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# Fleeing North: An Examination of U.S. Refugee and Asylum Policy towards Nicaragua

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# Fleeing North

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## An Examination of U.S. Refugee and Asylum Policy towards Nicaragua

AN HONORS THESIS

College of St. Benedict/St. John's University

In Partial Fulfillment

Of the Requirements for Distinction

In the Department of Political Science

by

Anthony Jensen

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## Introduction

Miami is home to some 22,000 Nicaraguans who fled their country after Sandinista rebels toppled the government of Anastasio Somoza on July 19, 1979. [...] There were no welcome crews at the airport for the Nicaraguans, no welfare agencies waiting to interview them, no "open arms" promises. Since their arrival, the Nicaraguan refugees have remained for the most part in a state of limbo, without immigration status. Unlike other refugees, the Nicaraguans have not received a cent of federal assistance.<sup>1</sup>

The excerpt above is from a September 1982 article in the *Miami Herald* describing the situation in which Nicaraguans who had fled the Sandinista government of their home country for the United States found themselves in the early 1980s. Unlike their Cuban neighbors in southern Florida who had come before them and had been welcomed with open arms, the Nicaraguans were confronted with an unpredictable situation in which the United States largely denied their requests for asylum status.

The Nicaraguans who were denied asylum were left in a position where they could be deported at any given time, were denied the right to work, and not given any aid or assistance from the United States government. While a large portion of these Nicaraguans were not forced to leave the United States, some were deported. The *Miami Herald* described one of these cases:

Oscar Paguaga, a Nicaraguan who vowed to "kick and bite and scream" if forced to return to his homeland, was deported Wednesday afternoon, according to a spokeswoman for the Immigration and Naturalization Service. Paguaga, 32, was taken from the Krome Avenue Refugee Camp and put on a plane bound for Managua. INS escorts accompanied him. [...] Robert Boyer, Paguaga's attorney, called the deportation "totally inhumane and tantamount to pre-meditated murder." Paguaga had said he feared persecution and imprisonment if returned to Nicaragua.<sup>2</sup>

How did a situation like this develop? How was it possible for the United States government to deny refuge to individuals fleeing an allegedly hostile regime?

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1 Liz Balmaseda, "22,000 Nicaraguans Found Exile in Miami," *The Miami Herald* (September 7, 1982) 2B.

2 Ana Veciana-Suarez, "Nicaraguan Deported to Homeland," *The Miami Herald* (March 24, 1983) 10D.

During the 1980s war and political violence ravaged Central America. In El Salvador, Guatemala, and Nicaragua, wars and insurgencies raged, in the process killing hundreds of thousands of people and injuring and displacing many more. Still, as people from these countries attempted to flee to the relative safety of the United States, U.S. immigration officials greeted these Central Americans in a less than welcoming manner.

At the same time as these wars ravaged Central America, the Cold War continued to engulf large swaths of the rest of world. As in the case of the Central Americans who sought to flee from the conditions of their home countries, so did significant numbers of people from the Communist bloc. The reception they received, though, from U.S. immigration officials was markedly different from the one received by the majority of Central Americans. Instead, these Poles, Czechs, and Hungarians saw their asylum applications approved in rates far exceeding those of the Central Americans.

This project seeks to determine how the United States' refugee and asylum policies are shaped and formulated. Specifically it will examine the case of policy towards Nicaraguans during the 1980s and the reasons for the changing levels of asylum acceptance towards them during this period.

## **Research Puzzle and Justification**

This research project examines the following question, "Why and how does the United States government create asylum and refugee policies?" To answer this question, I will look at the case of Nicaragua in the 1980s. Nicaragua is a significant case in Latin American migration during this period for a number of reasons. First, numbers make the Nicaraguan case significant. From 1981 to 1990 around 126,000 Nicaraguans applied for asylum, which accounted for around 25% of asylum applications during that period of time. In addition, after 1979, the leftist

Sandinistas, who were regarded as hostile by the Reagan administration throughout the 1980s, governed the country. This is of interest in that the Cuban government was largely seen in the same manner as the Sandinistas, yet people fleeing Cuba were welcomed into the United States. Nicaragua is interesting in the sense that it defies conventional logic on how asylum and refugee decisions are made. What has been commonly assumed is that individuals fleeing states deemed as “hostile” by the United States have been accepted into the country with asylum, while those fleeing “non-hostile” states have been denied. Nicaragua, despite my initial hypothetical leanings, in the early 1980s, did not fit this simple model.

In the first part of this paper, I will examine my original hypothesis on how and why American asylum and refugee policies are formed in the manner they are and how this hypothesis was largely disproven. Following this, the relevant literature in the field of asylum and refugee policies towards Nicaraguans is reviewed along with the relevant theoretical literature of Graham Allison. Finally, I will use three theoretical models to attempt to explain how and why asylum and refugee decisions are made, leading to an assessment of the validity of these models as explanatory tools.

There is continued relevance to this case study today despite it being firmly situated in the Cold War context of Central America during the 1980s. One of the most pertinent points of this relevance is that the United States continues to charge government bureaucracies with the execution of asylum and refugee policies. Due to this, politicking between leaders of government agencies such as the U.S. State Department and the U.S. Citizenship and Immigration Service continues to play a role in how policies are shaped. Additionally, the conflicts of the 21<sup>st</sup> century such as the wars in Iraq and Afghanistan and the Arab Spring uprisings have created large numbers of refugees and asylum claims around the world. The

United Nations Commissioner on Refugees notes that in 2011 there were 74,020 asylum claims in the United States and 278,850 claims since 2007.<sup>3</sup> By examining the case of Nicaragua in the 1980s, it is possible to see a previous example of how foreign policy considerations factored into asylum and refugee policy decision-making and how they could continue to play a role in the current policies of the United States government.

### **Initial Hypothesis**

When starting this project, I began with the initial hypothesis that linked asylum and refugee policies with the United States government's attitude towards the government of the sending country. In the case of Nicaraguan refugees and asylum seekers, U.S. asylum and refugee policies would be a reflection of the U.S. government's attitude towards and relationship with the government of Nicaragua in Managua. This hypothesis was based on the idea that with regime change in a given country, in this research Nicaragua, one would see a corresponding change in the asylum and refugee policies of the United States government. Hence, what I would expect to see would be the following:

- If the United States government is in friendly relations with the government of Nicaragua, then the asylum and refugee acceptance rates would be correspondingly low.
- If the United States government is in hostile relations with the government of Nicaragua, then the asylum and refugee acceptance rates would be correspondingly high.

This initial hypothesis was formed under the assumption that the asylum and refugee policies of the United States are, in fact, highly politicized decisions, which largely take into account the United States' position towards the sending country's government. When this initial hypothesis was formed, I had not yet been able to locate a body of scholarly literature on the case of

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<sup>3</sup> "Asylum Levels and Trends in Industrialized Countries," United Nations High Commissioner on Refugees (2011), 24.

Nicaraguan asylum seekers and refugees and U.S. government policy towards them. In a way, this hypothesis was formed in something of a research vacuum.

While this initial hypothesis was formed without specific knowledge of the Nicaraguan case, it was heavily influenced by what was known about the case of the Cuban exile community in the United States and the U.S. government's policies towards them. Following the Cuban Revolution of 1959, the United States government accepted Cubans into the country in a near automatic manner as a result of the Cuban Adjustment Act of 1966. But, why were Cuban exiles treated in this manner? In part, it was the public image caused by Cubans fleeing a left-leaning government in Havana for the supposed safety of the "free" and "democratic" United States that largely caused the U.S. government to respond this way.<sup>4</sup> In addition, it was part of the United States' overall policy at the time to overthrow the Castro government. By examining the Cuban exile case, one is led to the conclusion that, in fact, asylum and refugee policy decisions are heavily politicized.<sup>5</sup> The situation surrounding those fleeing the Communist bloc of Eastern Europe in many ways also mirror that of the Cuban exiles.

After examining the case of the Cuban exiles, the initial hypothesis was formed. One would expect to see increased levels of asylum acceptance for Nicaraguans following the Nicaraguan Revolution and the assumption of power by the Sandinistas due to the Reagan administration's attitude towards the new Nicaraguan government. This was not the case though. While one would have expected to find a series of high acceptance rates during this period of time, in line with what was seen in other countries that the United States government classified as "hostile" such as the Soviet Union, the Eastern European Communist bloc, and the

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4 Christopher Mitchell, "Reviewing the Case Studies: Implications for Understanding and for Policy Choice," in *Western Hemisphere Immigration and United States Foreign Policy*, ed. Christopher Mitchell (University Park, Pennsylvania: The Pennsylvania State University Press, 1992) 286-7.

5 Larry Nackerud, Alyson Springer, Christopher Larrison, and Alicia Issac, "The End of the Cuban Contradiction in U.S. Refugee Policy." *International Migration Review* 33, no. 1 (Spring 1990).



aforementioned case of Cuba, what was actually seen was a much more complex set of data. For the period from 1983 to 1988 asylum and refugee acceptance rates were as follows:

**Rate of Asylum Acceptance for Nicaraguans<sup>6</sup>**

<b>Year</b>	<b>Acceptance Rate<sup>7</sup></b>
<b>1983</b>	10.5%
<b>1984</b>	12%
<b>1985</b>	8.5%
<b>1986</b>	27%
<b>1987</b>	84%
<b>1988</b>	53%

In addition, the INS did not keep statistics on asylum applications by nationality before 1983, but anecdotal evidence shows that following 1980 Nicaraguans were not welcomed into the United States by U.S. immigration officials.<sup>8</sup>

As a comparison, individuals from Poland who sought asylum status within the United States were accepted in the following rates:

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6 Asylum acceptance rates unavailable from 1981-83 due to the statistical practices of the INS.

7 Immigration and Naturalization Service (INS)/U.S. Department of State.

8 Balmaseda, "22,000 Nicaraguans Found Exile in Miami," 2B.

### Rate of Asylum Acceptance for Poles

Year	Acceptance Rate <sup>9</sup>
1984	32%
1985	37%
1986	50%
1987	47%
1988	53.7%

This data raises doubts in regards to the initial hypothesis of this project. While asylum acceptance numbers were quite high during the years 1987 and 1988 for Nicaraguans, the period from 1980 to 1986 was marked by notably low numbers of acceptances, especially when compared to the rates of acceptance for individuals coming from Poland.<sup>10</sup> An additionally puzzling development is that in 1989 following a period of high asylum admissions for Nicaraguans, the number once again dips dramatically despite the continued rule of the Sandinistas in the country.<sup>11</sup>

In addition to the unusual asylum acceptance rate data, refugee admissions of Nicaraguans were also remarkably low. So low, in fact, that from the period between 1983 to

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<sup>9</sup> Ibid.

<sup>10</sup> It is difficult to compare asylum acceptance rates for Cubans with other groups as Cubans have largely taken advantage of a series of special federal programs such as the Cuban Adjustment Act of 1966 to gain acceptance into the United States. These programs are not accounted for in the official asylum calculations for Cuban exiles in the U.S.

<sup>11</sup> Guy Gugliotta, "Nicaraguan Exodus Slows With New Rule," *The Miami Herald* (April 24, 1989), 1A.

1986, not a single Nicaraguan was granted refugee admission into the United States, as the following chart shows.

**1: Refugee Acceptance Numbers**

	<b>1983</b>	<b>1984</b>	<b>1985</b>	<b>1986</b>	<b>1987<sup>12</sup></b>
<b>World Total</b>	60,713	72,695	62,477	62,440	64,828
<b>Cuba</b>	633	46	158	173	273
<b>Nicaragua</b>	0	0	0	0	36

If this research project’s initial hypothesis was to be correct, this period of time should have had more consistent asylum and refugee acceptance rates for Nicaraguans. In fact, what should have been seen were asylum and refugee numbers consistently closer to what was seen for Poles and Cubans respectively.

By examining this evidence it became evident that one could not simply assert that the United States would employ “receptionist” policies towards those fleeing “hostile” regimes, while at the same time employing “restrictionist” policies towards those fleeing states with “non-hostile” regimes. Hence, the following research question emerged:

- Why did U.S. asylum admission rates toward Nicaraguans witness a number of significant variations during the 1980s?

Additionally, instead of solely examining the role that the character of the Sandinista regime in Nicaragua played in shaping these policies, three new secondary research questions were added:

- What is the connection between the United States’ foreign policy concerns and its asylum and refugee policies?

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12 U.S. Department of State, Bureau for Refugee Programs, World Refugee Report (Washington D.C.: U.S. Department of State, September 1985), p. 118; World Refugee Report (September 1988), p. 113.

- How were asylum and refugee policies shaped by the United States' position towards other Central American countries such as El Salvador and Guatemala?
- What role have U.S. government bureaucracies such as the Department of State, Department of Justice, and the INS played in the development and implementation of these policies?

In sum, this project evolved from one that solely focused on whether or not U.S. asylum and refugee policy decisions are politicized in the sense that they change based on the regime that is found in the sending country to one that approaches these same policy decisions from a more nuanced understanding that recognizes that other considerations such as bureaucratic decision-making along with foreign policy concerns may act as influences.

Why does this study matter? From the initial research that I conducted there is indication that the prevailing theories on the formation of asylum and refugee policies are misleading and too simple to truly examine all cases dealing with this topic. While this model was applicable to the case of the Cuban exiles and individuals fleeing European states under Communist rule, it does not appear to apply to the Nicaraguan case. It is necessary to examine other possibilities and attempt to develop new hypotheses as to how asylum and refugee policies are shaped.

This project concludes that asylum and refugee policies are created as a reflection of the United States' foreign policy considerations, as in the case of Cuban exiles. Still it asserts that these foreign policy considerations manifest themselves in different manners than solely the receptionist asylum and refugee policies extended to Cubans. In addition to foreign policy concerns, politicking between government agencies including the bureaucracies in charge of processing asylum and refugee requests helped shape how the United States formed its shifting refugee and asylum policies towards Nicaraguans during the 1980s.

## Literature Review

This project examines why and how the asylum and refugee policies of the United States are formed and implemented by studying the case of Nicaragua during the 1980s. As such, it is necessary to study relevant literature on the subject of Nicaraguan migration and also how U.S. bureaucracies involved in the asylum and refugee policies approach their decision-making.

In the literature on the subject of Nicaraguan refugees and asylum seekers there is a variety of diverging opinions and some shared beliefs. One of the main divisions in the scholarship revolves around how U.S. immigration officials treated Nicaraguan asylum seekers and refugees. While some of the scholars assert that Nicaraguans faced low asylum acceptance rates as compared to other individuals fleeing leftist governments during the 1980s, others have asserted that, in fact, Nicaraguans were treated in an exceptional manner as evidenced by their high asylum acceptance rates in the late 1980s.

A number of the authors assert that the policies towards the Nicaraguans were largely shaped as a matter of deterrence against increased Latin American migration to the United States. Against this backdrop of migration deterrence, Alan Dowty briefly asserts that the low number of accepted asylum applications for Nicaraguans was part of the larger question of how to avoid large flows of supposedly “economic” migrants into the United States. According to Dowty, the U.S. government at the time was facing mounting criticism in regards to its treatment of Haitian refugees. As a reaction to this criticism, U.S. immigration officials did not shape a more lenient policy towards Haitians, but instead adopted a more restrictive policy towards other asylum seeking nationalities that had previously been accepted at higher rates. As such, the author claims that Nicaraguans along with the Polish and Chinese experienced notably low

asylum acceptance rates during this period of time.<sup>13</sup> While Dowty's analysis of the low number of successful Nicaraguan asylum applications during the mid-1980s does offer some reasonable arguments, what it does not answer are the reasons for the ending of such restrictive policies towards Nicaraguans.

Lars Schoultz makes a number of assertions as to why Nicaraguans were accepted into the United States at low rates during early to mid-1980s. One of these reasons according to Schoultz is that the U.S. government at the time feared setting a precedent for Central Americans to gain refugee status within the United States. The Reagan administration and the State Department believed that their foreign policy in Central America could be undermined if Nicaraguans were allowed to enter into the United States as refugees as this could lead to claims by Salvadorans and Guatemalans that they also should be allowed the same status as Nicaraguans, as at the time the U.S. was providing significant support to both the Salvadoran and Guatemalan governments.<sup>14</sup>

In addition to Dowty and Schoultz, Aristide R. Zolberg, Astri Suhrke, and Sergio Aguayo assert that Nicaraguan asylum and refugee admissions were heavily influenced by the fears of increased migration to the United States. They argue that the United States government under the Reagan administration attempted to use the case of Nicaragua and its refugees to assert that with the triumph of the Sandinistas and other insurgent movements around Central America, the United States would be overwhelmed with huge flows of "feet-people" or refugees who traveled

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13 Alan Dowty, *Closed Borders: The Contemporary Assault on Freedom of Movement* (New Haven: Yale University Press, 1987), 237.

14 Lars Schoultz, "Central American and the Politicization of U.S. Immigration Policy." In *Western Hemisphere Immigration and United States Foreign Policy*, ed. Christopher Mitchell (University Park, Pennsylvania: The Pennsylvania State University Press, 1992), 198.

by foot to the United States.<sup>15</sup> While the authors do not make a direct connection, they do suggest that this fear of “feet-people” migration may have been a factor in the incongruent policies of the Department of State and the Department of Justice during the early and mid-1980s.

A number of scholars have also posited that the reason for the low number of refugee and asylum acceptance for Nicaraguans during the early to mid-1980s was due to foreign policy considerations. Zolberg et al. do not limit their argument, though, to solely that the United States feared flows of “feet-people”, but also note that it was U.S. policy at the time to create “Nicaraguan refugee-warrior communities” in Costa Rica and Honduras. They assert that the U.S. took an active role in creating and maintaining the refugee camps near the Nicaraguan border from which the *contras* could stage their attacks into Nicaraguan territory. In addition, Zolberg et al. write, “As part of the effort the *contras* have even forced people to become refugees, and Washington has tried to utilize bona fide refugees for military purposes”.<sup>16</sup> According to the authors, not only were refugees recruited into the *contra* forces, but also that the *contras* had forced individuals to become refugees and join the anti-Sandinista opposition.

Like Zolberg et al., Alejandro Portes examines the role that the *contras* played in shaping U.S. asylum and refugee policies towards Nicaraguans during this period of time. In his examination of Nicaraguan migration to south Florida, Portes asserts that while the Cuban people were welcomed and accepted by the United States government during the period after the Cuban Revolution, Nicaraguans did not receive the same hospitable welcome.<sup>17</sup> Portes asserts the reason for this was in large part due to the *Contra* War being fought in Nicaragua. Nicaraguan

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15 Aristide R. Zolberg, Astri Suhrke, and Sergio Aguayo, *Escape from Violence: Conflict and the Refugee Crisis in the Developing World* (New York: Oxford University Press, 1989), 218.

16 Ibid.

17 Alejandro Portes, *City on the Edge: The Transformation of Miami* (Berkeley: The University of California Press, 1993), 151.

asylum and refugee seekers were not being allowed into the United States during this time period at rates comparable to Cubans, because as Portes claims the U.S. government believed that these refugee flows would drain the pool of recruits for the *contra* forces.<sup>18</sup>

Unique to Portes' study is that he examines the demographics of the Nicaraguan community in Miami, which was by far the largest enclave of Nicaraguans living in the United States. He notes that as the time passed from the initial period following the Nicaraguan Revolution, the make-up of Nicaraguan asylum seekers became increasingly less affluent. According to Portes, the first wave of Nicaraguans seeking refuge in the United States were composed of the wealthy, ruling class of Nicaragua who had just recently been ousted from power by the Sandinistas. This wave included members of the Somoza family itself. The first wave was followed then by a wave of middle class individuals, who often had previous experience in North America through university studies. This group of individuals initially rented from the wealthy Nicaraguan early arrivals, but eventually settled themselves comfortably into southern Florida society. The last wave of Nicaraguans to arrive during the 1980s was composed of Nicaraguan individuals from the lower, working class. Portes claims that these individuals left Nicaragua in the mid-1980s due to the violence caused by the *Contra* War and the disruption to the economy caused by the conflict.<sup>19</sup>

A few scholars have posited theoretical explanations separate from the other related bodies of literature examined above. Schoultz while noting the relationship between U.S. asylum policy towards Nicaraguans and U.S. asylum policies towards Salvadorans and Guatemalans also adds other explanations. He delineates between U.S. responses to refugee applications and the responses to requests of asylum. In regards to refugee policy, he notes that

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18 Ibid, 156.

19 Ibid, 152-4.



Nicaraguans represent an interesting case, as they did not gain admission to the United States until 1987, when 36 individuals were accepted. From the years 1983 to 1986, not a single Nicaraguan refugee was admitted into the United States.<sup>20</sup> Through interviews on the subject with State Department officials, Schoultz hypothesizes a number of possible reasons for the unusual lack of Nicaraguan refugees. The first of these is the simple reason that the Sandinista government was not engaged in activities that could be classified as “gross, life threatening persecution”. He notes that there were “no death squads, no death penalty, and few political prisoners”.<sup>21</sup> Still, Schoultz writes the majority of State Department personnel he interviewed claimed the reason for the lack of Nicaraguan refugees was that Nicaraguans did not need to seek refuge in the United States as they already could find safety in neighboring Central American countries. As such the United States government claimed that there was no need to accept Nicaraguan refugees as they were already out of “immediate, life-threatening danger”.<sup>22</sup> While Schoultz accepts these possibilities as justifications used by the State Department to not accept Nicaraguan refugees, he does question the validity of the last argument noting that while in fact, Nicaraguans and other Central Americans did seek refuge in places such as Costa Rica, Honduras, and Mexico, they nonetheless still faced life-threatening conditions.<sup>23</sup> He concludes that the countries of Central America were largely unprepared for the large influx of refugees during the 1980s. He specifically cites a General Accounting Office study which found, “the region’s worsening socioeconomic problems, the recent large refugee flows, and the refugees’ unwillingness to return home have severely strained the ability and willingness of countries to

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20 Lars Schoultz, “Central American and the Politicization of U.S. Immigration Policy,” 198.

21 Ibid.

22 Ibid.

23 Ibid.

continue providing asylum and assistance”.<sup>24</sup> The GAO’s finding seems to be one that invalidates claims by State Department officials as to why there were such low numbers of Nicaraguan refugees admitted to the United States during the early to mid-1980s.

In regards to asylum policy, Schoultz asserts that Nicaraguans did indeed receive preferential treatment from the INS and the Department of State. He notes that an initial examination of asylum acceptance rates during the 1980s would make it appear that geography rather than foreign policy concerns played a role in asylum decisions. He specifically cites the numbers from fiscal year 1983 in which only 9.5 percent of Nicaraguan asylum applicants were accepted. Still, he notes that the years 1983 to 1986 were an anomaly for Nicaraguan asylum cases.

Unlike other scholars, though, Schoultz goes on to examine why a disparity existed between Nicaraguan asylum applications and applications from other parts of Central America. One way according to the author to account for this difference was to deny its existence. Elliot Abrams, who was an assistant secretary of state at the time, deployed this method to defend U.S. policy in regards to asylum. Schoultz quotes Abrams as stating, “We do not have an asylum policy toward El Salvador or toward any country. We apply the same standards to each”.<sup>25</sup> Schoultz argues that this is not a fair claim as Abrams cites incorrect statistics and that the variations he refers to, in which Nicaraguans were met with asylum acceptance rates around 10% and Salvadorans and Guatemalans were met with asylum acceptance rates of around 2-3%, is not as insignificant as he suggests.<sup>26</sup> Instead, Schoultz argues that the United States does, in fact, have an asylum policy and it is linked to its foreign policy interests. Specifically, he points to the role that foreign policy concerns have in shaping the influential advisory opinions that the State

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24 Ibid, 201-2.

25 Ibid, 207.

26 Ibid.

Department provides to the INS when the latter is considering an asylum case. Schoultz notes that these opinions clearly reflect the foreign policy biases of the Reagan administration and State Department, while at the same time providing the basis for an overwhelming majority of asylum decisions by the INS.<sup>27</sup> As such, the author asserts that there is a clear foreign policy bias on the part of the INS and other branches of the United States government when processing asylum claims.

Along with Schoultz not all scholars agree with the assertion that Nicaraguan asylum seekers and refugees were treated in a manner similar to other Central Americans during the 1980s. Norman L. Zucker and Naomi Flink Zucker in their book *Desperate Crossings: Seeking Refuge in America* argue that the United States government treated Nicaraguans with what seems was unconditional preferential treatment. They note that it is impossible to argue that a migrant flow is due to completely economic or political reasons. Instead, they note that the reasons for these migrant flows often are an interrelated set of economic and political factors.<sup>28</sup> The authors assert that it was because of the nature of the factors that caused these refugee flows that allowed U.S. immigration officials to favor some groups of asylum seekers over others. In some cases, these officials would emphasize the economic nature of the migrant flow, such as in the case of Guatemala and El Salvador, in other cases the same officials would emphasize the political nature of the migrant flow such as in the case of Nicaragua and Cuba, where the governments in power were of a leftist orientation.<sup>29</sup>

Like previous scholars mentioned Zucker and Zucker, also do note that the Reagan administration shaped the dialogue surrounding refugee flows by arguing that the success of revolutionary movements in Central America like the Sandinistas in Nicaragua would lead to

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<sup>27</sup> Ibid, 207-8.

<sup>28</sup> Zucker and Zucker, *Desperate Crossings: Seeking Refuge in America*, 82.

<sup>29</sup> Ibid.

increased numbers of refugees in the United States. Once again, these authors note that Reagan invoked the image of the “feet-people” and the threat that they pose for United States. While the U.S. accepts Nicaraguan refugees, they do so only grudgingly, unlike in the case of the Cubans around two decades before, who were welcomed as ideological compatriots.<sup>30</sup>

Zucker and Zucker also examine the role that Attorney General Edwin Meese and the Nicaraguan Review Program (NRP) played in increasing the number of Nicaraguan asylum applicants and the number of approved Nicaraguan asylum applications. The authors note that the Nicaraguan Review Program was an extension of the Attorney General’s belief that U.S. asylum policy should not allow for the deportation of individuals back to communist countries. The NRP instituted in 1987 effectively ended the deportation of Nicaraguans from the United States, while encouraging those initially denied asylum to reapply. As noted by the authors, in the year before the establishment of the NRP, Nicaraguan asylum applications were accepted at a rate of 27 percent, whereas the year it was established this same rate jumped to 82 percent, the highest of any asylum seeking nationality.<sup>31</sup> Zucker and Zucker also note that the NRP resulted in a deluge of Nicaraguan asylum seekers in the United States, a situation which produced a significant amount of backlash, from elements that asserted the United States was being deluged with “feet people” migrants from Central America.<sup>32</sup>

Overall, the literature on U.S. refugee and asylum policy towards Nicaraguans as noted in the previous paragraphs is marked by a diverse body of opinion as to how Nicaraguan asylum seekers and refugees were treated. One issue with the current literature is that it does not account for the changes in asylum acceptance numbers towards Nicaraguans during the 1980s. While a number of the previously mentioned works offer reasons for the increase in the rates of accepted

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30 Ibid, 83-4.

31 Ibid, 94.

32 Ibid, 95-6.

applications for asylum these are not linked to explanations as to why the rates were low in the early to mid-1980s. This study will examine what factors and variables involved in the asylum and refugee decision-making puzzle led to changes in the manner in which Nicaraguan refugee and asylum flows were addressed.

### **Bureaucratic Decision-making Literature**

For the most part, the scholars who have examined American asylum and refugee policies towards Nicaraguans have not given focus to the decision-making of the organization most closely involved in the refugee and asylum policy, the Immigration and Naturalization Service. This appears to be a significant lapse on the part of the current research in the field, as it neglects the active role the INS plays. This project will attempt to determine how the INS plays a role in shaping the asylum policies of the United States.

In order to examine the policy choices made by the INS, it is necessary to draw upon the leading theories of bureaucratic decision-making. The theories forwarded by Graham Allison are amongst the leading and most well-established of these ideas. In his study, Allison disputes the established models of understanding how governments create policies, the rational actor model, and in its place posits two different models, the Organizational Process Model, and the Bureaucratic Politics (or Governmental Politics) Model.

### **The Organizational Process Model**

The Organizational Process Model explains foreign policy decision-making, as not defined by rational-choice, but instead by “standard operating procedures” (SOPs). SOPs are adopted by bureaucracies in order to handle the situations that they are confronted by. If they did not have these procedures they would simply be inundated and overwhelmed, as there is not enough time to tailor individual solutions to every problem presented and often problems present

themselves too quickly to respond in any other way than through a SOP. Also in regards to SOPs, Allison notes that these procedures are developed so that low-level officials are able to deal with complex and varied situations in a timely manner. He writes, “SOPs constitute routines for dealing with *standard* situations. Routines allow large numbers of ordinary individuals to deal with numerous instances, day after day, without much thought”.<sup>33</sup> In addition, Allison notes that standard operating procedures are largely based upon “previously established routines” and do not constitute “far-sighted, flexible adaption to ‘the issue’”.<sup>34</sup>

As such according to the Organizational Process Model, action is not determined by government leaders, but is instead determined by the inner-workings and operations of bureaucratic institutions. In the case of the Cuban Missile Crisis and the actions of the United States government in response to the presence of Soviet missiles in Cuba, Allison asserts organizational behavior is a better model to explain the behavior and policy outcomes of the United States government than the rational actor model. In regards to this case, Allison notes that the policy options available to President Kennedy were determined by the organizations involved. Hence the question was not “what should the United States do in response to the presence of Soviet missiles in Cuba?” but instead “what could be done?”<sup>35</sup>

President Kennedy was presented with a number of policy options by the organizations involved. Largely these policy choices revolved around the option of an air strike against Cuba. In order to prepare for these air strikes, the United States’ military apparatus, mainly the Department of Defense and Air Force, resorted to using set procedures for planning the attacks. Amongst these procedures, the Air Force used standard calculations to assess the number of

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33 Graham Allison and Philip Zelikow, *The Essence of Decision: Explaining the Cuban Missile Crisis*, (New York: Longman, 1999), 178.

34 Ibid, 178

35 Ibid, 225.

aircraft needed to successfully complete the mission. In addition due to its standard operating procedures, the Air Force also strongly urged that all Cuban and Soviet air defenses be eliminated before targeting the missiles, thereby increasing the number of aircraft needed and widening the scope of the mission. Allison notes the situation which resulted:

Kennedy and his senior advisers were thus presented with organizational options, constructed with a methodology they dimly understood, that pushed toward a very large strike (with proportionately larger dangers of Soviet retaliation in Berlin or even against the U.S.) while not offering a guarantee of success.<sup>36</sup>

As such, Kennedy resisted the military strike option and moved to the next available option, that of a sea blockade of Cuba.

The blockade was once again marked by the organizational procedures of the leading organization involved, the Navy. On this Allison writes, “Operation of the quarantine qualifies as a virtuoso organizational performance by the Navy’s Atlantic fleet, a tribute to the quality of its prior planning, training, and design of routines”.<sup>37</sup> In this case, after the organizational preferences of the Air Force had limited the options the President, the organizational procedures of the Navy determined the dynamics and characteristics of the blockade.<sup>38</sup>

As evidenced by Allison, the policies of the United States were not determined solely by President Kennedy and his close advisors. Instead it was the result of the policy limitations placed upon the administration as a result of the established procedures and repertoires of the organizations involved.

### **The Bureaucratic Politics Model**

Unlike the Organizational Process Model, the Bureaucratic Politics Model asserts government decisions are not made by a unitary actor, such as the President of the United States

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36 Ibid, 229.

37 Ibid, 231.

38 Ibid.

or a leading government official. Instead according to this model, policy decisions are made by a large array of actors who act as players.<sup>39</sup> These players engage in bargaining over foreign policy decisions, as Allison notes these decisions by their nature lead to competing policy positions among actors. As such, Allison writes, “The name of the game is politics: bargaining along regular circuits among players positioned hierarchically within the government”.<sup>40</sup> Therefore, government decisions are the result of these “bargaining games” and political “pulling and hauling” and not as a result of organizational outputs.<sup>41</sup>

In addition, Allison examines what factors shape these players’ perceptions and preferences on given issues. Amongst these reasons he includes parochial priorities and perceptions, goals and interests, states and stands, and deadlines and faces of issues. Of particular interest are goals and interests in which Allison notes the following:

Although many national security interests are widely accepted, reasonable officials can frequently disagree about how broad national goals bear upon a specific issue. Thus other interests come into play, including personal interests, domestic political interests, and organizational interests.<sup>42</sup>

In addition, he notes that career officials within these organizations often focus on organizational health interests, while the President and his top appointees are influenced by domestic political considerations.<sup>43</sup>

In the Bureaucratic Politics Model, power is what determines each player’s impact on results. Allison concludes that power is derived from three factors: bargaining advantages, skill and will in using bargaining advantages, and other players’ perceptions of the first two factors. Power that is used wisely leads to perceptions of “effectiveness”, while power used in an unwise

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39 Ibid, 255.

40 Ibid.

41 Ibid.

42 Ibid.

43 Ibid.



manner leads to diminishing power stocks and reputation. As such, players are careful to choose issues in which they have a high probability of success.<sup>44</sup>

As with the Organizational Processes Model, Allison applies the Bureaucratic Politics Model to the Cuban Missile Crisis, specifically the U.S. decision to blockade Cuba. When using the Bureaucratic Politics Model to examine this decision, the actions and politicking of top-ranking political figures in the Kennedy administration come into focus. Immediately following the discovery of Soviet missiles in Cuba, the players involved developed a number of solutions dealing with the issue. One set of players led by the Joint Chiefs of Staff and supported by others such as former Secretary of State Dean Acheson and CIA director John McCone supported a military solution to the problem. Others such as Secretary of Defense Robert McNamara and UN ambassador Adlai Stevenson were more hesitant of the military strike option. This hesitation led McNamara to raise the idea of a naval blockade against Cuba as another possible course of action.<sup>45</sup> Over the course of a number of days, Kennedy and the different players involved deliberated on the issue of whether to use a military strike option or the blockade option, with the players dividing into separate blocks based on their preferences, which according to Allison were shaped by “their character, responsibilities, and experiences”.<sup>46</sup>

While Kennedy ultimately chose the option of the blockade, this did not represent a complete victory for McNamara and other blockade option advocates. Instead it represented a synthesis, as the blockade option was linked with a demand that Soviet missiles be removed from Cuba backed by the threat of a military strike if this was not accomplished. As noted by Allison, the blockade-ultimatum decision was a “collage” in nature and included, “the president’s initial decision that something forceful had to be done’ the resistance of McNamara and others to a

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44 Ibid, 300.

45 Ibid, 340-4.

46 Ibid, 346.

surprise air strike; and the constant relationship [...] between Cuba and Berlin”.<sup>47</sup> According to the Bureaucratic Politics Model, the efficient use of power by McNamara must be noted as he was able to use his skills of negotiation and compromise to couch his blockade proposal in a manner in which the use of an air strike was not ruled out, but was also not a first option.

In total, the theoretical models of Graham Allison provide an effective framework for assessing the decision-making of the U.S. government by examining the role that organizations and the people at the top of and within those organizations play. By moving away from the rational actor model, it is possible to better understand what otherwise look like incoherent government policies and decisions.

As such while much of the case-specific literature on American refugee and asylum policies towards Nicaraguans approaches the issue from a rational actor model, it is necessary to apply Allison’s Organizational Processes Model and the Bureaucratic Politics Model to understand these policies. By assessing the United States’ policies towards Nicaraguan asylum seekers and refugees with Allison’s theoretical models, this project seeks to fill in the gaps in literature that fail to explain the changes seen in asylum acceptance rates during the 1980s.

## **Hypotheses**

As one can see in the previous section on the state of the literature regarding U.S. policy decisions on Nicaraguan asylum and refugee seekers, there is a division of thought on the issue. This project seeks to expand this literature and answer the questions as to why asylum and refugee acceptance rates saw numerous changes throughout the 1980s, in the process filling a gap in the scholarship that assesses not only why numbers may be high or low at a given point, but also why there is a change.

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<sup>47</sup> Ibid.

As such, three hypotheses are to be tested. One of these hypotheses examines the relationship between U.S. refugee and asylum policies and U.S. foreign policy interests. This model posits that foreign policy interests envisioned by actors in the United States government largely determine asylum and refugee policies.

The additional two hypotheses are grounded in the theoretical framework developed by Graham Allison dealing with the Organizational Behavior Model and the Bureaucratic Politics Model. The first of the Allison hypotheses asserts that the United States government's decision-making in regard to asylum and refugee policies can be explained by Allison's Organizational Behavior Model. More specifically, it asserts that the standard operating procedures used by the INS during the 1980s to process asylum seekers led to the low rates of acceptance seen in the early 1980s, while outside impetuses during the mid-1980s forced a change in the SOP leading to increased acceptance of Nicaraguan asylum seekers.

The second of the Allison hypotheses asserts that the United States government's decision-making in regard to asylum and refugee policies can be explained by Allison's Bureaucratic Politics Model. More specifically, it is based in the idea that the reason for the low levels of asylum acceptance in the early 1980s was due to governmental "pulling and hauling" and politicking between different government agencies. In this model, the changes in asylum acceptance rates are a reflection of one governmental actor's ability to influence a policy over another actor's preferences. The following sections will examine the evidence in regards to these hypotheses noting where the preponderance of this evidence lies.

## Evidence Assessment

### The Foreign Policy Hypothesis

Is there a relationship between the United States' foreign policy and its asylum and refugee policies? One possible theoretical explanation posits that, in fact, refugee and asylum decisions are closely related to the foreign policy considerations of the United States government. In sum, the United States bases its asylum and refugee based largely on what leaders in the U.S. government deem to be in the foreign policy of the United States.<sup>48</sup>

As noted in the literature review, this concept has been used to examine other cases of asylum and refugee decisions towards Latin Americans. The assumed paradigmatic case has been the United States' treatment of Cuban refugees in the wake of the takeover of Cuba by Fidel Castro and his forces. These Cuban exiles were welcomed with open arms into the United States by the U.S. government. The policy manifestation of this attitude was the Cuban Refugee Adjustment Act, which allowed Cuban individuals who had been in the United States for at least one year to become legal permanent residents of the United States. It was largely seen as a foreign policy and ideological victory that Cubans were fleeing the Communist regime in Cuba in favor of the West's liberal and democratic values.

The policies towards Cuban asylum seekers in conjunction with policies towards Communist European states during the Cold War have led to the assumption that, in fact, the United States during this period based their asylum and refugee policy decisions largely on the sending country's political orientation. This assumption is reflected in the work of Zucker and Zucker who note the following in regards to the asylum decision-making of the United States government:

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<sup>48</sup> Ruth Ellen Wasem, "Cuban Migration to the United States: Policy and Trends," Congressional Research Service (June 2, 2009), 2.

The United States also eases entry to further other anti-Communist foreign-policy goals. For decades, America has encouraged and welcomed migration from the Soviet Union and other Communist countries. And, not insignificantly, America has become a country of first asylum for Cubans. But we admit only those refugees who serve our foreign policy ends.<sup>49</sup>

Zucker and Zucker, on one hand, raise an important point that is central to this theoretical explanation. The point being that asylum and refugee decisions are made based on the “foreign policy” concerns of the United States.

The authors also assert that as these asylum and refugee policies are made as a reflection of U.S. foreign policy concerns, it has followed that the United States has developed friendly policies towards individuals fleeing leftist governments. While this assertion has held true for some cases such as Cuba and Poland, the case of Nicaragua remains more of a puzzle. Certainly in the mid to late 1980s, the United States’ policy towards Nicaraguan refugee and asylum policy seekers would support the assertion that the U.S. supported receptionist policies towards Marxist and Communist states, yet this neglects the period of the early 1980s, when Nicaraguan acceptance rates were markedly lower than acceptance rates of asylum seekers fleeing other allegedly leftist states. If Zucker and Zucker’s argument about how the United States creates its asylum and refugee policies was true, then the levels of Nicaraguan migration from 1979 through 1986 should be noticeably higher and in line with the acceptance rates of those individuals fleeing Poland, Hungary, and Afghanistan.

What factors explain the differing rates of asylum acceptance for Nicaraguans as compared to individuals fleeing from other alleged Marxist and Communist states? A possible explanation for these differences is that, in fact, U.S. policies toward Nicaraguan asylum seekers and refugees was based in foreign policy concerns, but those concerns did not dictate a blanket

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49 Norman L. Zucker and Naomi Flink Zucker, *The Guarded Gate: The Reality of American Refugee Policy* (San Diego: Harcourt Brace Jovanovich, 1987), 50.

acceptance of Nicaraguans flowing into the United States. Instead, the United States foreign policy interests were served by a policy that allowed a small number of Nicaraguans into the United States through grants of asylum, while at the same time denying large numbers of applicants and encouraging the development of refugee camps in Honduras and Costa Rica.

To understand the United States' asylum and refugee policies it is necessary to understand the U.S.'s involvement in Nicaragua after the Nicaraguan Revolution in 1979. This involvement lends a significant amount of credence to the foreign policy model. In the initial aftermath of the 1979 revolution that led to the downfall of Anastasio Somoza, the United States, similar to the case of Cuba in the aftermath of the Cuban Revolution in 1959, utilized a receptionist policy towards Nicaraguans wishing to flee their country. Unique to this receptionist policy was the manner in which it was implemented through the use of "Extended Voluntary Departure" (EVD) provisions, which allowed Nicaraguans in the United States at the time of the revolution to overstay their visas' expiration date.

EVD provisions are administrative mechanisms that allow the U.S. Attorney General, under the authority of the Immigration and Nationality Act, to permit aliens within the United States to stay if the conditions within their country of origins were to change in a manner that would endanger their well-being or lives.<sup>50</sup> Scholars have previously noted the connection between EVD and foreign policy concerns.<sup>51</sup> In fact, State Department officials have explicitly noted that since EVD considerations fall outside the purview of the Refugee Act of 1980, then in fact they may be openly tied to the United States' foreign policy interests. This was made clear in the case of EVD grants to those fleeing Poland in the early 1980s, as State Department

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50 Ibid, 218.

51 Ibid, 219.

officials acknowledged this had much to do with the United States' position and NATO's position towards the Polish government.<sup>52</sup>

In the case of Nicaragua, the Carter administration granted blanket admission to the United States through EVD from the period of November 1979 to September 1980. Not only were Nicaraguans allowed to stay past the end of their visas, they were encouraged to flee Nicaragua with a B-2 non-immigrant visa with the explicit knowledge that they would be granted EVD inside the United States. It is difficult to determine the numbers of Nicaraguans who took advantage of this opportunity, as the INS did not keep statistics based on nationality as to who was applying for EVD status.<sup>53</sup> Still, it is clear that many anti-Sandinista Nicaraguan elites took advantage of this opportunity. In the early period after the fall of the Somoza regime according to *The Miami Herald* approximately 15,000 Nicaraguans entered the country primarily settling in southern Florida.<sup>54</sup>

In the initial period following the Sandinista Revolution in Nicaragua, U.S. policy towards Nicaraguans fleeing the new regime appeared quite similar to the reaction of the U.S. government in the late 1950s and early 1960s when forces led by Fidel Castro ousted Fulgencio Batista from power in Cuba. Though different in form, both EVD and the Cuban Adjustment Act were examples of receptionist asylum and refugee policies in which blanket *de facto* asylum to individuals fleeing a leftist regime was granted.

Class is an important factor in examining the acceptance of Nicaraguans into the United States during this period. While the Carter administration during this period had not labeled the

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52 U.S., Congress, House of Representatives, Subcommittee on Immigration, Refugees, and International Law, Committee on the Judiciary, Temporary Suspension of Deportation of Certain Aliens: Hearing, 98th Congress., 2d session (March 13, 1984), 26-7.

53 Daniel B. Levine, Kenneth Hill, and Robert Warren, *Immigration Statistics: A Story of Neglect* (Washington D.C.: National Academy Press, 1985) 121-2.

54 Christopher Marquis, "Nicaraguan Exile Community Forges New Life in S. Florida," *The Miami Herald*, July 16, 1989, 1A.

Sandinista administration “communist” or “hostile” it still adopted a policy of accepting Nicaraguans fleeing the new Nicaraguan government into the United States. Who were these Nicaraguans though? Largely they came from the upper echelons of Nicaraguan society. Portes, citing the *Miami Herald* statistics notes:

Approximately fifteen thousand other rich exiles transferred their assets to Miami banks during the late 1970s, moved their furniture into fashionable residences in Key Biscayne and Brickell Avenue, and invested on condominiums in the suburban western edge of the city.<sup>55</sup>

As with the Cubans following the Cuban Revolution, the United States welcomed in large numbers of those closely linked with the fallen regime and those with wealth who believed themselves threatened by the new regime.

The comparison between the two cases in large part ends with the use of EVD from 1979 to 1980. Although Cubans continued to be accepted into the United States in a blanket fashion long after the revolution within their country, in the Nicaraguan case this special receptionist policy ended in 1980. In period following 1980 and extending to 1986, the United States’ policy towards Nicaraguan refugee and asylum seekers took a much less receptive stance. As noted earlier during this period, asylum acceptance rates for Nicaraguans hovered around 10%, while at the same time no Nicaraguans were accepted as refugees into the United States until 1987.<sup>56</sup> Why did the United States move from a policy of reception to an apparent one of rejection during this period?

Once again, foreign policy concerns provide an answer to this question. Beginning soon after the Nicaraguan Revolution, the United States government began funding and supplying

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55 Alejandro Portes, *City on the Edge: The Transformation of Miami*, 152.

56 As noted earlier, it is difficult to ascertain the exact statistics from the period before 1984 as the INS has not published this information.



anti-Sandinista guerillas.<sup>57</sup> The actions of these guerillas, known as *contras*, amounted to a proxy war against the Sandinista government by the United States. While the United States could provide funding and supplies to those opposed to the Sandinistas, it could not provide manpower to fight the conflict. Instead it was to be the refugee flows fleeing Nicaragua that would provide the needed fighters for the war. Hence, U.S. asylum and refugee policy began to reflect this foreign policy related need, as allowing disaffected Nicaraguans to enter the United States as refugees and asylum seekers would diminish the labor pool necessary to support the counter-revolution.

The United States decision to arm the Nicaraguan refugees is not without precedent. The United States and its allies had armed or were at the time arming a number of other refugee groups, such as noted by Zolberg et al., “Afghans in Pakistan [and] Khmer on the Thai-Kampuchea border”.<sup>58</sup> These scholars go on to assert that this phenomenon was not limited to solely Western states. In the Palestinian-Israeli conflict, the Arab world funded Palestinian refugees in order for them to be able to fight the Israelis, while Iran provided sanctuary to Afghan rebels.<sup>59</sup> In the case of Nicaragua, the U.S. established refugee camps in Honduras near the Nicaraguan border from which the *contras* were able to conduct their operations. On the other hand, the United Nations High Commissioner on Refugees set up refugee camps deep in Honduran territory for the purpose of moving Nicaraguans from the violence of the border regions.<sup>60</sup>

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57 Robert Kagan, *A Twilight Struggle: American Power and Nicaragua, 1977-1990* (New York: The Free Press, 1996) 150-1.

58 Aristide R. Zolberg, Astri Suhrke, and Sergio Aguayo, “International Factors in the Formation of Refugee Movements,” *International Migration Review* Vol. 20, No. 2 (Summer 1986): 156.

59 *Ibid.*

60 Fiona Terry, *Condemned to Repeat?: The Paradox of Humanitarian Action* (Ithaca, New York: Cornell University Press, 2002) 89-90.

As noted previously, the refugee and asylum policies of the early 1980s had class-based characteristics as well. EVD provisions had allowed Nicaraguan elites to enter the United States at will during the late 1970s and early 1980s, but as the decade went on more stringent policies forced many Nicaraguans from a lower socio-economic level to remain in Central America, largely in the refugee camps of Honduras.<sup>61</sup> While many of the leaders of the *contras* resided in Miami, the actual Nicaraguans fighting against the Sandinistas resided in the Honduran camps.

In addition to providing the necessary manpower to continue with the war against the Sandinistas, the refugees in Honduras served foreign policy purposes in a public relations manner. The Reagan administration used the sight of refugees in the regions bordering Nicaragua to increase support for the *contras*. The refugees became a symbol of the plight of the Nicaraguans at the hands of the Sandinista government. The logic being that the refugee situation in Honduras was created not by the *contra*'s campaign, but by the actions and policies of the Sandinistas. In one case, in the lead up to a vote in the United States Congress on funding for the *contras*, the U.S. embassy in Honduras staged an event in which 60 journalists were invited to interview recent refugees from the Mosquito region of Nicaragua. Americas Watch concluded that likely these refugees had been coerced by *contra* forces to leave Nicaragua for Honduras and did not leave due to the actions of the Sandinista government.<sup>62</sup> On this situation the authors of the Americas Watch report note the following:

Coming at a moment when the U.S. Congress is voting on aid to the *contras*, the flight of thousands of Indians across the border gives a very bad impression of Sandinista-Miskito relations, which were supposed to be on the mend [...] The picture that has already been painted by the Reagan Administration is that serious new abuses provoked this massive exodus, although Americas Watch has not learned of such abuses. The exodus gives the Congress more reasons to vote for

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61 Portes, *City on the Edge: The Transformation of Miami*, 152.

62 Americas Watch, *With the Miskitos in Honduras* (New York: America's Watch, 1986): 3.

aid to the *contras*, especially “humanitarian” aid which could be thought to benefit these refugees.<sup>63</sup>

It was in this manner that Nicaraguan refugees were used to further the foreign policy concerns of the Reagan administration. As such it was in the U.S.’s interest to prevent these individuals from entering the United States through the asylum or refugee process.

In addition to the concerns related to the *contra* war during this period, the Reagan administration was also hesitant to grant asylum status *en masse* to Nicaraguans due to concerns related to El Salvador and Guatemala. The thrust of this fear was that allowing Nicaraguans into the United States through political asylum would set a precedent for allowing Salvadorans and Guatemalans in as well. This posed a significant problem as while the United States during the Reagan administration considered Nicaragua a “hostile” state; Guatemalan and El Salvador were described as having improving human rights conditions. Arthur Helton, who served as a representative of the Lawyer’s Committee for International Human Rights in the following excerpt, noted this sentiment:

Our government has identified significant foreign policy interests with the government of El Salvador, and our Administration must certify to Congress periodically that El Salvador has shown progress in the area of human rights. As a matter of foreign policy, therefore, our Executive branch [...] has every incentive to characterize the situation in El Salvador as an improving one – a characterization which could be jeopardized through the granting of asylum to Salvadorans.<sup>64</sup>

This belief that Salvadorans, and also Guatemalans, could not enter the United States through asylum also led to a restrictive policy towards Nicaraguans following the initial receptionist policy of EVD from 1979 to 1980.

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63 Ibid, 14.

64 Statement of Arthur C. Helton on the Refugee Eligibility Standard: Before the Subcommittee on Immigration of the Committee of the Judiciary, U.S. House of Representatives, June 7, 1983.

Although the explanation that foreign policy is linked to asylum and refugee policy answers the question as to why the latter policies limited Nicaraguan entry into the United States during the early 1980s, it does have limitations. The most notable of these is that while it explains why asylum and refugee policies were shaped in a certain manner; it does not explain how they were shaped. In order to more fully understand the processes for which foreign policy considerations shaped asylum and refugee policies it is necessary to use other theoretical models. In the next section, we will explore the possibility of a bureaucratic influence in the creation and implementation of asylum and refugee policies in order to better understand the “how” question.

## **The Organizational Behavior Hypothesis**

### **The Original Standard Operating Procedure**

The first hypothesis to be examined is one based in Allison’s Organizational Behavior Model. As noted earlier in the theoretical literature review, this model revolves around the idea that states are not, in fact, unitary decision makers as the Rational Actor Model asserts, but instead are composed of a number of different organizations and bureaucracies, which play a significant role in the foreign policy decision-making of that state. What will be specifically focused upon are the standard operating procedures, repertoires, and programs of the Immigration and Naturalization Service in regards to asylum decision-making, along with what impetuses there may have been for a possible change in these organizational operations.

In regards to the INS’s standard operating procedure during the early part of the 1980s, it appears by examining the asylum acceptance numbers from the period from 1984 to 1986 (see table below), that the SOP was one of denial of Nicaraguan asylum application requests.

### Rate of Asylum Acceptance for Nicaraguans

Year	Acceptance Rate <sup>65</sup>
1984	12%
1985	8.5%
1986	27%

While other nationalities were granted preferential treatment including Cubans under the Cuban Refugee Adjustment Act and individuals fleeing the Eastern European Communist bloc and the Soviet Union, individuals fleeing Nicaragua were denied asylum at rates as high as over 90%.<sup>66</sup> While the majority of Nicaraguans denied asylum were not deported immediately after their asylum decisions were made, they were denied the services granted to those officially accepted for asylum. Although wealthy Nicaraguans who arrived in the United States immediately following the Nicaraguan Revolution were largely well-protected from the prospects of deportation or economic hardship, other Nicaraguans who came in subsequent waves of migration to the United States and were from less affluent backgrounds did not find themselves in the same position. With the status of “illegal aliens” given to them by the INS, denied Nicaraguans were excluded from “refugee assistance, resettlement aid, or welfare”, while at the same time forced to deal with a precarious situation in which they could be forced to leave the United States at any given point.<sup>67</sup>

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65 Immigration and Naturalization Service (INS)/U.S. Department of State.

66 Helsinki Watch, *Detained, Denied, Deported: Asylum Seekers in the United States* (New York: Helsinki Watch, 1989),80-1.

67 Fabiola Santiago and Barbara Gutierrez, “Dade’s Little Managua: Bastion of Uncertainty,” *The Miami Herald* (July 19, 1984), 16A.

Following the Organizational Processes Model, the INS had adopted a policy of denial as its standard operating procedure towards Central American asylum seekers including Nicaraguans, Guatemalans, and Salvadorans. This policy of denial was despite State Department claims that the Sandinistas were committing human rights abuses. In a series of Human Rights Reports given to the U.S. Congress, the State Department described a situation in Nicaragua in which human rights and civil liberties were repeatedly and systematically violated by the Sandinista government. In 1982, the authors of the report note that, “Under the state of emergency, the [Sandinista] Government has instituted prior censorship of all media, imposed extensive restrictions on political party activities and detained without due process many Nicaraguans on charges of ‘counterrevolutionary’ activities”<sup>68</sup>. In addition, the 1982 report also noted the following regarding extrajudicial killings:

There is credible evidence that security forces have been responsible for the death of a number of detained persons in 1982. In addition to these cases, the Ministry of Interior publicly announced that several prisoners were killed while “attempting to flee detention.” There were in 1982 some 15-20 credible reports of deaths at the hands of security forces, most of which have been confirmed.<sup>68</sup>

Subsequent Human Rights Reports from the mid-1980s continue to describe the human rights situation in negative terms, mainly as a result of Sandinista policies of repression. The 1983 report concluded:

The Permanent Commission for Human Rights reported that the security forces, particularly the Directorate General of State Security, detained hundreds of suspected “counterrevolutionaries” (a term used loosely by the Government for anti-Government guerillas, suspected guerilla sympathizers, and subversives) and held many of them incommunicado indefinitely without formal charges. There are credible reports of torture and killing of detained persons by security forces.<sup>69</sup>

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68 United States Department of State, 1982 Human Rights Report, 579-80.

69 United States Department of State, 1983 Human Rights Report, 633.

This report was followed in 1984 by descriptions of wide-spread human rights abuses by the Sandinista government including forced displacements of indigenous populations, killings, torture, and disappearances of suspected “guerrillas and subversives”.<sup>70</sup>

Despite the reports coming from the State Department which claimed the Sandinistas were a repressive regime engaged in human rights abuses, the Immigration and Naturalization Service continued to deny Nicaraguans asylum in the United States in significant numbers. Nicaraguans like others fleeing Central America including Guatemalans and Salvadorans were largely denied entry into the United States.

Beginning in 1986, though, a change occurs and the asylum acceptance rates began to noticeably increase at a sharp rate.

**Rate of Asylum Acceptance for Nicaraguans**

<b>Year</b>	<b>Acceptance Rate<sup>71</sup></b>
<b>1986</b>	27%
<b>1987</b>	84%
<b>1988</b>	53%

By adhering to Allison’s Organizational Behavior Model, there appears to have been a change in the standard operation procedure or repertoire of the INS. As noted by Allison for such a change to take place the INS likely experienced one of following: an increase in funding, a decrease in funding, or a “dramatic performance failure”.

70 United States Department of State, 1984 Human Rights Report, 609-11.

71 Immigration and Naturalization Service (INS)/U.S. Department of State.

The evidence points to the latter factor being the one that most influenced this change in SOP by the INS. While, not necessarily “dramatic performance failures” in the strictest sense of the term, a combination of serious events propelled the INS to change the way it processed asylum requests by Nicaraguans.

***Immigration and Naturalization Service v. Cardoza-Fonseca***

The first of these impetuses was the 1987 United States Supreme Court decision in *Immigration and Naturalization Service v. Cardoza-Fonseca* (480 U.S. 421 (1987)). The background to the *Cardoza-Fonseca* case was that a Nicaraguan, Luz Marina Cardoza-Fonseca, had entered the United States in June of 1979, with a non-immigrant visa, which was the same year that the Sandinistas overthrew the Somoza government and began their revolutionary government. Cardoza-Fonseca, whose brother was a supporter of the Somoza regime, remained in the United States past the expiration of her non-immigrant visa. She was eventually apprehended by the INS and was offered the option to voluntarily depart from the United States for Nicaragua, which she declined. As such, deportation hearings were brought against her, while she requested the “withholding of deportation” by claiming asylum status under section 208(a) of the Refugee Act of 1980.<sup>72</sup>

While Cardoza-Fonseca claimed that she would face persecution at the hands of the Sandinistas if she was forced to return to Nicaragua due to her brother’s political activities, the immigration judge on her asylum hearing panel denied her asylum status. He gave his justification as the following:

None of the evidence indicates that [Ms. Cardoza-Fonseca] would be persecuted for political beliefs, whatever they may be, or because she belongs to a particular social group. She has not proven that she or any other members of her family,

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<sup>72</sup> Carlos R. Soltero, *Latinos and American Law: Landmark Supreme Court Cases* (Austin, University of Texas Press, 2006), 136.



other than her brother, has been detained, interrogated, arrested and imprisoned, tortured and convicted and sentenced by the regime presently in power in Nicaragua.<sup>73</sup>

After this initial denial of asylum by the immigration judge, Cardoza-Fonseca, appealed the ruling to the next level of the immigration hearing system, the Board of Immigration Appeals, which affirmed the lower administrative court's ruling. The next step in the appeal process for Cardoza-Fonseca was to appeal in a Federal Court of Appeal, in this case the Court of Appeals for the Ninth Circuit. The Court of Appeals sided with the argument of Cardoza-Fonseca and ruled that the INS should have used a lesser standard than a "clear probability" of persecution for determining who qualifies for asylum in this case.<sup>74</sup>

After this ruling, the INS appealed to the United States Supreme Court, which heard the case on October 7, 1986. On March 9, 1987, the Supreme Court issued its opinions, which ruled in favor of Cardoza-Fonseca, allowing her to remain in the United States. The court found that the INS had applied a too restrictive standard when assessing who qualifies for asylum. The Refugee Act of 1980 states asylum may be granted to individuals who face persecution or have a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or based on political opinion. The INS had used a standard which required that an asylum seeker establish that he or she would "more likely than not" face persecution if deported, the Supreme Court with Justice John Paul Stevens delivering the majority opinion asserted that this was not the case and that, in fact, asylum seekers did not need to establish that there was a 50% or greater chance of persecution occurring. Instead, they noted

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73 Ibid, 137.

74 Ibid, 137-8.

that in a case where there was only a 10% chance of persecution, this still warranted the granting of asylum.<sup>75</sup>

Following the Organizational Processes Model, the *Cardoza-Fonseca* ruling in many senses was a “dramatic performance failure” on the part of the INS, as the United States Supreme Court publicly showed that the organization had been using an incorrect standard of asylum. As such, the INS was forced to change the “standard operating procedure” used to determine asylum cases. More significantly, the Supreme Court’s opinion forced the INS to specifically change the manner in which it had been handling the application of Nicaraguan asylum requests, as *Cardoza-Fonseca* herself was a Nicaraguan. In the memorandum issued by the Department of Justice regarding the new policies towards Nicaraguans, specific reference is made to the Supreme Court ruling as noted in the following excerpt from said memo:

INS officials will encourage Nicaraguans whose claims for asylum or withholding of deportation have been denied to reapply for reopening or rehearing of such claims in accordance with the standard spelled out by the Supreme Court in the recent Cardoza-Fonseca decision.<sup>76</sup>

A report from the Congressional Research Service notes the impact of the *Cardoza-Fonseca* finding on the Department of Justice as Attorney General Edwin Meese established a special program, the Nicaraguan Review Program, for Nicaraguans coming to the United States.

The CRS report specifically notes:

In part a response to the U.S. Supreme Court’s *Cardoza-Fonseca* decision, Meese issued a statement that encouraged Nicaraguans, especially those denied asylum prior to the *Cardoza-Fonseca* ruling in March 1987, to re-apply for asylum. He also instructed INS to facilitate the processing of Nicaraguans’ claims, to advertise asylum procedures in communities with concentrations of Nicaraguans, and to issue work permits to Nicaraguans as soon as they registered with INS.<sup>77</sup>

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75 Ibid, 138-9.

76 Department of Justice Memorandum regarding new policies towards Nicaraguans, July 8, 1987.

77 Ruth Ellen Wasem, “Central American Asylum Seekers: Impact of 1996 Immigration Law,” CRS Report for Congress (November 21, 1997), 7-8.

These measures were exceptional for asylum seekers from any country at the time, most notably the issuance of work permits, which would later become a norm for asylum seekers in the early 1990s, but previously had not been extended to those waiting for their asylum rulings.

### **Public Pressure Campaign**

In addition to the *Cardoza-Fonseca* ruling, the Nicaraguan community within the United States mounted a public pressure campaign that attempted to provide an impetus for the INS to change its asylum policy towards Nicaraguans. Beginning in the mid-1980s, the Nicaraguan community living within the United States began a concerted effort to bring attention to their situation by forming a number of advocacy groups and engaging in acts such as letter-writing to members of the U.S. Congress, public demonstrations, and meetings with high-ranking U.S. officials.<sup>78</sup>

One of the first of these organizations was the Nicaraguan Humanitarian Coalition, whose formation is noted in the August 28, 1985 edition of the *New York Times*. Wealthy Nicaraguans living in the United States largely funded the group. Leaders of the coalition while engaging in a campaign to receive asylum status from the United States government were quick to point out the contradictions in the rhetoric and policies of the same government. The head of the Nicaraguan Humanitarian Coalition, Dr. Silvio Arguello, played upon this disparity asserting, “There is a total incongruency between what President Reagan says and what the State Department does. [...] Mr. Reagan says that Nicaragua has a dictatorial Communist regime which oppresses our people, and the State Department and the INS say to thousands of Nicaraguans that they were not persecuted at all”.<sup>79</sup> While, a disparity between rhetoric on the part of the Reagan administration and U.S. asylum and refugee policy towards Nicaragua had

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78 Jean Thompson, “Asylum Seen for Nicaraguans,” *South Florida Sun-Sentinel*, June 27, 1987, 3A.

79 George Volsky, “Group Would Aid Nicaraguans Here,” *The New York Times*, April 22, 1986, A11.

existed for a number of years, this public pressure campaign was one of the first times it had been publically denounced.

In addition, an article in the *South Florida Sun-Sentinel* from June 27, 1987 notes one particular group of Nicaraguans living in the United States, which had organized in order to protest the lack of accepted asylum applications for Nicaraguans within the country named the Committee of Poor Nicaraguans in Exile. One of this group's actions included flying 100 small children to Washington to take part in demonstrations on behalf of the cause of Nicaraguan asylum and also meet with members of Vice President George H.W. Bush's staff.<sup>80</sup>

The public pressure campaign by the Nicaraguan community living within the United States, many of them with statuses that would be termed "illegal", represents one of the first efforts made by individuals to note the low numbers of Nicaraguans being admitted into the United States for asylum, while at the same time the Reagan administration continued to call the Sandinista government both Communist and repressive.

By adhering to an Organizational Behavior understanding of this evidence, one is able to see that a "dramatic performance failure" and other related factors such as the public pressure campaign on the part of the Nicaraguan community to point out disparities between rhetoric and practice led the Immigration and Naturalization Service to implement a new standard operating procedure. This new SOP consisted of the INS no longer denying Nicaraguan asylum requests at rates as high as 90% and instead accepting Nicaraguans at rates higher than any other nationality applying for asylum status within the United States during the year 1987.

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<sup>80</sup> Ibid.

## **Nicaraguan Review Program**

As previously noted, a major facet of this new SOP was the Nicaraguan Review Program (NRP), which was instituted by U.S. Attorney General Ed Meese. The NRP was created to re-hear all cases of Nicaraguans who had previously been denied asylum. In fact, soon after the *Cardoza-Fonseca* ruling in March of 1987, Meese issued a statement compelling Nicaraguans who had been previously denied asylum to reapply. The creation of the NRP denoted that Nicaraguan asylum seekers were a unique group of asylum applicants as others groups denied asylum were bound over to the Executive Office of Immigration Review. In addition to re-hearing previously denied asylum cases, Meese also instructed the INS to advertise asylum proceedings in Nicaraguan communities and issue work permits to all Nicaraguans who applied for asylum with the INS, both of which were exceptional measures.<sup>81</sup>

## **Issues with the Organizational Processes Model**

Although at first glance the Organizational Processes Model appears to explain how asylum and refugee policies were created, a number of issues raise questions as to its validity in this case. One of the main issues of the Organizational Processes Model is that it does not take into account the use of extended voluntary departure provisions by the Carter administration in 1979 and 1980. As noted in the section on the foreign policy model, in the initial aftermath of the Nicaraguan Revolution in 1979, the Carter administration granted significant numbers of EVD provisions from the period from 1979 to 1980. During this period a large number of wealthy Nicaraguans, approximately 15,000 individuals, were able to enter the United States and reside in a legal manner in places such as Miami.

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<sup>81</sup> Ruth Ellen Wasem, "Central American Asylum Seekers: Impact of 1996 Immigration Law," (CRS Report for Congress, 1997), 7-8.

According to Allison, government policy-makers have their “menu of choices” in regard to policy options limited by bureaucratic routines, repertoires, and procedures. This is not true in regard to EVD provisions and their use by the Carter administration. The policy options available to policy-makers appear to be more wide-ranging and flexible than the Organizational Processes Model would lead one to believe. Additionally, this flexibility was not the result of the capabilities or operations of agencies such as the INS, but the result of law-making by the United States Congress.

Additionally, one would be misled to lend too much credence to the notion that the Nicaraguan public pressure campaign influenced policy-making. There is a lack of evidence to suggest that policy-makers were swayed in a significant manner by these campaigns. While the actions of the organizations associated with these campaigns did garner attention in publications such as the *Miami Herald* and the *New York Times*, it does not appear that this had a significant impact on the actions of the United States government.

### **The Bureaucratic Politics Hypothesis**

The next hypothesis to be examined is the Bureaucratic Politics Model. As noted in the review of Allison’s theoretical framework earlier in this paper the BPM model recognizes that “The ‘leaders’ who sit on top of organizations are not a monolithic group. Rather, each individual in this group is, in his own right a player in a central, competitive game. The name of the game is politics: bargaining along regularized circuits among players positioned hierarchically within the government”<sup>82</sup>. In regards to the study of decision-making involving Nicaraguan asylum applications during the 1980s, what is of interest is the relationship between the United States Department of State and Department of Justice, which contained the INS.

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82 Graham T. Allison, *Essence of Decision: Explaining the Cuban Missile Crisis* (Boston: Little, Brown, 1971), 144.

During the decade of the 1980s, the United States' asylum and refugee policies were at the center of a bureaucratic tug-of-war between the Justice and State Departments. As such, by adhering to the Bureaucratic Politics Model, these asylum and refugee policies towards Nicaraguans were not the result of "a single rational choice but by the pulling and hauling that is politics".<sup>83</sup> Zolberg et al. note this development in their examination of Nicaraguan asylum decisions writing:

For several years the Justice Department did not recognize [Nicaraguans] as refugees, whereas the State Department insisted that the Nicaraguan regime was totalitarian. Finally, in June 1987, the attorney general authorized their stay in the country, albeit with a rather ambiguous status.<sup>84</sup>

The State Department's position during this period of time does appear to be clear. Throughout this period the United States labeled Nicaragua as a hostile state.<sup>85</sup> This is further evidenced by the State Department's Human Rights Reports previously mentioned.

Given that Nicaragua was deemed a hostile state by the State Department, it would seem to follow that the INS would then be influenced by this decision and accept Nicaraguans at levels seen with other states deemed as hostile. This assertion is forwarded, in part, by Barbara Yarnold, who notes in terms of hostile versus non-hostile asylum and refugee applications:

In decisions on applications for asylum and refugee status, both the INS and the State Department were influenced by whether the alien's country of origin was hostile to the U.S. Hence, in their decisions in this area, both the INS and the State Department serve to promote a "state interest" in favoring hostile state aliens.<sup>86</sup>

Yet, this does not seem to be the case in regards to Nicaraguan asylum and refugee cases. From 1981 to 1985, asylum acceptance rates hovered around 10%, while other "hostile" states were

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83 Ibid.

84 Zolberg, Suhrke, and Aguayo, *Escape from Violence*, 218.

85 Barbara M. Yarnold, *Refugees Without Refuge* (Lanham: University Press of America, 1990), 243.

86 Ibid, 94.

greeted with much higher acceptance rates. Despite being labeled as fleeing a hostile state, Nicaraguans continued to be rejected in high numbers.

This lends credence to the theory forward by Zolberg et al. that at the bureaucratic level, there was disagreement between the two bodies most responsible for this type of decision-making. While the State Department asserted the hostile nature of the Nicaraguan regime, the Justice Department and the INS asserted otherwise. The Justice Department and INS belief that Nicaragua was not a hostile state involved in persecution of opposition elements is informed also by the *Cardoza-Fonseca* case, where the original immigration judge noted, “None of the evidence indicates that [Ms. Cardoza-Fonseca] would be persecuted for political beliefs, whatever they may be, or because she belongs to a particular social group”.<sup>87</sup> This was a position upheld in addition by the Board of Immigration Appeals, which is the administrative appellate body for asylum appeals within the Department of Justice.

At the same time, an additional concern likely shaped the INS’s position towards Nicaraguan asylum applications. This concern focused on the need to limit Salvadoran, Guatemalan, and Haitian migration to the United States. If the United States was to open its borders to Nicaraguans fleeing violence there, it would set a precedent for others to flee similar situations throughout Latin America and the Caribbean. In the INS’s calculations of the “national interest”, it was imperative to avoid such hemispheric migrant flows of “feet people”.<sup>88</sup> When examining the early period of the 1980s it appears that the Justice Department and the INS were able to maintain an upper-hand and “pull and haul” more than the Department of State. Still, what accounts for the changes in asylum acceptance rates in the middle of the 1980s?

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87 Soltero, *Latinos and American Law*, 137.

88 Schoultz, “Central America and the Politicization of U.S. Immigration Policy,” 198.



Working within the Bureaucratic Politics Model, the actions of the INS official Perry Rivkind acted as one of the initial impetuses for this change. Rivkind served as the INS district director for the district of Miami during the 1980s. In April of 1986, Rivkind unilaterally made the decision to discontinue denying Nicaraguan asylum requests in his district. He stated in a quote published on the front page of the April 17, 1986 edition of the *New York Times* that “I would personally – not just as a government official but personally – have trouble sending people from a communist country back to that country. Morally and ethically it would be wrong to send people back to Nicaragua when we are at great odds with that Government”.<sup>89</sup> Due to Rivkind’s feelings towards Communism and the Sandinista government, he made the decision to end the deportation of Nicaraguans and the denial of Nicaraguan asylum requests.

Due to the structuring of the Immigration and Naturalization Service, Rivkind was well within his organizational capabilities to proceed with such action. As stated by Rivkind himself, “By law [...] I have the authority and discretion to do what I did”.<sup>90</sup> In making his decision it was noted that Rivkind did not discuss this policy change with any other officials within the INS including the organization’s lawyers or commissioner. This discretion was confirmed by an INS spokesperson who immediately following Rivkind’s decision issued the statement that granting asylum was “a matter of discretion that’s fully within the authority of the district director”.<sup>91</sup> In the absence of any higher-level decisions or policies within the INS and working within the organization’s operational framework, Rivkind was able to make the decision that he did.

While, one may originally doubt the significance of Rivkind’s decision, it is important to note that although he was only one of thirty-three INS district directors, three-fourths of

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89 Robert Pear, “Key Federal Aide Refuses to Deport Any Nicaraguans,” *The New York Times* (April 17, 1986) A1.

90 Ibid.

91 Ibid.

Nicaraguan asylum requests were made in his district. In 1986, there was already an estimated 20,000 to 70,000 Nicaraguans living in South Florida, a number that would spike following Rivkind's decision to end deportations and asylum denials.<sup>92</sup> When examining asylum acceptance numbers for Nicaraguans during this period it is interesting to note that in 1986 there was a slight increase in acceptance numbers in 1986, along with an increase in the numbers of Nicaraguans applying for asylum, a year before the U.S. Supreme Court ruling in the *Cardoza-Fonseca* case and the institution of the Nicaraguan Review Program.

The actions of Rivkind fall within the framework of the principal-agent problem of the Bureaucratic Politics Model. As noted by Allison:

In most complex decision processes, the individuals that principals engage as agents also have interests, information, and expertise that cannot simply be transmitted to the principal. [Nominal agents] assure proper attention to special interests and indeed represent such interests for the purposes of legitimation of the decision.<sup>93</sup>

In this case, Rivkind acted as a player in the governmental game of politics and influenced the policy-making of his organization by working within his organizational position as a nominal agent. It was Rivkind's attention to the "special interests" of Nicaraguans fleeing communism that led to his policy choices.

In addition to Rivkind's actions, according to Congressional testimony from high-ranking immigration officials during the late 1980s, it appears that beginning in the mid-1980s, the State Department began to more ardently push for a policy of asylum acceptance for Nicaraguans fleeing the Sandinistas.

Alan C. Nelson, the Commissioner of the Immigration and Naturalization Service was one of those officials to give testimony. According to Nelson, in regards to the lead up to the

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92 Schoultz, "Central American and the Politicization of U.S. Immigration Policy," 212-3.

93 Allison and Zelikow, *Essence of Decision*, 273.

Nicaraguan Review Program, there were discussions amongst the leading officials of the State and Justice Departments, as seen in the following excerpt of his testimony in front of the Congressional Subcommittee on Immigration, Refugees, and International Law:

We had some meetings in the late spring of 1987, May or June. Elliot Abrams was Assistant Secretary of State at the time. He vigorously pushed the idea that we ought to have a special policy for Nicaraguans because of the nature of the Government down there and the problems and the war going on. We had a number of meetings, Mr. Abrams, myself, Mr. Meese, and others, and my point of view from the Immigration point of view was that this wasn't the right policy or the right law. So we had some vigorous debates.<sup>94</sup>

As is made evident by that passage, a significant amount of tension existed between the positions of the State Department and Abrams and the positions of the INS and Nelson. Nelson continues in his testimony to note:

Basically, at that time Mr. Meese indicated that we continue with the basic policy of case-by-case review but was sensitive to these general concerns.

Thereafter this memorandum came out. I think what was happening, he was probably trying to balance between these strong competing points of view.<sup>95</sup>

The memorandum to which Nelson refers laid out the points of the Nicaraguan Review Program, which as mentioned in the section on the Organizational Processes Model, gave special preference to Nicaraguan asylum seekers.

In the late 1980s, by following the Bureaucratic Politics Model, the State Department was able to gain an advantage over the INS and Nelson resulting in the establishment of the NRP. This decision was also impacted by Meese's position of the Reagan administration and as a result had an anti-Sandinista outlook. The NRP as noted by Nelson, represented a "balance"

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94 "Central American Asylum-Seekers," Hearing Before the Subcommittee on Immigration, Refugees, and International Law of the Committee on the Judiciary House of Representatives, One Hundred First Congress, First Session, March 9, 1989, 68-9.

95 Ibid, 69.

between two points of view from the State Department and the INS, but with the balance tipped in favor of State.

What is of particular interest about Nelson's testimony was that he made no mention of the *Cardoza-Fonseca* ruling and the effect it may have had on the creation and implementation of the NRP. To Nelson, according to his testimony, the NRP was mostly the result of bureaucratic politicking between the State Department and the INS, lending credence to the BPM model.

Finally, the Bureaucratic Politics Model also provides explanation as to why in 1989, asylum rates for Nicaraguans begin to fall to low levels such as those seen in the early 1980s. This decrease should be seen once again as a result of governmental "pulling and hauling". In the aftermath of the institution of the NRP, migration from Central America to the United States jumped markedly. According to Ruth Wasem of the Congressional Research Service:

The apex of Nicaraguan migration occurred when almost 18,000 Nicaraguans, along with about 19,000 other Central Americans, crossed the border at Brownsville, Texas, from June 1988 through March 1989. This period of mass asylum is surpassed only by the Mariel boatlift in 1980 in terms of sheer numbers of asylum seekers arriving in the United States over several months.<sup>96</sup>

As a result of this major increase in migration, the INS was able to increase its influence in government politicking and implement a policy, which while not leading to a discontinuation of the NRP, did lead to decreased acceptance rates and in the process mitigated the hemispheric migratory flow.<sup>97</sup>

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96 Wasem, "Central American Asylum Seekers: Impact of 1996 immigration Law," 6.

97 Gugliotta, "Nicaraguan Exodus Slows with New Rule," 1A.

## Assessment

This study concludes that foreign policy considerations within the United States government are a main driver of why asylum and refugee policies are shaped in the manner they are. Still, simply asserting that foreign policy concerns determine asylum and refugee policies does not explain how these policies are formed. In order to explain the “how” question it is necessary to understand the decision-making process of government bureaucracies.

In regards to the model that states foreign policy concerns and asylum and refugee policies are closely related to each other, it appears foreign policy concerns largely guide asylum and refugee policies. The foreign policy interests of the Carter and Reagan administration did play a major role in the treatment of Nicaraguans seeking protection in the United States. The initial manifestation of this treatment was the use of extended voluntary departure provisions by the Executive to allow the entry of wealthy Nicaraguans into the United States. By doing this the Carter Administration largely mirrored the actions of the Kennedy administration during the 1980s towards Cuban exiles. Following this period, though, asylum and refugee acceptance rates dropped to notably low levels, in part as a result of the United States need for manpower to fight the *Contra* War within Nicaragua against the Sandinistas. The establishment of refugee camps in Honduras and Costa Rica also provided the Reagan administration with positive public relations material to show the repressive nature of the Sandinistas in order to seek increased funding for the *contras*. Finally, the denial of refuge to Nicaraguans into the United States served the foreign policy interests of the Reagan administration as it also set a precedent for the denials of Salvadorans and Guatemalans, avoiding global hemispheric refugee flows.

While the foreign policy model is of value in explaining why asylum and refugee policies towards Nicaraguans during the 1980s were neither completely receptionist nor exclusionary, it

does not provide an explanation for how foreign policy considerations influenced the government agencies charged with overseeing the asylum and refugee programs. In order to provide answers to this question, this project has tested two of the theoretical models developed by Graham Allison, the Organizational Processes Model and the Bureaucratic Politics Model.

The Organizational Processes Model leads one to understand American asylum and refugee policies from the early 1980s as the result of the operating procedures of the Immigration and Naturalization Service. By adhering to this model, the INS adhered to a strict standard operating procedure that led to Central American asylum seekers, including Nicaraguans, being denied asylum *en masse* during this period. This SOP was rooted in previous policies and procedures of denying asylum seekers to individuals from this region of the world and preventing hemispheric migration flows.

Continuing to adhere to the Organizational Processes Model, the changes in asylum policies seen in the mid to late 1980s are also explained. Major policy failures provided the impetus for a change in the manner in which the INS approached asylum decisions. Amongst these, the Organizational Processes Model fully takes into account the influence of the *Cardoza-Fonseca* ruling along with domestic, non-foreign policy issues that in large part contributed to a shift in how Nicaraguan asylum were processed.

Still major issues do arise with the use of the Organizational Processes Model to explain asylum and refugee policy decision-making. One of the major issues of this model is that it neglects the influence of foreign policy on asylum and refugee decisions. As noted by Allison, “activity according to standard operating procedures and programs does not constitute far

sighted, flexible adaption to ‘the issue’”.<sup>98</sup> As such, the SOP of the early 1980s cannot be seen as a result of the Reagan administration’s foreign policy concerns and the *contra* war.

In addition, another major issue with the Organizational Processes Model’s ability to explain asylum and refugee policy decision-making is that while Allison posits that bureaucracies act to limit the “menu of choice” of policy options, in the case of these certain policies they do not. Instead, the Executive had a large menu of policy options available to it, including options not provided by bureaucracies such as the State Department or INS, but instead by the U.S. Congress, in case of extended voluntary departure.

The BPM model, on the other hand, provides explanation for how foreign policy considerations heavily influenced the direction of asylum and refugee policies by examining the degree in which bureaucratic and governmental politicking plays in shaping the policy outcomes of the United States government. In the case of Nicaraguan asylum seekers the model asserts that in the initial period of the 1980s due to Justice Department assessments of the Sandinista government, Nicaraguan asylum seekers were denied in large numbers, despite the claims by the State Department that the Sandinistas were a hostile government. While that in part explains the high level of denials, it is puzzling why despite the State Department’s attitudes towards the Sandinistas; larger numbers of refugees were not admitted to the United States. In regards to this incongruity, foreign policy concerns likely play a role, as while the State Department labeled the Sandinistas as a hostile regime they were prone to deny refugee applications to the United States in favor of settling the refugees near the Nicaraguan-Honduran border due to *contra* war considerations. The Bureaucratic Politics Model also in part helps to explain the changes seen during the mid-1980s in regards to the increasingly high asylum acceptance levels seen after

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98 Allison, *Essence of Decision*, 178.

1986. Evidence suggests that elements within the State Department were largely responsible for the establishment of this special treatment for Nicaraguans in the United States.

In addition, the Bureaucratic Politics Model is of use in its explanation of the principal-agent problem. The principal-agent problem largely explains the actions of Perry Rivkind, the INS district director, who stopped denying Nicaraguans asylum due to the allegedly Communist nature of the Sandinistas. While Rivkind's actions certainly did not solely lead to the increased asylum admission rates of the late 1980s, he did establish a precedent for special treatment of Nicaraguans that would continue to apply into the latter part of the decade.

Finally, unlike the Organizational Processes Model, the Bureaucratic Politics Model is also useful as it allows for the influence of foreign policy concerns within the U.S. government, as it notes that different players and their stances are affected by different ideas of "national interest". In this case, the national interest supported by Elliott Abrams centered upon tarnishing the image of the leftist Sandinista government by allowing Nicaraguans into the country with blanket asylum. On the other hand, the national interest envisioned by the Justice Department during the early 1980s included not creating a hemispheric flow of migrants into the United States.

After examining the following three models, this project asserts that the United States' asylum and refugee policies are largely influenced by foreign policy interests as envisioned by players in the United States government. In addition, as is made evident by the Bureaucratic Politics Model, politicking between government agencies largely determines how these foreign policy interests affect asylum and refugee policies. Assertions that government bureaucracies such as the INS limit the policy options available are largely unfounded as evidence shows that a number of different segments of the United States government created the menu of policy



choices and in fact this menu presented a large, widely encompassing, array of options that led to policy flexibility.

## **Conclusion**

This research has examined how the United States forms its asylum and refugee policies. While a large amount of scholarship has been devoted to studying the cases of Cuba and Haiti, these two situations represent the poles of asylum policy decision-making. Instead, it is necessary to study cases such as Nicaragua, where policies were neither completely receptionist or exclusionary in nature.

This project asserts that while the United States' foreign policy interests have largely guided U.S. asylum and refugee policies, the connection is more complicated than traditionally assumed. Although, prevailing theories on asylum and refugee policies assert that the U.S. is more receptive to those fleeing "hostile" states than "non-hostile states", this is not the case. Instead, while foreign policy considerations do heavily influence asylum and refugee decisions, they do so in a more nuanced manner. In the case of Nicaragua, the foreign policy concerns of the United States government led to varying degrees of asylum acceptance during the course of the 1980s.

Although, foreign policy considerations do in large part answer the question as to why asylum and refugee policies are created in a particular manner, it does not answer the question of how they are created. In order to examine this question this project has applied two theoretical models formulated by Graham Allison, the Organizational Processes Model and the Bureaucratic Politics Model. While the Organizational Processes Model did not appear to act as a valid explanatory model for how asylum and refugee decisions were formulated, the Bureaucratic Politics Model accurately examines the manner in which the foreign policy considerations of

actors in the United States government combined with governmental politicking, led to the creation of asylum and refugee policies towards Nicaraguans during the 1980s.

While this project has examined the case of Nicaragua, it is necessary to expand this methodological approach to other case studies as well. By doing this, it will be possible to test whether the framework of bureaucratic politics developed by Allison is a useful measure of how asylum and refugee policies are shaped towards states other than Nicaragua and whether in cases both geographically and chronologically different, the U.S. government's foreign policy concerns continue to impact refugee and asylum policy decision-making.

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