



**Immigration Emergencies:
Learning from the Past,
Planning for the Future**

Gretchen Bolton

THE U.S. COMMISSION ON IMMIGRATION REFORM IS A BIPARTISAN COMMISSION AUTHORIZED BY THE IMMIGRATION ACT OF 1990 AND CHARGED WITH EXAMINING IMMIGRATION POLICY AND ITS IMPACT ON SOCIAL, ECONOMIC, AND COMMUNITY RELATIONS, ON POPULATION SIZE AND CHARACTERISTICS, AND ON THE ENVIRONMENT.

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REFUGEE POLICY GROUP
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INTRODUCTION

The development of American immigration and refugee policies and procedures in the twentieth century has been characterized by *ad hoc* administrative measures and incremental legislative steps. Thus, when faced with the new and unexpected situation of a direct influx of large numbers of Cubans, Haitians, and Central Americans during the 1980s, legislation, administrative procedures, and contingency planning based on the previous crisis were overcome by events. Based on lessons from the U.S. experience in this period, this paper sheds light on policy development, legal statuses available for immigration emergencies, resettlement management, and return programs. The experiences in 1980 regarding Cuban and Haitian entrants and in 1988-89 regarding Central Americans are used to illustrate these points.

A selected list of legal, logistical, institutional, and financial systems or remedies that may play a role during an immigration emergency should help structure a discussion of policy options. This paper attempts to review various aspects of preparedness, institutional responses, long-term adjustments, and special cases that must be considered in addressing immigration emergencies. In discussing these components of the Cuban-Haitian

crisis and the Central American influx, the paper focuses on:

- Expectations on the eve of the Cuban-Haitian crisis in 1980 and in relation to the expansion of direct migration from Central America to the U.S. in the ensuing years;
- Results and impact of such expectations on existing procedures;
- Legislative and administrative changes instituted during that period;
- Lessons that can be distilled from the U.S. experience with immigration emergencies in the 1980s.

Defining an Immigration Emergency

At the outset, it may be useful to look at different definitions of an immigration emergency for which extraordinary policies and procedures must be developed. The Federal Emergency Management Agency [FEMA], which was called into action to manage the Marel crisis in 1980, is normally expected to follow specific procedures to define the kinds of emergencies in which it takes responsibility:

State disaster officials request Preliminary Damage Assessments [PDAs]; state governors ask the President to declare a major disaster when supplemental federal assistance is required; FEMA evaluates PDAs and advises the President, not on the basis of the numbers affected, nor on the basis of cost estimates (which are considered unreliable), but rather on the basis of uninsured needs not met by state, local, and voluntary recovery efforts.

This formulation of criteria and procedures was intended for a recovery effort following a discrete event, like a hurricane or earthquake, not for the management of influxes of large numbers of people, where the crises might be ongoing, nor for a crisis with legal and international repercussions. However, the FEMA focus on local needs, its immediate access to funding, and its “mission assignment” capability to call upon seventeen other agencies and departments of the federal government to detail personnel to assist in an emergency, made it a very useful—and perhaps the essential institution at the time—to spearhead efforts to manage the Mariel crisis.

A report of the Cuban-Haitian Task Force [CHTF], looking back at its experience in 1980, suggested a simpler definition of an immigration emergency: “a future possible

influx of persons . . . who will require large-scale social services.” Another definition from the time was an influx of unpredictable numbers and of unpredictable duration.

In legislating procedures for use of the newly created Department of Justice Immigration Emergency Fund in 1990, the Congress left it to the Attorney General to prescribe scenarios that constituted an immigration emergency. The INS Proposed Rule on the Immigration Emergency Fund (Nov. 5, 1993) established procedures governing requests for a Presidential declaration of an immigration emergency, but again did not provide a clear definition. In addition, the Attorney General was given authority to provide for local assistance up to \$20 million of the \$35 million fund even in the absence of an emergency where (a) more than 1000 asylum applicants arrived in one quarter of a year and (b) there was danger to lives, property, safety, or welfare of residents.

The definition of a refugee or migration emergency meant to trigger funding from the Emergency Refugee and Migration Assistance fund [ERMA] of the Department of State is a Presidential designation of an “unexpected, unforeseen refugee or migration emergency” which is deemed to be in the national interest. “Unfore-

seen” is defined as “not predictable enough to seek an appropriation from Congress in advance.” The criteria that trigger the use of ERMA are, thus, lack of funds in the budget and no reprogrammable funds. The Department of State has reserved use of the fund since 1980 for overseas emergencies, not domestic border crises.

These definitions of an emergency significantly are largely objectively quantifiable and expected to trigger certain responses. Different agencies and departments of government use different definitions depending on the response that they are capable of making and the policy and tradition they bring to it. INS, for example, operates from a definition focused almost entirely on the difficulties of processing and control, the hardship an influx of migrants might bring to American residents, and the question of legal status—in other words, a border enforcement point of view.

FEMA looks at local crisis management issues: recovery needs requiring resources beyond the capacity of the local community. The CHTF, in the period that it was becoming more attached to the Department of Health and Human Services [HHS] Office of Refugee Resettlement [ORR], was more concerned with the well-

being of the migrants themselves and of their social service needs. The Department of State, under the authority of the President, looks at unanticipated costs and “the national interest,” objective and subjective criteria that are motivated by foreign policy rather than by domestic concerns and that focus on emergencies in other countries.

In this paper, preparedness for the immigration emergencies of the 1980s is evaluated by the extent to which expectations were closely related to the realities of history and current conditions, the accuracy and timeliness of information reaching an appropriate level to trigger action, and the degree to which contingency planning was in line with national laws and values and coordinated in a manner to ensure uniform compliance and cooperation among the relevant federal and state agencies and departments and local voluntary groups.

THE 1980 CUBAN- HAITIAN IMMIGRATION EMERGENCY

Federal Expectations, Information, and Preparedness

Despite some obvious indicators that things were changing, the nation on the eve of the Mariel crisis did not consider itself a country of first asylum for refugees. President Carter said, on May 14, 1980, in the middle of the crisis, "Our laws never contemplated and do not adequately provide for people coming to our shores directly for asylum . . ." It was anticipated that traditional U.S. generosity to those fleeing political persecution could be exercised in a deliberate, orderly, and planned migration and resettlement program.

The model of an orderly and internationalized resettlement program so recently in the national consciousness was the U.S. response to the Vietnamese boat people landing in Thailand, Malaysia, Indonesia, and the Philippines. Except for the initial exodus from Vietnam in 1975, when refu-

gees stayed briefly at reception centers on the West Coast of the United States and four military camps around the U.S. while awaiting transfer to sponsors or relatives, refugees were selected and processed in holding camps abroad and brought to the U.S. only when they could be delivered directly to sponsoring families or voluntary organizations. Boat people did not land on U.S. beaches; that kind of chaos and tragedy was not expected here. The U.S. had the luxury of time and planning in the selection and resettlement program.

Further, following the Geneva Conference on the boat people situation in Southeast Asia in the summer of 1979, the U.S. was one of a number of countries that pledged resettlement numbers, and although the U.S. pledged the most numbers of any single country (14,000 a month), there was a sense of joint responsibility in the internationalized program.

The U.S. had experienced its most massive and long-lasting refugee resettlement program in the Cuban Refugee Program, which had lasted for nearly fifteen years from 1959 to 1973. This program, established by the Attorney General's parole authority and then through special legislation and outside the usual immigrant visa quotas, brought 800,000 Cubans to the U.S. In the earliest period, Cuban

exiles arrived by air, through various visa arrangements, or on their own cognizance without special assistance. After suspension of commercial air travel from 1962 to 1965, when U.S.-Cuban relations were at their lowest point, Fidel Castro suddenly opened the port of Camarioca for one month in 1965. Just as they were to do fifteen years later, Cuban-Americans plied the straits in small boats to rescue some 5,000 family members until President Johnson formalized an "air bridge" orderly migration program (the "Freedom Flights") that was to bring 50,000 Cubans a year to the U.S. for the next eight years. While arrivals had essentially stopped in 1973 when Castro brought that program to an end, a plan for phasing out the last Cuban refugee resettlement services over a period of six years was entering its third year when the Mariel crisis occurred.

The Refugee Act of 1980

Congress and the federal government had been working together in the years preceding 1980 to establish for the first time permanent statutory authority for the acceptance and resettlement of refugees in such orderly migration programs. The Refugee Act of 1980, signed into law March 17, 1980, which amended the Im-

migration and Nationality Act of 1965 to bring it in line with current practices and international norms of refugee assistance, was intended to put into place a contingency plan and procedures that would be sufficiently flexible to be responsive to unforeseen emergency refugee situations.

During the previous thirty years, refugees had been resettled in the U.S. on the basis of group designations in each overseas emergency under the parole authority of the Attorney General, with a presumption in favor of those fleeing communist countries. Resettlement assistance and adjustment of status to permanent resident had been made available through country-specific legislation on a case-by-case basis.

Due to Congressional dissatisfaction with the *ad hoc* legislative and administrative practices, the 1980 law for the first time incorporated into U.S. law the international legal definition of a "refugee" according to the Geneva Convention of 1951, without the ideological baggage of the Cold War. [See **Appendix** for full definition.] With the intention of using the services of the U.N. High Commissioner for Refugees [UNHCR] in the country of first asylum abroad for protection and designation of those refugees requiring resettlement, the act provided procedures for selection and processing on an indi-

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vidual basis of those refugees whose admission to the U.S. is “justified by humanitarian concerns . . . or is otherwise in the national interest.” For the first three years that the legislation was in force, a “normal flow” of refugees up to 50,000 could be admitted to the U.S. annually. The President was to consult with Congress annually concerning planned admissions in excess of that number and immediately in case of an unforeseen emergency refugee situation. Proposed Admissions for FY 1980 started at a high of 217,000 because of current concerns for Indochinese “boat people” and Soviet Jews.

Provision was made for the coordination of this complex program through the newly-created office of the U.S. Coordinator for Refugees, an Ambassador-at-large under the authority of the Secretary of State. At the same time, legal status determinations for resettlement of refugees were to be carried out under the authority of the Attorney General, as delegated to the Immigration and Naturalization Service [INS].

The 1980 legislation also created the Office of Refugee Resettlement in the Department of Health and Human Services under the general policy guidance of the U.S. Coordinator to fund and carry out programs for domestic resettlement of,

and assistance to, refugees. Such programs were to include employment training and placement, English language training, cash assistance as well as supplemental security income benefits [SSI], and response to such special needs as health, social services, and care for unaccompanied refugee children. Services were to be subcontracted largely to voluntary resettlement assistance agencies or to be 100 percent reimbursable by the federal government to the states.

With the passage of a systematic program for all refugees, the Indochina Migration and Refugee Assistance Act of 1975, one of the pieces of special legislation still on the books from the earlier era, was repealed. However, while the assistance program for earlier Cuban refugees was being phased out, the new legislation did not repeal the special legislation for Cubans, but merely amended the Cuban Adjustment Act of 1966 to conform with the one-year adjustment provisions of the new refugee act. The 1966 act and its potential for future use in adjusting the status of Cuban entrants to permanent residency was not a matter of discussion in the Conference Committee concluding negotiations on the new legislation.

The criterion for acceptance as a refugee—a well-founded fear of persecution in the home country for various reasons—was

established as the basis for adjudicating asylum applications for individuals *after* their entry into the U.S. as well. The Refugee Act of 1980 went further than the U.N. in allowing for the designation as refugees of certain persons still in their own country in certain circumstances, thus allowing for in-country processing and orderly movements of would-be refugees when the exit of politically sensitive people and family members could be negotiated in preference to imprisonment and persecution. This important provision was useful in the following years in setting up the Overseas Departure Program from Vietnam, Moscow processing of Soviet Jews, and the processing and movement of selected refugees directly from such Western Hemisphere countries as Cuba, El Salvador, Haiti, and Nicaragua.

The new Act did not, however, anticipate in any manner a direct influx of large numbers of people in little boats arriving on U.S. beaches and applying for asylum. In designating the number of asylees who could adjust their status to permanent resident under the new legislative authority, the Congress anticipated the possibility of only 5,000 *bona fide* asylees being accepted for adjusted status in FY 1980 from among aliens already in this country.

Camarioca: The Cuban Precedent, the Cuban Presentiment?

The incident at the port of Camarioca clearly had been forgotten by Congress and the Administration in Washington. However, when Castro brought the air bridge program to an end in 1973, some 135,000 approved refugees had been left behind. The flow of migrants from Cuba to the U.S. was at its lowest point during the period from 1973 to 1978. Only 18,000 people successfully made the trip through third countries or by entering the U.S. illegally.

With the beginnings of a thaw in U.S.-Cuban relations in 1978, "Interest Sections" were opened in each nation's capital to conduct diplomatic business, and between October 1978 and March 1980, a total of 22,168 former political prisoners and their families were allowed to migrate from Cuba to the U.S. Negotiations aimed at easing relations with Cuba in the fall of 1979 included discussions about expansion of this program to a possible larger orderly migration program. Economic conditions in Cuba had declined, the desire to emigrate had been whetted by visits now permitted from exile relatives, and Castro was eager to export those most likely to foment dissent in Cuba.

Later in 1980, the House Permanent Select Committee on Intelligence was to accuse the Carter Administration of an intelligence failure due, in part, to Castro's March 8, 1980 speech intimating that a repeat of Camarioca could occur if negotiations broke down. The Department of State, however, believed "that the reopening of Camarioca did not seem imminent," and instructed the Interests Section to brief Cuban officials on the Refugee Act of 1980, which, they believed, would provide for the more rapid processing that the Cuban Government was seeking. [See Copeland, R. 1981. The 1980 Cuban Crisis: Some Observations. *Journal of Refugee Resettlement* (August).]

Whether this was an intelligence failure or failure to act on intelligence received is not clear, but it is clear that no one in authority recognized that a crisis was imminent. Significantly, however, at that time the President was deeply distracted by the Iran hostage crisis and the deteriorating U.S. economy. No early warning system can be effective if those in charge are not in a position to pay attention and act on the warning.

Growing Numbers of Haitian Arrivals

If the arrival in south Florida from 1973

on of Haitians in small boats was noted outside the local community, it was in the courts where Haitian rights activists were fighting for fair hearings for Haitian asylum applicants. The small group of Haitians was being managed not through the generous refugee and asylum procedures offered to those fleeing communist countries but, rather, through the border enforcement procedures of the INS applied in an inconsistent, *ad hoc* manner. Until 1977, a year when only 274 Haitians had been apprehended entering the U.S., the INS had detained Haitians until deportation hearings.

In 1977, appeals from Haitian rights advocates bore fruit; the INS reversed course and released imprisoned Haitians without bond, giving them work authorization while they were awaiting asylum and deportation hearings. The new policy and procedures, along with a tightening up in official policy in the Bahamas (where Haitians had also sought asylum), caused an increase in the flow of Haitian boat people to the U.S. from 274 in 1977 to 1,815 in 1978, a growing backlog of cases at INS offices, and strain on local social and health care services. There was a backlog of some 20,000 asylum applicants from all sources by fall 1979.

In response, the INS again reversed course in 1978, reinstating detention, cancelling

work authorization, and setting up an expedited deportation hearing process with little representation available for the Haitian asylum applicant. U.S. Federal District Judge James King imposed a temporary injunction against the INS to suspend this practice in July of 1979 and ruled in July 1980 that, "The decision was made among high INS officials [note: *only* INS officials are mentioned] to expel Haitians, despite whatever claims to asylum individual Haitians might have. . . . This program, in its planning and executing, is offensive to every notion of constitutional due process and equal protection."

At the time of the onset of the Mariel crisis in April, 1980, the INS was still in limbo as to how it would be permitted to respond to the growing Haitian influx, which had increased by 2,522 additional arrivals in 1979 and already surpassed that number in the first three and one-half months of 1980.

Occupation of the Peruvian Embassy: An International Crisis

A number of fast moving situations thereafter were beyond American control. When on March 28 a busload of Cubans seeking political asylum crashed through

the gates into the Peruvian embassy compound in Havana killing a Cuban guard in the shooting that followed, Castro, in an effort to embarrass the Peruvians, announced that those seeking to leave Cuba would be allowed to do so. The antagonism toward Peru and a number of other Latin American governments had come about because they had been offering Cubans political asylum if they came to the embassies, but had not been willing to move ahead with an orderly migration program with the Castro government (contrary to the procedures preferred by the U.S.).

As the number of Cubans massed at the Peruvian Embassy in Havana in increasingly inhumane and untenable living conditions grew to more than 10,000, the government of Peru, supported by Venezuela, Costa Rica, and the United States, requested assistance of the Intergovernmental Committee for European Migration [ICEM]¹ for an internationalized resettlement effort. Responding to the appeal from ICEM for resettlement numbers from

¹ ICEM underwent two name changes in the 1980s, first dropping "European" from its name to become the Intergovernmental Committee for Migration [ICM] reflecting its growing international responsibilities, and later being renamed the International Organization for Migration [IOM]. This paper uses the name or initials in effect at the time of the events discussed.

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governments around the world, the U.S. offered to resettle 3,500 Cuban refugees, the largest number offered by any of the participating countries. The other quotas established by April 30 were Argentina 300, Australia 200, Austria 50, Canada 300, Costa Rica 300, Ecuador 200, Federal Republic of Germany 278, Peru 1,000, Spain 500, and Venezuela 500. In addition, financial contributions of some \$768,000 for the resettlement program, plus unspecified additional transportation costs, were pledged by the U.S. and by the countries where quotas were established.

Costa Rica, with ICEM assistance, agreed to provide a staging area for prescreening and transit for the Cubans. With the acquiescence of the Cuban government, ICEM initiated an airlift from Cuba to Costa Rica and onward to the other countries on April 16, 1980. On April 18, with only 677 Cubans transported, Castro precipitously cut off the flights to Costa Rica and within three days opened the Port of Mariel to all those wishing to leave. (There was one more flight on April 24, bringing the total airlifted to San Jose to 773. Another 484 persons were able to go to Spain on direct commercial flights from Havana, and ICEM arranged transit flights from San Jose for 387 for resettlement in Peru by May 15.)²

Castro was reacting to an international public relations disaster and an internal economic crisis. The question arises whether at this point the U.S. could have done anything within its humanitarian tradition without threatening either other foreign policy initiatives to forestall the measures Castro took to take the heat off his government or the overwhelming response of Cuban-Americans in Florida who went out in their boats to bring their relatives and friends over. Castro's goal was to embarrass the U.S. and other countries that were gaining political mileage at Castro's expense through the international resettlement program. By mixing undesirable criminals or individuals released from mental hospitals with the dissidents and family reunification cases, and by overwhelming the State of Florida, Castro succeeded. For months to come, despite two international conferences in San Jose, Costa Rica, Castro would be re-

² Different sources quote different numbers of Cubans moved from Havana in the airlift. This paper relies on the statistics issued by ICEM at the time of the airlift. Discrepancies—for example, much higher figures in the *Report of the Cuban-Haitian Task Force*, November 1980—may be due to the inclusion of numbers of released Cuban political prisoners who had left Havana earlier in 1980 and were not actually occupants of the Peruvian Embassy compound or part of the ICEM airlift.

sponsive neither to further calls for an orderly migration program nor calls for adherence to the norms of international law and customary international courtesies.

Under such circumstances, the contingency plans laid out in the Refugee Act of 1980, starting with the internationalization of the resettlement effort, had questionable efficacy. The Act did not anticipate the use of refugees as a weapon by one country against another, much less the mockery of a generous refugee policy through imposition of “undesirables”—criminals and the mentally ill—on the recipient country.

The Post-Mariel Limits of Internationalization

Just as the Refugee Act of 1980 did not anticipate large numbers of refugees or asylum-seekers landing directly on the U.S. shores, so it did not anticipate that the prevailing international attitude in such a circumstance would be that this was now an American problem and no major international effort was required. UNHCR and a number of European governments were extremely reluctant to make an all-out effort toward internationalizing the resettlement program once the

Cubans were in a country that, more than any other country in the world, seemed fully capable of providing adequate first asylum and resettlement and was obviously the destination of choice.

The UNHCR also had not been able to respond positively to requests from Latin American countries to assist with the asylum seekers in the Peruvian Embassy compound in Havana, at least in part because of the narrow Geneva Convention definition of refugee (as opposed to the expanded designation allowed by U.S. law) these people had not yet left their country of origin. At that time and in this particular crisis, the U.S. Department of State was involved in an effort to urge the UNHCR toward a broader commitment and interpretation of its mandate, but without immediate success.³ On the basis of appeals from major donors, the UNHCR did agree to provide limited funds for care and maintenance of the Cubans in transit in Costa Rica. Questioned on the eligibility of Cubans for refugee status and resettlement assistance under the UNHCR mandate, a spokesman

³ The UNHCR has since that time interpreted its mission more broadly to include peoples displaced or threatened within their own countries who require protection and/or resettlement, e.g., the Kurds in Iraq following the Gulf war and the Bosnians in war-torn former Yugoslavia.

replied as late as April 25, 1980, that UNHCR would pay its share in the cost of a humanitarian operation in Costa Rica and Peru and that the question of eligibility would eventually be studied by UNHCR later when migrants had arrived in countries of resettlement. No funding for Cubans resettled in the U.S. was ever made available by the UNHCR.

ICEM had the more flexible mandate to assist refugees *and migrants* without definition at the request of its member governments through fully reimbursable programs rather than through annual grants to a general fund. Thus, ICEM was able to provide processing and transportation assistance from Havana to Costa Rica and later was to take responsibility for outprocessing and transportation to U.S. sponsors from each of the U.S. holding camps on contract with the U.S. "In these circumstances," the U.S. Coordinator for Refugees, Ambassador Victor Palmieri, stated, "an organization like ICEM is . . . indispensable. It is an organization that we have found in Indochina, in our operations with the Soviet Jews and Eastern Europeans in Vienna and Rome, and now with our Cubans to be flexible, responsive and cost effective. Indeed, it is an organization which, if it did not exist, we would have to have invented . . ."

While the U.S. leaned heavily on ICEM for specific logistical services, the agency of choice for internationally accepted refugee protection and advocacy was the UNHCR, and the U.S. expected some benefits at the time of its national crisis in return for its large financial commitments to the UNHCR. After further negotiations the UNHCR did eventually take over from ICEM the limited screening and interviewing of Cubans for third- country resettlement from U.S. holding camps, but once the Cubans were in the U.S. only a few hundred were ever successfully resettled elsewhere, despite the pledged resettlement numbers. Those who had been taken initially to Peru did not become permanently resettled for some time, some eventually making their way to the U.S. after a considerable period of discontent.

Failed Expectations

The image on television of chaos and of criminals and mental patients being imposed on the "freedom flotilla" led to a turning point in American attitudes, even though the actual number of excludable undesirables may have been only a few thousand out of more than 124,000 Cubans who came. The prevailing attitude of generosity to refugees among the pub-

lic and in the Carter Administration was overtaken by a feeling of insecurity and lack of control at the borders as well as weakness at being the fall guy for Castro's dirty tricks. The imperfect coordination of refugee and asylum procedures and the inconsistency of U.S. Administration policies from one bureaucracy to another within the federal government also were revealed when the boat arrivals of Cubans and of Haitians were inevitably linked. In the aftermath, the mood of the country toward refugees turned from sympathy to anxiety, and Members of Congress and professionals in the field of assistance to migrants and refugees spoke of "compassion fatigue."

In summary, in April 1980, when the Cubans began to arrive, neither refugee resettlement policy and procedures administered by the office of the U.S. Coordinator for Refugees and the Department of State's new Refugee Programs Bureau, nor immigration policies and procedures and border enforcement administered by INS provided any guidance for immediate action at the federal level. Controversy occurred as well over the mandates and responsibilities of international organizations. Expectations were not in line with historic reality and current conditions, and available information or "early warnings" were ignored.

A number of critics have pointed to a double standard at work in the operation of U.S. immigration, refugee, and asylum programs—racial discrimination and politically motivated determinations of status. At the same time as officials of the newly created Refugee Programs Bureau at the Department of State and as Members of Congress who had worked many years on the issue were congratulating themselves on the institution of a nonpolitical definition of refugee, an official of the Haitian desk at the Department of State opined that the U.S. could not accept Haitians as refugees because it was on friendly terms with the Duvalier government. It is not necessary to imply negative motivations to the policy inconsistencies of 1980. This particular situation points to a lapse in communication among the various agencies and departments and the independence and irregularity of accountability of the separate bureaucracies. Deeply ingrained bureaucratic attitudes, like pieces of heavy earth-moving equipment, are especially difficult to turn in new directions without a firm coordinating hand and advanced planning.

Response and Impact in Florida

At the outset, South Florida's response to the "freedom flotilla" was swifter and more generous than the federal response. It had been only five years since the Cuban "freedom flights" had been cut off. The HHS Cuban Refugee Center in Miami was still in operation at 75 percent of its former capacity despite the reduced number of arrivals in the years preceding the new crisis. The Center, the state of Florida, and the local governments, with the assistance of Cuban-American volunteers, established a registration procedure in Key West as boats landed and a processing center in Tamiami to centralize and coordinate the effort to place the new arrivals with their families or with other Cubans in the U.S. Voluntary agencies with prior experience in sponsoring and resettling refugees from Cuba came to the assistance of the local groups. The Cuban-American community raised more than \$1 million nationwide and donated food and clothing.

More than 54 percent of the Cubans who arrived between April and June 1980 were resettled with family in this manner without major delay or detention, but the crisis overwhelmed the local effort. FEMA was called in on April 27, and holding centers in military facilities outside the

South Florida area were opened during a five-week period in May and June with the cooperation of the Department of Defense: Eglin Air Force Base, Florida; Fort Chaffee, Arkansas; Fort Indiantown Gap, Pennsylvania; and Fort McCoy, Wisconsin.

Although FEMA was already present, on May 5, Governor Robert Graham of Florida formally requested that the President declare a state-of-emergency in Florida. President Carter issued the emergency declaration the next day and also authorized use of the ERMA fund from the Department of State to help cover resettlement costs.

The positive expectations among the Cuban-American community in South Florida were soon strained by Castro's actions. It had been a group of prominent Cuban exiles, the Committee of 75, who had spearheaded efforts toward both better and more open relations and communication between Cuba and America in 1978-1979 and expanded migration. When the Peruvian Embassy was occupied, the exiles in South Florida advocated the admission of all 10,000 asylum-seekers. As numerous first-person reports testify, Cuban-Americans were also the first to feel the shock and disappointment when they viewed their efforts to provide transit to dissidents and relatives manipu-

lated by a cynical leader who included political prisoners and mentally ill among the migrants.

Despite the eagerness of Cuban-Americans to accept their relatives and compatriots at the outset of the crisis, Florida state and local officials questioned how they were going to be able to resettle large numbers of people without massive federal assistance, as had been provided in the earlier Cuban Refugee Program. Florida had been uniquely receptive in absorbing Cuban refugees during the past twenty years, but conditions had also been changing. The growth of the city of Miami from a pleasant tourist mecca to the so-called capital of Latin American trade and banking in that same period of time had been accompanied by growing crime, drug trafficking and money laundering. Further, the new arrivals had lived twenty years under communism. They were less educated, more dependent, and less prepared to adjust to a modern capitalist society.

By mid-May 1980, the problem population that Castro had imposed on the boat owners of the freedom flotilla was beginning to be obvious on the streets of Miami and in the holding camps. Hardened criminals and mental patients released from Cuban hospitals were the most obvious group, but there were also large

numbers of unaccompanied minors and the Dade County school system estimated more than 15,000 school-age children would require special facilities. At the height of the crisis when upwards of 10,000 Cubans were arriving in one week, mistakes were made, and many Cubans who had been released without sponsors or whose sponsors had deserted them were becoming street people.

Managing the Crisis

At a hearing in May 1980, members of the Senate Judiciary Committee of both parties, led by Senator Edward Kennedy and responding to appeals from relief organizations, most notably the U.S. Catholic Conference, operating in Florida, advocated application of the new Refugee Act to the Cuban and Haitian arrivals, calling on the administration to let the UNHCR help in screening and designating the refugees within U.S. camps in the same manner as is done abroad. They also called upon the administration to use the Refugee Act to trigger administrative procedures and 100 percent reimbursement of states for job and language training, health care and social services in the process of resettlement equivalent to those currently available to Indochinese refugees. Such an approach would have put into operation immediately the services of ORR/

HHS as well as the Reception and Placement services of the Bureau of Refugee Programs in the Department of State.

Because of a traditional assertion of U.S. sovereignty once aliens were on U.S. territory, the Administration would not accede to the request for the involvement of the UNHCR even in advisory opinions on asylum status for the new arrivals in the U.S., and the UNHCR was less than eager as noted to assist even in third-country resettlement.

A desire to deter potential new arrivals and reassert border controls played a major role in policymaking in an effort to retake the initiative lost through Castro's treachery. The administration was unwilling to admit either Cuban or Haitian boat people as refugees for fear of setting a precedent for other groups. In addition, the chaotic situation in South Florida and the lack of an adequate number of trained INS officials to adjudicate individual cases, not to mention officials in the Department of State's Bureau of Human Rights and Humanitarian Affairs who were required by INS regulations to provide advisory opinions, mitigated against applying the new Refugee Act. The question of funding also hung heavy over the Administration. Focussing on reducing tensions in the Miami community, the Administration

wished to avoid any appearance of rewarding the illegal migrants.

Refugees by Any Other Name . . .

For these reasons, as well as in response to critics of apparent unequal treatment of Cuban and Haitian boat people, and in anticipation of Judge King's final ruling, Ambassador Palmieri announced on June 20, 1980, the *ad hoc* designation for both groups of "Cuban-Haitian Entrants (status pending)," under six-month renewable parole authority of the Attorney General. All Cubans who had arrived from April 21 to June 19 and were in INS proceedings were covered by the new designation as well as all Haitians who were in INS proceedings as of June 19. (The status was later extended to include Cuban and Haitian arrivals from June 20 to October 10.)

The Attorney General's parole authority allowed a more flexible, not to mention cost- and time-efficient, procedure of granting temporary status on a group basis, which the Refugee Act with its individual determinations had been intended largely to replace. The Refugee Act specifically proscribed use of parole authority for anyone who could be defined as a "refugee." The "entrant" sta-

tus thus allowed the Administration to sidestep the refugee resettlement benefits requirements of the Act and create an *ad hoc* administration for the resettlement program.

A supplemental appropriation was passed on July 2, and the Cuban-Haitian Entrant Act of 1980 was submitted to the Congress by the Administration on July 31, authorizing 75 percent reimbursement of expenses to the states, as opposed to the 100 percent provided for in the Refugee Act. Senator Kennedy countered on August 5 with his own Entrant Act declaring Cubans and Haitians to be refugees eligible for benefits through the Refugee Act and providing for 100 percent federal reimbursement to the states as specified by the Act. Disagreement between the Administration and Congress was resolved on October 10, 1980, when the Administration belatedly supported special authorizing legislation that was embodied in the so-called Fascell-Stone Amendment to the Refugee Education Assistance Act of 1980.

This oddly-placed piece of legislation provided the first statutory legal definition of Cuban-Haitian entrants, extending coverage back to arrivals since November 1979. More importantly, it stipulated that they would all be treated as refugees, without regard for any future status des-

ignation, for the purposes of providing them domestic assistance under the terms of the Refugee Act of 1980 and reimbursing states and localities at 100 percent. Funding authorized by this act was included in the Supplemental Appropriations, Continuing Resolution for FY 1980 and in FY 1981 budget requests.

Thus, a period of uncertainty as to status, benefits, and federal reimbursement of costs came to an end for the most part. The Cuban and Haitian Entrants of 1980 were basically treated like refugees, despite the difference in label and in legislative authority. There never was any intention or sufficient political will to deport any of the new arrivals except those clearly excludable for reasons of criminal activity.

Even were there not forceful lobbies for the states most affected by the resettlement process—and especially Florida—as well as a Cuban-American lobby for their compatriots, the Department of State knew very well that Thailand and other Southeast Asian countries of first asylum were watching closely how America was going to treat *its* boat people. The U.S. could not afford to do anything to cause renewed mistreatment and push-offs of desperate Vietnamese refugees landing in those countries and upset the equilibrium so carefully negotiated the previous year.

The question of regularizing the status of Cuban-Haitian Entrants was left open for a future date and was not resolved until the resurrection in 1984 of the Cuban Adjustment Act of 1966, which, as amended in 1976, allows for Cubans who have been in the U.S. for at least one year to apply for adjustment of status to permanent resident at the discretion of the Attorney General. This special country legislation is unique in that it does not have a cut-off date. It remains in force, although such *ad hoc* country-specific procedures are not favored by Congress. The limitations on the Attorney General's parole authority written into the Refugee Act of 1980 were intended to reduce the necessity for relying on special legislation, but despite repeated efforts the Cuban Adjustment Act of 1966 has never been repealed.

The Cuban-Haitian Task Force

Administratively, there were some awkward results. The CHTF, which was formally brought into being on July 15, 1980, was an entirely new bureaucratic institution, comprised of officials detailed from more than ten different federal agencies, including FEMA for overall funding and mission assignment authority, ORR/HHS for refugee resettlement services, the De-

partment of State for international policy and overall coordination, the Department of Justice and INS for legal status processing, the Department of Defense for holding camps in four different locations, the Department of Education, the Department of Transportation, among others.

Initially, in contrast to the INS response to the trickle of Haitian boat people in the 1970s, the CHTF was under the authority of the Secretary of State and the U.S. Coordinator for Refugees, who was seated in the Department of State. This set-up also contrasted significantly with the earlier Cuban program, which was essentially coordinated from the Department of Health, Education and Welfare [HEW, which preceded HHS]. The crisis had started in Cuba as an international refugee situation, and it continued to have important foreign policy implications. Both the Administration and Congress wanted to use the new structure of the U.S. Coordinator's office to the extent possible, despite its lack of experience or expertise in working with the large number of federal, state, local, and private entities involved. In a confusion of authority, however, which actually helped to strengthen his position with other agencies and departments, the Task Force Director also reported directly to the Presidential Assistant for Intergovernmental Affairs in the White House.

The CHTF continued to rely in large part for funding of camps, staff, and services through the authority of FEMA, which was given the lead role at the outset of the emergency for the practical reasons mentioned above. At the other end of the spectrum, the CHTF reimbursed states and localities for services rendered and subcontracted services to a variety of voluntary refugee resettlement agencies and local community service organizations, which were vital partners in the resettlement process.

Without the authority of the plan of assistance authorized by the Refugee Act, CHTF found one aspect of the resettlement program particularly irksome—the question of unaccompanied minors for whom no guardianship authority was available. The Refugee Act specifically designates to ORR/HHS the role of guardianship for unaccompanied refugee children. Without legislative authority, ORR/HHS would not take on the responsibility for several months. The history of the CHTF reveals that the Task Force repeatedly had to create *ad hoc* assistance to the minors and to sign special contracts with the states for their care.

Among other unanticipated problems that the CHTF faced were the criminal element of the Cuban influx and disruptive actions leading to riots in camps, broken spon-

sorships leading to a “tent city” in Miami, the need for special legislation to obtain authorization and funding, as well as to settle status questions and care and placement of the mentally ill.

Without a refugee designation for the Cuban and Haitian influx, the Office of the U.S. Coordinator for Refugees in the Department of State began a slow and inevitable withdrawal from resettlement and relief operations as arrivals wound down over the summer after the institution in May of Coast Guard interception and fining of vessels travelling to and from Cuba. The effort to continue internationalizing the crisis also languished. In the long run, one year later, by July 1981, the CHTF was merged with ORR at HHS, its logical home once the emergency period was past and resettlement services and aid to problem cases were the main ongoing requirements.

A full discussion of CHTF management and responsibility is beyond the scope of this overview, but it may be worthwhile for those involved in contingency planning to review the *Report of the Cuban-Haitian Task Force*, November 1, 1980. *Decision and Structure: U.S. Refugee Policy in the Mariel Crisis* by Mario Antonio Rivera also gives a complex and theoretical, but at the same time sympathetic and enlightening, discussion of bureaucratic

politics during the Cuban-Haitian crisis. The CHTF leadership did not have an easy time of it, having to depend on diplomacy and negotiating skills, rather than statute and full authority, to gain assistance from other agencies and departments in solving the myriad problems thrust upon them.

The End of the Emergency

By the time Castro closed Mariel Harbor on September 26, 1980, a total of 124,779 Cubans and 7,785 Haitians had entered the country. On October 9, the United States Interests Section in Havana officially resumed Immigrant Visa Operations for orderly, legal migration. While there was great disappointment in some circles that the new Refugee Act had failed its first test, others in the federal bureaucracies involved, notably those working with the CHTF, congratulated themselves on the flexibility and creativity of their response operations. Questions of how to establish more effective early warning systems and contingency planning as well as entry status determinations for immigration emergencies, were raised that to this day have not been answered.

With the end of the Cuban crisis, the Haitian migration did not end, but rather

moved into a new phase. The largest monthly number of Haitians arriving on boats in 1980 was 2,280 in October, when only 10 more Cubans arrived. While monthly Haitians arrivals diminished somewhat after that time, they continued larger than prior to 1980 until the policy of Coast Guard interdiction of boats at sea and temporary detention of arrivals was instituted in the second half of 1981. By 1982, the numbers were smaller than in 1988-1989.

The Coast Guard interdiction was part of a new "program proposal" or contingency plan announced by then Acting Commissioner of INS Doris Meissner to the Senate Judiciary Sub-Committee on Immigration and Refugee Policy on July 31, 1981. The plan combined strong prevention measures to preclude a recurrence of the Mariel crisis with the first legislative proposal to regularize the status of the Cuban-Haitian Entrants. It also signalled that the lead role in any future crisis of direct arrivals in the U.S. under the Reagan Administration would move from the Department of State and the U.S. Coordinator for Refugees to the Immigration and Naturalization Service of the Department of Justice. The story of arrivals from Central America in South Texas in 1988-1989 is a case in point.

THE CENTRAL AMERICAN INFLUX ON THE SOUTHERN BORDER

Anticipation, Information, and Policy Options

Throughout the 1980s and 1990s, the fear and anticipation of a major invasion of illegal economic migrants and asylum seekers from Central America animated federal immigration and refugee policy initiatives and border enforcement.⁴ By 1984, according to the UNHCR, more than 300,000 refugees were displaced and living in camps both inside and outside their home countries in Central America and Mexico. Just as President Carter's remark in May 1980 that the U.S. would greet the Mariel Cubans "with open arms" became a focal point for political responses positive and negative to the Cuban crisis, so

⁴ The question of "undocumented migrants and migrants in an irregular situation" was also high on the international agenda, with a major intergovernmental conference hosted by ICM in Geneva in April 1983. A comparative look at the policies of European countries in this connection is in order but outside the scope of this paper.

President Reagan helped set the national agenda when he said that the civil wars to the south would "create a tidal wave of refugees—and this time they'll be 'feet people' and not boat people—swarming our country seeking safe haven . . ." These remarks fed anxieties arising from the Cuban and Haitian influxes and set up a polarization of attitudes—sympathetic or antagonistic—toward the growing numbers fleeing the Central American civil wars and their resulting economic distress.

In 1982, the INS moved ahead with its "Mass Migration Emergency Plan" primarily for South Florida in 1982, which involved mostly the same preventive measures announced by Acting Commissioner Meissner the previous year: (1) interdiction of boats bringing migrants by sea; (2) detention of those who elude interdiction until their status was adjudicated; and (3) deportation of all who were not eligible for resettlement. A plan for a major revision of immigration legislation entitled the Immigration Reform and Control Act [IRCA] preoccupied the Administration and Congress for several years before its passage in 1986, leaving a plan for mass immigration control on the U.S.-Mexican border in draft during that period.

Proposals for the new legislation came about because of the growing perception that illegal migration to the U.S. from all

around the world, but mostly from south of the border, was out of control. The numbers of illegal residents in the U.S. was variously estimated from three to ten million persons. The omnibus reform bill was also the second stage of the immigration and refugee reform effort that started with the Refugee Act of 1980 and the studies prepared by the Select Commission on Immigration and Refugee Reform from 1979 to 1981. The IRCA legislation approached border control on two fronts: on the one hand, stronger regulation and enforcement, including sanctions against employers of illegal aliens; on the other hand, provision of, among other measures, a time-limited amnesty program for the many illegal aliens already in the U.S. The concept was that once the U.S. could get a handle on the undocumented alien population already in long-term residence and provide them with a humane option to legalize their status, then the U.S. could intensify its enforcement efforts to prevent future illegal arrivals.

The intensifying civil strife in Central America during the 1980s and the resulting refugee crisis served to confound these immigration enforcement expectations. The Department of State responded to the refugee crisis in Central America by continuing to assert that the tradition of regional hospitality and asylum was a viable solution in Central America, although

contingent on the availability of international funding. Very few refugees processed in the region were accepted for resettlement in the U.S. under the Department of State's refugee program. Despite U.S. and international funding in the region, a General Accounting Office [GAO] report from July 1984 suggested that resources in Central America were insufficient to care for all those in need in the region.

Expanding Legal Categories for Migration Emergencies: A Trend for the Eighties

As early as 1981, a movement began to extend some form of temporary legal status to those fleeing violence who arrived in the U.S. and were not eligible for asylum status. At the extreme was the sanctuary movement, in which churches asserted a right to provide temporary protection to such asylum-seekers without color of law. In Washington, bipartisan political forces were lining up in support of either an administrative status of "extended voluntary departure" [EVD] for Salvadorans and Nicaraguans or for a broader, legislated status offering "safe

haven” to those fleeing civil strife in their home countries and needing temporary protection.

EVD is a discretionary measure providing temporary relief from deportation for individuals or groups already in the U.S. Granting temporary work authorization as well, it is applied administratively by the Department of Justice when the Department of State determines that conditions in the countries of origin are “unstable” or “unsettled” or show a pattern of “denial of rights” that would put returnees in danger even if they did not have a “well-founded fear” of individual persecution according to the definition of a refugee. Since 1960, EVD status had been given for shorter or longer periods of time to citizens of fourteen countries: Cuba; Czechoslovakia; Cambodia; Vietnam; Laos; Lebanon; Ethiopia; Hungary; Romania; Iran; Nicaragua; Uganda; Afghanistan; and Poland.

For both political and practical reasons, however, there was strong resistance in the Reagan Administration to the application of EVD to Salvadorans and other Central Americans in the 1980s. First, there was the potential size of the problem, the vision of hundreds of thousands of feet people arriving at the southern border and their immigration impact. The problem, which was not resolved in pro-

posing such a temporary status, was how to get the migrant to return to his home country when conditions improved. With the granting of work authorization, EVD became an obvious option for those seeking to circumvent the employment limitations of IRCA. It hardly seemed feasible that INS successfully could lift work authorization and institute deportation proceedings for several hundred thousand Central Americans once conditions improved in their home countries.

Second, there were political and perceptual differences as to the conditions in El Salvador and Nicaragua. The Administration, and those who felt the Administration was on the right track in supporting the Salvadoran government and opposing the Nicaraguan government, portrayed conditions as improving in El Salvador while human rights abuses in Nicaragua had become institutionalized. Those who opposed Administration policies harkened back to the black days of the Salvadoran death squads in 1979-1983 and continued to feel the situation in El Salvador was unstable and dangerous. They protested the fact that much larger percentages of Nicaraguans received favorable decisions on their asylum applications than Salvadorans and accused the Administration of playing politics with human lives. The return of Salvadorans to El Salvador under present conditions, they

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protested, was tantamount to “refoulement” (forced return) and a violation of U.S. international obligations under the U.N. Protocol on Refugees.

To answer critics of the U.S. policy of deportation or voluntary return of illegal Salvadoran migrants who did not present an adequate case for asylum, the Department of State contracted with ICM, as an independent international organization, for a program of reception assistance and follow-up for the returnees in order to monitor whether they faced security problems upon their return. Should security problems arise, ICM was to offer them assistance in migrating to other countries. ICM was at that time prescreening and assisting Salvadorans who might be accepted for special “safe haven” status in Canada and Australia, among other countries.

In May 1987, another GAO report concluded that the extent of problems experienced by returned Salvadorans was not determinable on the basis of the data which ICM, the U.S. Embassy in San Salvador, and various human rights and church organizations were able to collect. While the Department of State was quoting ICM data as if it showed that returnees had run into little or no personal danger upon return, ICM was wary of making broad assumptions from its limited

data and asserted logistical limitations to its methods, which were based on meeting short-term material assistance needs, not legal protection or human rights criteria. The other organizations had collected data at different, and thus incomparable, times in the fluid and changing situation and on incomparable populations. While there was disagreement on the extent of individually targeted violence in El Salvador, there was more general agreement on all sides of the political spectrum that returnees to El Salvador would face the same range of violence that others in El Salvador faced during the civil war.

In the second half of the decade, as illegal arrivals continued to trickle in along the long and porous southern border, critics of the Administration began to propose legislation to put carefully delineated procedures and criteria for a “safe haven” status into law, rather than leaving the only protection against deportation in times of conflict, barring refugee or asylum status, to the discretionary authority of any particular administration. Country-specific legislation for Salvadorans and Nicaraguans (the Moakley-Deconcini bill) was passed four times by the House of Representatives but, under threat of filibuster, never reached the Senate floor for a vote. A new general status, Temporary Protected Status [TPS], was finally enacted

into law in the Immigration Act of 1990 [IMMACT] and applied first to Salvadorans.

Other remedies utilized were extensive court challenges of INS asylum adjudication procedures. On April 29, 1988, a U.S. District Court judge ordered the INS to stop “employing threats, misrepresentation, subterfuge, and other forms of coercion to induce Salvadorans to accept ‘voluntary departure’ to El Salvador.” The judge held that the 1980 Refugee Act should be interpreted to mandate that those in deportation proceedings had a right to be informed of the possible remedy of applying for asylum to obtain relief from deportation.

Misguided Policies in South Texas 1988-1989

All this controversy aside, it was not until 1988 that mass numbers of asylum-seekers sought again to enter the U.S. in an uncontrolled manner as in Florida in 1980. Even then, the “crisis” atmosphere that pervaded South Texas briefly in 1988-1989 could be said to have been caused by an ill-advised, but largely misinterpreted *ad hoc* statement of Attorney General Edwin Meese and by localized policy changes by

the INS District Office in South Texas. All the Attorney General had said was that Nicaraguan applicants for asylum who had fled their country on the basis of a well-founded fear of persecution would be considered positively. But, this restatement of basic asylum policy was taken both by Nicaraguans and by some INS officials in its context without mention of Salvadorans as a political indication that Nicaraguans would receive preferential treatment for their asylum applications.

As a result, apprehension of illegal Nicaraguans along the South Texas border jumped exponentially, reaching nearly 50 percent of all border apprehensions, or 14,243 persons, in the Harlingen District by the last six months of 1988. Probably due to greater availability of information on the asylum process and work authorization following the District Court decision, asylum requests from all groups from Central America—Salvadorans, Guatemalans and Hondurans, as well as the Nicaraguans—grew to exceed 50,000 for FY 1988, according to a Congressional staff report, which also predicted that if arrivals and applications for asylum continued to increase at the same rate, there would be 100,000 in FY 1989, a figure that was beginning to look more like the Cuban crisis numbers.

At first, most of the asylum seekers arriving in the Rio Grande Valley of South Texas received work authorization and were allowed to travel to their intended destinations to stay with family or friends and to apply for asylum with the local INS office. But, as numbers increased, facilities in such locations as Miami and Los Angeles, where there were anchor communities of Central Americans acting as magnets, became overburdened, and local communities as well as the INS began to fear no end in sight to the influx.

In response, the INS District Director in South Texas instituted a series of control and deterrence mechanisms on December 16, 1988, requiring that all asylum applicants file their applications immediately at the INS Harlingen facility and have their initial interview there before travelling to any other location. A roadblock on the highway out of the Valley effectively kept aliens from travelling north without proper papers.

Unforeseen Consequences: Bringing the Long- Expected Crisis

Applications for asylum quickly rose to some 6,000 a month at the Harlingen INS office, which was not equipped to handle

the numbers, and backlogs of asylum applicants were quoted as high as 20,000. These numbers may seem relatively minor compared to the 100,000 Cuban entrants in April and May 1980, but the homeless migrants were very obvious in the small cities of Harlingen and Brownsville. With national media watching, they were wandering the streets, sleeping out in front of the INS facility, illegally squatting in an abandoned motel, and camping out in vacant lots by the end of December, despite a sudden spate of cold weather.

The border communities, which were already suffering from economic depression, with 18 percent unemployment, were outraged and sought relief from the unfair burden put on them by INS procedures. The travel restrictions imposed by the INS forced the asylum-seekers to stay in the Valley rather than allowing for the natural distribution of the social burden to other parts of the country where family and friends could assist the new arrivals. Some in the border communities reacted with hostility to the newcomers and the situation was getting explosive. Thus, an *ad hoc* plan to relieve burdens on other communities and INS offices, while attempting to deter new arrivals, had actually become in large part the cause of a localized immigration emergency in South Texas.

National media and humanitarian and human rights groups emphasized the suffering of the asylum-seekers and the alleged violations of their due process rights that the new INS system appeared to cause. INS was accused of failing to follow its own rulemaking by not giving adequate notice of proposed procedural changes that would have allowed the community to testify to the social consequences of the new policy and would have provided time for raising any legal challenges to the procedures.

Because of the paucity of legal services in the Valley, the travel restrictions deprived asylum applicants adequate information and legal counsel concerning their rights under American law. In 1989, there were only three lawyers in the Rio Grande Valley able to offer *pro bono* legal services to the asylum-seekers and only three in private practice who would assist for a fee. Four voluntary groups providing legal assistance also utilized three or four volunteer paralegals among them at any one time. Taxi drivers and other unscrupulous individuals were profiteering from the asylum applicants, filling out obviously fraudulent applications for them at a price, which applicants were willing to pay in hopes just to get out of the Valley and join relatives elsewhere.

At least two of the voluntary groups were

politically motivated in opposition to U.S. policies and actions in Central American and refused to serve Nicaraguans, whom, they were convinced, were Contras or Contra deserters, and whom, they felt, had the protection of the Attorney General in any case. An outside observer independently interviewing some of the asylum seekers noted that this political assumption was false. Many of the Nicaraguans were indeed deserters, but from forced conscription and re-enlistment into the Sandinista army. Basically nonpolitical, they fled their country in disillusionment and despair at the continuing civil war and impossible living conditions for their families. A Congressional staff study group concurred with the view that there was no single reason for the sudden escalation in Central American arrivals, noting that it appeared that many were now simply "giving up" on their homelands.

Crisis Resolution

Class action litigation undertaken jointly by both community and out-of-state attorneys resulted in a temporary restraining order from the U.S. District Court in January 1989 requiring the INS to revert to its previous policy of allowing asylum-seekers to be transferred to other districts. The overload of asylum seekers in the Valley dispersed around the country early

in 1989, "scattered to the four winds," as Attorney General Thornburgh described it. INS reported that of 2,541 applicants in Harlingen who had requested that their files be transferred for adjudication to Miami, only 371 appeared for their interviews in Miami 14 days later.

While the restraining order was in effect, INS and the Department of Justice had time to develop a plan for addressing the rising number of "frivolous" asylum applications from Central Americans. On February 20, 1989, when the restraining order was lifted, INS announced and instituted a program with the necessary staffing which, in brief, provided for accelerated adjudication of affirmative asylum claims, immediate detention and initiation of deportation proceedings for applicants whose claims appeared frivolous or without apparent merit, and holding camps for those detained for deportation or awaiting appeals.

The Community Relations Service of the Department of Justice was mandated to insure that families were kept together, which was possible in facilities managed by the American Red Cross, and that adequate juvenile facilities were available for unaccompanied minors. Three such centers were funded in rural areas or small towns not far from Harlingen, and the unaccompanied minors, mostly single

male teenagers, were cared for in relatively pleasant surroundings for a few weeks until they could be processed out to relatives or foster families willing to act as guardians while asylum applications were processed. The INS alien detention facility for single adults was located at Bayview, Texas, in a prison-like setting.

The care with which the new program was developed and instituted made it immune to further successful class action legal challenges, and the program, which attained its goals from the INS point of view, resulted in significant deterrence to potentially frivolous asylum applications from Central Americans, while expediting affirmative applications with merit. After the 9,502 pending asylum applications from January and February 1989 were dispersed, there were only 975 cumulative applications in the Rio Grande district through October 23, 1989. These figures compare to 28,541 affirmative asylum applicants in 1988.

Apprehensions thus dropped precipitously after the deterrent effect of the new procedures kicked in. Guatemalan and Honduran monthly apprehensions leveled off at or below monthly levels at the end of 1987. Figures for Salvadoran apprehensions in September, October, and November 1989 were significantly lower than comparable months two years earlier in

1987, while Nicaraguan numbers remained about double the 1987 monthly levels but ceased accelerating.

The bipartisan Senate subcommittee staff report declared the new INS policy toward South Texas “appropriate” and “effective in deterring frivolous asylum applications,” although “certain adjustments” were recommended to assure greater opportunities for nonfrivolous applicants. The report also noted that the local community had been remarkably tolerant of the Central Americans, while at the same time local leaders were understandably impatient with the sluggish federal response. In Harlingen itself, as crowds of Central American asylum applicants gathered around the INS office and were eating, sleeping, and carrying out personal functions in public while saving their places in line for processing of their applications, the town mayor even went so far as to padlock the INS office for code violations.

What is distinctive about the South Texas situation, as in the case of the initial Haitian arrivals ten years earlier, is the *ad hoc* nature of the federal response. Then INS Commissioner Alan Nelson was known to give considerable leeway in authority to INS District Directors. The emergency contingency plans proposed in the early 1980s were not finalized until the 1990s.

In the meantime, INS District Directors appeared to be in a tug-of-war with Federal District Courts, formulating enforcement and deterrent policies without much attention to the niceties of rulemaking procedures and then having to pull back from them in the middle of a crisis.

Unlike the Cuban crisis, there was never any intention to consider the asylum seekers in South Texas for paroled entry as a group. However, the long and tedious process of individual asylum adjudication and appeal, not to mention deportation hearings for those denied asylum, meant that most of those seeking asylum would remain in the U.S. for some time, even under the accelerated procedures. Delay was, indeed, a strategy of choice used by attorneys handling asylum cases. A study by the GAO in January 1987 concluded that, even when asylum applications were denied, few denied applicants were actually being deported.

A class action suit originally brought in 1985, *American Baptist Churches v. Thornburgh*, was finally settled in December 1990, with the agreement by the U.S. government to readjudicate the asylum claims of all Salvadorans and Guatemalans who had been denied since 1980 because of discriminatory treatment in government determinations of asylum, deportation, and EVD. The settlement of

the so-called “ABC” case, combined with the TPS, has meant that only a very small percentage of Central Americans who arrived in the 1980s have ever been deported. Nearly 200,000 originally registered for “ABC” or TPS (the registration requirements were combined to save on costs); four years later, with repeated extension of the status or delay of deportation they still are in the country even though the civil war and economic crisis which precipitated their migration is largely over.⁵

THE 1980s EXPERIENCE

Lessons Learned

For a coordinated federal response and Presidential declaration of a national immigration emergency, no consistent definition without color of separate bureaucracies appears to have emerged from the experiences of the 1980s. The President, rather is left with a palette from which he can pick or choose depending upon which agencies he wishes to activate. All of the following might be part of the definition:

- Imminent danger either to the lives of those arriving or to residents in the community of arrival, or both;

- Capacity of local officials and local offices of federal agencies to manage a benchmark number of direct arrivals within a limited period of time;
- Security and social services required and their availability locally; legal status or potential legal status of the immigrants; manner of arrival and physical condition of those arriving; economic and/or social impact on the community;
- Duration or potential duration of the crisis; and
- International and domestic political repercussions.

The lack of more specific triggering devices and the bureaucratic politics of the federal response appears to contribute significantly to what some have called the federal molasses and to the frustration of local communities in the face of an influx. In the Cuban crisis, it took weeks before a strong federal presence took over reception, processing, housing, and security in Florida, and it was months before the question of federal reimbursement of services to states and localities was resolved through legislation introduced by a Florida congressman.

Some of the delay is probably inherent in the nature of the crisis, both in the objective, but unpredictable, numerical aspects of an influx of people and in the more subjective legal and foreign policy aspects that must be considered. Flexible policymaking has characterized the U.S. approach to immigration and refugee admissions and is unlikely to be eliminated entirely through contingency planning, if experience is any guide, because of this mixture of humanitarian, legal, and foreign policy considerations, and because of the participation in the decisionmaking of a variety of institutions with different agendas. While response may be delayed, there are some times when such delays are useful. The delegation of authority for quick response to federal district officials, as in the South Texas situation, resulted in inappropriate and inhumane actions and a social and legal crisis that might have been avoided.

Another question is raised by the South Texas situation in which the immigrants were allowed to disperse to other regions of the country: Was there ever a real emergency? Except for the pressures on INS District Offices of processing large numbers of asylum applications, it is not clear that the country or even the South Texas region was ever overwhelmed by the influx until movement was restricted to a limited region. Attorney General

Thornburgh's remarks that the asylum-seekers were mostly scattered to the four winds never to be seen again imply that the country could absorb the illegal immigrants without major distress or federal assistance.

In contrast, the large numbers of Cubans arriving *and* desiring to settle in South Florida presented a major social and economic problem, even when the community was enthusiastic about resettling them.

Aspects of Contingency Planning

Once an immigration emergency is recognized, prompt action is paramount to avoid human tragedy and/or political disaster. Both the Cuban-Haitian and the Central American influxes demonstrated a confusion in priorities and authorities just at a time when clear thinking and action would have been helpful. Evidence from these two crises points to the following areas where advance decisions for contingency planning in the case of an immigration emergency are needed.

- 1. Clear articulation of the national interest.** Criteria should be developed to use in determining whether legal, humanitarian, or foreign policy

concerns should take precedence. Such criteria may include in the foreign policy area: a balancing of U.S. domestic impact against the conditions in the country of origin of the migrant; the circumstances of departure and personal condition of the illegal entrant; and international standards and treaty obligations, as well as bilateral relations. From a humanitarian, domestic point of view, consideration should be given to: the size of the group and the predictability of the flow; other immediate international options; and relationship with existing ethnic communities in the U.S. that could relieve federal, state, or local authorities of immediate responsibility for a short or long stay.

Legal consideration may have to be delayed in order to meet these value-oriented criteria and to serve the overall national interest. Court cases in the 1980s pushed INS toward more humane and equitable procedures, and the public debate over status issues that resulted in TPS legislation in 1990 made it clear that humanitarian concerns are a major component of the national interest.

Whatever the legal status of the Cuban influx, humanitarian and po-

litical circumstance dictated a policy of acceptance, and relationships with the Cuban-American community made possible the immediate resettlement of the majority of those arriving. Had a decision been made at the outset to follow this path of least resistance, then refugee services through existing procedures might have been made available immediately. Indecision and inconsistency in policies, combined with negative media portrayals, contributed to the national anxiety.

- 2. Recognition of the nature of services needed.** If resettlement or temporary protection of the arriving group seems the most likely solution, determination should be made as to whether they are to be treated and provided services like refugees or like immigrants, whatever their eventual legal status.

Refugees have particular characteristics of vulnerability caused by sudden flight: no material preparation in advance ("leaving with just the clothes on their backs"); an involuntary or unplanned migration based on fear, not anticipation of a chosen new life; and estrangement from family members and culture. Both the procedures laid out in the Refu-

gee Act of 1980 to ease resettlement and an experienced cadre of federal officials, state, local, and voluntary agencies consider these factors in planning for reception and placement, health services, housing, orientation, and income-producing activity for the refugee. If the arriving group has refugee-like characteristics, as the Cuban group did, then it would appear more practical to activate immediately the existing refugee services rather than penalize the group, jeopardize successful resettlement through delays or diminution of services, and place unwarranted burdens on impacted communities.

Immigrants arriving voluntarily on a legal or illegal basis, on the other hand, may have existing contacts and planned resources for integrating themselves into the economy and finding their place in the culture. The cost of individual *refugee* resettlement can be discussed in concrete terms; the cost of *immigrant* resettlement cannot be discussed except in the most general terms because the immigrant is largely free-living. In the long run, the smaller group of illegal arrivals in South Texas and other asylum-seekers who trickled in during the 1980s followed the immigrant pattern of resettlement, dis-

persing themselves around the country and using their own contacts to resettle and find work, whether or not they ever regularized their legal status.

Community concentration and impact, as well as aggregate numbers and conditions of the migrants, also must be considered in determining whether to activate federal services. State and local governments view refugees and indigent migrants as a segment of the dependent population that may require cash assistance, medical services, job training, and schools. Gradual increases or changes in such populations can be accommodated, but a sudden influx, as in South Florida *and* South Texas, is seen as an imposition of a federal problem on the local community, demanding consultation between federal and local officials on policy and on federal impact assistance.

- 3. Adequacy of legal criteria.** Only once these primarily humanitarian and domestic considerations are resolved for mass arrivals, can questions of legal status and procedures adequately be approached. As was seen in the South Texas situation, legal status issues and procedural changes took precedence over hu-

manitarian concerns and community impact, resulting in a crisis that could have been avoided. In the Cuban situation, the attempt to emphasize international responsibility faltered and was finally buried by the burdens of the domestic situation.

While a clear articulation of the national interest in case of an immigration emergency was not forthcoming in the 1980s, legal categories open for discussion included: immigrant, refugee, asylee, and parole status; the special Cuban-Haitian entrant (status pending); the possibility of EVD; "safe haven;" and TPS. This proliferation of categories may be seen as a reflection of the difficulties in reaching a "merciful" determination using legal statutes and procedures. It may be that the Geneva Convention definition of a refugee is not adequate for U.S. situations, or at least not when applied on an individual basis.

New INS procedures, promulgated in the 1990s with careful regard for the instructions of the courts, are considerably less biased in asylum determinations, but the applicant still faces long waits for adjudication and, as in the case of the Salva-

dorans, still is unlikely to be deported quickly if turned down. Americans may have to listen to their own voices on the question of status. Is the U.S. really willing to take punitive steps against large numbers of people coming to this country in an immigration emergency?

- 4. Alternatives to domestic resettlement.** While it is beyond the scope of this paper to discuss alternatives to domestic resettlement in detail, a few remarks are in order. Contingency planning requires advance thought as to the potential for third-country resettlement or internationalization, deterrence, detention, interdiction at sea and deportation. In addition, although the issues have yet to be effectively approached, various forms of return assistance to those whose status has come to an end because of improvements in their home country should be considered. There are international models that combine return assistance to the individual migrant and his family with economic development assistance to the country of return.
- 5. Handling of special cases.** Every mass movement of peoples has a

different demographic composition. On the basis of experience in other refugee or mass immigration emergencies, models of assistance to women, children, single men, invalids, the mentally ill, and criminal elements may be available and should be considered in contingency planning. The Refugee Act of 1980 made specific provision for unaccompanied refugee children in recognition of the frequency with which this special group appears in refugee movements and of the special services they require. Because the Refugee Act was not used at the outset for setting up a services for the Cuban entrants, the needs of unaccompanied minors initially were not met adequately, even though they could have been anticipated. Marielito Cubans, who had come from prisons or mental hospitals, exhibited extreme characteristics not necessarily normal among mass immigration populations.

6. Preparation and coordination. In 1993, the Department of State proposed the abolition of the position of U.S. Coordinator for Refugees that had been created by the Refugee Act of 1980. There has not been a political whimper to greet its demise. In the years since 1980, the Coordina-

tor, usually a political appointee with little experience with the extensive federal bureaucracy, could not carry out fully his/her role. Even at the time of the Cuban-Haitian crisis, the Director of the CHTF reported both to the Coordinator's office and to the White House.

The problem with this separate permanent office for a coordinator is that the working staffs are in other offices, departments, or agencies, and under other supervision, rules, and traditions. At the Department of State, the Coordinator relied for substance and operations on the Refugee Bureau, which was headed by a Director with Assistant Secretary status. The Coordinator's position was even weaker in relation to every other department and agency. In 1981, the Select Commission had recommended that the Coordinator's office be in the White House. Whoever is appointed by the President to coordinate an immigration emergency must have the authority and experience in the government to carry out the responsibility effectively.

Final Remarks

An immigration emergency is by its very nature an unanticipated situation. Contingency planning may anticipate different kinds of emergencies, project special situations concerning individual countries, and make plans for deterrents or management. Both the Department of State and the Department of Justice have established committees to do so. If successful, contingency planning—both administrative and legislative—will avert an emergency. There is no such thing as budgeting for contingencies, nor can the President be certain in advance which agency or department should lead in any specific emergency. What is certain is that clear values and goals, a national interest, must be articulated that all will adhere to when carrying out what, of necessity, may be *ad hoc* procedures if, and when, an emergency occurs.

APPENDIX

Refugee Act of 1980 Definition of Refugee

The term 'refugee' means (A) any person who is outside any country of such person's nationality or in the case of a

person having no nationality, is outside any country in which such person last habitually resided, and is unable to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, or (B) in such special circumstances as the President after appropriate consultation . . . may specify, any person who is within the country of such person's nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing, and who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The term 'refugee' does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.

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P A P E R

U.S. COMMISSION ON IMMIGRATION REFORM
1825 CONNECTICUT AVENUE NW, SUITE 511
WASHINGTON, DC 20009
202-673-5348

U.S. COMMISSION ON IMMIGRATION REFORM