons seeking admission to the United States or persons who has been admitted but are removable” is called “removal” (Kurzban, 150-178). Removal is a legal term that means deportation. Deportation is the informal term for the same proceeding.

The INS definition of a refugee is dense one comprised of elements that amount to a legal quagmire. The immigration laws of the US permit persons fleeing persecution to seek protection in the US under several categories. One of these categories is “fear of persecution”. “Fear of persecution” has five bases. These grounds upon which one can apply for asylum are persecution or fear on account of: 1. race 2. religion 3. nationality 4. membership in a particular social group 5. political opinion (INA S101(a)(42)). The law prohibits the deportation or removal of anyone whose life or freedom would be thwarted in his or her country on account of one of these five grounds. Additionally, the asylee must demonstrate that this fear is well founded. The last condition of the definition of refugee requires that the applicant must be unable or unwilling to return to their home country because of a legitimate fear of reentry (Gordon-Troy, 75). Conversely, status as an “economic migrant” is not based on the push factor of persecution (Foster, 7).

The BBC Migration Glossary defines an economic migrant as, “Someone who leaves behind their country of origin in order to improve their quality of life. The term is often used to refer to those attempting to enter a country without legal permission and/or those who asylum procedures without bona fide cause”(1). It is implicit in this definition that economic migrants are persons who leave voluntarily, usually to improve their financial situation and living standard. Voluntary immigration, especially without government approval such as a work visa, is not given the same benefits as refugee status. In other words, there is no protection and limited access to participation in society (Foster, 1-10). In *Escape from Violence: Conflict and the Refugee Crisis in the Developing World*, the authors summarize this point neatly: “voluntary economic = migrants [and] involuntary political = refugees” (Zolberg, Suhrke and Aguayo, 30). Separating the immigrant populations into two black and white categories can be overly simplistic. A persons reasons for immigrating can be deeper and more multifarious than a surface examination can appear (Foster, 110). This distinction has stigmatized economic migrants in the US, both document and undocumented. Although there are complex social implications surrounding the term 'economic migrant', in this paper, the BBC definition will serve as the base for the refugee versus economic migrant discussion.

VII. Guatemalan Migration Patterns

During the Guatemalan Civil War, an estimated 250,000 to 500,000 refugees fled the country (J. Smith, 1). At this time, Guatemala's neighbor El Salvador, was also experiencing intense violence and civil conflict. A large number of Salvadorians also fled their home. When data is collected on the number of people fleeing Central America in the 1980s, refugee populations of Guatemala and El Salvador are typically counted together. Although their populations are not identical, their history, especially during this dispersion is similar. Both populations had similar reasons for flight, migration

and settlement patterns, and legal limitations abroad. Furthermore, the United States foreign policy during this time was comparable in both their home countries. Therefore, Guatemalans and Salvadorans are usually considered a single population when discussing their status (Kahn, 29-51). The largest difference is that a majority of the Guatemalan refugees were of Mayan descent. Many Indigenous peoples did not speak Spanish or English but their own tribal languages (García, 85-89). The total for both refugee populations during this period is estimated between 500,00 to almost one million (J. Smith, 1). Because of their complicated legal status abroad, complete statistics on these populations were difficult to acquire. Most publications and surveys on Central American immigrants discuss both groups in tandem. However, this paper will primarily discuss the asylum process for Guatemalans, only referring to Salvadorans when necessary.

Guatemala and El Salvador experienced a mass eruption of violence during the 1980s, but they were not the only Central American countries in turmoil. Nicaragua was also involved in armed conflict around the same time. Yet, the Nicaraguan process post-departure was markedly different. The reasons for this discrepancy will be discussed in depth later in the paper. Migratory data on Guatemalans and Salvadorans suggest that refugees settled in three countries: Mexico, the United States, and Canada (García, 43). Migration Information Source reports indicate that 200,000 Guatemalans fled to Mexico, around 60,000 continued north the United States, and over 15,000 settled in Canada (J. Smith, 1). In Mexico, the United Nations High Commissioner for Refugees (UNHCR) and the Mexican Government, protected and assisted more than 45,000 of those refugees, the rest remain officially unaccounted for. The refugees whose final destination was Canada inevitably journeyed to Mexico and the US for a while before migrating north. Canada was very hospitable to Central Americans, granting a substantial portion of their asylum requests. Like Mexico, Canada also worked with the UNCHR (García, 119-156).

VIII. United States Foreign Policy Influence on Refugees

Those that came to the US faced another situation entirely. The United States had a large and influential role in the Guatemalan Civil War. As explained previously, acting out of both security concerns over communism and with the interest of the UFCO in mind, the Central Intelligence helped in the coup of Jacobo Arbenz. While the economic factor was a motivator in CIA involvement, the driving force behind the U.S. support was Cold War policy (Handy 138-167). The reality was that the level of communist organizing in Guatemala was overstated. After the overthrow of the second reformist president in Guatemala, the United States stayed engaged in the Guatemala counterinsurgency conflict by supplying military aid and strategic advice (Handy, 169-199). Well into the end of the 21st century, US connection to the State military hardly faltered. Jonas often regards the Guatemalan surge in violence a “Cold War Civil War” and similarly Grandin says the country acted as, “a staging ground for the continental Cold War” and “one of the Cold War's last killing fields” (4-5). None of this means that the US is directly at fault for the massacres, displacement, and terror that occurred for 36 years. However, even if the US was not the one actually killing innocent Indigenous women and children, there was no strong action of behalf of America to prevent the wide scale crimes against humanity. During this time, “the United States was a distant yet still involved patron during the Guatemalan genocide” (Grandin, 188).

A slight reprieve from US support of Guatemala came during the Carter Administration. The President could no longer ignore the reports and international outcries of severe human rights violations. In the late 1970s, the financial support of the military ceased (García, 23-24). This would only last for four years since the following President Ronald Reagan openly supported and defended Guatemala's leaders (Grandin, 190). The Reagan Administration's official policy for Guatemalans who had fled was to label them as economic migrants, therefore denying their request for asylum (J. Smith,

2). Guatemalans faced “an extremely harsh and even dangerous context of exit and an exceptionally inhospitable context of reception” (Menjívar, 1001). The handling of Central American asylum cases was founded in the context of global events. Since security was the national priority of US Cold War strategy, considerations such as human rights violations were significantly less important. In essence, the US Government in the Reagan era refuted reports of cruelty and terror order by the Guatemalan military dictators (Gradin, 190). The Administration even went as far as sending personal “opinion letters” to immigration judges strongly advocating concordance with Reagan's foreign policy (Gzesh, 2). This gesture is significant because a grant of asylum is discretionary and is determined by individual immigration judges.

The Guatemalans that entered the United States predominantly migrated to Los Angeles, Phoenix, San Francisco, and Washington D.C.. Smaller populations settled in New York, Chicago, and Boston (Menjívar, 999). Although many eventually crossed the US border, not all of the immigrants were undetected or successful in their entry to the United States. Thousands of Guatemalans were detained at the US Border and unhesitatingly return to Guatemala, back to the counterinsurgent violence they had fought so hard to escape. Of those who did make it into the US, many had enter undocumented and therefore illegally (García, 44-84). Many Guatemalans did not file for asylum or misfiled because the application process itself is “confusing, and reliable information is hard to obtain” (Menjívar, 1013). Language played a central role in the understanding or lack thereof of asylum process and applications. This barrier was worse for those who only spoke Mayan languages, since Mayan language translators were more rare. Illiteracy was also considerably higher among Indigenous populations (IWGIA, 1). Those that did file were left waiting as tedious and lengthy legal proceedings and government policies played out. For some it took as long as 20 years for the courts to reach a decision on their case. A lack of a government recognized status as a refugee can produce apprehension and severe limitations within society (Bailey et al., 125-144). Additionally, research has shown that incidents of discrimination are more likely for undocumented immigrants, making the stress and danger

levels for this group higher than other immigrant populations (Heyman, 158).

IX. ABC v. Thornburg, NACARA, and Beyond

When the United States government would not support the influx of Central American refugees, churches began to give them support. Since those who had fled the armed confrontation were not given immediate asylum status, they were considered to be in the US illegally. Starting with a church in Tucson, Arizona, and spreading to churches of multiple denominations across the US, faith groups began to help the refugees. Quaker, Presbyterian, Baptist, other Christian sects, and a few Jewish and Catholic churches participated in the social campaign called the Sanctuary Movement (J. Smith, 4). These churches acted as literal sanctuaries for persecuted Guatemalans. They provided shelter, food, access to medical treatment, employment assistance, and spiritual and emotional support. Some churches became active in helping Guatemalans cross the borders as well as bring their families into the US (Kahn, 18-20).

The strong actions of religious leaders and their congregation members was controversial. “the defense of the... Guatemalans marked a new use of international human rights norms by US activist. Citing the Nuremberg principles of personal accountability developed... post WWII, religious activist claimed a legal precedent...” to deflect prosecution (Gzesh, 3). Charges were brought against several churches for smuggling by the Department of Justice (DOJ). After the trials increased popular support for the movement, no further charges were pressed. Churches played a major role in Guatemalan's legal battle for asylum. Legal support came from lawyers nationwide, often working pro bono, to defend Guatemalans as a group and individually in a variety of legal matters (Kahn, 20-26).

The American Baptist Churches v. Thornburgh 760 F. Supp. 796 (N.D. Cal. 1991), referred to as ABC v. Thornburgh, is a landmark asylum case. An assortment of legal advocacy groups

representing eight religious organizations filed a federal lawsuit versus the U.S. Attorney General and the head of the INS in 1985. The refugees from Guatemala and El Salvador were the plaintiffs (Trainor, ABC). ABC attempted to prove that US Government:

Violated domestic and international laws which require that asylum determinations be made on a non-discriminatory basis without regard to the ideology of the country from which the refugee has fled, and that federal officers protect refugees fleeing conditions of war, persecution and widespread human rights violations. The lawsuit also charged...officials with interfering with the First Amendment religious rights of sanctuary workers... It sought a court declaration that sanctuary is legal under international law and the 1980 Refugee Act. (Center for Constitutional Rights, 1)

After several years of litigation, a settlement was attained, which was expected to have a profound impact on Guatemalan refugees in the US (Trainor, ABC).

In the provisions of ABC v. Thornburgh, Guatemalans who were initially denied asylum, are granted a new interview by INS (now USCIS), with the potential of a different decision, regardless of previous court rulings. The law also designates terms for detention and release from detention. Detention of an ABC class member can be based on criminal history and questions of national or public safety, which are possible grounds for removal (Trainor, ABC). ABC v. Thornburgh also had a clause allowing employment opportunities. An estimated 350,000 to 400,000 Guatemalans and Salvadorians compose the class members of the law suite. In order to be considered for the suite's benefits, these Central Americans must have been in the US prior to 1990 and officially registered with ABC. The asylum applications were all adjudicated as of January of 2008, the final date given by the ABC v. Thornburgh verdict (ILGRP, 5-9). At the time of it court's decision, the settlement in ABC v. Thornburgh was considered a victory for the plaintiffs, but the subsequent years have proved otherwise.

In the ensuing years after the Sanctuary Movement's legal success, several more laws were passed affecting the status of Central Americans. Migration Information Source outlines a number of

these changes including the addition of Temporary Protected Status (TPS) in 1990. Temporary Protected Status is fairly self-explanatory. The law grants immigrants short term stay in the US and transient employment opportunities (J. Smith, 4). Because TPS is intended to protect immigrants from brief situations such as severe environmental problems or brief armed struggle, it can never result in permanent residence (Foster, 5). As soon as the US Government determines TPS is no longer necessary, those protected under it must return to countries of origin or former immigrant classification (Gzesh, 4). Activists fought for Guatemalans to receive TPS after it was passed without success. Interestingly, application attempts by Guatemala's Central American neighbors from El Salvador were accepted, giving them TPS (J. Smith, 4). Another short term immigration status like TPS is called Deferred Enforced Departure, or DED. The Department of Homeland Security explains that, “individuals covered by DED are not subject to enforcement actions to remove them from the United States, usually for a designated period of time,” as authorized by the President (Press Office, U.S. DHS). DED can slow the process of removal but will never result in permanent residence.

Six years after the original *ABC v. Thornburg* settlement, the Nicaraguan Adjustment and Central American Relief Act (NACARA) was passed. NACARA upholds the decision in *ABC v. Thornburg* for Guatemalans and Salvadorians but expands the benefits and provisions of the original settlement. NACARA immigration law extended to include other countries such as Cuba and Nicaragua (ILGRP, 8-9). Under section 203 relief of NACARA, certain Guatemalans can petition suspension or cancellation of removal. The act gives further channels for citizenship than *ABC v. Thornburg*. The major change from *ABC* ruling is the possibility for *ABC* class members to apply for permanent residency in the US (Trainor, NACARA, 1). “Lawful permanent resident status” is also known as a green card. Additionally, NACARA provides avenues for those granted asylum status to bring their families to the US (ILGRP, 7-9). With NACARA, a select number of Guatemalans are eligible for permanent residency, but the law does not guarantee that those who qualify will be given residency. In order to meet the requirements for NACARA, Guatemalans needed to apply for asylum

within a small, fixed time period. One of the biggest challenges Guatemalans face with NACARA is that the act is not inclusive for all Guatemalans who arrived within the 36 year time frame. The time window is narrow, making the NACARA applicant pool only a small portion of the substantial Guatemalan population that came during the War (Menjívar, 1015).

X. Inconsistent Realities

Despite the supposed strides made with *ABC V. Thornburg* and NACARA, the reality for Guatemalans in the United States has not really changed. NACARA has very strict cut off dates to determine who benefits under the law. Research by Menjívar shows that, “fewer than half of Salvadorians and Guatemalans arrived prior to,” the NACARA deadline (1012). This does not mean that “fewer than half” of them did not flee persecution. It simply means that they were too late, regardless of the human rights violations they suffered. The result is a large population of Guatemalans who have been intentional victims at the hands of their own government, who have to choose between remaining in the US illegally or returning to confront their oppressors. The timeframe of NACARA is too strict, and there are too many who might qualify under NACARA but missed the deadline. This creates a massive problem for both the United States and Guatemala, as well as those who are not protected by NACARA.

Furthermore, the United States Government has now declared the conditions have changed in Guatemala. Therefore, it is now “safe” for those who fled to return (Heyman, 174). Under the law, if the government finds the situation different enough for return, the well founded fear upon which the asylum case was established is no longer relevant (Kurzban, 151). While it is true that the Peace Accords were signed in 1996, that does not necessarily mean that conditions are truly safe for those tormented during the war. Currently, the US is attempting to either elicit voluntarily return from

Guatemalans, or deport those who do not have asylum or permanent residence. This equals the possible deportation of thousands of Central Americans across the United States (García, 86-91).

It should be noted that this does not refer to the Guatemalan population who immigrated after the Civil War. When the Peace Accords were signed, it was expected that immigration flow from Guatemala would decrease rapidly. Due to the poor economy of Guatemala, the inequalities that remain, and the struggle to rebuild a conflict-stricken society, immigration has not significantly decreased (Freedom House, 5). The International Organization for Migration (IOM) has conducted research on the immigration patterns of Guatemalans. Their data shows an almost continual incline in the number of Guatemalan immigrants to the US on their Net Immigration Graph from 1998 until 2005. Since not all of the immigrants use legal channels, IOM figures are not exact, but their data approximates an entrance of 6,000 to 12,000 Guatemalans to the US annually (Migration and Development, 4-7). This population, including both documented and undocumented immigrants, should not be extended protection under NACARA or the Refugee Act. These immigrants are recognized under the category of economic migrants. However, their countrymen who came to the US before the Peace Accords to escape the violence and oppression, should be given permanent residence.

XI. The Case for Permanent Residency

Guatemalans in the US who were dislocated during the Civil War necessitated asylum status when they first entered the US, and since they have been unjustly rejected, they should receive that status now. For centuries, Indigenous people in Guatemala have been treated as lesser human beings, culminating in the mass killings and atrocities of the Civil War. Immigration abroad became the only chance at survival, and Guatemalans who fled were in dire need of foreign protection. The outright bias of the Reagan Administration at the peak of Cold War hysteria overruled the legal rights of

Guatemalans. In addition, subsequent legal proceedings have been complicated and extremely selective; never effectively changing Guatemalans' immigration status. The unlawful intersection of politics and immigration decisions, as well as legal obstacles, have denied many an asylum or permanent resident status. Provisions of current laws need to be changed giving Guatemalans the citizenship classification they deserve.

USCIS needs to amend the provisions of NACARA and the ABC settlement to account for those unprotected by the laws. The rapid changes to immigration law for Central Americans has made the process, including the understanding of deadlines, confusing and difficult to follow. Within the current parameters of the law, thousands of Central Americans are ineligible for permanent residence. In addition:

US immigration law has been applied unevenly across Central American groups and within the same group at different points in time, contributing to discrepancies in the experiences... Thus for over two decades the web of legal obstacles and undecipherable and intractable immigration laws and deadlines has made legality paramount” to the survival of Guatemalans. (Menjívar, 1011)

Guatemalans have waited years, even decades, for the legal justice they deserve to no avail. This pushes many who are unwilling to return to live as an undocumented, hoping to never be subject to deportation. Without a comprehensive law to deal with this unprotected population, they will remain undocumented, causing more problems with the already problematic immigration system.

Even though NACARA and ABC v. Thornburg had laws to give qualified Guatemalans asylum status or permanent residence, the status of most did not change after their passage. ABC guaranteed those that filed another asylum interview, making their original application decision inadmissible, but the results of the second interview hardly diverged from the first. There were only a few years where individual class member cases from the ABC settlement were tried in immigration court before NACARA was past. NACARA superseded ABC and had a clause that would could give ABC members permanent residence instead of asylum states. Since NACARA, few Guatemalans have actually

received permanent residence. In effect, NACARA and ABC v. Thornburgh have been useless for Guatemalans. If laws are created and passed with the intention to help a specific population, then in practice, the group should receive those designated benefits. When immigration laws are passed that have no real bearing on people, they only make the system more complicated and ineffective. The channels for citizenship were put into place but never realized through implementation.

In the 1980's, as previously demonstrated, during the Reagan Administration not even three percent of total applicants, out of thousands, were granted asylum (Menjívar, 1012). According to the UN Convention, UN Protocol (of which the US signed) and Refugee Act, asylum status is not to be granted or denied based on the political agenda of the country in which the asylee seeks protection. A separation of politics is a fundamental tenant of these immigration laws. Yet, the Reagan Administration clearly violated the rules of the treaties and laws it proposed to support. Not only were Guatemalans denied asylum, they were the only Central American group not given any protection such as TPS or DED. An undisputed 200,000 Guatemalans died in their Civil War. How many more Guatemalans needed to die before the US Government recognized the gross human rights abuses during the conflict? Since when is well-documented, “multiple acts of savagery...such as the killing of defenseless children... the impaling of victims; the killing of persons by covering them in petrol and burning them ...confinement of people who had been mortally tortured... the opening of the wombs of pregnant women,” not violations of the Universal Declaration of Human Rights. Sadly, the CEH officially recognized groups of Guatemalans as genocide victims while the Reagan Administration called them economic migrants.

The prejudice of the Reagan administration is even more evident when compared to asylum decisions for other nations at the same time period. While 97% of the thousands of Guatemalans who applied for asylum were denied, “the approval rate for Iranians was 60 percent, 40 percent for Afghans fleeing the Soviet invasion, and 32 percent for Poles” (J. Smith, 3). Iranian, Afghani, Soviet, and Polish asylum data is useful to understand the global continuum in the 80's, but the most relevant case

for exposing the Reagan Administration contrarities is Nicaraguan immigrants. Around the same time as the conflicts in Guatemala and El Salvador, the *Sandinistas*, a socialist party, took control of the government. Since the US was in support of the former Nicaraguan government and those that fought against the revolution, they were sympathetic to Nicaraguan immigrants. In *Other People's Blood: U.S. Immigration Prisons in the Reagan Decade*, Robert Kahn writes that, "INS Officials, directed by the US attorney general, encouraged Nicaraguans to settle here, issued them work permits and protected them from deportation, regardless of the weakness of their claims to political asylum" (1). Kahn analyzed data to conclude that around 20,000 thousand more Guatemalans and Salvadorans were deported than Nicaraguans while INS reports show that a majority Salvadorians were granted "generous provisions" and eventual asylum (Kahn, 1-7). These figures, in comparison to Guatemalan and Salvadoran illuminate how inseparable US foreign policy was from asylum decisions. All three nations are from the same region, all experienced large armed conflicts with high death tolls and human rights violations, all during the same era. Yet the favoritism toward Nicaraguans is incontrovertible.

Since the United States clearly and unfairly used political platforms in asylum decisions, those who attempted to escape the violence should not be punished on account of US bias. If the US was following the adopted refugee protocols, thousands more Central American immigrants would have been given asylum status. The Reagan years have unfairly classified Guatemalans arriving in the 36 year interval of the war as economic migrants. Based on the accepted definition of economic migrants and the verifiable facts of the Civil War, Guatemalan asylees can not be classified as economic migrants. The primary motivation for Guatemalan immigration to the US and beyond was not financial gain. Guatemalans, mostly rural and indigenous peoples, left their home countries because of acts of torture, forced disappearances, scorched earth warfare, and mass killings by the Guatemalan military. Guatemalans in the US should not be forced to return now simply because the US was in a Cold War panic. It is not too late for the US to amend the provisions of NACARA and make up for the mistakes and injustices from the 1980s. "The Reagan administration doesn't want to accept us as refugees

because it would be admitting that the military aid it sends to El Salvador does not help, rather destroys and creates refugees. I didn't come here because I wanted to. I had not economic need to come. I left my country because I had to," testimony given by an anonymous Salvadoran (Garcia, 84) .

Not only are these Guatemalans not economic migrants, they qualify under the INS definition of refugee. Part one of the definition requires the person to have suffered past persecution or fear of future persecution. Next, this fear must be well founded. The accounts detailed in *Memory of Silence* by the CEH provided enough evidence that the fear was well founded, but if that is not enough, there is a litany of scholarly and academic data on atrocities during the Civil War to further corroborate proof of fear. Then, according to INS law, this well founded persecution must be on account of race, religion, nationality, membership in a particular social group or political opinion. For indigenous groups, given that the armed conflict was not a, "unplanned aggressive frenzy" but a, "systematic racial policy", they would qualify under the category of persecution on account of race (Jonas, 34). It has already been established throughout the paper that racism in Guatemala against Indigenous groups can be traced to the early 1500s. The racism that permeated the country for centuries enabled the mass killings and even total destruction of Indigenous communities. In addition, the non-Indigenous that fled in the 1980s would also qualify for asylum. Some of the immigrants were activist, students, professors, and workers who were targeted because their stance against the government. They can be categorized as people who were persecuted for their political opinion. Both indigenous groups and government adversaries were perceived as communists, whether accurate or unfounded. Because of this perception, the government sought to rid Guatemala of communists by any means, including violent and fatal methods. It follows that one could make a case that some Guatemalans seeking asylum have a legitimate fear of persecution based on their "communist" views.

Although Guatemala is not fraught with Civil War at the moment, that does not mean that with peace came the eradication of intense racism and profound disparities. Grandin describes post-War Guatemala as a country where, "poverty is endemic, racism and sexual exploitation continue, wealth

and inequality is at an all time high, national armies and security forces seem invulnerable, and most of those responsible for Cold War atrocities continue to enjoy...immunity” (191). Grandin captures the state of the country in a concise and eloquent manner. The underlying problems that fueled the war have not changed dramatically since the Accords. A majority of land is still controlled by a minority of the population, unemployment is high, and the export-based agricultural economy of Guatemala is subjected to market fluctuations, making capital and foreign investment unstable. After the War, gangs became rampant and powerful throughout Guatemala, often as a product of 36 years of violence. Many gang members are former soldiers. Some gangs control entire neighborhoods and even cities (Menjívar, 1016). A clear class system still governs the social norms of Guatemala. Hierarchies and racial prejudice have not subsided, cementing the obstacles for Indigenous peoples firmly in place (Freedom House, 2-5).

After the War, many members of the military, including officers, became part of the civilian police force created after the War. The police are still corrupt and have been found to use unnecessary violence against suspects. The Death Squads still exist in Guatemala, only now they are comprised of civilians and policemen instead of civilians and military men. The lack of demilitarization reflects the less than total commitment of Guatemalan Government to peace (Jonas, 150-151). Many perpetrators of violence and leaders over the 36 years have not been punished. The result is men who have killed, raped, and tortured who have been indiscriminately absolved. This is psychologically damaging for victims to face their assailants on the streets and in every day lives (Freedom House, 3). The War was already traumatizing for those who fled and further trauma is not only unnecessary but avoidable if Guatemalans are not deported. Many of the military leaders, including one dictator, have become major political figures in Guatemala since the War. Even though crimes by these men and crimes ordered by them have been well documented, most of them have not had to answer for the consequences (CEH, 3). The War Guatemalan Justice System, regardless of gradual improvements, remains ineffectual, limited, and lacking trust of a majority of the population (Jonas, 152) In the most recent Guatemalan elections

in 2007, “Alvaro Colom won the presidency in a runoff against former general Otto Perez Molina, and former dictator Efraim Rios Montt, who was wanted in Spain on genocide charges, won a congressional seat and its attendant immunity from prosecution”, Freedom House reports (1). With former military men at large, there does not seem to be a guarantee of safety for those who suffered during the War. Guatemalans who came to the US during the violence should not be made to return to the monsters that killed their family, friends, and neighbors.

XII. Conclusion

Indigenous peoples of Guatemala have never really been treated as equal citizens. This oppression dates back to the arrival of the Spanish, when Mayans were conquered on their home land. After independence, they were forced into manual labor positions without rights or opportunities for advancement. With the rise of coffee plantations, even more land was taken from indigenous groups. When the coffee trade grew, so did the inequalities. Indigenous groups were not part of political and economic decisions. In fact, they were hardly even considered. They had little civil rights and discrimination against them was rampant. From 1944 until 1954, the Ten Years of Spring were a deviation from traditional Guatemalan political machine. Ethnic tensions and civil unrest began to rise, eventually exploding into violent clashes and a polarized society. The Guatemalan military, with the financial and logistical support of the CIA, overthrew reformist President Jacobo Arbenz. A long, violent, devastating, and horrific Civil War followed, lasting for 36 years. The charade of Communism kept the United States involved on the side of the government for most of the war. After the Peace Accords in 1996, the Commission for Historical Clarification (CEH) did extensive research on the war and found unthinkable acts of terror, torture, and genocide were committed by the military and Government against their people. The Indigenous population was caught in the crossfire between the

military regime and leftist guerillas, suffering the worst human rights violations of the War.

In response to the massacres and paralyzing fear that swept the country, thousands of Guatemalans sought refuge beyond the borders of Guatemala. Many of them ended up in the US, without asylum visas because of the Reagan Administration's Cold War policy. In response to an influx of immigrants without US protection, churches nationwide began the Sanctuary movement. With the help of lawyers, these church groups contested immigration decisions regarding Guatemalans in the court case ABC v. Thornburgh. Most importantly, ABC v. Thornburgh allowed for reexamination of individual Guatemalan asylum applications. NACARA came shortly after ABC and provided a path to permanent residence for Central Americans. Both decisions have achieved little for the Guatemalan community in the US. Without permanent residency or asylum, Guatemalans have little protection under the law, they do not have access to basic services like health care and education, and the possibility of deportation is a daily fear. The threat of a second dispossession is a waiting game, and the cost of losing is everything. Guatemalans who should be refugees have been relegated one of the lowest statuses in society. This societal imprisonment of undocumented causes intense anxiety and seemingly insurmountable barriers. Instead they could be enjoying the benefits of permanent residence if politics and asylum cases were kept separate in the 1980s.

Guatemalans who entered the US between 1960 and 1996 should be given permanent residency. If the Reagan Administration had viewed their situation objectively, there would not be such a significant problem today. Guatemalans who have been waiting in the US for decades on tedious and complicated legal battles should not be deported since their asylum case was unfairly decided. Under the INS definition, Guatemalans qualify as refugees and cannot be classified as economic migrants. Political propensity and denial of crimes against humanity is not a justifiable excuse for the denial of asylum. Decades later the US cannot simply write off their mistakes at the expense of peoples livelihoods.

Currently, the conditions in Guatemala are not a dramatic departure from the social, economic,

and political environments of the War. Guatemalans, especially indigenous peoples, who immigrated during the war, should not have to go back to a country that perpetually disenfranchises them. Justice for victims in Guatemala is nonexistent, especially for those who lost the most. Guatemalans in the US have been displaced and unwillingly removed from their ancestral land. They have lost important connections to their community and felt the pain of devaluation of their culture. When Guatemalans left their country, they left their home. Now that they have been in the US for decades, the US should not take away the only home they have.

The Indian is an inexhaustible layer of
exploitation, and his best song
is his taciturnity ... Guatemala is
sad; a desperate, horrid, fearful
sadness. Its people are sad, they live
introspectively, without sensation or
passions. Mute, withdrawn, hushed....
We are a sad people . living with
a totally alien world within us.
—Ernesto Juan Fonfrias,
"Guatemala: un pueblo triste"
(Handy, 47)

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