

One such restrictive change added this year, but eliminated by amendment in June 1987, included a registration process that would have required those eligible to sign an affidavit assuring voluntary departure once the temporary protection measures were lifted. This amendment was part of a package passed in the House Rules Committee that effectively brought the bill back to its original intent to protect Salvadoran refugees without extraneous restrictions.

Having passed the most difficult hurdles in various committees, the bill presently awaits a vote on the Senate floor. Optimistic about passage, advocates are currently strategizing the House and Senate versions. Efforts are underway to maintain the integrity of the recently amended and approved House bill.

From a refugee community perspective the bill has been instructive. Throughout the long struggle to see blanket protection for refugee fearing repatriation to El Salvador, we have seen desired protection measures adopted for others such as Poles, Afghans, Ethiopians, and others. The argument that temporary humanitarian protection has become more of a public relations/political gesture than safe haven at face value is increasingly evident.

Myths, by definition, embellish the hopes and fears of many. In the case of the Moakley bill, the hopes of the refugees provide similar counterpoint to the fears of U.S. officials. Such fears are often based on government-bred myths such as that by providing limited protection to Salvadoran refugees we encourage them to stay in the U.S. and that by staying they will, for example, steal jobs from U.S. citizens. These false and intentionally misleading representations, refuted by a number of economists and researchers, create the effective dividing line between protection and deportation.

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1. INS statistics, partial FY 1987 October-May.

2. A blanket protection measure that provides for withholding of deportation and work authorization pending review of humanitarian conditions in the home country.

Orantes-Hernandez v. Meese:

LITIGATION TO STOP I.N.S. ABUSE OF SALVADORAN ASYLUM SEEKER

Paula Pearlman

In 1981, every afternoon immigration attorneys in Los Angeles would be found at the downtown (U.S.) Immigration and Naturalization Service (INS) office retracting their Salvadoran clients' "voluntary departure" to stop a deportation to El Salvador. The INS practices in California, along the U.S.-Mexico border and elsewhere in the United States led to the filing of a nation-wide class action suit against INS, *Orantes-Hernandez v. Meese*.¹

The Orantes case went to trial before Federal District Court Judge David Kenyon in Los Angeles 1985 and was finally concluded in February 1987. More than 75 plaintiffs' witnesses testified in person and 30 by deposition. The government presented approximately 150 witnesses.

Plaintiffs, Salvadorans apprehended by the INS, had been coerced by the INS into signing "voluntary departure" forms to return to El Salvador. They were deprived of access to telephones and counsel. They had not been informed of their right to apply for asylum under the Refugee Act of 1980.² The lawsuit was filed to stop the coercive practices of INS, to prevent future abuses and to guarantee that Salvadorans rights be protected.

The plaintiffs and class members of this lawsuit are Salvadorans who fled from the civil war in their homeland, were arrested by INS and are eligible for asylum. Salvadoran class members are represented by a litigation team of public interest lawyers, including those from the Central American Refugee Center (CARACEN), Legal Aid Foundation of Los Angeles, Immigrants' Rights Office, National Center of Immigrants' Rights, American Civil Liberties Union of Southern California and San Fernando Valley Neighbourhood Legal Services.³ The attorneys worked cooperatively for thousands of hours interviewing and preparing witnesses across the country.

Expert witnesses from Americas Watch, the Lawyers' Committee for Human Rights and the University of Central America in San Salvador, testified in Los Angeles about human rights conditions in

El Salvador. Testimony highlighted the lack of a functional judicial system in El Salvador and the failure to prosecute any Salvadoran government officials or security forces for the persecution, including death and torture, of any Salvadoran. Witnesses described the lack of investigatory interest and government intent to pursue human rights abusers in contrast to the situation in Argentina. The U.S. Government's witnesses testified that the monitoring of human rights abuses by the U.S. State Department is based primarily on newspaper accounts in the Salvadoran press. Extensive State Department documentation of abuse by the Salvadoran security forces was withheld from plaintiffs on the basis of the state secrets doctrine.

Salvadorans presented dramatic testimony about their reasons for fleeing El Salvador: escape from death squad members, torture, and unlawful arrest. Perhaps they or their family members had been involved politically in unions, opposition groups, religious and charitable organizations; or perhaps they were merely opposed to one side of the conflict or the other. Their testimony became even more compelling when followed by descriptions of the trauma of apprehension by the U.S. Immigration Service. In one instance, plaintiff Dora Castillo described verbal abuse by the border patrol agents, demands for signatures on paper with no opportunity to read it, and threats that she would never see her children again if she refused to sign her "voluntary departure." She signed. Other Salvadorans testified about being told by the INS that they no option in this country (U.S.) BUT to sign, even after stating that they were afraid to return home.

Judge Kenyon ordered the INS (June 2, 1982) to provide every Salvadoran apprehended in the United States at the border, or in the interior of the U.S. with a notice of rights including the right to apply for asylum, the right to consult with an attorney, the right to a deportation hearing, and the right to sign for voluntary departure.

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Cont'd from page 6

Even after the injunction was instituted, there was testimony about continued coercion, harassment and misinforming of Salvadorans by the INS. Salvadorans were told that it was useless to apply for asylum, that they would "rot in detention", and that they would just be deported back to El Salvador anyway.

Testimony has amply detailed the oppressiveness of conditions of detention. The detention centers are located in remote, isolated areas with extreme climates. Immigration attorneys complained about long delays to see clients, the lack of legal materials, libraries, writing materials available to Salvadorans in detention and the failure of the INS to provide an adequate number of telephones. In El Centro, California for example, detainees had to queue up to use a short, stubby 'golf pencil' for two hours. INS detention officers at the Port Isabel Detention Center, Texas, give an orientation for all new detainees. They offer voluntary departure without explaining, and do not describe the right to post bond or advise that an attorney could assist them with deportation proceedings. Coupled with the coercive treatment by INS officers, Salvadorans experience disillusionment and uncertainty. Yet the INS officers have testified that there is nothing wrong with their practices.

While the INS internal policing mechanism is designed to function by INS officers and agents reporting on misconduct observed, subsequent investigation and remedial action, it is remarkable that to date only this investigation (of Mr. Orantes-Hernandez) has been conducted into allegations of abuse, despite the fact that the highest authorities in the Immigration Service testified to their awareness of the abuses and the allegations in that lawsuit. William King, then patrol agent in charge of the El Centro border patrol sector, testified that even after receiving a memo ordering his agents to stop coercing Salvadorans into signing voluntary departures, he did not investigate the allegations of misconduct among his officers.

The traumatic experiences in El Salvador have an obvious and serious impact upon the psychological orientation of many Salvadorans. Dr. Saul Nieford, a clinical psychiatrist and expert on Central American refugees, testified that many are reluctant to reveal to INS agents the varied reasons why they seek refuge in the U.S.

They tend to omit rather than exaggerate their own difficult experiences. Salvadorans suffer from "frozen shame" for having survived the ordeal in their country, then fleeing to the U.S. leaving behind loved ones and friends. Consequently, a Salvadoran may not reveal to an INS agent his/her fears of returning. Without an advisal of rights, Salvadorans may even and sign for voluntary departure, despite the fact that they are terrified to return home.

A post trial brief in this case was to be filed in May, followed by oral argument. Plaintiff's attorneys requested that the judge order the immigration service to continue advising Salvadorans of their right to asylum and also prohibit INS coercion, including misinformation in the apprehension, processing and detention of Salvadorans. The court called this case one of the most important law suits in the U.S. because it revealed the involvement of the United States government in El Salvador. The INS has vowed to take the case to the U.S. supreme court if it does not receive a favourable decision. Those concerned about human rights and the protection of legal rights in the United States, and the world at large, have eagerly awaited the court's decision.

[At press date, no decision had been rendered following the completion of the oral argument on August 31, 1987. Ed.]

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1. 541 F. Supp.351 (1982); originally filed as *Orantes-Hernandez v. Smith*, CV 82-1107-Kn, United States District Court, Central District of California. The Secretary of State was also named a defendant but the cause of action against him was subsequently dismissed.

2. Pub. L.96-212, 94 Stat. 102 (1980) U.S. Congress enacted a comprehensive system for resettlement of and assistance to refugees in the United States. It directed the Attorney General to establish a procedure for an alien physically present in the U.S. to apply for asylum. 8 U.S.C. 1/21158(a).

3. Attorneys are Linton Joaquin, Sandra Pettit, Sheila Neville, Charles Wheeler, Mark Rosenbaum, Vera Weisz, and Paula Pearlman, all members of the National Lawyer's Guild.

CHANGE OF LOCATION:

The Refugee Documentation Project (RDP) has moved to Suite 290J, Administrative Studies Building, York University. RDP's data base of over 8,000 research items relating to refugee issues and situations are available in the Resource Centre during the academic year. Please telephone (416) 736-5061, ext. 3639 for further information and schedule.

NEW PUBLICATIONS LIST

UPROOTING, LOSS AND ADAPTATION: The Resettlement of Indochinese Refugee in Canada. August 1987. Kwok B. Chan and Doreen Marie Indra, eds. Published by the Canadian Public Health Association, 1355 Carling Avenue, Suite 210, Ottawa, ON, K1Z 8N8. Price, \$12.00. The book brings together papers representing contemporary research on the resettlement in Canada of Vietnamese, Laotian and Kampuchean refugees. It includes an exhaustive bibliographic survey of Canadian research in Indochinese communities and original photographs.

MULTICULTURALISM AND THE CHARTER: A Canadian Legal Perspective. Toronto: Carswell, 1987. Pp 212. Price \$48.00. Special papers, some in English and some in French have been collected by The Canadian Human Rights Foundation which recruited a committee of Canada's leading experts on human rights, multiculturalism, and constitutional law.

HUMAN RIGHTS INTERNET DIRECTORY: Eastern Europe and the USSR. Harvard Law School, Pound Hall Room 401, Cambridge, MA 02138, USA. April 1987, pp 304, price \$30.00

A Directory of International Migration Study Centers, Research Programs, and Library Resources. Eds. D. Zimmerman, N. Avrin and O.D. Cava. CMS Center for Migration Studies, 209 Flagg Place, Staten Island, NY 10304-1148, USA. Pp 299, indices, price \$35.00.