The Closing of the Golden Door: Necessity, International Law and Freedom of Religion Are Failing as Defenses for Sanctuary Movement Workers

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THE CLOSING OF THE GOLDEN DOOR: NECESSITY, INTERNATIONAL LAW AND FREEDOM OF RELIGION ARE FAILING AS DEFENSES FOR SANCTUARY MOVEMENT WORKERS

I. INTRODUCTION AND HISTORY

Victor Walter Garcia Ortiz left El Salvador and came to the United States. In September 1980, he was deported from Los Angeles and returned to El Salvador. In November 1981, he was killed by the Salvadoran National Police. Santana Chirino Amayo was deported back to El Salvador in June 1981. In September 1981, his body was found, tortured and decapitated. Jose Umberto Santacruz Elias was returned to El Salvador in January 1981. He has not been heard from since. Octavio Osequeda, who was returned to El Salvador on July 12, 1982, was killed on July 13, 1982 by special police.

Victor, Santana, Jose and Octavio were just four of many thousands of Salvadorans, between 1980 and 1986, who were forced to return to El Salvador after having been denied asylum in the United States. They returned to a civil war in their country which had been responsible for the deaths of over 60,000 Salvadoran civilians between 1979 and 1986.

The United States immigration policy governs the admissions of these Salvadorans, and all aliens, into the country. It mandates a procedure by which an alien who has already entered the country can apply for asylum. Asylum may be granted at the United States’ Attorney General’s

2. Id.
3. Id.
4. Id.
5. Id.
6. Id.
7. Id.
8. Id.
11. 8 U.S.C. § 1158(a) (1988) provides:
   The Attorney General shall establish a procedure for an alien physically present in the United States or at a land border or port of entry, irrespective of such alien’s status, to apply for asylum, and the alien may be granted asylum in the discretion of the Attorney General if the Attorney General determines that such alien is a refugee
A special inquiry officer, who has the authority to exclude an alien, presides over the procedure. An “excluded” alien has a right of appeal to the Attorney General for a determination of refugee status. Refugee status enables an alien to remain in the United States, but the limitations set upon the number of immigrants allowed to enter the country force the Attorney General to categorize certain refugees. Central Americans, having been designated “economic” refugees, as opposed to “political” refugees, are among the largest groups to be deported.

American religious and public organizations have recognized that immigration laws do little to help Central American refugees. Some of these groups began the Sanctuary Movement, a system through which members assist refugees' entry into the United States. Rev. John Fife of the Tucson, Arizona Southside Presbyterian Church and Quaker Jim Corbett are credited with founding the Sanctuary Movement in 1982. Southside

12. Id. § 1158.
13. Id. § 1226.
14. Id. § 1226(b).
15. Id. § 1151(a). This code section limits the total number of immigrants allowed per year.
16. While the total number of immigrants is limited each year, the number of refugees is not. See supra note 15 and accompanying text. 8 U.S.C. § 1157(a)(2) (1988) provides: “[T]he number of refugees who may be admitted under this section . . . shall be such number as the President determines, before the beginning of the fiscal year and after appropriate consultation, is justified by humanitarian concerns or is otherwise in the national interest.”

The “humanitarian” concern mandated by this code section is often translated to mean a “political” refugee, which includes those refugees from East Asia, Eastern Europe and the Soviet Union. Schmidt, Refuge in the United States: The Sanctuary Movement Should Use the Legal System, 15 Hofstra L. Rev. 79, 80 (1986); cf. Anaya, Sanctuary: Because There are Many Who Wait for Death, 15 Hofstra L. Rev. 101, 106–07 (1986) (“[c]ertainly there is more persecution of union members in El Salvador than there is of Chinese tennis players; obviously there is more persecution of Guatemalan Indians than of Russian ballet stars. Yet it is much, much easier for the tennis players and ballet stars to qualify as ‘refugees’ than it is for the peasants and Indians”).

The INS 1983 record of granting asylum confirms this differential pattern. Political asylum claims made by refugees from Afghanistan were 82 percent successful, from Iran 72 percent successful, and from Poland almost 30 percent successful. From El Salvador, where fifty-five thousand persons were killed in three years, only 2 percent of the claims for political asylum based on fear of persecution were granted. The reason the INS gives for its refusal to grant political asylum is that Central Americans are not political refugees but only economic refugees.

R. Golden & M. McConnell, supra note 9, at 44. An economic refugee is one who desires to live in the United States, not from a fear of persecution in his own country, but from a desire to take advantage of available job opportunities and state and federal assistance programs.

17. The Sanctuary Movement assists refugees from such countries as El Salvador, Guatemala, and Honduras. See generally R. Golden & M. McConnell, supra note 9 (discussing the Movement’s history and purpose).
18. E.g., R. Golden & M. McConnell, supra note 9, at 37; Comment, supra note 10, at 143; Comment, The Sanctuary Movement: An Analysis of the Legal and Moral Questions
Presbyterian Church's congregation began helping Central American refugees by raising bond money to secure their release from detention. As the congregation housed refugees during deportation hearings, members of the church became personally involved. By October 1981, the congregation had become so committed to obeying moral and religious values by assisting the refugees that the church elders voted to publicly declare the church a sanctuary for refugees from Central America. By April 1986, Jim Corbett alone had helped conduct safe passage to 700 refugees, and thousands of others passed into this country through the Tucson Southside Presbyterian Church. Yet, the Southside Presbyterian Church is not alone in its participation in the Sanctuary Movement. Many other religious, civic, and public organizations quickly rallied to give their support. These groups include Methodist, Presbyterian, and Catholic churches, Jewish synagogues, a Trappist monk, an Amerindian tribe, and a farm collective. The movement counts among its members individuals throughout the Rio Grande Valley, Colorado, Nebraska, Mexico, New York, Kansas, Iowa, Wisconsin, California, and Washington, D.C. In 1984, the number of sanctuaries in the United States was estimated to be 3,000 with approximately 240-300 having publicly declared their commitment by 1985.

The Sanctuary Movement is patterned after the underground railroad which helped American slaves to freedom in the nineteenth century, and the European underground of churches that saved the lives of numerous Jewish refugees during World War II. It is based on the Sanctuary Movement workers' beliefs in their freedom of religion, the United States' involvement, and the United Methodist Church mandates its congregations to do justice and to resist the policy of the Immigration and Naturalization Service by declaring their churches to be sanctuaries for refugees from El Salvador, Guatemala, and other areas of the Caribbean and Central America. It urges the U.S. to follow the United Nations definition of refugees. United Methodist Church, Book of Resolutions of General Conference, June 1984, reprinted in R. Golden & M. McConnell, supra note 9, at 123.

Involving, 30 St. Louis U.J. 1221, 1224 (1986) [hereinafter Comment, An Analysis].
19. Id Catholic Agitator, supra note 1, at 1.
20. Id. Rev. Fife, stressing that the movement is religious and not political, stated that the movement began quietly, but when it became apparent that the laws of the United States were in conflict with the laws of religion and morality, the church decided to publicize its decision to offer sanctuary. Id.
22. Id. at 47.
23. Id. at 52-53.
24. Id.
25. Id. at 53.
26. Comment, An Analysis, supra note 18, at 1224; The Sanctuary Movement: A Survey of Recent Litigation, 2 Geo. Immigr. L.J. 214 (1987) [hereinafter Survey of Recent Litigation]. A statement from the United Methodist Church is an example of the public statements issued by sanctuary-giving organizations:

The United Methodist Church mandates its congregations to do justice and to resist the policy of the Immigration and Naturalization Service by declaring their churches to be sanctuaries for refugees from El Salvador, Guatemala, and other areas of the Caribbean and Central America. It urges the U.S. to follow the United Nations definition of refugees.
ternational treaty obligations to help refugees, and the necessity of saving thousands of Central Americans lives. Yet these beliefs fail as a defense to the prosecution of Sanctuary workers. This Note will examine three prevalent defenses used by Sanctuary workers; freedom of religion, necessity, and international law. It will outline the general theory of each defense, examine how each has failed in Sanctuary cases, and suggest how each might be successfully used by Sanctuary defendants.

II. THE SANCTUARY CASES

While Sanctuary workers are motivated by the altruistic goal of gaining temporary asylum until it is safe for Guatemalans and Salvadorans to return home, their actions violate certain United States laws. The United States government at first declined to acknowledge the severity of the Sanctuary Movement, but eventually arrests were made and indictments delivered.

The first Sanctuary trial, in 1985, was that of Stacey Lynn Merkt, in United States v. Merkt (Merkt I). Merkt worked at the Casa Oscar Romero in San Benito, Texas, which supplied food and homes to Central American refugees with the aid of area churches. Merkt was arrested, and convicted of, conspiring to transport, aiding and abetting the transport of, and transporting two illegal aliens, whom she was driving to the Immigration and Naturalization Service (“INS”) office in San Antonio, Texas when she was arrested. Merkt was sentenced to ninety

27. 14 Catholic Agitator, supra note 1, at 1. Temporary resident status is currently allowed if an alien meets certain requirements. 8 U.S.C. § 1255(a)(1988). General permanent asylum is allowed under procedures set by the discretion of the Attorney General. Id. § 1158(a); see supra note 11.

28. “It shall be unlawful for any person, . . . to bring to the United States from any place outside thereof . . . any alien who does not have an unexpired visa; if a visa was required under this chapter or regulations issued thereunder.” 8 U.S.C. § 1323(a)(1988). This code provision defines the crime of bringing in certain aliens. Section 1324(a)(1) lists the criminal penalties for an individual who brings an alien into the United States, harbors an alien, or transports an alien to help the alien avoid detection. Id. § 1324(a)(1). Sanctuary workers have also been prosecuted for violating conspiracy laws and aiding and abetting laws. 18 U.S.C. § 371 (1988) (conspiracy); Id. § 2 (aiding and abetting).

29. “Certain arrests could have taken place if we would have wanted to, but we felt the government would end up looking ridiculous, especially as far as going into church property— anything where ethics involved would be questioned.” Statement of Leon Ring, Chief of Tucson Division of Border Patrol (Dec. 25, 1982). R. GOLDEN & M. MCONNELL, supra note 9, at 47, reprinted from Medlin, Underground Railroad Still Runs in the Open, Ariz. Daily Star, Dec. 25, 1982.

30. 764 F.2d 266, reh’g denied en banc, 772 F.2d 904 (5th Cir. 1985).

31. Id. at 268; see also 14 Catholic Agitator, supra note 1, at 2.

32. Merkt, 764 F.2d at 288-69; see also R. GOLDEN & M. MCONNELL, supra note 9, at 58; 18 U.S.C. §§ 2, 371; 8 U.S.C. § 1324(a)(2) (supra note 28). Both of Merkt’s Salvadoran passengers had received death threats in El Salvador, and had lost family members and co-workers to the violence there. 14 Catholic Agitator, supra note 1, at 2.
days in prison, but this was suspended and replaced by two years of supervised probation.  

On March 17, 1983, Phillip Conger was the second Sanctuary worker to be arrested. Conger, like John Fife, was a member of the Tucson Southside Presbyterian Church, and like Merkt, was arrested for transporting undocumented aliens. The state dropped charges against Conger when the judge found border patrol agents lacked probable cause to stop Conger's car.

In April, 1984, Jack Elder was the next Sanctuary worker to be charged with transporting undocumented aliens, in United States v. Elder. Elder drove three Salvadorans from the Casa Oscar Romero to a bus station in Harlingen, Texas, where they were detained by border patrol agents who observed the group disembarking from their bus. The United States District Court for the Southern District of Texas refused to grant Elder's motion to dismiss, but a jury acquitted him of all charges.

The next Sanctuary trial resulted in a guilty verdict against Lornita R. Thomas, who was convicted of concealing an alien in her car. Thomas was sentenced to two years in prison after stating that she would not cease her work in the Sanctuary Movement.

While Stacey Merkt was on probation for her first arrest, and John Elder awaited his trial, both were charged with conspiring to bring in additional aliens and transporting aliens, in United States v. Merkt (Merkt II). In this incident Elder drove two Salvadorans from the Mexican border to Casa Oscar Romero where they met Merkt, who drove them to McAllen, Texas and helped them to buy bus tickets. Both Elder and Merkt were convicted.

33. Merkt, 764 F.2d at 269-70; see also Altemus, The Sanctuary Movement, 9 WHITTIER L. REV. 683, 707 (1988).
34. Survey of Recent Litigation, supra note 26, at 217; 14 Catholic Agitator, supra note 1, at 1.
35. Survey of Recent Litigation, supra note 26, at 217.
36. Altemus, supra note 33, at 707; Survey of Recent Litigation, supra note 26, at 217.
37. 601 F. Supp 1574 (S.D. Tex. 1985); Altemus, supra note 33, at 708; Comment, An Analysis, supra note 18, at 1226; Survey of Recent Litigation, supra note 26, at 217.
38. Elder, 601 F. Supp. at 1578; Altemus, supra note 33, at 708; see also Comment, An Analysis, supra note 18, at 1226; Survey of Recent Litigation, supra note 26, at 217.
40. Altemus, supra note 33, at 709; Comment, An Analysis, supra note 18, at 1226.
41. Survey of Recent Litigation, supra note 26, at 218.
42. Id.
43. 794 F.2d 950 (5th Cir. 1986), cert. denied, 480 U.S. 946 (1987); Survey of Recent Litigation, supra note 26, at 218-19.
44. Merkt, 794 F.2d at 953.
45. Id. at 964-65; Altemus, supra note 33, at 709; Survey of Recent Litigation, supra note 26, at 219 (Both defendants received prison sentences but were freed pending appeal. The
Finally, in January 1985, the United States arrested over sixty Sanctuary workers; the government indicted sixteen and ultimately convicted eight in United States v. Aguilar.46 Aguilar differs from Merkt I, Elder, and Merkt II in that the arrests in Aguilar were achieved after the government used paid informants to infiltrate Arizona churches and sanctuary groups in Mexico.47 These informants tape-recorded hundreds of conversations among the church members and identified Sanctuary workers.48

The government’s improper use of sending undercover agents to spy on church congregations was just one of the defenses used in Aguilar.49 The defense also argued lack of intent, mistake of law,50 selective prosecution,51 necessity,52 international treaty obligations of the United States to aid refugees,53 and freedom of religion.54 Of these defenses, necessity, international law obligations, and freedom of religion are most frequently used in Sanctuary cases.

court later reduced Elder’s sentence.)
46. 883 F.2d 662 (9th Cir. 1989), cert. denied sub nom. Socorro Pardo v. United States, 59 U.S.L.W. 3481 (1991); Altemus, supra note 33, at 710.
47. Aguilar, 883 F.2d at 668; Altemus, supra note 33, at 711.
48. Altemus, supra note 33, at 711.
49. Aguilar, 883 F.2d at 696-705.
50. Id. at 671-76. The defendants in Aguilar, and Stacey Merkt in Merkt II claimed that they believed the Salvadorans they were helping were refugees under the Refugee Act of 1980. Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (codified in scattered sections of 8 U.S.C.). If the Salvadorans were refugees under this Act, they would have automatically been allowed to stay, at least temporarily, in the United States, without being designated “illegal aliens.” If they were not illegal aliens, then the Sanctuary workers would not have been violating immigration laws by aiding them. This is the crux of the mistake of law defense.

The lack of requisite intent defense was based on the similar argument that if the workers thought they were helping legitimate refugees, not harboring illegal aliens, they had no intent to break the laws which prohibited transporting, aiding, and concealing aliens. The lack of intent defense was recognized by the Supreme Court in Morissette v. United States, 342 U.S. 246 (1952). In Morissette, the defendant was charged with stealing government property under 18 U.S.C. § 641 (1988). He salvaged several tons of spent bomb casings from a bombing range. Morissette, 342 U.S. at 247. Morissette argued that since he believed that the casings had been abandoned by the government, he did not have the intent to steal government property when he took them. Id. at 248-49. Finding that intent is always an element of theft-related crimes, the Supreme Court held that the existence of intent is always a question of fact for the jury to decide. Id. at 274. The Court ultimately reversed Morissette’s conviction, since the jury in the trial court had not been allowed to determine if Morissette had acted with the requisite malicious intent. Id. at 276.
52. Id. at 692-96.
53. Id. at 679-80.
54. Id. at 687.
DEFENSES FOR SANCTUARY MOVEMENT

III. Necessity

A. General Application of Necessity Defense

The defense of necessity, duress, or justification mitigates punishment or allows an acquittal for a defendant who admits having performed an unlawful act. It is a common law defense, which has been statutorily recognized in many jurisdictions.

A defendant using necessity or duress as a defense must prove that he acted unlawfully to prevent a greater evil from occurring. The elements of the defense are: (1) the immediate threat of a harm, such as death or serious bodily injury, which would be a greater harm than that caused by the unlawful act committed by the defendant; (2) the defendant's reasonable belief that the harm actually will occur if he does not act unlawfully; and (3) lack of a reasonable opportunity to escape the threatened harm without committing an unlawful act. In examining the elements more closely, it becomes apparent that the actor must believe his conduct is necessary to avoid harm of a greater magnitude than the harm caused by his act. At trial, the jury must weigh the defendant's belief against this reasonable opportunity to avoid committing an unlawful act.

The need for a jury to determine whether duress exists in a particular case was affirmed in United States v. Contento-Pachon. Contento-Pachon had been arrested for smuggling cocaine from Columbia to the United States in balloons he had swallowed. He stated that he concealed the cocaine because the owner of the cocaine had threatened to kill him and his family if he refused. The Ninth Circuit Court of Appeals held that Contento-Pachon's evidence was sufficient to suggest the existence of duress, and therefore, the evidence should have been presented to the jury.

57. E.g., TEX. PENAL CODE ANN. § 9.22 (Vernon 1989); Luckstead, supra note 55, at 179.
58. United States v. Contento-Pachon, 723 F.2d 691, 693 (9th Cir. 1984); see MODEL PENAL CODE § 3.02; Luckstead, supra note 55, at 184-87.
59. MODEL PENAL CODE § 3.02 comment 2; cf. Luckstead, supra note 55, at 191 (the necessity defense usually fails in civil disobedience cases because the actor's belief in the necessity of his actions must be a reasonable belief, not a religious or moral one).
60. 723 F.2d 691 (9th Cir. 1984).
61. Id. at 693.
62. Id.
63. Id. at 694. While the court allowed the use of a duress defense, it precluded a necessity defense because of a traditional common law distinction between the two defenses. Under the common law, duress was only available when the evil sought to be prevented was produced by a human threat, and necessity was an available excuse only when the evil was
Contento-Pachon met the first element—a threat of imminent harm—by proving the cocaine owner had threatened him and his family. He satisfied the second element—a well-grounded fear that the threat would be carried out—by proving that the owner knew his family’s home address. He fulfilled the third element—no reasonable alternative to acting illegally—by testifying that he believed the police in Bogota, Columbia were corrupt. Additionally, the court commented that on occasion a defendant would be required to prove a fourth element—that the wrongdoer turned himself in to authorities as soon as possible. The court noted, however, that this element was required only in prison escape cases.

The most difficult element of the necessity defense for a defendant to establish is that he was faced with an emergency. In People v. Patrick, the defense failed to establish that the defendant did indeed face an emergency. In Patrick, the defendant was charged with kidnapping and false imprisonment after he abducted a young woman, a member of a cult, allegedly to “deprogram” her. Because, the woman was not in the cult’s custody at the time of her abduction, the court decided there was no threat of imminent harm to be avoided by the abduction.

Another element of the necessity defense which is difficult to prove is the absence of any reasonable, legal alternative course of action. Proof of this element is often missing in cases of political protest. For instance,

caused by forces of nature. Id. at 695. The Supreme Court, however, has held that the distinction between duress and necessity has been nearly extinguished today. United States v. Bailey, 444 U.S. 394, 410 (1985). But see Model Penal Code §§ 2.09, 3.02 (1962) (adhering to the distinction between duress and necessity as caused by human and natural forces, respectively).

64. Id.
65. Id.
66. Id.
67. Id. This fourth element—that wrongdoers turn themselves into the authorities as soon as possible—was the basis for the conviction of four federal prison escapes. Bailey, 444 U.S. at 412-14. While the defendants in Bailey may have been able to prove the necessity of their escape from prison by providing testimony of prison conditions, they would have been unable to justify why they remained in hiding for several months after their escape, instead of going to governmental authorities. Id. The defendants’ necessity defense failed because there was a legal alternative to hiding and that was to turn themselves over to authorities. Id.

69. Id. at 956, 179 Cal. Rptr. at 279.
70. Id. at 960, 179 Cal. Rptr. at 281-82.
71. See United States v. Dorrell, 758 F.2d 427 (9th Cir. 1985) (defendant broke into Vandenberg Air Force Base to spray paint slogans protesting nuclear war and world starvation); United States v. Seward, 687 F.2d 1270 (10th Cir. 1982), cert. denied sub nom. Ahrendt v. United States, 459 U.S. 1147 (1983) (nuclear war protestors arrested for trespassing at a Colorado nuclear plant); United States v. Kroncke, 459 F.2d 697 (8th Cir. 1972) (defendant attempted to destroy Selective Service records after breaking into a Minnesota Selective Service office).
in *United States v. Kroncke*,72 the defendant, in protest against the Vietnam War, burglarized a Minnesota Selective Service office to destroy Selective Service records.73 The court held the necessity defense failed because the defendant had the reasonable, legal alternative of applying to the political system to end the war.74 Political processes were also offered as a legal alternative in *United States v. Quilty*.75 The defendants in *Quilty* were charged with trespassing at the Rock Island arsenal in order to hold a prayer meeting to protest nuclear arms.76 While the court noted that nuclear war is a more serious harm than a peaceful prayer meeting, it denied the necessity defense because the political process was a legal and reasonable alternative.77

B. Necessity as a Defense in the Sanctuary Cases

No Sanctuary worker attempted to use the necessity defense until *Aguilar*, and even there it proved unsuccessful. In *Aguilar*, the court granted the prosecutor’s motion *in limine* to exclude all testimony and evidence which made any direct or indirect reference to the necessity of the Sanctuary Movement.78 Despite the court’s ruling, necessity still may

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72. 459 F.2d 697 (8th Cir. 1972).
73. Id. at 698.
74. Id. at 701-04.
75. 741 F.2d 1031 (7th Cir. 1984).
76. Id. at 1032.
77. Id. at 1033.

The motion *in limine* granted in *Aguilar* excluded all evidence which directly or indirectly depicted conditions in El Salvador, and therefore completely eliminated the necessity defense. *Aguilar*, 883 F.2d at 693; see also Altemus, *supra* note 33, at 713. Many commentators, however, have urged that

[t]he motion *in limine* is not designed to prevent the opposing party from presenting legitimate defenses simply because they may be harmful to the moving party. . . . The motion is not a means to eliminate harmful evidence; rather, it is a means to eliminate the admittance of prejudicial evidence which would constitute error.

Rodin, *supra*, at 234. If this advice had been followed in *Aguilar*, the court would have
be a viable defense in Sanctuary cases.

To establish the first element of necessity, a Sanctuary worker must show that the harm to refugees who remain in El Salvador is imminent and outweighs the harm done by workers assisting the refugees to enter the United States. While the harm created by workers who help persecuted persons to escape danger is not severe, the harms threatened to the refugees—torture, rape, abduction, and murder—are very great. 

Sanctuary workers must also establish that the harm was imminent and that they had a reasonable belief that the harm would occur if they did not act unlawfully by helping the refugees to safety. In light of the staggering death statistics in Central America, it seems unlikely that a judge could legitimately deny the immediacy of the threatened harm.

If defense counsel were allowed to present this evidence it is likely that a Sanctuary defendant could establish the necessity defense or would at least be able to present his case to the jury. The court in Aguilar, however, excluded evidence that would best demonstrate the immediacy and

allowed testimony about Salvadoran conditions. While the descriptions may have been gruesome, they are central to the defense and should not have been excluded as prejudicial.

The motion in limine should be very specific, and “its scope should be more like that of a rifle than a shotgun . . . .” Gamble, supra, at 10-11; Rodin, supra, at 234. The Court of Appeals for the Sixth Circuit has stated that “[o]rders in limine which exclude broad categories of evidence should rarely be employed. A better practice is to deal with questions of admissibility of evidence as they arise.” Sperberg v. Goodyear Tire & Rubber Co., 519 F.2d 708, 712 (6th Cir.), cert. denied, 423 U.S. 987 (1975). The judge in Aguilar then, instead of barring any evidence relative to Central American cruelty, could at least have permitted the admission into evidence of the death and asylum-denial statistics, and even some limited testimony from Salvadorans, since he could have excluded graphic descriptions of abuse and death if he felt such individual facts were too prejudicial.

The use of the motion in limine to bar an entire defense may, in fact, violate a defendant’s right to trial by jury. Cf. Duncan v. Louisiana, 391 U.S. 145 (1968) (right to have a jury decide the facts of a case); U.S. Const. art. III § 2 (right to trial by jury). In Aguilar, use of the motion may also have violated the attorney work-product privilege because the defense attorney was forced to prepare a brief in response to the government’s motion in limine. In its responsive brief, the defense explained its theory of defense in order to persuade the judge to allow the presentation of relevant evidence. The preparation of a defense is protected as privileged, since it is work product. Cf. Hickman v. Taylor, 329 U.S. 495, 510-512 (1947) (work product is privileged). Though privileged information is not available to opposing parties through discovery, the prosecution in Aguilar was allowed access to much of Aguilar’s attorney’s work product prior to trial, since defense counsel, in effect, was forced to argue part of its defense in its responsive brief. Cf. Fed. R. Civ. P. 26-37 (discovery in general), 26(b)(1) (privileged information is not discoverable); Fed. R Crim. P. 16 (discovery in general).

For an extensive examination of the motion in limine and its paralyzing effect in Aguilar, see Colbert, supra.

severity of the threat to the refugees: testimony regarding the impact of war in their home countries, and the conditions resulting therefrom. For a case to go to a jury, the defense must simply establish the *prima facie* elements of the necessity defense. However, if the defense is precluded from presenting evidence demonstrating the immediacy and severity of the harm, this defense will not be available.

Sanctuary workers also need to present this evidence to establish the reasonableness of their actions, otherwise their motives will appear purely religious and moral. In political protest, the necessity defense is often denied because moral and religious motives are not considered to be reasonable.

While the government has stated that testimony of conditions in El Salvador is "irrelevant and prejudicial to the prosecution's theory . . . " such testimony should be allowed at trial because the conditions in Central America are the very reason for the Sanctuary Movement. It is not merely a case of alien-smuggling, as argued by the prosecution in the Sanctuary cases, but it is an attempt to provide those persecuted with a better life.

Not only would the presentation of such evidence allow the Sanctuary workers to properly present their case, but also it would have the additional effect of educating the American public about events in Central America. If the conditions in El Salvador, Guatemala and Honduras were better-known, a judge might take judicial notice of them. The harm threatened would then be easier to establish, and could lead to a successful use of the necessity defense. One federal court has, in fact,
taken such judicial notice in *Orantes-Hernandes v. Meese*. 87

Publicizing the torture and cruelty in Central America would also have the effect of making INS officials better able to question refugees in hearings to determine asylum. 88 If refugee status were determined in these preliminary hearings, the workers in the Sanctuary Movement would not be forced to break the law.

Sanctuary workers would also be able to establish the final element of necessity—that there was no legal, reasonable alternative to their unlawful act—by presenting evidence concerning the statistics of Central Americans who are refused asylum. 89 As in the political protest cases, the government would probably answer a necessity argument in Sanctuary cases by asserting that the political system is the proper alternative to the act of aiding aliens. 90 If defendants were allowed to show that the deaths and tortures are occurring at a rate far greater than the INS rate of granting asylum, Sanctuary workers could argue that the political process, though legal, is not a reasonable alternative. 91 The political process remains an


The Court, having received and considered the evidence presented, having heard the testimony of witnesses, and having heard the arguments of counsel . . . makes the following Findings of Fact and Conclusions of Law:


10. People from a wide cross-section of Salvadoran society suffer human rights abuses. Trade unionists, members of farmworker unions and cooperatives, religious workers, human rights activists, refugee relief workers, members of student of political organizations, people suspected of opposition to the government or of being sympathetic to the opposition, and family members and associates of those involved have been particularly subject to abuses.

11. The form of the persecution includes the following: arbitrary arrest, short term detention, torture including use of electric shock, *capucha*, beatings, rape, “disappearance,” extra-judicial executions, abductions, threats against family members, intimidation, forced ingestion of food, false imprisonment, mock-executions, sleep deprivation, mass-killings, and forced relocations.

12. The persecutors are primarily Salvadoran military and security forces which include the *Policia de Hacienda* (Treasury Police), *Policia Nacional* (National Police), *Guardia Nacional* (National Guard), as well as the paramilitary *Brigadas de Defensa Civil* (Civil Defense Patrols), and the *patrullas contonales* (canton patrols).


88. Altemus, supra note 33, at 716; see supra note 13 and accompanying text.

89. See supra note 16 and accompanying text.

90. See supra notes 74-77 and accompanying text.

91. The government has countered such an argument with the statement that political protestors cannot use their “impatience” as a defense. See United States v. Dorrell, 758 F.2d
unreasonable alternative because applying for asylum or refugee status is not preventing the thousands of abuses in Central America.

IV. INTERNATIONAL LAW

A. General Applications of International Law

In addition to the necessity defense, Sanctuary workers have also argued that their actions are justified because the United States is violating international law by refusing to grant asylum to refugees from Central America.92 In 1951, the United Nations produced its Convention Relating to the Status of Refugees ("1951 Convention").93 This treaty defined "refugee" to mean "any person who: . . . owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality. . . ."94 The 1951 Convention then stated that "[no] Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership in a particular social group or political opinion."95

The United States was not a party to the 1951 Convention,96 but in 1968 it became a signatory to the United Nations Protocol Relating to the Status of Refugees ("1967 Protocol").97 The 1967 Protocol incorporated the definition of refugee and reaffirmed the other provisions of the 1951 Convention.98

The United States Constitution makes international treaties which have been signed by the United States "the supreme Law of the Land."99 Only self-executing treaties, however, are actually held to be United

427, 431 (9th Cir. 1985).


96. See Schmidt, supra note 16, at 90.


99. U.S. CONST. art. VI, cl. 2.
States law, and neither of these two United Nations documents were self-executing. Because the 1967 Protocol was not self-executing, Congress would have to specifically legislate to make it or any of its provisions law. Congress did legislate to include the United Nations' definition of “refugee” in the Refugee Act of 1980.

Since the definition of refugee from the 1951 Convention is now included in United States law, Sanctuary workers believe that by refusing to apply this definition to Salvadorans and Guatemalans, the United States is violating its own, as well as international, law. An even more convincing argument is that, in adopting the United Nations' definition of refugee, Congress manifested the intent to abide by these international treaties. If that is the case, then the United States is violating international law by refusing to recognize that Central Americans fit the definition of refugee. In order to avoid violating the law, INS would be forced to label these individuals as refugees and grant them asylum, as mandated by 8 U.S.C. § 1158. By deporting Central Americans back to their native countries, the United States would also be violating the treaties' condition that refugees not be returned to territories where they fear persecution.

B. International Law as a Defense in the Sanctuary Cases

The government's answer to the violation of international law argument is that United States' law, and only United States law, controls immigration and the policies of asylum. The laws said to be controlling are the Refugee Act of 1980 and the Immigration and Nationality Act (“INA”). These laws allow refugee status to be granted at the discretion of the United States Attorney General.

The Refugee Act and the INA do not have to be viewed as being in opposition to international law, as demonstrated by the adoption of the refugee definition by the Refugee Act. While courts are willing to recog-

100. A self-executing treaty is a treaty in which the intent to make the treaty part of the contracting party's law is manifested. See Restatement (Second) of Foreign Relations Law of the United States § 141 comment a (1965).
103. E.g., Aguilars, 883 F.2d at 680.
105. See 1951 Convention, art. 33, 19 U.S.T. at 6276, T.I.A.S. No. 6755 at 54, 189 U.N.T.S. at 176; Cox, supra note 98, at 376-77.
106. Merkt, 794 F.2d at 964, n.16; Elder, 601 F. Supp. at 1581; Schmidt, supra note 16, at 93.
107. Immigration and Nationality Act of 1952, 8 U.S.C. §§ 1101-1524; see Altemus, supra note 33, at 691.
108. See supra notes 11-15 and accompanying text.
nize the treaties, decisions of asylum remain within the Attorney General's discretion.\textsuperscript{109} One possible way to combine both sets of law would be to use the United Nation's requirement of a "well-founded fear of persecution" as the \textit{prima facie} case an alien must establish in order to get his case to a jury. This process was alluded to in \textit{Merkt II}, where the court held that even if the aliens were refugees under international law, they still had to prove their refugee status according to United States law and the discretion of the Attorney General.\textsuperscript{110}

The government may still alter the meaning of the United Nations documents in its interpretation of the refugee definition. One of the INS's arguments has been that the warfare which causes the type of persecution described in the United Nations documents is not the "civil unrest" currently occurring in Central America.\textsuperscript{111} As in the exclusion of testimony regarding living conditions in El Salvador and Guatemala, this obstacle can only be overcome by instilling in the American public an awareness of these conditions.\textsuperscript{112} Authorities do not readily recognize these conditions because of the inclination to think only of the people in Europe and Asia as persecuted.\textsuperscript{113} The 1951 Convention, in fact, was originally drafted as a response to the cruel treatment of Jewish and other refugees during the World War II.\textsuperscript{114} The 1967 Protocol, however, in reaffirming the 1951 Convention, extended the world's concern to all refugees, including Salvadorans, Guatemalans and Hondurans.\textsuperscript{115} Perhaps because of the "cold war," the United States developed a preference for helping Europeans and Asians to escape persecution.

Finally, like the necessity defense, testimony regarding the actual

\textsuperscript{109} See Immigration and Naturalization Serv. v. Stevic, 467 U.S. 407 (1984). In Stevic, the Court found that, while the Refugee Act incorporates the United Nations' definition of refugee as having a "well-founded fear of persecution," neither the treaties, nor the Refugee Act, dictated what standard of proof was required in establishing this well-founded fear. \textit{Id.} at 421. The defendant was a Yugoslavian citizen who desired asylum in the United States because he feared he would be imprisoned in Yugoslavia as a known member of an anti-communist group. \textit{Id.} at 409-10. The Court held that the defendant's showing that he met the 1951 Convention's definition of refugee was not sufficient to obligate the United States to prevent his deportation. \textit{Id.} at 422-24. The Court, noting that past rulings had required an alien to prove at least "a likelihood" of persecution, determined the standard of proof to be one requiring the establishment of the "clear probability of persecution." \textit{Id.} at 422, 430.

\textsuperscript{110} \textit{Merkt}, 794 F.2d at 964.

\textsuperscript{111} Comment, \textit{An Analysis}, supra note 18, at 1234.

\textsuperscript{112} See supra note 78 and accompanying text.

\textsuperscript{113} See supra note 16 (far more European and Asian refugees are granted asylum than Central Americans).

\textsuperscript{114} Altemus, \textit{supra} note 33, at 688.

events in Central America is necessary for international law to aid the Sanctuary Movement. Even if a court does allow the "well-founded fear of persecution" definition to be argued, the most effective method for an alien to establish his fear is to discuss the cruelties he has already seen. Eliminating this evidence, as was done in Aguilar,\footnote{See supra note 78 and accompanying text.} makes it virtually impossible for an alien to establish his refugee status.\footnote{There are two other international documents which also apply to the situation of the Central American refugees. The first is the Universal Declaration of Human Rights, Dec. 10, 1948, U.N.G.A. Res. 217 A (III), U.N. Doc. A/810, at 71 (1948), reprinted in B. WESTON, R. FALK, & A. D'AMATO, Basic Documents in International Law and World Order 161, 162 (1980). Relevant portions of the Universal Declaration of Human Rights include: Art. 3. Everyone has the right to life, liberty and the security of person. 
Art. 5. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. 
Art. 9. No one shall be subjected to arbitrary arrest, detention or exile. 
Art. 13. (1) Everyone has the right to freedom of movement and residence within the borders of each State. (2) Everyone has the right to leave any country, including his own, and to return to his country. 
Art. 14. (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution. Universal Declaration of Human Rights, arts. 3, 5, 9, 13, 14.}

116. See supra note 78 and accompanying text.

117. There are two other international documents which also apply to the situation of the Central American refugees. The first is the Universal Declaration of Human Rights, Dec. 10, 1948, U.N.G.A. Res. 217 A (III), U.N. Doc. A/810, at 71 (1948), reprinted in B. WESTON, R. FALK, & A. D'AMATO, Basic Documents in International Law and World Order 161, 162 (1980). Relevant portions of the Universal Declaration of Human Rights include:

- Art. 3. Everyone has the right to life, liberty and the security of person.
- Art. 5. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
- Art. 9. No one shall be subjected to arbitrary arrest, detention or exile.
- Art. 13. (1) Everyone has the right to freedom of movement and residence within the borders of each State. (2) Everyone has the right to leave any country, including his own, and to return to his country.
- Art. 14. (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

Universal Declaration of Human Rights, arts. 3, 5, 9, 13, 14.

The second document is the United Nations Convention for the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, T.I.A.S. No. 3365, 75 U.N.T.S. 287. Relevant portions of this Convention are:

**ARTICLE 3**

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

   a. violence to life and persons, in particular murder of all kinds, mutilation, cruel treatment and torture;
   b. taking of hostages;
   c. outrages upon personal dignity, in particular humiliating and degrading treatment;
   d. the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

2. The wounded and sick shall be collected and cared for.

**ARTICLE 17**

The Parties to the conflict shall endeavour to conclude local agreements for the removal from besieged or encircled areas, of wounded, sick, infirm, and aged persons, children and maternity cases, and for the passage of ministers of all religions, medical
V. Freedom of Religion

A. General Application of Freedom of Religion

The final defense available to Sanctuary workers that this Note will examine is freedom of religion. The United States Supreme Court first fashioned a test to determine the extent of one's freedom to act according to religious beliefs in *Sherbert v. Verner*. In *Verner*, a Seventh Day Adventist was fired from her job because she refused to work on Saturdays, the day she celebrated as the Sabbath. The South Carolina Unemployment Commission declared her ineligible to receive unemployment compensation because she had not demonstrated good cause for refusing the work offered to her. The Supreme Court ultimately held the Unemployment Commission's decision unconstitutional because it violated the employee's right to exercise freedom of religion.

In developing its test, the Court first examined whether a burden was
placed upon some sincere personal belief in a religion. The Court found that there was a burden on the individual fired because she could not observe her religion's Sabbath and still be entitled to the same unemployment compensation as any non-Seventh Day Adventist would be.

Once the plaintiff had established that there was a burden placed upon her religious activity, the Court then looked to the second portion of its new test. It required proof of a competing interest which required the government to violate the individual's religious freedom. South Carolina argued its competing interest was to prohibit persons from taking advantage of unemployment resources by refusing to accept gainful employment. The third prong of the test required the state to establish that it had no alternative to infringing on the right to religious freedom mandated by the Constitution. South Carolina failed this prong of the test.

After Verner, the Supreme Court modified this three-prong test in Wisconsin v. Yoder. In Yoder, an Amish group had been charged with violating Wisconsin's mandatory education statute by withdrawing their children from public schools. The Amish religion required practitioners to educate their children at home. The Court applied the three prongs of the Verner test, but modified the second prong. Not only must the state demonstrate a competing interest, but it also must prove a compelling, overriding interest.

Having withstood many subsequent examinations, the test to determine a violation of an individual's freedom of religion still requires: (1) the plaintiff's showing of a burden imposed on the practice of his religion, (2) the state's demonstration of a compelling, overriding state interest, and (3) the absence of a reasonable alternative action the state could choose to limit the infringement on the individual.

123. Id. at 403-04.
124. Id.
125. Id. at 406; see Comment, The Expanded Jurisprudence, supra note 118, at 189-90; Note, En El Nombre, supra note 118, at 210-11.
126. Sherbert, 374 U.S. at 403-07.
127. Id. at 407-09; see also U.S. CONST. amend. I ("Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . .").
129. Id. at 207-09.
130. Id. at 207-12.
131. Id. at 214; see Note, En El Nombre, supra note 118, at 210-11.
132. See Bowen v. Roy, 476 U.S. 693 (1986) (government's interest in preventing fraud in welfare programs was a compelling interest which allowed it to give a Social Security number to an American Indian despite her parents' protests that it took away her spirit); Leary v. United States, 383 F.2d. 851 (5th Cir. 1967), rev'd on other grounds, 395 U.S. 6 (1969) (governmental interest in controlling possession, distribution and use of marijuana overrode individual's desire to use it in his Hindu religious experiences); see also Comment, The Expanded Jurisprudence, supra note 118, at 189-90; Comment, Constitutional
B. Freedom of Religion as a Defense in the Sanctuary Cases

Freedom to act according to religious beliefs was used as a defense in Elder, Merkt II, and Aguilar. In Elder, the defense filed a motion to dismiss based on Elder's freedom of religion. The court, applying the Verner/Yoder test, determined that Elder met his initial burden by testifying that aiding anyone in need was a basic tenet of Christianity. Elder, therefore, established the burden to his religious freedom created by the government's refusal to allow him to aid Salvadoran refugees. The government, however, successfully established its overriding interest by demonstrating Congress' intent to control entry into this country via its propagation of immigration regulations.

While Elder was able to meet at least the first prong of the three-step test, he and Stacey Merkt were less successful with the freedom of religion defense in Merkt II. In that case, the court was not convinced that 8 U.S.C. § 1324 created a burden upon religion. The court reasoned that the statute was neutral on its face and did not mention religion.}

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134. United States v. Merkt, 794 F.2d 950, 954 (5th Cir. 1986).
137. Id. at 1577.
138. Id. at 1578, 1580.
140. Merkt, 794 F.2d at 956.
141. Id.
The court also stated that the statute did not infringe on the defendants’ freedom to act according to religious beliefs because other means could have been chosen to help Central Americans. The court in Merkt II completed its examination of the case under Verner/Yoder standards and determined that controlling alien entry is an overriding state interest and that there was no less burdensome alternative for the government than to arrest the Sanctuary workers.

In Aguilar, the defense moved for a dismissal based on freedom of religion. The court relied directly on Merkt II and held that (1) the defense failed to establish a burden on religion; (2) the patrol of United States borders was a compelling state interest; and (3) there was no less restrictive alternative available to the state.

Commentators disagree on whether Sanctuary workers can successfully use a freedom of religion defense. The change in the courts’ beliefs that a religious act or belief was violated in Elder, but was not violated one year later in Merkt II, suggests that the Sanctuary workers cannot meet this prong of the three-step test, and therefore cannot rely on the freedom of religion defense. The critical problem with meeting this first prong is that the government has continually asserted that the movement is not religious, but is just another form of political protest against the United States’ involvement in Central America.

The second prong remains an obstacle for Sanctuary workers as long as courts believe that keeping refugees from crossing American borders is a compelling state interest. This interest will continue to be labeled “compelling” as long as the conditions in El Salvador and Guatemala remain virtually unknown. If actual conditions were made known, Sanctuary workers would be able to make a better argument that this country’s interest in turning away a few thousand refugees does not override a commitment to protect them from death and torture until they can return to the United States.

142. Id. These other means included providing bond money, housing and food to aliens who were awaiting an immigration hearing—the very reasons which the Sanctuary Movement was started. See supra text accompanying notes 19-20.
143. Merkt, 794 F.2d at 955-56.
144. Id. at 956-57.
145. Aguilar, 883 F.2d at 694.
146. Id. at 694-95.
147. Compare Comment, supra note 10 (suggesting arguments Sanctuary workers could use in establishing a freedom of religion defense) and Comment, The Expanded Jurisprudence, supra note 118 (suggesting modern freedom of religion provides enough protection to defend Sanctuary Movement) with Comment, Constitutional Law, supra note 132 (suggesting Sanctuary workers cannot successfully meet the three prong test) and Note, En El Nombre, supra note 118 (suggesting government’s interest is believed to be too compelling for defense to work in Sanctuary cases).
148. Note, En El Nombre, supra note 118, at 213. But cf. supra note 20 (Rev. John Fife stressed that the Sanctuary Movement is a religious, not a political, one.).
Central America.

The prosecution has consistently established the third prong by showing that the State has no reasonable alternative to prosecuting the Sanctuary workers for aiding aliens. Until 1990, it was true that the government had no other alternative, since aiding aliens is a crime. However, on November 29, 1990, Congress amended the Immigration and Nationality Act and created the Immigration Act of 1990.149 Under this amended act, refugees from El Salvador may no longer be considered aliens, so aiding them may no longer be a crime. One section provides for a “temporary protected status,” which the attorney general may extend to aliens from certain countries.150 The next section explicitly names El Salvador as one of those countries.151

While achieving “temporary protected status” requires the alien to have lived in the United States for a certain amount of time and mandates a procedure for gaining this status,152 it is a preferable alternative to prosecuting Sanctuary workers. With this alternative, Sanctuary workers may be able to finally prove the third prong of the freedom of religion defense.

VI. Conclusion and Predictions

One report states that United States aid to El Salvador totalled $1.4 million per day in January, 1990,153 and yet the cruelty continues. A small, but growing number of United States citizens have given their homes, food, advice, and freedom to individuals from El Salvador. For a number of Central Americans, these gifts, condemned by the United States government, have done far more to alleviate the suffering than any amount of governmental aid.

   (A) the Attorney General finds that there is an ongoing armed conflict within the state and, due to such conflict, requiring the return of aliens who are nationals of that state to that state . . . would pose a serious threat to their personal safety
   . . . or
   (C) the Attorney General finds that there exist extraordinary and temporary conditions in the foreign state that prevent aliens who are nationals of the state from returning to the state in safety . . . .
Id. (to be codified at 8 U.S.C. § 244A(b)(1)(A)-(C)).
151. Id. at Sec. 303(a)(1).
152. Id. at Sec. 302 (to be codified at 8 U.S.C. §244A(c)(1)(A)-(B)).
INS, at first claiming no threat from the Sanctuary Movement, is now fully prosecuting workers and infiltrating churches to do so. The Sanctuary Movement does not have as an objective the relocation of all Salvadoran citizens permanently into the United States. Their goal is to help each individual refugee from Central America to escape the threats of death and torture, prevalent in the daily lives of many there. By doing so, the Sanctuary workers have created their own, religiously based asylum. They would prefer not to break any laws. They would prefer that the INS and the Attorney General grant temporary asylum to these refugees.

The government, however, has effectively established its interest in policing the entry of any alien. It has convinced INS officials, federal judges, and a majority of the American public that Central Americans desire to live in the United States for economic, not political, reasons. The refugees brought into the country by Sanctuary workers are not reaping any economic benefits. They are hiding in churches and homes, borrowing clothes, and losing family members and friends left behind.

A governmental interest in regulating admission of immigrants is a valid interest, but many exceptions have been made, creating refugee status for political reasons. Salvadorans and Guatemalans cannot establish that they are escaping political oppression as long as they cannot present the true conditions in El Salvador and Guatemala. If these conditions were disclosed in testimony in the Sanctuary trials, the necessity defense could be successful. The requirement that a greater evil is prevented would be established since that greater evil is death and torture.

The international law defenses might also succeed, or at least be argued, since the presentation of any international law violations by the United States was also prohibited along with the prohibition of evidence concerning conditions in Central America. Again, the presentation of the conditions would allow the refugees to establish their political refugee status, and the international treaties would apply to them.

Finally, if conditions in Central America could be accurately depicted at trial, the interest of the state in a freedom of religion defense would no longer be deemed compelling in light of the harsh alternative of sending the refugees back to Central America.

The defenses of necessity, international law and freedom of religion have failed repeatedly for Sanctuary workers. Courts are bound to adhere to the laws enacted by Congress and have now created precedents for these defenses to fail in Sanctuary cases. Relief, then, must come through
the legislative branch supported by the public. The plight of Central Americans is slowly creeping into the public's view.

American courts have refused to recognize the torturous conditions in Central America. This refusal has eliminated the effectiveness of three very important defenses; necessity, international law, and freedom of religion. While the judicial system remains blind to the refugees' plight, the public and its representatives have begun to realize the severity of the situation. Sanctuary workers, who saw the problem many years ago and began an effective campaign to alleviate it, have now been joined in their awareness. The clearest evidence of the growing awareness of the oppressive conditions in Central America is the Immigration Act of 1990, which may eventually make the Sanctuary Movement no longer necessary.

Karen E. Lavarnway

158. Congressman Joe Moakley and Peter Rodino were joined in urging Congress to pass the recent legislation by members of the American Civil Liberties Union, the Church World Service, the Deputy Assistant Secretary of State for Human Rights and Humanitarian Affairs, and other members of the Subcommittee on Immigration, Refugees and International Law, Subcommittee on Immigration, Refugees and International Law, Committee on the Judiciary, Hearing on the Temporary Suspension of Deportation for Nationals of Certain Countries. H.R. Rep. No. 822, at 1-2, 47-54, 68-74.

Cities declaring themselves sanctuaries include Berkeley, California; Madison, Wisconsin; and Los Angeles, California. City Sanctuary Resolutions and the Preemption Doctrine: Much Ado About Nothing, 20 Loy. L.A.L. Rev. 513, 516-17 (1987). Two states which have declared themselves states of refuge are New York and New Mexico. Survey of Recent Litigation, supra note 26, at 222. See also Anaya, Sanctuary: Because There are Still Many Who Wait for Death, 15 Hofstra L. Rev. 101 (1986) (discussing the need for cities and states to become sanctuaries). The author of this previously cited article, Toney Anaya, was the governor of New Mexico from January 1983 to December 1986. In 1986, he issued a proclamation making New Mexico the first state to declare itself a sanctuary. Id. at 101-02.