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**Cycles of Denial: US Reception of Drug-War Refugees from Mexico  
through the Asylum System**

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**Cycles of Denial: US Reception of Drug-War Refugees from Mexico  
through the Asylum System**

**by**

**Lynn Elise Romero, BA**

**Thesis**

Presented to the Faculty of the Graduate School of

The University of Texas at Austin

in Partial Fulfillment

of the Requirements

for the Degree of

**Master of Arts**

**The University of Texas at Austin**

**May 2014**

## **Dedication**

This thesis is dedicated to Alejandro “Alex” Romero for helping me on this long journey. Thank you for putting up with all the crazy hours and rollercoaster emotions that came along with having a wife in graduate school. Thank you for being an amazing dad to our beautiful children and for supporting every whim and grand idea that has ever popped into my head. Thank you for patiently keeping up with all of the mundane household chores, which would have gone completely undone if left up to me. Finally, thank you for always being my guiding weight, bringing me back to Earth when I drift too far into the clouds. Words cannot express how grateful I am.

## **Acknowledgements**

A Master's thesis may be considered a relatively minor thing in the realm of academia, but it is no small feat. This thesis was made possible by the support of an incredible community of people. First, I would like to thank Dr. Lorraine Leu for helping formulate the research proposal and then helping to put the plan in action. Also, Steve Alvarez, without you and your diligence in securing funding for us students, this thesis would not have been possible. Thank you PART of Austin and LLILAS donors for your generous financial contributions. Thank you to my advisors, Dr. Nestor Rodriguez and Prof. Denise Gilman for patiently helping me through this long learning process. Thank you to Alejandra and Carlos Spector and the rest of the Mexicanos en Exilio community for so generously opening up your lives to me. Thank you to the Jacobson family for providing my family with a wonderful home-away-from-home in El Paso. I am also grateful for the support of the amazing LLILAS cohort that I am proud to be a part of. You all have made this process such a joy and have enriched my experience with your knowledge, passion, and laughter. Thank you to Elizabeth O'brien for your example and support throughout this entire experience – from grad school applications, to childcare and this thesis, you have been an invaluable friend. Most of all thank you to my family. To Leslie for understanding me more than anyone else on Earth, to Ann and Kurt for being the best parents anyone could ask for, to Alex for everything, and to Victoria and Aden for being my pride and joy. I would not be who I am today without you. Thank you all.

## **Abstract**

# **Cycles of Denial: US Reception of Drug-War Refugees from Mexico through the Asylum System**

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Abstract: This thesis focuses on the recent increase in the number of Mexican nationals applying for asylum in the United States and the disproportionate denial of their claims. It helps clarify national debates regarding asylum, sheds light on bi-national socio-political conditions, and raises important questions about the human rights of asylum seekers, including the United States' obligations regarding those rights. It adds a rarely considered perspective to the scholarship on Mexican migration by focusing on migrants who are motivated by violence rather than economic factors.

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## **Introduction**

Just two years ago, US political asylum was rarely associated with Mexican migration, and, other than a few small blurbs reporting that some Mexican journalists were seeking protection in the United States, there was little mention of Mexican asylum seekers (or “asylees”) in the mainstream media. (Mexico is widely recognized as one of the most dangerous countries in the world for journalists (IPI 2012)). However, the issue was suddenly thrust into a much brighter spotlight when -- amid a national, immigration debate fervor -- nine “DREAMers”<sup>1</sup> claimed asylum at the US-Mexico border. The group was detained; then, after passing credible-fear interviews (the first step in the asylum-application process), they were released. Conservative media outlets reacted swiftly, reporting that Mexicans had found an immigration loophole that would cause the asylum system to “overflow” and immigrants to “flood” the United States. However, as the Department of Homeland Security (DHS) later countered, asylum claims still account for only a small fraction of total immigration, and most asylum applications filed by Mexican nationals are ultimately denied. In fact, as I will later show, a disproportionate percentage of Mexican asylum cases are denied. Still, the number of asylum applications filed by Mexican nationals has, in fact, been steadily increasing, though perhaps not for the reasons or at the rate the media allege.

This thesis focuses on the increased number of Mexican nationals who recently applied for asylum in the United States, and it reveals that US government officials

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<sup>1</sup> The group was comprised of undocumented youth of Mexican nationality who had grown up in the US and then left the country briefly for various reasons. They then re-entered, claiming asylum, in protest of US immigration policy.

disproportionally deny these claims. It is research that is important for clarifying the national debates regarding asylum, shedding light on bi-national socio-political conditions, and raising important questions about the human rights of migrants, including the United States' obligations regarding those rights. Most importantly, it is research that shows that violence, not just economics, is affecting Mexican migration.

### **Mexican Asylum in Historical Context**

Historically, since the end of the Mexican Revolution, economic factors have been considered the main driver of migration between the United States and Mexico. Even in the early 2000s, when there was a temporary spike in the number of Mexican asylum seekers, the augment in applications was attributed to individuals seeking asylum as a means of entering removal proceedings where they could then apply for work permits and apply for other immigration relief (Schoenholtz 2005; 339). However, there is new evidence that security concerns are becoming veritable “push” factors for Mexican nationals migrating to the United States and that insecurity is responsible for the sudden and consistent increase in US asylum applications filed by Mexican nationals.

Harvard researcher Viridiana Rios (2014) argues, in her quantitative study on immigration, that although overall Mexican migration is currently at net zero, southwestern states are seeing a surge of Mexican migrants because of violence. Similarly, Anthropologist Deborah Boehm (2011) argues that a cycle of physical and structural violence present on both sides of the border is changing the way people migrate and is blurring the categories traditionally used to describe Mexican migrants. However, public perception and US policy have not yet recognized this shift, and the denial rate of

Mexican asylum claims remains disproportionately high. The belief that Mexican migrants are primarily labor migrants, however, is only one factor that may be contributing to high denial rates for Mexican asylum claims.

In fact, asylum is a very politically charged legal status, and the definition has been used strategically during its 34-year implementation in the United States (The Refugee Act 1980). This fact is exemplified in the research of Susan Bibler Coutin (1998) whose work focuses on Salvadoran refugees during the 1980s who were at one time denied asylum at rates paralleling those currently experienced by Mexican applicants. This is a point further made by law professor Michael J. Churgin (1996) who contends that asylum has historically been a political tool used to influence US opponents and is rarely afforded those fleeing non-communist countries or US backed governments. The asylum system has undergone significant changes since Churgin made this assertion, but as this thesis shows, foreign policy interests still influence asylum decisions today.

Because of the close proximity between the United States and Mexico, and because the countries are so closely integrated (historically, socially, culturally, economically, and politically), the politics of asylum for Mexican nationals is greatly magnified. For example, due to the history of migration from Mexico to the United States, many Mexican asylees already have established social ties in the United States or have past immigration records with US enforcement agencies -- a fact that greatly complicates their asylum claims and eligibility. Furthermore, the immigration debate in the United States largely centers on Mexican migration, creating a myriad of social ideas and political constructions that negatively target people of Mexican nationality more than

others.<sup>2</sup> These stereotypes and immigration policies are generally aimed at exclusion rather than inclusion. Lastly, because Mexican nationals have represented the largest group of migrants in the United States for several decades, Mexican asylees face unique circumstances in their quests to establish new lives in the country -- some quite positive and others negative. All of these issues will be explored at length in this thesis.

Because security concerns are relatively new factors contributing to Mexican migration and asylum cases still represent only a small fraction of total Mexican immigration, little research has been conducted on asylum seekers from Mexico or on Mexicans who relocate through other legal (or illegal) channels due to the threat of violence or insecurity. This thesis takes as its premise that trends in asylum can provide a valuable window for understanding trends that affect larger migration flows, security conditions, societal stereotypes, and bi-national politics. Furthermore, because asylum is a status born out of an international human rights ideology, any analysis of the construct leads to inevitable questions about who is protected from what and about the limits of US obligation to provide that protection. Therefore, in the absence of an academic body of work on asylum claims made by Mexican nationals, this thesis aims to act as an initial overview of the topic in the hopes that it will spark further awareness and research. It also seeks to add to the journalistic conversation on asylum and to clarify and contextualize the exaggerated claims made by some in the media that Mexicans are causing an “asylum

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<sup>2</sup> I do not deny that Central Americans and other Latin Americans receive similarly negative treatment at the border (and in locations far from it). However, in popular discourse, Latino immigrants, regardless of nationality, are often conflated into the group “Mexicans”. Therefore, I argue that in immigration debates this group has become the primary target of negative stereotypes and exclusionary policies.

crisis” as they overwhelm the system with their “bogus” claims (See Stranahan 2014, Garvin 2013).

Asylum claims have always represented a small proportion of total Mexican immigration to the United States, however the recent rise in claims very likely reflects a larger trend, as is demonstrated by Harvard researcher Viridiana Rios (2014) in one of the first studies tying security concerns to Mexico-US migration more broadly. Asylum cases represent a small, researchable group that may help us understand broader trends in Mexican migration. Therefore, it is important to understand Mexican asylum as the United States debates and struggles to pass meaningful immigration legislation amid conflicting ideas about national interests, labor concerns, and how best to provide relief for millions of immigrants who live in the country without documentation. It is also important as both countries begin to reassess drug-war policies and understand the human and political impact such policies have had.

More pressingly, there are concerns that the United States is not in compliance with its domestic and international obligations concerning asylum. This is an issue Denise Gilman (2013) outlines in her most recent work that concludes that US detention practices concerning asylum seekers are not aligned with international regulations and should be significantly scaled back. Specifically, my work calls into question the United State’s adherence to obligations that allow all individuals the right to make an asylum claim and that prohibit the arbitrary or punitive detention of asylum seekers. If such concerns prove founded, the US government is legally obligated to correct the practices.

## **Literature Review**

There is a notable absence of scholarship on Mexican asylum seekers, therefore the framework for this research has been shaped and influenced by a broad basis of literature and academic disciplines. It is research that blends scholarship on immigration, state security, organized crime, Mexican-American history, and human rights law. It takes inspiration from Sociology, Anthropology, Law, and Journalism, and what emerges is a lens that is a distinct blend between the social sciences and law. This interdisciplinary framework is an important component to this thesis, and it shapes its conclusions in key ways.

The social sciences have contributed a humanistic view of immigration that broadly considers the phenomenon as it involves subjects within societies, cultures, and political systems. This view proves valuable in establishing that immigration laws, bureaucratic enforcement structures, and ideologies do not represent absolute necessities or truths but instead represent fabrications of complex societies. The social sciences also highlight the humanistic component to immigration -- emphasizing that beyond laws and policies there are people who are concretely affected by regulations and by the environments in which they live. However, the social sciences too rarely provide solid suggestions for what can be done to exact positive change on society. Obviously, the macro-view presented by the social sciences is relevant and useful and can in fact work to shape and shift deeply rooted traditions and beliefs. However, this change is slow and gradual, sometimes expanding beyond a single lifetime.

In contrast, the study of law, usually based on or reinforced by views formed in the social sciences, has the ability to radically change migrants' lives immediately. Because Law provides determinations based on previously established legal frameworks, it is an extremely powerful yet sometimes quite confining discipline. Legal scholarship on immigration examines and reinforces or rejects established norms through already legitimized and institutionalized ways of thinking (like constitutions), making the findings harder to ignore than sociological findings. For example, where Anthropology can question the legitimacy of borders based on a world view that contradicts accepted realities, Law must work within an accepted reality to contest the border. The establishment of an international human rights law has helped broaden Law's potential, providing some universal standards that lawyers can utilize apart from national legal frameworks. However, even in the context of international law, the problem remains that legal scholarship can only do so much as can be justified under accepted legal frameworks.

For this thesis, I have chosen to take an inter-disciplinary approach in framing the research and interpreting the conclusions. I reason that for this particular project, an interdisciplinary approach will help me provide a more holistic view of asylum than any one discipline could provide alone. I also believe the approach will help me draw the most useful conclusions for migrants themselves and for shaping academic views about the phenomenon. For these reasons, I have pulled from both the social and legal fields of literature, fully recognizing the strengths and limits of each. In the absence of a body of work that focuses specifically on Mexican asylum, I have chosen to frame my arguments

based on the legal scholarship surrounding asylum in general and concerning Central Americans in the 1980s, on the immigration scholarship provided by anthropologists and sociologists, and on the work of journalists covering the drug-war, a factor shaping the asylum process. This holistic view is based on the approach taken by Susan Bibler Coutin throughout her work on Salvadoran refugees during the Central American civil wars.

### **Law**

The legal body of work that I rely on for this research mostly concerns asylum in general terms. In order to understand anything about the Mexican asylum experience, one must first disentangle the complex system that represents the US asylum process. This means sifting through the laws, treaties, and agreements that influence that law and its implementation -- not an easy task for a non-lawyer. Legal organizations like the American Immigration Lawyers Association and the UN Refugee Agency (UNHCR) reduce the burden by providing reports that outline the laws and then help readers make sense of them.

Secondly, I rely on the work of lawyers who question the implementation of the US asylum system and the original intent of international treaties relating to asylum (Hathaway 2005). Questions about international treaties are important because the United States is a signatory to many of the agreements, and US law is largely based upon UN recommendations. These debates concerning intent and implementation largely center on questions of disparity, detention, and standardization. For example, Schrag, Schoenholz and Nogales argue that asylum cases are one of the most arbitrarily-decided type of legal case. According to these scholars:

There is remarkable variation in decision making from one official to the next, from one office to the next, from one region to the next, even during periods when there has been no intervening changes in the law. The variation is particularly striking when one controls for both the nationality and current area of residence of applicants and examines the asylum grant rate of the officers who work in the same regional building, or immigration judges who sit in adjacent court rooms of the same immigration court (2007:302).

This body of work that questions the implementation of asylum also highlights the importance of the status as one of the first tangible ideas to emerge from the international human rights discourse.

Little work focuses specifically on Mexican asylum seekers, but one notable exception is Jullian Blake's article "Gang and Cartel Violence: A Reason to Grant Political Asylum from Mexico and Central America" (2012). The article explores why gang-based asylum claims are usually denied. Blake concludes the claims should not face blanket denial because resistance to gangs can constitute a political opinion. Her argument rests on Bunker and Sullivan's notion of "dual sovereignty," or the idea that criminal organizations are fighting for control of a portion of the state. Blake also defines three interpretations of asylum. The interpretation most useful in understanding the United States' use of asylum to facilitate government interests is what she calls the "Political Theory definition of asylum." Blake attributes this theory to Price who "distinguishes asylum from other legal or policy tools by its expressive power to condemn an outlaw regime for the [illegitimate] actions it takes against its citizens." According to Blake this definition provides space for a dangerous conflation of foreign

policy and law that makes asylum more contingent on foreign policy than the need for protection.

In addition to adopting her disciplinary approach, I rely on the work of Bibler Coutin to help contextualize Mexican asylum. Although, the Central American asylum cases of the 1980s and the contemporary Mexican cases are in many ways different, they are also similar in several key ways that make the work a useful tool for reference. For example, the Central American conflicts happened in the Cold War context that largely shaped US asylum law. For a time, Salvadoran asylum seekers experienced only a 2.6 percent approval rate, well below the rate for other groups (Bibler Coutin 1998). This research on Central American refugees highlights the protection gap that often exists between those who qualify as refugees under humanitarian interpretations of the definition but do not qualify under political interpretations -- or more simply put, those who may qualify as refugees but are not awarded the status because of other factors such as US foreign policy interests and judicial prejudice.

The Salvadoran case also provides hope for Mexicans currently searching for protection, because although Salvadorans were denied asylum in large numbers for a considerable time, many were eventually able to obtain Temporary Protective Status (TPS), an alternative form of protection that has proven somewhat problematic but at least offered the group some immediate protection. Furthermore, eventually Central Americans were awarded asylum in more significant numbers.

Lastly, I rely on Cecilia Menjívar's (2013) work on the "legal violence" created by denying documentation to whole populations. Menjívar concludes that the recognition

and validation awarded through official documents is psychologically important and the denial of such documents constitutes violent exclusion.

### **Social Sciences**

This idea of systemic or structural violence is a prominent idea in the social sciences and a key theory in shaping this thesis. Anthropologist Deborah Boehm argues that violence is influencing recent Mexican migration patterns and that the climate of violence stretches from Mexico to the United States, where it takes form in official state violence such as deportations. Boehm does not equate the extreme physical violence facing migrants in Mexico to the structural violence experienced in United States, stressing that US practices are in fact violent instead of worrying about “degrees” of violence.

The second idea that I borrow from social scientists, specifically migration scholars, is the “construction of illegality”. According to sociologists such as Rodriguez and Paredes in their article “Coercive Immigration Enforcement and Bureaucratic Ideology,” (2014) the construction of illegality is shaped and reinforced by official government policy and enforcement. This idea is further developed by the theories of epistemology articulated by scholars that focus on power and oppression (e.g. Grosfoguel 2013) and those who have incorporated the theories into discussions on immigration (see Martinez, George 2012). This work concludes that being “illegal” implies criminality but states that even documented migrants suffer from the ideologies of illegality (Menjívar and Kanstroom 2014). Because being “illegal” is not a physical trait, a Hispanic migrant is often suspected of being “illegal” even if s/he is documented. This constant suspicion

coupled with racist epistemologies of criminality (i.e. disproportionate incarceration rates based on race), create the stereotype that Mexican migrants are more likely to be criminal than native-born, white Americans. These ideologies of illegality and criminality are not exclusively applied to Mexican migrants but are particularly pronounced for the group, and those perceived to be a part of the group, because of the attention placed on Mexicans in national immigration debates.

Thirdly, I rely heavily on the work of Viridianna Rios (2014) who recently concluded, in one of the first quantitative studies on the subject, that Mexican migration is shaped by violence. Rios argues that although Mexican migration has slowed nationally to net zero, there is a noticeable influx of Mexican migrants in Southwest states and unexpected rates of growth in certain regions of Mexico. Rios says that the influx of migrants in the United States corresponds with the unexpected outflow of migrants from Mexican cities with high homicide rates.

Lastly, I rely on interpretations of the drug-war produced by Mexican social scientists. The body of work on the drug-war emerging from Mexico is much more comprehensive than the scholarly work produced in the United States. In particular, I rely on Adriana Estevez's (2013) argument that Mexico operates under a system of "necropolitics". According to Estevez, death has become an economic activity in Mexico that is practiced by both the government and criminal groups who together create a sort of "parallel state". Estevez further develops previously established ideas on parallel states, concluding that there exists a "hybrity" between government and criminal gangs in Mexico that at times makes the two groups indistinguishable from one another.

## Journalism

Journalism is the third type of work that has influenced this research. Journalists have provided excellent articles and books on the drug-war, a topic that is somewhat stigmatized in academia because the topic is so often sensationalized. However, a discussion on the drug-war in this thesis is warranted because, as established above, it is becoming recognized as a motivating factor for migration. Journalists have documented the rise in Mexican asylum cases as academia has remained quiet on the subject. However, most journalists have yet to close the lingering gap between their coverage of immigration and their coverage of the drug-war, a task that this thesis aims to complete. Notable exceptions include the work of *Dallas Morning News's* Mexico Bureau Chief, Alfredo Corchado, who reported on the waves of affluent Mexican journalists relocating to Dallas (an article that has since been replicated by journalists in other parts of Texas) and journalists in El Paso who experience both the drug-war and its effects in magnified proportion because of their proximity to Ciudad Juárez, the most violent city in Mexico (Corchado 2012; Greenwood 2010).

Journalists have provided the most comprehensive coverage of the US-Mexico drug-war on the US side of the border and have taken a more radical stance on the issue of government complicity than many US scholars. US journalists have concluded, reinforcing Estevez's previously mentioned assertion, that corruption is so endemic on the Mexican side of the border that there is no clear division between enforcement agencies and cartels. In this scenario, even "clean" officials are either forced into criminal activities or are rendered helpless by the corruption that surrounds them. Journalists also

often conclude that US involvement reaches far beyond drug-consumption and arms supplying. The United States has supported the Mexican government for decades despite knowing about cabinet-level corruption. It supported NAFTA, a trade agreement that has reduced barriers to legal and illegal trade, and it has even directly supported cartels in its quest for intelligence and -- it has been strongly suggested -- political stability (Ungar 2014). This more radical, journalistic interpretation of the drug-war has shaped how I approach this research.

Journalist Charles Bowden focuses on the US side of the drug-war and paints a picture of US politics that may be largely corrupt but is definitely comprised of bureaucratic enforcement agencies whose goals often times directly contradict one another in an intricate, confusing, and secretive web. Parts of this complex web become visible when conflicts arise such as alleged CIA involvement in the death of DEA agent Kiki Camarena (Conroy 2013). Bowden (2004) highlights this complexity most clearly in his book “Down By the River”, in which he explores the small world that exists among criminals, enforcement agencies, and victims in Juárez-El Paso. According to this source, it is clear that the United States is deeply involved in providing weapons and other supplies to drug cartels in exchange for information and other forms of support (Bowden 2013).

In one controversial case illustrated by blogger Bill Conroy, the US government stood idle so that it could attain larger enforcement goals while one of its informants killed people in a Juárez “house of death”. In other words, US enforcement agencies often help carry out or ignore crimes in order to receive intelligence that will help them

complete their ultimate goal of busting cartel leaders. According to Conroy's reports, the aforementioned "house of death" operation was only terminated after the killers targeted a DEA agent and his family (Conroy 2013). This is significant, because it indicates that the United States is indirectly involved in specific actions that may lead individuals to seek asylum in the country. This is best illustrated in the *New York Times* article, "A Drug War Informer in No Man's Land: Wanted in Mexico, Jilted by D.E.A., and Stuck in Middle." The article tells the story of a former high-level Mexican official who worked as a D.E.A. informant helping to expose cabinet-level corruption (Thompson 2013). Now, because of foreign policy considerations, the United States will not award him legal status and, too afraid to return to Mexico, he lives as an undocumented construction worker. Several members of his family, however, have been awarded asylum.

Accurate and complete journalism from the Mexican side is becoming scarcer as Mexico has become one of the most dangerous countries on Earth to be a journalist ("2012 deadliest year" 2012). In fact, Mexican journalists have recently presented some of the most compelling asylum cases in the United States (Martinez, Alejandro 2013). However, Mexican coverage of the drug-war has not disappeared completely despite the risk journalists face; Reporters like Marcela Turati paint a grim picture of the deaths and disappearances plaguing Mexico. These attacks are not always on "involucrados"<sup>3</sup>, as the government often alleges, but on innocent bystanders, fearful citizens, and children. The deaths and disappearances are sometimes committed at the hands of cartel members, sometimes at the hands of officials, but so often left unresolved that in most cases no one

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<sup>3</sup> Involved people

really knows. In her book *Fuego Cruzado*<sup>4</sup> (2011), Turati illustrates the fear that arises when a society cannot trust its own law enforcement and the many repercussions mass deaths have -- from the creation of orphans to the booming funeral business. According to Turati, the Mexican state is a key part of the violence plaguing the country, both for its direct involvement and its impunity. Similarly, in 2010, the international freedom of the press organization Article 19, released a statement saying that, even if the Mexican government were innocent of all physical harm against journalists, it was at least complicit in the violence because of its refusal to prosecute crimes (Romero 2012).

While most journalists explore the social effects of the drug-war, Moisés Naím, former editor of the journal *Foreign Policy*, makes a broad economic argument for why black markets are proliferating globally. He argues that trade agreements, such as NAFTA, that decrease barriers to legal trade also increase illegal trade. This supports economic arguments made by social scientists studying Ciudad Juárez and gendered violence near the border. Naím's arguments are also reinforced by immigration scholars such as Douglas Massey who note with irony that Mexican trucks cross almost unabated at the border while migrants, travelers, and commuters face long lines for entry (Massey 2002). Naím further challenges the idea of organized, centralized crime cartels and instead argues that as legal economies become decentralized and highly globalized, so do black markets. He also states that illegal trade is inextricably linked to traditional markets, highlighting the case of a legitimate trucking company located near the US-Mexico border that expanded its business into the black market. The owner of this

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<sup>4</sup> Cross Fire

company does not pledge allegiance to any particular cartel but is more of an independent contractor charged with transporting legal and illegal goods across the border. Naím's findings are important because they challenge the basic assumptions US anti-drug policy is based upon -- the same assumptions used to determine asylum cases. Naím's conclusions also highlight the type of illegal activity emerging in Mexico with the implementation of neo-liberal economic policies, further clarifying the reasons behind the increase in asylum claims from Mexico.

When it comes to asylum, the journalistic body of work available is less comprehensive. Many journalists have covered Mexicans seeking asylum or the rise in asylum cases, however they have refrained from taking a clear, or unique stance on the subject. The journalistic work on asylum will be the subject of analysis in section three of this thesis.

### **Framework for Research**

Throughout this thesis I rely on the interpretations of asylum provided by law scholars and on the interpretations of the factors shaping Mexican asylum provided by social scientists and journalists. Their dedicated work allows me to carry the following assumptions throughout this research, and it is within this multi-disciplinary framework that I understand Mexican asylum in the absence of previous scholarship on the subject.

Relying on the work of lawyers, I assume that asylum is not a judiciously applied status. It is a legal tool used politically to exert pressure on other governments and historically has only been awarded those fleeing regimes politically opposed to the US government. However, in some cases, such as the Salvadoran case outlined by Bibler

Coutin (1998), alternative forms of relief for refugees have been constructed in response to grassroots political pressure. I further assume that asylum law is not static, and I recognize the importance Bibler Coutin places on migrants and other immigration actors in shaping future legal practices through case law. Secondly, I assume that in most instances the United States employs a very narrow definition of asylum when deciding cases. This interpretation is what Blake calls the “political theory definition of asylum”, and is an approach that limits the possibilities of asylum by linking foreign policy to the application of immigration law. Although this politicization of the status is less overt now than in previous decades, this thesis shows that politics still play an important role in asylum decisions. Lastly, I assume that asylum decisions are more variable than other forms of judicial decision. Whether an asylum case is granted in the United States is less dependent on the merits of the case and more on the particular asylum officer (or judge) assigned the case, a trend Ramji-Nogales, Schoenholtz, and Schrag call “Refugee Roulette” (2007).

Through the work of social scientists I carry as assumptions that there is a perpetuation of violence in the United States for those denied recognition by the State. As I will later show, this feeling of invalidation is an integral part of the asylum experience for Mexicans. Furthermore, based on the work of immigration scholars, I assume that the constructions of illegality and criminality that characterize discussions about Mexican immigration, and the lived reality of those migrants, are a form of structural violence. I also hold that ideologies surrounding immigration enforcement are based on goals of exclusion rather than inclusion. Finally, based on the work of Rios and Boehm, I assume

that there is a connection between recent increases in violence in Mexico and migration to the United States.

From journalists (and Mexican sociologists) I carry two key assumptions about drug-war violence throughout this text. First, the Mexican state is largely involved in the violence faced by Mexican nationals. Sometimes this violence is perpetrated by corrupt officials and other times it is broadly applied as a method for controlling drug-trafficking. Regardless, the Mexican state is unable to protect its citizens from its own officials and from criminals; this is demonstrated by the almost complete impunity for crimes committed in the country. Second, the role of the United States goes beyond drug consumption and the supplying of arms. The United States is inextricably involved in the drug-war and violence in Mexico through its globalized economic activity promoted by NAFTA, its foreign policy, and its anti-narcotics enforcement tactics. Finally, I consider Corchado's work a reinforcement of Boehm and Rios's conclusions that there is in fact a link between violence in Mexico and migration.

### **Research Methods**

For this thesis, I have chosen to take an interdisciplinary approach and to pull from both social science and legal traditions, recognizing the strengths and limits of each. For example, following a legal model, I will argue that some of the current practices facing Mexican asylum seekers are illegal under international and domestic asylum law. However, following a more sociological model, I will broaden the context of that argument by examining the reasons the denial rates are disproportionately high in the first place. Similarly, my conclusions will make suggestions about necessary legal reforms

regarding the asylum system for Mexican nationals while also critiquing the circumstances that have led migrants to the asylum system in the first place. By using a legal argument to suggest reforms to the asylum system so that it more accurately adheres to current laws, I do not mean to ignore the factors leading to the need for asylum nor legitimize them. Instead my aim is to provide suggestions so that Mexican asylum seekers receive tangible relief as rapidly as possible and then to examine and critique the broader context of the situation through a sociological analysis. This holistic method is similar to the one employed by Bibler Coutin throughout her work.

The methods for this thesis are varied, reflecting the inter-disciplinary approach of the research and my desire to provide a comprehensive look into the increase and disproportionate denial of Mexican asylum cases. However, because this is a Master's thesis, the limits on time and resources mean that there are significant boundaries to the work. Here I will discuss each of my approaches, my intent, and the limits of the study.

The first challenge was choosing a research cohort. Asylum cases are not open to public records requests and generally the public is limited in their access to information on the cases. Therefore, I chose to contact legal aid offices and immigration lawyers in order to find asylum seekers from Mexico. However, this approach is already biased. Unlike in US criminal courts, defendants in immigration court are not automatically awarded legal counsel, and this has dramatic effects on the denial rate of asylum cases. In 2010, 91 percent of all asylum seekers had legal representation, but this number could be significantly lower for Mexican applicants, the reasons for which will be discussed in chapter two (Asylum Denial Rate 2010). Nevertheless, in order to gain access to asylum

seekers in the limited three months I conducted fieldwork, I chose to go through lawyers and refugee centers located near El Paso and Austin, Texas, knowing that it would alter my findings.

Once in contact with area refugee centers and lawyers, I interviewed lawyers, center workers, and asylees. I also tried to contact immigration judges and other immigration officials but was told they were not permitted to give interviews. Most interviews were conducted only once. However, I did consult with Carlos Spector, founder of Mexicanos en Exilio, and Denise Gilman, Clinical Professor at UT, multiple times. These two immigration lawyers are among the few attorneys who have recently represented successful asylum claims for Mexican nationals in Texas. Gilman acts as a second reader for this thesis. In addition to these interviews, I attended an asylum decision hearing with Spector and multiple events put on by Mexicanos en Exilio, acting as a participant observer. I conducted formal interviews with three asylees, all male between the ages of 30 and 50. Through events, I made contact with eight other asylees, four of whom were women, one around age 50 and three younger than age 20.

Because of the sensitive nature of asylum cases, I have chosen not to identify most participants in this study. I also applied for an IRB waiver for written consent and only asked for oral consent when conducting interviews to limit the amount of traceable information. Moreover, I have decided to focus on applicants' stories starting from their arrival to the United States. I made this choice both to be as sensitive as possible to those whom I was interviewing given our limited relationship, and because this study focuses on the US asylum system rather than patterns of violence in Mexico. Obviously, the two

subjects are deeply interconnected. However there is an absence of scholarly work on the asylum claims of Mexican nationals and much more work on violence in Mexico. When interviewees did choose to share their stories with me, their experiences usually reflected the accounts of drug-war violence given by the journalists and scholars cited in the above section. Therefore, also in an effort to leave out identifiable information, I have omitted the stories of violence I heard in interviews and observations and have included only information that is already publicly available.

The second important component to this research was statistical analysis. All the information included in this study from the US official perspective is the result of publicly released reports by US immigration enforcement agencies or email exchanges I had with a member of the Executive Office for Immigration Review (EOIR) of the US Department of Justice. Each year US immigration enforcement agencies release vast amounts of data in the form of yearbooks and reports. These data include information about asylum that is sometimes broken down by nationality. However, there has not yet been any academic study that considers Mexican asylum in particular. This thesis relies on data from the Department of Homeland Security (DHS), the Department of Justice (DOJ), and their sub-agencies, as well as information gained through the Freedom of Information Act (FOIA), and by Transactional Records Access Clearinghouse Immigration (TRAC), which is an immigration enforcement data tracking center at Syracuse University. The information released by DHS and DOJ is in no way complete or comprehensive. Therefore, I had to make several of my own FOIA requests, which I

do not expect to be answered before the publication of this thesis, if they are in fact fully answered at all.

The third methodological component to this study is a critical media analysis. There is evidence that media depictions of immigration affect public opinion on immigration (Gil de Zúñiga 2012). Because asylum is at its core a source of immigration, it is important to understand the broader portrayal of Mexican immigration and then to determine how Mexican asylees fit into this context. Furthermore, the journalistic work on Mexican asylum provides an expansive view of the trend, including asylee stories that compliment my own fieldwork.

It is well established in media studies that the effect of media is circular and that media depictions both represent and influence the public's perceptions (McDougall 2012). The generation of official rhetoric that is shaped by and shapes media portrayals of immigration is also important in this particular case. This is relevant not only in understanding how Mexican asylees are viewed and treated by the public but also in determining the patterns of denial Mexican asylees face. Immigration judges are, after all, citizens that are influenced by the media and by official rhetoric.

The key limit to this thesis is time. Because of time constraints, the research cohort is limited to a relatively small group of asylees who all have legal representation. Also, each interviewee was only interviewed once, providing a valuable but limited glimpse into each of their lives and legal situations. The lack of a long-term and established relationship between the interviewees and researcher also probably significantly reduces the amount of sensitive information asylees were willing to share.

Because of this, the journalistic work on asylum becomes important in providing supporting evidence and a more expansive view of the trend. Furthermore, because of gaps in the data provided by US enforcement agencies and the slow nature of FOIA responses, there are significant holes in the data analysis that will be noted as they arise. Each of these limitations is fully factored into the conclusions that this thesis draws.

Despite the constraints, I believe this study succeeds in providing a much-needed initial overview of the asylum situation for Mexican nationals, including a historical context within which to situate the trend, establishing the actual numerical trends over time, presenting the factors that lead to high denial rates, and discussing circumstances unique to Mexican asylum seekers. This thesis will also serve to highlight the many areas where future investigation and research is needed.

### **Thesis Structure**

This thesis is broken down into three chapters. In the first chapter, I give historical context to the construction of the US asylum system and to the current increase in Mexican asylum claims. I will discuss the international and domestic history of asylum and the arguments claiming that far from operating in a fair and uniform manner, asylum has acted as a powerful, political tool working to exclude most groups and include only a select few. I will situate Mexican asylees within this discussion, exploring how the group has been perceived by the asylum system in the past and analyzing the recent factors that have led to severe insecurity in Mexico, contributing to an increase in asylum claims. Here I will establish the exact upward trends seen in asylum applications filed by Mexican nationals. This chapter will include a brief but thorough discussion of the drug-

war and US involvement in bi-national, anti-drug policies, because these issues are important in understanding the increase.

The second chapter of this thesis will focus on the high denial rate of asylum applications filed by Mexican nationals. In this chapter, I will analyze how denial rates have changed over time and how they compare to the rates experienced by applicants of other nationalities. Furthermore, I will explore the political factors that may be leading to the disproportionately high rates, including a discussion on the role of human rights reports and the Mérida Initiative. I will discuss the legal explanations that are frequently given to justify the high rates of denial experienced by Mexican nationals, including topics of judicial subjectivity influenced by politics and the definition of asylum as it relates to gang-related violence. In this chapter, the section “Stereotypes and the Flood Gates” will consist of an analysis of media depictions of asylum and immigration in general. This is important because media has been shown to influence opinions on immigration and the politics of individual judges have been shown to affect the outcome of asylum decisions.

Finally, in the third chapter, I will discuss the unique circumstances facing Mexican asylum seekers, including why a disproportionate number of Mexicans are not eligible for asylum. These individuals may apply for asylum, but must end up arguing for a status known as “withholding of removal,” a legal inbetween status that is much harder to win than asylum and that does not afford the recipient the same extent of benefits. The allegations of practices concerning Mexican asylum seekers that defy domestic and international law will also be discussed in this chapter. First, I will discuss how the

history of migration has shaped the concrete ways Mexican asylum seekers are treated in the United States. This will include a detailed analysis of Department of Justice detention practices that may lead to longer detention periods for asylum seekers of Mexican nationality, as well as an exploration of how Mexican asylum seekers are treated by different sectors of society, including by immigration officials, other Mexican migrants and by US-born citizens. Then I will explore how the close proximity of the US and Mexico plays a role in the entire asylum process from initial entry into the US to the eventual adjustment to a new (permanent or temporary) life in the country. Finally, I will detail some of the pressing challenges that are not unique to the group, but are worth noting for their extraordinary impact on human lives. This will include a discussion on the challenges of dealing with physical debilitations, Post Traumatic Stress Disorder (PTSD), and the continued fight for justice in Mexico from outside of the country.

In sum, this thesis is intended to provide a broad analysis of the issues surrounding asylum-seekers from Mexico. However, because it represents the first academic inquiry into the subject, it cannot provide an entirely detailed view of the complex trend. It is a basis for understanding the increase in asylum applications from Mexico, the disproportionate denial of those applications, the unique circumstances Mexican asylum seekers face in the United States, and the incredible human struggle that accompanies the process. Although I cannot hope that it will be a complete analysis of the situation, I do expect this work to illuminate several key areas that warrant further academic investigation and political inquiry.

## **Chapter 1: Drug-War Refugees and Historical Policies of Exclusion**

Although refugees have been an international reality since at least biblical times, political asylum is a relatively new phenomenon, rising to international concern with the creation of the United Nations (UN) at the end of World War II and only becoming legally implemented in the United States in 1980 with the passage of the Refugee Act (Kenney, Schrag 98). Asylum and refugee status are related but distinct in important ways. An asylee fits the definition of a refugee but applies for the status from within the United States rather than from abroad. In contrast, refugees never have access to US immigration courts nor their appeal processes.

Today, almost 70 years after the end of World War II, the creation of the UN, and the drafting of the Universal Declaration of Human Rights, many people take for granted that there are certain, universal human rights that reach beyond the limits of cultural relativism. In fact, the extent to which human rights have become entrenched in certain sectors of the international community is somewhat surprising to some scholars (Sjoberg 2013). Although the ideological acceptance of human rights seems strong, there is still debate on the specific details of what should be considered a human right, what practices violate these rights, who should be held accountable for violations, who is responsible for handling alleged violations, and in what manner violations should be treated. The question of political asylum arises within this political and ideological context, appearing in Article 14 of the Universal Declaration of Human Rights that states, “(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution. (2) This right

may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations”.

Let us back up for a moment and examine the global conditions during and after World War II that gave rise to international human rights ideology and to the emergence of asylum. In 1939, the M.S. *St. Louis* ocean liner left Germany full of 937 people, mostly of Jewish descent and fleeing Nazi rule (Wartime Fate 2013). They were denied entry into Cuba and the United States and forced to return to Europe where they were finally accepted into Belgium, Holland, France, and the United Kingdom. By the next year, all of the passengers (except those who were given refuge in England) found themselves once again under expanding Nazi rule. The fates of the M.S. *St. Louis* passengers are still under investigation, but through the work of the United States Holocaust Memorial Museum (USHMM), it is clear that many perished in Nazi extermination camps or lived through unimaginable persecution and hardships after being denied entry into the United States. The M.S. *St. Louis* represents a stain on the reputation of the United States as a country that claims to shelter and protect the persecuted, as well as that claims it is committed to the prevention of mass atrocities. According to the US State Department, a picture of the M.S. *St. Louis* currently hangs in front of the US Refugee Bureau as a powerful ideological symbol, reminder, and “source of motivation” (Legacy 2012).

After the war ended in 1945, 51 countries banded together to create the United Nations, an international organization “committed to maintaining international peace and security, developing friendly relations among nations and promoting social progress,

better living standards and human rights” (United Nations). In 1948, the Universal Human Rights Declaration was adopted as a sort of “international bill of rights.” Then in 1950, the United Nations High Commissioner for Refugees (UNHCR) was established as a temporary office charged with helping displaced Europeans. The next year, the United Nations Convention Related to the Status of Refugees (hereafter referred to as the Geneva Convention) was adopted. It is also important to note that the Cold War began in 1947 and has had a considerable impact on the policies and actions of the UN, from its fledgling years until very recently. In fact, it was the outpouring of an estimated 200,000 refugees from Hungary into Austria and Yugoslavia, after the Soviet quashing of the Hungarian revolution, that cemented the UNHCR as a permanent agency of the UN (History of UNHCR 2014).

This historical context is important both in understanding the underlying ideology of US asylum law, but also for understanding the legal authority and limitations of the law. The domestic asylum policy of almost every country that has one, is based on the text of the Geneva Convention that defines a refugee as a person outside their country of nationality due to a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion” (Nicholson, Twomey 1999). As simple as this definition may initially sound, it has sparked intense debate regarding its proper interpretation, the details of which are beyond the scope of this thesis. Also, it is important to understand that, although the United States does accept more refugees than any other country in numerical terms, its asylum laws are not necessarily inclusionary. In fact, I argue along with many other scholars that the policies

prove quite exclusionary for many refugee groups whose entry would clash with US policy goals (See Churgin 1996).

Notably, the United States initially refused to sign the Geneva Convention. The country eventually signed the Protocol Relating to the Status of Refugees in 1967 that served to amend and update the original convention (Churgin 1996). However, US domestic law did not come into compliance with the Protocol until the Refugee Act of 1980. In more direct terms, even though the United States agreed in 1948, through the Universal Declaration of Human Rights<sup>5</sup>, that the ability to seek asylum was a universal human right, it was 16 years before the country finally signed the 1967 Protocol Relating to the Status of Refugees. Then, after signing the Protocol, it was another 13 years before domestic legislation was passed to comply with international law. In other words, it was 35 years after the end of WWII before the United States finally implemented a permanent legal system that provided a way for displaced or persecuted persons to seek asylum. Therefore the only refugees (as there was no process for asylees) that were accepted into the country prior to 1980 were accepted through programs that were region specific and usually restricted to those fleeing communism. For example, after WWII the United States admitted 40,000 European refugees through a manipulation in quota numbers that created the biggest mass migration to the United States in 30 years (Churgin 1996 312). Then, in 1948 the United States admitted another 200,000 people through the Displaced Persons Act that excluded most Jews (Churgin 1996). Later, programs beginning in 1948 allowed for the resettlement of displaced persons fleeing communist countries including

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<sup>5</sup> This is not a treaty but rather an ideological statement.

China, Cuba, Hungary, Korea, Poland and Yugoslavia. In 1975, more than 100,000 Southeast Asians were admitted under the ad hoc program called the Refugee Task Force (“Refugee 101” 2014). However, there was no legal avenue for people facing persecution outside the definitions of these specifically targeted programs to seek asylum. Furthermore, up until the implementation of the Refugee Act, almost all refugees came from countries ideologically opposed to the United States, and in many programs, race played an important role in the decision-making (Churgin 1996).

Even after the implementation of the Refugee Act, which ideally should have helped avert the focus from politics and ideology to human rights, refugees fleeing nations friendly with the United States were typically denied asylum. One emblematic example of this is the Salvadoran cases of asylum-seekers who were denied refuge en masse despite reports of widespread human rights abuses committed by the US backed Salvadoran military. Salvadorans were denied asylum at high rates until, after much protest and legal action, they were finally offered compromises including the construction of a new status called Temporary Protected Status (TPS). Others were allowed to reapply for asylum, but currently there are many Salvadorans who are being deported back to El Salvador after residing in the United States for 20 or more years (many since childhood). This contrasts with the more generous benefits offered to Nicaraguans by the Nicaraguan Adjustment and Central American Relief Act (NACARA) offered to those who entered the United States before December 1, 1995 and who were fleeing persecution from the Sandinista government that was ideologically opposed to the United States (Bibler Coutin 1998).

US reluctance to establish a generalized asylum system and the country's historical use of ad hoc refugee programs indicate that US refugee policy has not been based on protecting or furthering *universal* human rights but on sending political messages to ideological enemies. It also indicates, as is noted by Churgin (1996), that the United States prefers to keep its screening processes far from home where it can selectively choose refugees, knowing that those rejected will probably never make it to the United States on their own. This historical context is important in highlighting some key trends in US asylum. First, US policy toward refugees has generally been one of reluctance, a fact further highlighted by legislation passed since 1980 that limits the application of asylum. Second, historically refugees have only been accepted when fleeing countries ideologically opposed to the United States -- a trend that continues in somewhat less overt ways today. Third, the US has strongly preferred to keep screening processes far from home where refugees do not have the option to appeal or enter the country through alternative means. Each of these three points will be important in understanding the disproportionate denial of Mexican asylum cases detailed in chapter two.

### **Bureaucracy, Confusion, and Luck**

As has already been established, there was no US bureaucratic structure charged with processing asylum applications until 1980. Up to that point, asylum was purely an ideological construct, and the definition of a refugee was established in practice to be any displaced person fleeing the country of a US foe. However, with the adoption of the

Refugee Act, a bureaucratic structure was established to grant asylum using the Protocol definition of a refugee that is someone who:

Owing to a 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 and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it (Convention and Protocol 1967).

As is demonstrated by the Salvadoran cases, the practical definition of refugee (and thereby asylee) changed little after the passage of the Refugee Act. With the creation of the asylum system, the institution was confronted with cases that fit the definition of refugee under the Protocol definition, but that were in ideological conflict with the historical and practical definition of refugee. Judges routinely denied these cases, until the United States faced considerable pressure through lawsuits and immigration appeals in federal court. Then, the US government passed a series of special legislation on a country-by-country basis, allowing some asylum seekers to reapply for the status.

Today, asylum applicants apply for the status through the complex bureaucracy that was established to screen and then grant or deny asylum. This structure spans governmental agencies and many times requires the participation of foreign bureaucracies as well. It is also confusing for asylees and leads to the feeling that much of the asylum process is based on sheer luck. I will not elaborate on the many intricacies of the process in this thesis, but I will give some context.

Asylum applications are broken down by “affirmative applications” and “defensive applications”. To apply affirmatively, an applicant must first enter the country

illegally or with some sort of visa and then apply for asylum through a United States Citizenship and Immigration Services (USCIS) bureau within one year of entry. In this scenario the applicant probably would not be detained, and his/her case would be reviewed by an asylum officer who could grant the request or “refer” it to the Department of Justice (DOJ). According to the US Department of Justice, affirmative asylum cases are generally granted more often than defensive claims (DOJ 2012; K2). They are also less adversarial, and are typically decided much more quickly than defensive cases. Therefore, there is a strong incentive for asylum seekers to attempt to enter the United States by whatever means possible before applying for asylum.

If an affirmative application for asylum is not granted but is instead referred to DOJ, it becomes defensive, meaning the applicant is placed into removal proceedings and must argue an asylum claim before an immigration court. There are two other ways to file a defensive asylum claim in removal proceedings before an immigration court: (1) Be detained by an immigration enforcement agency for being in the country without legal status (or for any other immigration infraction), be placed into deportation proceedings, and then apply from those proceedings. (2) Present yourself at a US Port of Entry and state a fear persecution or be apprehended while attempting to enter the country without documentation. Under these latter two scenarios, the asylum application still must be filed within a year of entry into the country unless an exception to the filing deadline applies. In all of these scenarios except for referral from the asylum office, detention is almost guaranteed for at least some period of time. [In fact, in the second situation detention is mandated by the 1996 Illegal Immigration Reform and Responsibility Act

(IIRIRA) until the asylum seeker passes an initial screening interview.] The duration of detention is widely contingent upon how close to the border a person is when apprehended and a person's immigration and criminal records. From detention, migrants belonging to the first defensive scenario can apply for asylum. Those belonging to the second defensive scenario are placed into "expedited removal" proceedings and must first pass a "credible fear" interview given by an asylum officer. Then, if deemed to have a credible fear of persecution, the person will enter asylum proceedings in court. Otherwise, the person is deported.

Regardless of whether a claim is affirmative or defensive, the process can be daunting without the help of a lawyer (that is assuming the individual is aware of the option to claim asylum at all). And this does not even factor in any of the many possible, complicating factors. However, when I cold-called immigration lawyers in Texas, most said they would not represent a Mexican asylee. A few said they would consider it only in the most exceptional cases. This is an issue that will be further discussed in chapter two of this thesis.

Testimony from asylees shows that there are a large amount of uncertainty and confusion about the asylum system. One El Paso lawyer said that for quite awhile he was receiving calls from Mexican nationals who had been released from detention after passing "credible fear interviews" and who thought they had won asylum cases. Many times these individuals and families called him in order to file applications for permanent residency, unaware that they had technically abandoned their asylum cases. The lawyer says that these calls have slowed in the past couple of years for unknown reasons. He

says perhaps asylum officers are doing a better job of explaining the process to applicants or maybe the group is learning through word-of-mouth as an increasing number are processed through the system. Asylee B<sup>6</sup> reinforces the idea that, at least in some cases, there is a considerable lack of explanation afforded individuals in detention. He told me how confusing and traumatic it was to claim a fear of persecution at a US Port of Entry along with his wife and toddler and then be promptly separated from his crying child for hours without any explanation. Now he says he has to reassure his young daughter that the border patrol they see around town are not kidnappers. Yet another example is illustrated by a *New York Times* article on a municipal official in Mexico that writes letters for residents wanting to seek asylum in the United States. A recipient of one of the letters, Amparo Zavala, arrived to the border with several of her family members. However, some family members were quickly deported after failing credible fear interviews. Others were allowed to stay for a court hearing – an outcome that confused Zavala who was among the deported (Cave 2013).

This story also highlights the importance of documentation. It shows that the bureaucracy of claiming asylum does not start in the United States but rather in Mexico where future asylees try to secure proof of their persecution from a government highly complicit in violence or from journalists, one of the groups most heavily influenced by terror tactics in Mexico. In the Zavala case mentioned above, a public official in a small Mexican town gives letters to potential asylum seekers. In other cases, families arrive at

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<sup>6</sup> Interviewees who wished to remain unnamed were categorized by “Asylee” and a letter

the border with newspaper clippings. However, this reliance on documentation provided by the sending country is controversial.

The need for “corroborating documentation” became more central to the asylum process with legislation passed in 2005 known as the REAL ID Act. Among other changes to the US asylum system, the REAL ID ACT mandated that adjudicators require further “corroboration” of an asylum seeker’s claim apart from oral testimony. The vagueness of this law in determining when and how much documentation is reasonable, makes it problematic. As Cianciarulo highlights:

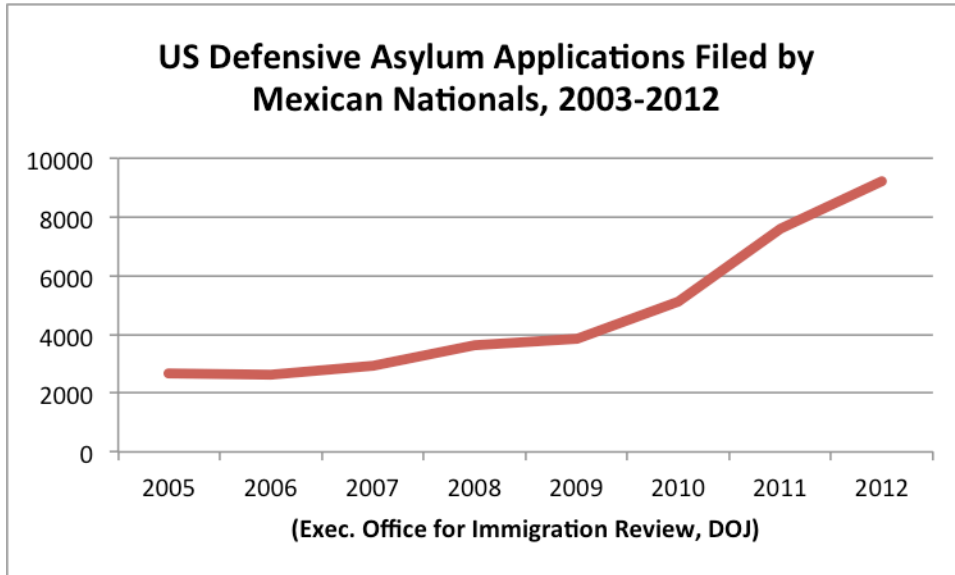
Corroborating asylum claims presents significant challenges, especially in terms of logistics and authentication. Obviously, most asylum seekers will not come to court equipped with notarized affidavits from their persecutors stating, “I, Joe Persecutor, beat and tortured your client on three occasions between December 1999 and August 2003 on account of her political opinion against our oppressive but beloved dictator. Her political opinion was foremost in my mind when this occurred.” Moreover, many asylum seekers arrive from countries that lack infrastructure, adequate communication systems, and sometimes even a functioning government... Additionally, persons escaping persecution may leave behind important documents (such as identity cards, birth certificates, medical records, etc.) when fleeing their countries, either in haste or in an attempt to conceal their identities from persecutors... In many cases, therefore, the more legitimate the persecution, the less likely it is that the asylum seeker will have the required proof (2006; 122).

While Mexico is certainly more developed than the sending countries of many asylum seekers, the historical opaqueness of the government makes the problem of corroboration an issue relevant for Mexican asylum seekers. Even if a Mexican applicant is not worried about being persecuted for requesting documents, the proof may never materialize. Simple obituaries, usually available in newspapers, are sometimes hard to acquire. The Mexican press is currently labeled “not free” by the international human rights agency

Freedom House, and the Mexican media is generally assumed to heavily self-censor, particularly when it comes to the subjects of death, violence, corruption, and crime. The El Paso lawyer and his partner reinforce the importance of corroboration saying that written documentation is an important factor in determining whether or not the firm will agree to represent an asylum case from Mexico.

### A “Wave” of Mexican Asylum Seekers?

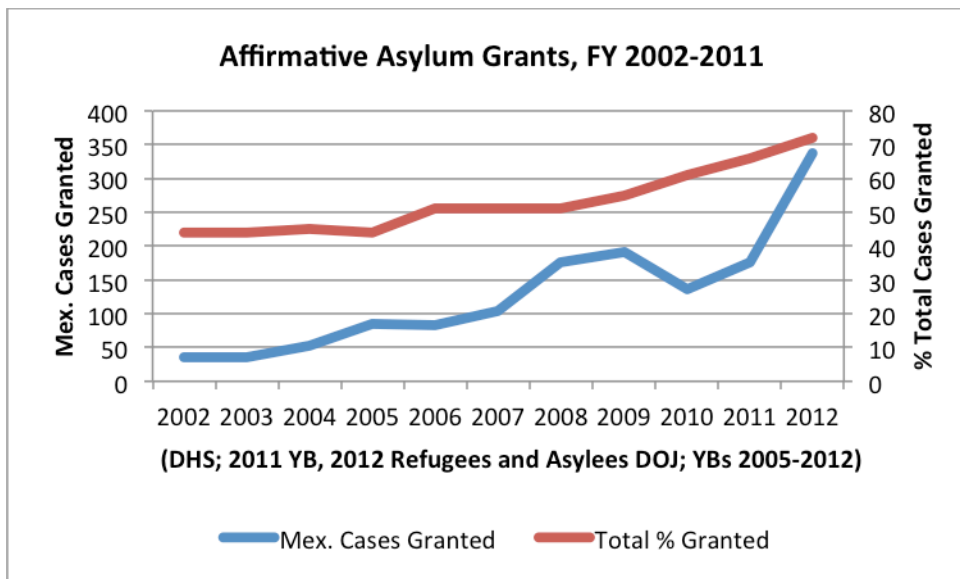
Chart 1:



The above chart shows that there was a 245% increase in the numbers of Mexican asylum seekers filing defensively from 2005 to 2012. However, this figure does not represent the total number of asylum seekers from Mexico, because unfortunately DHS does not release the total number of applications filed affirmatively and broken down by

nationality.<sup>7</sup> However, the department does release affirmative grant numbers by nationality. These statistics are represented in the following chart that seems to indicate an increase in affirmative asylum claims filed by Mexican nationals. As the graph shows, the overall grant rate for affirmative asylum claims by all nationalities increased 63% from 2002-2012. However, because we know Mexican nationals face disproportionate denial rates in defensive claims, it is reasonable to assume that the overall grant rate for Mexican nationals has not increased as rapidly as the overall average. But even if it is assumed that the grant rate for Mexicans is equal to the average increase of 63%, the numbers of Mexican nationals granted affirmative asylum increased 836% from 2002-2012. This indicates a probable, significant increase in affirmative applications filed by Mexican nationals during the period.

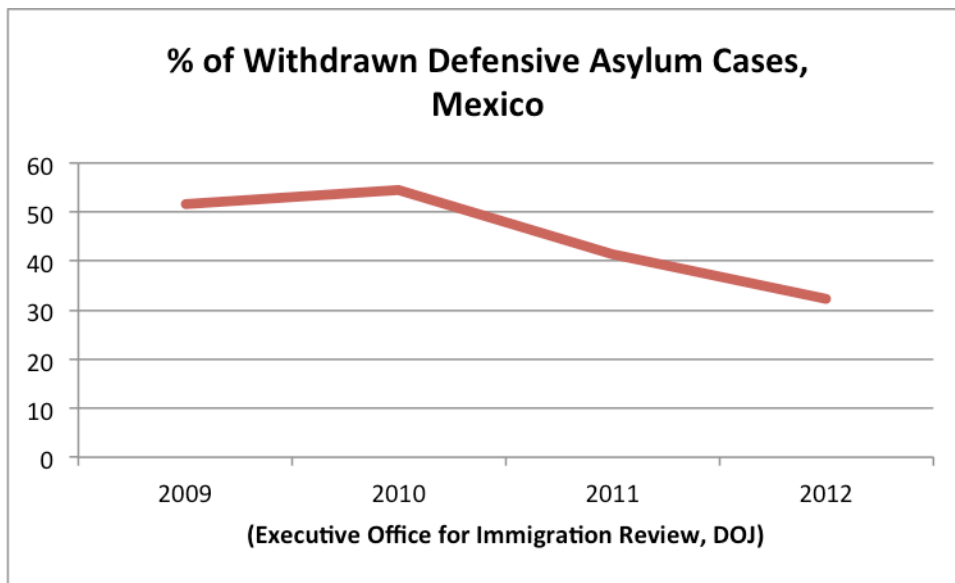
Chart 2:



<sup>7</sup> I have requested this information in a pending FOIA request.

These data suggest a significant increase in asylum applications filed by Mexican nationals since 2002. However, this is not the first increase seen in applications filed by the group. In 2003, there were 7,678 defensive asylum applications filed by Mexicans, a figure similar to 2011 statistics. However, the number quickly dropped to 2,670 by 2005. What explains this? In the early 2000s, DHS concluded that high numbers of Mexican asylum applications did not accurately represent actual numbers of individuals fleeing Mexico because of security concerns (Schoenholtz 2005). Rather many Mexicans in the United States applied for asylum in order to enter into removal proceedings where they could apply for cancellation of removal -- a way to obtain lawful permanent resident status in qualifying cases and to obtain work authorization during the pendency of their case. According to the department, the numbers began to drop after the prosecution of several preparers in California and the start of publicity campaigns highlighting the illegality of the maneuver. However, if DHS is correct in its assertion that Mexican asylum seekers during this period did not have valid asylum claims they intended to pursue, it significantly clouds the data on Mexican asylum applications filed before 2004. Nevertheless, in the data represented below, it is clear that the percentage of “withdrawn” asylum claims among Mexican applicants is decreasing. It is also important to note that not all withdrawn cases indicate abuse of the system. This decrease indicates that the current increase in asylum applications reflects applications based on violence rather than applications filed as a procedural mechanism for seeking other forms of relief.

Chart 3:



Furthermore, conditions in Mexico have drastically changed in recent years, and while homicides declined until the mid-2000s, they rapidly increased after 2007 (Trans-Border 2013). Although there has been drug-trafficking in Mexico for more than a century, efforts to eradicate drug-trafficking operations in other parts of Latin America coupled with new enforcement tactics enacted under President Felipe Calderon led to a marked increase in violence in the country (Grillo 2011). These militarized enforcement techniques continue under the new President, and despite strong criticism by human rights groups, the measures have always been strongly supported by the US government. Through the Mérida Initiative the United States has supplied money, information, and training to the Mexican government, despite clear evidence of deeply entrenched corruption at the top-most levels of government (Merida Initiative 2008, Thompson 2013). Apart from aiding Mexico in enforcement, the United States conducts its own

strong-handed anti-drug efforts usually aimed at eliminating high-level cartel bosses. These operations include many undercover operations that entail aiding criminals in exchange for information, such as the highly controversial Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) operation dubbed Fast and Furious. That operation failed, leaving hundreds of weapons unaccounted for (Murphy 2011).

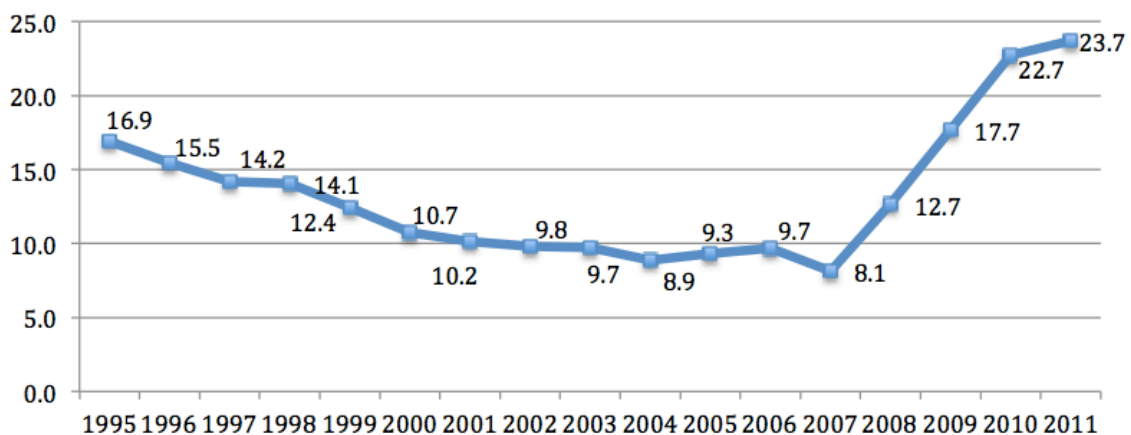
Since the election of President Enrique Peña Nieto, the new administration has made a clear effort to direct attention away from the drug-war and toward economic reforms. However, homicide rates in the country continue to climb. And while some scholars claim that the violence in some parts of Mexico is improving, others disagree. One representative from a migrant shelter told me that, based on recent Mexican arrivals, she believes the violence is shifting to different regions in Mexico. An El Paso writer that focuses on the border said he does not necessarily see decreasing homicide rates, particularly in Juárez, as an indication that the situation is getting better. There is only so much killing you have to do before everyone is completely at your mercy he explained. Regardless whether the situation is improving, it is clear that certain groups have become particular targets in the drug-war.

Journalists are one such targeted group, and so it is not surprising that journalists represent some of the first high-profile Mexican asylum cases to gain publicity in the United States. During the 1980s, the Mexican press simultaneously experienced the effects of a drastic democratization process and an increase in physical threats (Romero 2012). The situation worsened dramatically with the beginning of the drug-war, and Mexico became one of the most dangerous countries in the world to be a journalist. At

one point, the country surpassed Iraq to become the deadliest countries in the world for media workers (Romero 2012). In fact, in 2012 while I was an intern at the Knight Center for Journalism in the Americas, I attended the 10th annual Austin Forum on Journalism in the Americas, themed Security and Protection for Journalists. Ironically, on the last day of the conference, A journalist by the name of Miguel Angel López Solana showed up just in time to tell participants about his harrowing journey traveling with his wife from Veracruz to Austin, Texas after three members of his family were killed in a wave of violence against the press that is still sweeping Veracruz (Martinez 2013). Conference participants were able to refer López to attorney Carlos Spector, and in 2013, only a year after filing, he won his affirmative asylum claim. López was lucky; another journalist that I spoke with is still in the midst of asylum proceedings four years after applying.

Chart 4, From the Trans-Border Institute (Molzahn, Rodriguez Ferreira, Shirk 2013):

**Figure 3: Homicide Rate in Mexico, 1995-2011**



SOURCE: UNODC, Intentional homicide, count and rate per 100,000 population (1995 - 2011).

As these graphs demonstrate, there was a 155% increase in the homicide rate in Mexico from 2005 to 2011 that corresponds with the 245% increase in defensive asylum claims from 2005 to 2012. Homicide rates are not the only factor that may lead to migration, and other factors such as kidnappings and disappearances undoubtedly play a role. However, it is evident that the rapid increase in homicide rates in Mexico closely matches the increase in US asylum claims.

Therefore, it is clear that there has been a significant increase in the number of both affirmative and defensive asylum applicants from Mexico and that this increase cannot be attributed to the legal maneuver that DHS formerly assumed was the cause of large numbers of Mexican applicants. Moreover, the simultaneous rapid increase of human rights violations in Mexico strongly indicates that the rise in Mexican asylum claims is in fact a result of insecurity in Mexico. The high-profile cases of journalists and human rights defenders reinforce this assertion. Still, even in 2012 at its peak, the numbers of asylum applications came nowhere close to the 143,446 Mexican nationals who became legal permanent residents in 2011 nor to the 17 million who were admitted as “nonimmigrants” that same year (DHS 2011); Asylum applications still represent only a small fraction of total Mexican immigration.

However, considering the United States’ historically limited definition of asylum and the country’s proximity to Mexico, it would be overly simplistic to assume that asylum seekers are the only migrants affected by violence. It is probable that the increase in insecurity also influences other types of immigration. This becomes more apparent when one considers the complexity of the asylum system. Most simply, applying for

asylum at least requires a general knowledge that the category exists, and this does not even factor in the dissuading effect that high denial rates may have on application rates. These data reinforce previous work concluding that other types of Mexican migrants are being influenced, at least in part, by violence. As Boehm (2011) suggests, violence may not only cause immigration to the United States but also halt or postpone return migration to Mexico. Following the ideas of Menjívar (2013), recognizing that asylum is a valid status to award Mexican nationals will provide the group with relief from physical violence and will provide a much needed legal validation of their experiences. In general, a broader acknowledgment of how security concerns affect migration will help to validate the unknown number of Mexican migrants who count violence as a factor in their migration decisions.

## **Chapter 2:**

### **Cycles of Rejection: Foreign Policy, Refugee Definitions, and the Flood Gates**

In 2012, there were 9,206 defensive asylum applications filed by Mexican nationals<sup>8</sup>. This is the highest in at least ten years, but, as has been established, this number only represents a tiny fraction of total Mexican migration that year (and does not include affirmative asylees). However, the number is high when considering the overall trends in asylum. In comparison, in 2012 there was only one country that surpassed Mexico in the number of defensive asylum applications filed: China. In 2012, Chinese applicants filed 10,985 defensive asylum requests and represented the group granted asylum in the highest numbers. For more perspective, that year Chinese applicants filed 25% of all defensive asylum applications, Mexicans 21%, and Central Americans 17%.

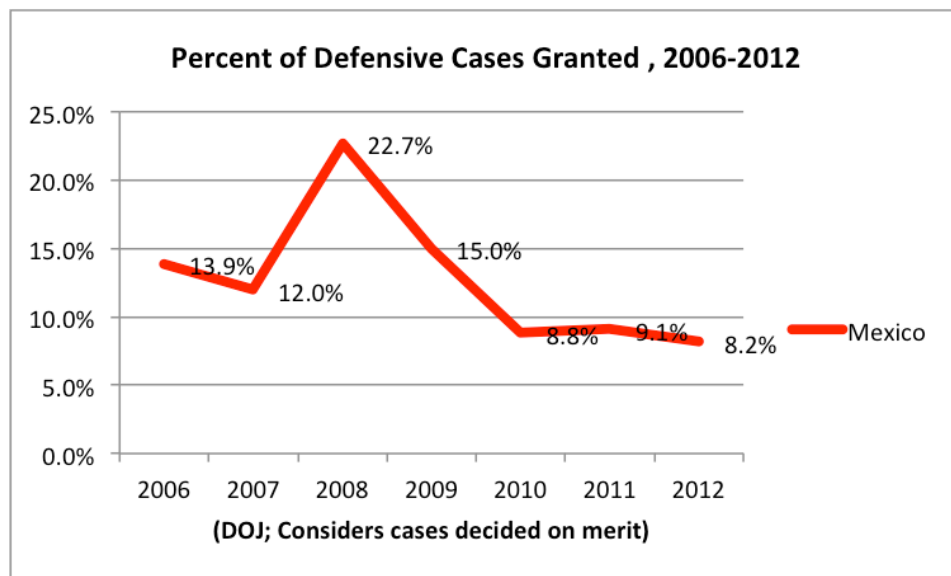
Mexico was not one of the top ten nationalities granted defensive asylum in 2012, but it did rank number 10 on the list of top nationalities granted affirmative asylum. However, even at number 10, Mexican applicants represented only 1.9% of the total affirmative cases granted, and as stated earlier, it is not known what percentage of total affirmative requests the group filed. Therefore, even though Mexican was the number 10 nationality granted affirmative asylum in 2012, if the number of total applicants is high (which I concluded in chapter one is probable), then only a small percentage of Mexican applicants may have been granted affirmative asylum. In contrast, there is no doubt that Mexicans were granted defensive asylum in disproportionately low numbers.

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<sup>8</sup> All data are from DOJ and DHS Yearbooks and DOJ Asylum Statistic Reports, unless otherwise noted.

TRAC immigration data says that Mexicans were the number 5 nationality most denied asylum status during 2000-2005. During that time, only about 14% of decided cases filed by Mexican nationals were granted (“Asylum Denial” 2006). This trend cannot be attributed to the large number of Mexican asylum applicants applying for asylum to gain work permits in the method explained in chapter one, because denial rates only factor in the number of cases decided on merit (that is granted or denied) and not those withdrawn, abandoned, or decided in some other manner. That is not to say the general perception that Mexicans were gaming the system did not play a role in determining individual cases. Since 2005, there has been a large shift in the security environment in Mexico. As the following chart shows, the approval rates for Mexican nationals seeking asylum reflected this change for a short time, but then actually dropped from 2008-2011 during the peak of the violence. Why would asylum rates decrease while documented human rights abuses increased? This trend will be discussed further in the following sections. In the following chart, grant rates are calculated by considering the total number of Mexican applications decided on merit (granted or denied) and then determining the percentage of grants represented.

Chart 5:



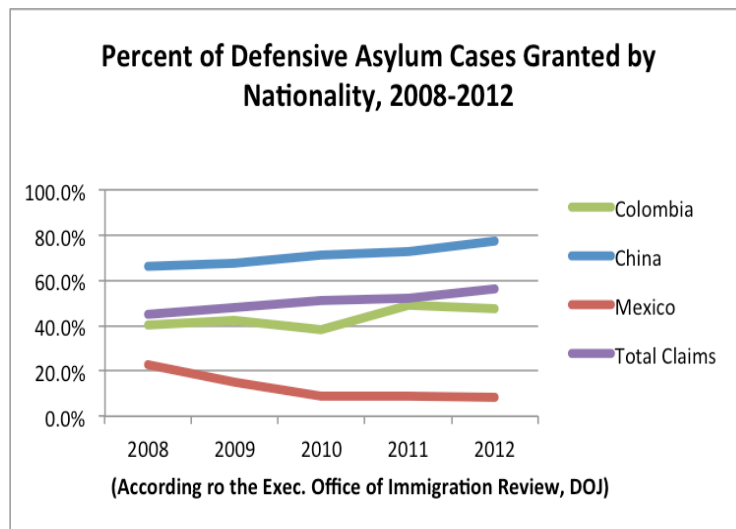
Throughout this text, I refer to the denial rates for Mexican asylum cases as “disproportionate”. Now that I have established that the denial rates are indeed high and disproportionate when considering past statistics, I will further show why these rates are disproportionately high compared to the denial rates currently experienced by other nationalities. In the above chart, we see that the denial rate for defensive asylum applications filed by Mexicans in 2006 is around 86%, similar to the rate TRAC says the group experienced from 2000-2005 when Mexico ranked fifth for highest asylum denial rates. The other four nationalities that ranked higher than Mexico in denial rates during that time were all Central American or Caribbean. El Salvador ranked third for its denial rate of 87.8%.

In the following chart, the rates for Colombian, Chinese, and Mexican asylum decisions are compared with the overall rate. Colombia is widely thought to face similar conditions as Mexico regarding insecurity. Both countries are drug-war hubs, and both

are close allies with the United States. This should indicate similar denial rates for Colombian and Mexican asylum claims, but as the following charts show, current approval rates for Mexican asylum claims are significantly lower than Colombian approval rates, which are lower than the overall average rate. This contrasts sharply with the numbers of Chinese applicants granted asylum in the highest rates experienced by any nationality.

The United States considers the Chinese government, ruled by the Chinese Communist Party, authoritarian (State Department China 2012). However, in 2013 an independent security analysis firm said that citizens in all three countries were at “extreme risk” for human rights violations (“Human Rights Index 2014”). The most significant difference between Mexico and China is that there is a clear acknowledgment in US State Department human rights reports that people are persecuted by government officials acting on behalf of the government in China. In Mexico, official involvement is much less acknowledged and even actively downplayed, as will be discussed more in subsequent sections of this chapter.

Chart 6:



This chart shows that Mexicans are obviously granted asylum at lower rates than other groups-- even those coming from countries facing similar types of “gang-based” violence like Colombia. This is true even though the the two countries are widely compared for their drug-violence, anti-drug enforcement measures, and for the involvement of the United States in those measures.

Also of note is the aforementioned spike in approval rates for Mexican applicants that corresponds with increased homicide rates in Mexico, and then the decline in approval rates during a rapid spike in violence. As homicide rates rapidly increased in Mexico, asylum approval rates for Mexican applicants dropped to an even lower rate (Compare Charts 4 and 5 ). At the same time, overall grant rates for asylum were actually increasing. Why the decline in approval rates for this particular group even as other groups were actually experiencing higher approval rates? This is a mystery that this thesis

cannot definitively solve, but by discussing the many factors leading to low approval rates, I hope to shed some light on the trend.

### **Politics and Foreign Policy**

One journalist and professor in El Paso told me that anyone who said that the denial of Mexican asylum applications was not political was crazy. How can the US government admit the scale of human rights abuses being perpetrated by a government that it supports? In fact, to recognize the human rights abuses might mean having to withdraw military aid to the Mexican government because of the human rights clauses included in the Mérida Initiative. This is something that Human Rights Watch (HRW) urged Secretary of State Hillary Clinton to do in 2009 following their report on widespread military abuses and almost complete impunity (Roth 2009).

US foreign policy considerations are in direct contradiction to favoring the approval of large numbers of Mexican asylum claims in several key ways. The fact is the drug-war is just as much a US war as it is a Mexican one. The difference is the United States fights the war clandestinely -- in undercover operations and mostly in another country -- while the Mexican government unleashes the military on its own people (Grillo 2011, Turati 2011). Generally, the United States has only allowed large numbers of refugees into the country when they wanted to send a political message to an opposing government. Take for instance the almost general amnesty that the country grants Cubans who make it to US soil (Stuart 2010; 157). However, the US government has no desire to shame the Mexican government, and in contrast has many reasons to avoid causing the country any embarrassment. Moreover, allowing large numbers of asylees into the

country would jeopardize the Mérida Initiative that helps fund the Mexican government's anti-drug enforcement efforts and would undoubtedly upset the Mexican government that is all too aware of how influential the United States has been in promoting and waging the drug-war. In the past few years, Mexican presidents have been quick to point out US involvement in the drug-war, highlighting the tension that the Mexican government already feels at having to bear the burden of a joint war. Cutting US financial support would likely not be received well by the Mexican government, and the last thing the US wants to do is contradict the Mexican government who spends millions of dollars on PR in the United States for tourism campaigns that tout the country's safety (Rosenberg and Barrera 2010).

The US-Mexico border is one of the longest terrestrial borders in the world between two countries of such varying stages of development, and especially after 9/11 it has become a focal point for fortification. Making enemies with the Mexican government could lead to a potential security problem for the US government (real or imagined), a risk the United States is keen on avoiding. Beyond security, there are also economic concerns. Mexico represents the United States' third largest trading partner and accounts for around 13% of total trade (Foreign Trade 2013). During the past two decades, the US and Mexican governments have made a considerable effort to integrate their economies through policies like NAFTA. Disrupting this bond, by embarrassing the Mexican government or cutting drug-war funding, is not a step the US government would take lightly. These considerations do not even factor in the United States' own image and anti-drug stance. It would take a drastic shift in US drug-war policy for the country to change

enforcement tactics. Right now, it does not seem as if US politicians are ready for such an approach, especially since some experts say the proposed alternatives, such as drug legalization, would not reduce crime (Ríos 2012). So, in the absence of obvious alternatives to the drug-war, the war wages on. However, large numbers of asylees would problematize the reality the United States would like to portray, and so it is in its best interest to avoid such a situation. Furthermore, the border region is becoming increasingly militarized causing observers to note the war-like characteristics of the region (Blakeslee 2014). This unofficial war is aimed, at least in part, at keeping undocumented migrants out. Asylees are undocumented migrants, and even when they present themselves at US ports of entry stating a fear of persecution, they are treated as such.

The fear of implicating the United States in controversial anti-drug operations or in human rights abuses may be another factor leading to high denial rates. This is highlighted by the *New York Times* piece on a former top Mexican official and DEA informant who has been living in the United States undocumented for the past decade because the country does not want to admit knowing his whereabouts and he is afraid of retribution by the Mexican authorities. “The cover-up was initially led by the D.E.A., whose agents did not believe the Mexican authorities had a legitimate case against their informant. Other law enforcement agencies later went along, out of fear that the D.E.A.’s relationship with Mr. López might disrupt cooperation between the two countries on more pressing matters (Thompson 2013).” In this case, five family members were

eventually awarded asylum, but the informant himself was left to live under the radar.<sup>9</sup> And while this represents only one case, it could indicate a broader trend of reluctance to grant asylum when the United States may be deeply involved in the particulars of the case.

Further lending credence to this idea is the ATF gunrunning scandal known as “Fast and Furious”. Guns that the agency lost track of during this operation have since been connected to crimes in Mexico, including the death of a US Border Patrol Agent (Murphy 2011). Similarly, in 2006 it came to light that both a US legal resident and a DEA agent and his family had been targeted by a drug-trafficker in Ciudad Juarez in what came to be known as the “House of Death.” Court documents and further investigation revealed that one of the principal murderers was a US informant and that high-level Washington officials had known about the house where 12 bodies were eventually found. In this instance, officials maintained ties with the criminal, who was himself carrying out murders, to build a case against his superior (Rose 2006). These cases show that US direct involvement in the drug-war makes Mexican asylum claims problematic, and while this factor is probably not the principal reason for high denial rates, it certainly does not lend support for high approval rates.

So it has been established that US political and foreign policy interests are not aligned with allowing large numbers of asylees into the country, but if individual cases are granted by asylum officers and courts, how do the federal government’s wishes “trickle-down” and manifest themselves in actual asylum decisions? There are several

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<sup>9</sup> This information was obtained from an email exchange with Ginger Thompson of the New York Times.

ways that the federal government's desires may manifest themselves in the decisions of individual asylum adjudicators. First are the government issued human rights reports used to judge whether or not an applicant's claims are valid. The wording of these annual reports can have a significant impact on the ways in which cases are granted. Next is that defensive asylum claims are known as "adversarial"-- that is the asylee is the defendant and the US government acts in a prosecutorial role. Presumably, government lawyers could fight the claims of certain individuals harder than others. Third are the politics of individual judges, which is something likely to have a considerable impact on Mexican cases that have particularly political characteristics. Last is the possibility that agencies would release internal memos directing adjudicators how to consider certain cases.<sup>10</sup> I will further discuss the possibility of internal direction, the influence of human rights reports, and the individual politics of judges on asylum cases.

Because of the initial spike in approval ratings and then the subsequent decline, it does lead to questions about a possible, intentional manipulation of asylum grants. Because the ABC trial involving Salvadoran cases in the 1980s concluded, "the U.S. government's attitude regarding an applicant's ideology, politics, and country of origin are irrelevant to the adjudication of an asylum claim (Bibler Coutin 2001; 73)," the direction, if given, would not have been a direct order dictating how cases should be decided. However, it is possible that some type of a memo was released regarding country conditions in Mexico or warning adjudicators about false claims. Although direct evidence of a memo is unavailable, there is some indication that it might exist by

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<sup>10</sup> Note that by "consider", I do not mean "decide"

examining public government documents. The State Department's Annual Human Rights reports are used by asylum adjudicators in every type of asylum hearing and factor heavily on decisions (Keith, Holmes, and Miller 2013). In 2008 and 2009 there was a notable softening of the wording used in Mexico's human rights report compared to the previous year, even as homicide rates were rapidly increasing<sup>11</sup>. This softening usually downplayed the involvement of government officials in abuses. For example, the statement "impunity and corruption remained problems, particularly at the state and local level" was deleted from the 2008 report. In 2009, the statement "there were instances in which elements of these forces acted independently of government authority" was changed to "there were instances in which elements of these forces acted *outside of the government's policies*" (emphasis added). This change was clearly made to imply that the Mexican government had control over its security forces and that infractions were merely a disregard for policy rather than for authority.<sup>12</sup>

This softening was probably not directly intended to curb the acceptance rates of asylum seekers but was likely meant to ensure Mérida Initiative funding (that began in 2008). However, as the primary source of information for immigration judges regarding country conditions, the change almost certainly affected asylum decisions for Mexicans. Of particular concern is the weakening of the link made in reports between government officials and patterns of violence. Every asylee I met was directly attacked by government officials or was told the government had no control over the area in which a

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<sup>11</sup> It is worth noting that the most recent 2013 Human Rights report used noticeably stronger language than the preceding few reports.

<sup>12</sup> See more complete changes from 2008-2009 in the last section of this chapter.

crime had been committed (situations that mirror those depicted in independent assessments). However the accounts directly contradict US interpretations of the security situation. Furthermore, obscuring the Mexican government's involvement (at the federal level) in abuses, reinforces the idea that the conflict is regional. This could imply to many judges that internal relocation may be a viable option even when asylees' accounts indicate otherwise. The finding that the language in reports has been strategically changed to only partially reflect reality, should call the objectivity of these reports into question along with the legality of the Mérida Initiative amid allegations of widespread human rights abuses. It should also raise questions about the legitimacy of asylum denials based on the softened reports. Still, the change in language does not indicate why grant levels would fall below those of the early 2000's when Mexican applicants were seen as highly suspect and conditions in Mexico were considered stable.

In the next section I argue that at least part of the decline in approval rates can be attributed to the recent politicization of immigration and the incorporation of asylum into such debates. First I will establish why judges may be particularly prone to political influence when it comes to deciding Mexican asylum cases. Experts on asylum often point to the disparity among individual judge's grant rates. Ramji-Nogales, Schoenholtz and Schrag call this game of chance "Refugee Roulette", explaining:

There is remarkable variation in decision making from one official to the next, from one office to the next, from one region to the next, even during periods when there has been no intervening changes in the law. The variation is particularly striking when one controls for both the nationality and current area of residence of applicants and examines the asylum grant rate of the officers who work in the same regional building, or immigration judges who sit in adjacent court rooms of the same immigration court (2007:302).

These scholars argue that, because of the disparity in individual judge's grant rates, an asylee's fate is really a matter of chance, regardless of nationality. For example, in San Antonio, Judge Gary D. Burkholder denied 88.2% of all asylum claims from 2007-2012, however Judge Margaret Burkart denied only 33% (Immigration Judge Reports 2013). There are many factors contributing to the disparity, including judges' gender and work history, and this thesis cannot possibly address them all. Here I will focus on evidence indicating that political affiliations may be leading to high denial rates for Mexican asylum seekers.

Asylum adjudicators are part of a justice system that strives to be objective, even though the whole notion of objectivity has been repeatedly questioned by prominent social scientists including Haraway (1988) with her theory of "situated knowledges" and Bourdieu with his theory of "habitus." Still, studies show that in certain types of legal proceedings there is some continuity in the way similar cases are decided across individual judges and courts (Keith, Holmes and Miller 2013). As Schrag et al establish, asylum cases are not among those proceedings. A recent study conducted by Keith, Holmes, and Miller (2013) concluded that political ideology played a significant role in determining how judges decided asylum cases, even when controlling for other factors. According to these scholars, "the legal strictures in asylum cases are loose because both the facts and the law are vague." They further explain the disparity:

IJs experience a good deal of autonomy in their decision making because of (1) the large volume of cases they decide (approximately three times the number decided by a typical federal district court judge), (2) the low probability of reversal by the Board of Immigration Appeals (BIA) and the federal circuit

courts, and (3) the standard of appellate review to which the IJs are subjected: reasonableness... In essence, IJs are judges-as-bureaucrats, with ample discretion and broad civil service protections.

The assertions are further reinforced by examining the denial rates of judges appointed from 2004-2007 under President Bush and who were vetted using a “conservative political litmus test” (Savage 2008). The practice was deemed illegal in 2007, but the judges hired under the practice continue to affect the outcome of asylum decisions with their high denial rates. One of the most extreme examples of this disparate denial is Judge Howard Rose from Houston, who was appointed in 2006 and who denied 100% of the 222 asylum cases he saw from 2007-2012 (Immigration Judge Reports 2013). From 2002-2007, the average denial rate for Bush appointees was “66.3 - 6.6 percentage points greater than their collective peers” (Savage 2008). Half of the 16 Bush appointees surveyed were among those least likely to grant asylum.

So it has been demonstrated that there are many political and economic reasons for the US government to prevent Mexican nationals from being granted asylum. It has further been argued that these wishes can be carried down to individual judges through a manipulation of the language used in human rights reports. Moreover, individual judges’ asylum decision rates have been found to correlate with political ideology. As the next section demonstrates, Mexican asylum claims have become particularly politicized, and therefore are likely to be decided more frequently according to party lines. This may be intensified by the relatively new existence of Mexican refugees and the lack of precedent guiding decisions.

## **Stereotypes and the Flood Gates**

The previous section establishes that asylum is a particularly polarizing construct, and that certain judges are far more likely to grant it than others. In this section, I argue that in the case of Mexican asylum the political factor is even more magnified than in other cases. This is true because of the many foreign policy concerns already mentioned, the focus on immigration in the political realm especially after 9/11 and the “Great Recession”, and the central role of the Mexican immigrant in these debates.

Although the Mexican immigrant has recently become a key figure in political debates at all levels of government and the figure is especially polarizing now, this is not the first time that Mexican immigration has factored into US political consciousness. However, Massey and Sánchez argue that currently, “the context of reception [is] more hostile to immigrants than any time since the Great Depression (2010; 58).” While it is true that Mexicans are not the only group received with hostility, they often become the focus of debate because they represent the largest immigrant group in the country. In fact, Central Americans and other Latin American immigrants are often lumped into the group “Mexican” when it comes to depicting negative views of immigration. For example, a 2013 article on the conservative website Breitbart is entitled *Asylum Crisis as Mexican Nationals Overwhelm System*. The article cites a “sudden flood of asylum requests” at one border crossing near San Diego and counts all asylum seekers as Mexicans. However, the DHS later clarified that much of the increase in asylum claims on the southwest border can actually be attributed to Central Americans (Skoloff 2013).

According to Massey, Mexican immigration to the United States is characterized by five periods of first inviting Mexican laborers into the country and then deporting them en masse during times of economic hardship (Klein 2013). In these times of recession, immigrants become scapegoats on which citizens blame the country's financial woes. Even though the 2008 recession has naturally reduced the amount of labor immigration from Mexico and overall net migration from the country is now zero, Mexican immigration continues to be described in such derogatory and dramatic terms such as a "flood" or "invasion" (Klein 2013). Immigrants themselves are described as "illegals", "job stealers", or "leaches".

Of particular note, is the assertion that immigrants are becoming increasingly criminalized by US enforcement measures (Martinez and Slack 2013). According to these arguments, it is not just public perceptions that create negative images of immigrants but also the systemic enforcement policies that create and rely on ideologies of fear and "illegality" to justify bureaucratic actions such as mass deportation (Rodriguez and Paredes 2014). Anthropological work regarding this criminalization relies on notions of "epistemological violence" to argue that US enforcement measures represent a continuation of violence for Mexican migrants who often migrate because of factors produced by "a profound imbalance of power that plays out in the everyday lives of transnational migrants" (Boehm 2011).

Still, most immigration debates in academia assume that the Mexican migrant is an economic migrant. This is true even when it is argued that economic inequality is a type of violence (Boehm and Ríos are notable exceptions). However, it has been

established that an increasing number of Mexican migrants count physical violence as a factor in their migration decisions. Ríos says that although net migration is down nationally, the Southwest is experiencing an increase in migration that directly corresponds with rates of violence. It has also been noted in journalistic work that the characteristics of these “new” migrants often differ from the stereotypical labor migrant, but debates about immigration reform in the political realm have been slow to recognize this shift in “push factors”. Across spheres of debate, there has been much discussion of the drug-war, but immigration is rarely considered as a related phenomenon.

In fact, journalistic coverage of the drug-war, if anything, has sparked more concern for keeping Mexicans out for fear the violence might “spillover” to the US side of the border. Even such prominent publications as the *New York Times* and the *Huffington Post* have featured headlines since 2008 regarding the “spilling over of violence,” concerns that have so far been unfounded (Cawley 2013). Still, these debates often serve to further cast suspicion on the group and have a significant effect on public opinion (gauged through media coverage and legislative action) of Mexican asylum. For example, in November 2013 the House Judiciary Committee began looking into claims made by the Alliance to Combat Transnational Threats El Paso division that several individuals with ties to criminal groups had gained entry to the United States through the asylum system (Dinan 2013). However, from the reports it is unclear whether or not any of these individuals were actually granted asylum. In fact, it seems as if most began the asylum process, were detained, and then released after credible fear interviews. In other words they had not yet been granted asylum. This assumption is strengthened by DOJ

numbers that say that from 2007-2012 only four Mexican applicants were granted defensive asylum in El Paso despite the city's proximity to one of the most violent cities on Earth.<sup>13</sup> Still, conservative politicians and media outlets jumped on the story that they headlined, "Mexican drug cartels exploit asylum system."

In another related example, in 2013 journalist and asylee Miguel Ángel López Solana was accused of ties to drug-cartels (Martinez, Alejandro 2013). An accusation that stemmed from the reasoning, "well if he was targeted he must be a narco." However, López was quickly granted affirmative asylum after being targeted and losing immediate family members during a wave of violence against journalists in Veracruz. Still the accusation against López shows how precarious the situation is. Because the drug-cartels are so obscure and have infiltrated almost every sector of society, everybody is considered guilty until proven innocent. This does not help Mexican nationals' chances in asylum court.

There has been a strong social movement that has arisen to push for immigration reform and to counter negative stereotypes of Latinos in the United States. However, the debate is strongly polarized, with liberals pushing for immigration reform and conservatives taking a strong stance against it. But the debates have their limits; Most legislation supported by liberals provides a path to citizenship for those already in the United States but still calls for an increase in militarized enforcement measures. Furthermore, a recent study shows that even liberals' perceptions of Mexican immigrants is negatively affected by exposure to conservative views on Fox News (Gil de Zúñiga,

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<sup>13</sup> El Paso statistics obtained through an email exchange with a DOJ representative.

Correa, and Valenzuela 2012). In this way there is a certain atmosphere of fear and suspicion across party lines regarding Mexican migration and the general perception that an open border would mean a “flood” of Mexicans into the country. Still, the issue is clearly polarized along party lines with conservatives down-right attacking Mexican immigrants and liberals taking a more accommodating stance.

This is the context in which the Mexican asylee is considered. There is a general suspicion of Mexicans fostered by debates about immigration and the drug-war, subjects that are rarely examined together, and there is a strong polarization when it comes to the topic of Mexican immigration. It is no surprise then, that conservatives are calling asylum a “loophole” for Mexican immigrants. I will not spend time working to discredit this claim as I think other sections of this thesis provide ample evidence that the asylum system, with its extremely high denial rates for Mexican nationals, is not an immigration loophole. Instead I only wish to highlight that the same derogatory terms used to describe other forms of immigration are also used to describe asylum, especially in the conservative media sphere. This is important because, as the previous section discussed, political ideology shaped by media depictions is a strong indicator of asylum denial rates.

The topic of Mexican asylum seekers was really flung into the mainstream media spotlight when the DREAM-9 applied for asylum in the United States, passed credible fear interviews and were released from detention. This led to a series of op-eds about bogus asylum claims. However, in the following chapter I show that actually the DREAM-9s’ cases are not all that surprising. Although they perhaps have many reasons to return to the United States, persecution may very well be a considerable factor for their

decision. Similarly, during the process of writing this thesis, a friend decided she was tired of living under the radar with her four US-born children. She had lived in the country for close to 15 years, but decided it was time to go home. Less than a month later she and her husband fled back across the border after family members were targeted and killed in their small town. This friend was an economic migrant turned refugee, however she decided not to apply for asylum because of a lack of money to pay a lawyer and because of the strong possibility she would lose her case and be deported. Still, media attention on the DREAM-9 as primarily DREAMers rather than refugees served to seal the conflation of asylum with broader debates about immigration reform.

Usually these debates about reform employ a certain amount of US exceptionalism (migrants come here to this wonderful country to make a better life for themselves) rather than examining US involvement in creating conditions that drive migration, including the drug-war. Therefore in liberal rhetoric, asylum is incorporated and conflated with pushes for immigration reform that tend to assume migrants are economically motivated. On the conservative side, asylum is seen as an immigration loophole for the “waves” of aliens waiting to flood the United States by any means possible.

This further explains why there is a lack of “solidarity” for this wave of refugees comparable to the solidarity movement that arose during the Central American revolutions. Those that do sympathize with asylees are often already active in the immigration debate and figure that passing immigration reform would help all immigrants including asylees. Another factor inhibiting the creation of a solidarity

movement is that while the Central American struggles were ideological in nature, the contemporary Mexican case is regarded to be a struggle against crime and criminals. Examining a case of solidarity that has arisen in the Mexican case, strengthens this hypothesis.

Churches played a pivotal role in the Central American solidarity movements because religious figures were persecuted during the struggle. In the Mexican case, the only sign of strong solidarity has come from international press organizations that defend Mexican journalists who have become particularly targeted for persecution. In the Central American case, churches showed solidarity because they believed in freedom of religion. In the Mexican case, international press organizations are showing solidarity because they believe in freedom of the press. Both movements gained momentum because of specific ideological views. However, in the Central American case the movement was able to gain much broader support. In the Mexican case, the movement is more confined because press organizations are usually removed from journalists themselves and so have a much smaller reach than do churches. Therefore, any semblance of widespread solidarity for drug-war refugees remains under broader immigration organization efforts. However, when asylum is lumped together with traditional immigration debates, the debates typically focus on economic policies and the vital role of Mexican immigrants in the US economy. They do not address US drug-war policy or drug-war refugees and they tend to assume that migrants have made an economic decision to move rather than a life or death one.

## **Self-Perpetuating Cycles of Denial**

The interesting thing about law in practice is that it is very circular in nature. Legislators wrote and voted on asylum legislation bringing it into law in 1980, but it has been up to the judicial system to interpret and implement that law. This interpretation and implementation is not static, however. It is a continuous process that is influenced by each decision with some weighing more heavily than others. This essentially means with each negative decision, the position against granting Mexicans asylum gets stronger, assuming there are no variable factors or changes to the law. Take for example, the 2008 Board of Immigration Appeals (BIA) decision in the matter of S-E-G- that reinforced the idea that gang-based claims are not valid asylum claims (Harris and Weibel 2010). Of course, the opposite is also true, and asylum grants contribute to this cyclical effect -- which is why Carlos Spector believes winning asylum cases is so important. He says he takes the strongest cases, because he cannot take them all, to show that Mexican asylees do in fact fit the definition of refugee and are in fact eligible for asylum. It is a practice that has been problematized by scholars like Bibler Coutin who says that choosing cases that fit the prescribed definition of refugee only serves to strengthen the narrow definition of asylum, leaving individuals with more ambiguous cases without options. However, Bibler Coutin's criticisms were made considering the Central American solidarity movements that used asylum as only one political tool in their organizing efforts. No such movement exists for Mexican refugees. To the contrary, considering the representations of Mexican immigration overall and the recent "lumping" of asylum into

these discussions, there is a large constituency that strongly opposes Mexican asylum because it is associated with immigration reform.

Further perpetuating this cycle is the issue of legal representation. Defendants in immigration court are not offered representation like those in criminal courts are, but representation has a strong impact on whether or not cases are granted or denied. A report by TRAC Immigration says that in 2010, 11 percent of asylum seekers without representation were granted asylum while 54 percent of represented cases were granted (Asylum Denial Rate 2010). However these data consider all nationalities, and it is likely that in Mexican cases, that are notoriously hard to win, representation may be even more important. Asylum cases are usually involved and long, and lawyers are not willing to take on the work if they are likely to lose. In fact every lawyer that I cold called said that they would not accept a Mexican asylum case except under very rare circumstances. One El Paso lawyer said that when people called asking about asylum, the first step was to exhaust every other channel -- asylum was the very last option. The question of money further cements this trend. Some Mexican asylum seekers may have ample financial resources, but I did not personally encounter any that did. In fact, most Mexican immigrants with financial resources would not apply for asylum (no matter their eligibility), because there are easier ways to migrate for those who have the resources. Take for example, Austin resident Alejandro Junco de la Vega, CEO of the powerful Mexican media conglomerate *La Reforma*. Junco de la Vega has publicly cited violence as the motivation for his immigration to the United States, however he did not enter the United States through the asylum system because he had the resources not to (Romero

2012). Journalistic accounts highlighting the influx of Mexican businessmen to Texas because of violence reinforce this conclusion.

Most lawyers cannot afford to work for free. Therefore the only lawyers that I found that routinely take Mexican asylum cases are non-profit organizations, except Carlos Spector, who frequently takes pro-bono cases and is in the process of applying for non-profit status. The lack of representation options vastly limits the number of asylum seekers who are likely to have positive asylum decisions. And high denial rates make representation even harder to find, contributing to a vicious cycle where lawyers are unwilling to represent cases because of high denial rates, and denial rates remain high because lawyers are unwilling to represent the cases. Further complicating the matter is the tendency for some lawyers to take the “easy” cases. Case law cannot be made more favorable with easy wins. Precedent is set by the Board of Immigration Appeals (BIA), and a case that makes it to this level of appeal has a bigger chance of influencing other cases. However, once a case makes it to the BIA, both denials and grants can become precedent either greatly helping other asylum seekers with similar cases or greatly increasing their chance of denial.

Not only are asylum decisions cyclical, the violence is too. In becoming migrants, individuals are exposing themselves to more risk of violence. Boehm (2011) and the 2013 Human Rights Report for Mexico both establish that migrants are a targeted group for violence and extortion in Mexico. Moreover, Menjívar (2013) says that refusing a group judicial recognition is a type of legal violence that asylees face on the US side of the border. Other types of violence include: the psychological toll that such official

indifference takes on those who have suffered through terrible trauma, detentions that are long in duration for some asylum seekers (Gilman 2013), the lack of psychological care that many interviewees mentioned, and the possibility of deportation back to the source of trauma. Also significant are the currents of racism and xenophobia against Mexican migrants living in the United States that are evident in the mainstream media and in the everyday lives of Mexican migrants.

### **Refugee Definitions**

Despite all of the factors mentioned above, including politics, racism, and the cyclical nature of the judicial system, one frequent reason given by experts to explain the current high denial rates for asylum claims from Mexico and Central America is that the types of claims the applicants present are not aligned with the definition of refugee: someone who is out of their country because of a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.” According to this argument, there is a “protection gap” for those who legitimately fear persecution but cannot prove that they are being targeted for one of the five acceptable categories. In other words, asylum precedent establishes that “generalized violence” is not grounds for protection. Therefore, if everyone in a migrant’s home country faces a threat of persecution, and he/she is not afraid of being specifically targeted for at least one of the five acceptable reasons, the person is not eligible for asylum. Furthermore, an asylum applicant must prove that the chosen category makes them distinguishable from the general public, and that belonging to that group was a “central reason” for the persecution faced. Bibler Coutin (2001) notes that the terror

tactics used during the Central American revolutions relied on the fear created by ambiguity and uncertainty, making this “particularity” hard to argue. However, at least in this case the conflict was widely considered “political” as understood in a Cold War context. In current contexts of violence in Mexico, the terror tactics mirror those used in the Central American wars, but the political nature of the violence does not fit accepted definitions of political violence -- a reality that further complicates recent asylum claims from the country.

Despite these challenges, recent scholars have argued that changing interpretations of violence should bring gang-based claims more in line with the current definition of refugee. Other scholars suggest changing available protection measures to close the “protection gap” that often exists between the definition of refugee and the actual experiences of displaced persons (McAdam 2007). In this section I will explore the legal arguments and counter arguments regarding Mexican asylum cases. Most research on this subject focuses on Central American cases, but because the types of cases are often similar, I assume that the conclusions can be applied to Mexican asylees as well.

Most Mexican asylees base their claims on membership in a social group. In several granted cases, including two of the interviewees for this thesis, the social group was a family. This social group argument has become popular, because the situation is widely regarded by the US government not to be political -- a position exemplified by the omission of references to government abuses in human rights reports. However, lawyer Jilian Blake (2012) argues that in light of new scholarship on dual-sovereignty, political opinion should also be a valid claim for victims of gang violence. Similarly, in one now

decided case Spector said that he attempted to argue that refusing extortion was a type of political opinion. In his view, the criminal organizations acted as a de facto government, and refusing the extortion was akin to refusing to pay taxes -- an interpretation strengthened by the fact that the extorters were police officers. According to Blake's analysis, Spector's would be an acceptable argument, but she warns that lawyers should be careful not to reinforce notions that gangs are just simple criminal organizations by implying that refusing gangs is akin to upholding the legitimate rule of law. She says this argument further reinforces the erroneous idea that gangs operate under, rather than with, the state. However, it is one thing to argue that political opinion is a valid claim in theory and another to have the idea accepted and reinforced in practice. Spector's case had a favorable outcome, but the judge did not base her decision on the political opinion argument, and, as the previous section established, decisions are an important shaper of asylum law in practice. Furthermore, in the matter of S-E-G- that became precedent in 2008, the courts ruled that refusing gang recruitment was not a political action because the evidence did not show that the defendants were "politically active or made anti-gang political statements." This finding has been critiqued by scholars who say, "This reasoning suggests that only those who put themselves in more danger, by openly criticizing dangerous gangs, will be eligible for asylum based on their political opinion (Harris and Weibel 2010)." Spector has been trying to solve this dilemma by encouraging some of his clients to be politically active once already present in the United States. This tactic will be further discussed in chapter three.

Some scholars argue that the refugee definition is insufficient and protection mechanisms should be expanded to reflect the current realities of displaced persons (McAdam 2007). Bibler Coutin provides a particularly compelling example of the divergent ways that refugee status is interpreted by different groups. In her article, *The Oppressed, the Suspect, and the Citizen: Subjectivity in Competeting Accounts of Political Violence* (2001), she argues that the ways activists and refugees in the Sanctuary Movement defined refugees differed from state definitions of the term. Bibler Coutin explains:

Though their thinking was not uniform, movement members tended to define oppression as a societal process in which some groups (such as elite families, U.S. corporations, military leaders) took advantage of others (poor farmers, populations of countries where U.S. corporations operated, victims of human rights abuses). To seek justice for victims who fled to the United States, religious activists used U.S. refugee law....this remedy prioritized legal definitions of persecution over other understandings of oppression.

Essentially, she says in countries where the government is considered “legitimate,” meaning not ideologically opposed to the United States, the state is generally assumed to protect the rights of its citizens. In such cases, only those that can prove that they are somehow distinguishable from the general public and targeted for being different, are eligible for asylum. Bibler Coutin argues that such a narrow interpretation of social groups ignores the larger, globalized trends of marginalization that activists frequently cite. However, as was discussed in the previous section, the context of Mexican asylum differs from the Central American cases during the Sanctuary Movement because of the small scale of advocacy and activism surrounding the trend and the conflation of asylum into polarized discussions about broader immigration reform.

Still, Bibler Coutin's theories regarding divergent understandings of oppression and persecution are important when trying to understand current asylum cases from Mexico. Depictions of the drug-war and violence in Mexico often emphasize the economic factors that have led to extreme inequalities within Mexico and between it and the United States. Similarly, some depictions of asylum, such as that outlined by the aforementioned *New York Times* article on the D.E.A. informant, emphasize the US role in asylee creation. These interpretations contribute to a moral argument for granting Mexicans asylum.

The 9 DREAMers who applied for asylum in 2013 employ a similar tactic, arguing that the United States has a moral obligation to allow them into the country. While the DREAMers do say they fear persecution, their moralistic argument rests in highlighting their contributions to the country and their "Americanness" rather than highlighting US involvement in violence and instability. However moralistic arguments, especially those concerning US involvement in the drug-war, are unlikely to work unless there is a dramatic shift in public opinion and pressure. Furthermore, the legal definition of refugee in the United States has been narrowing even as international definitions widen. There is little indication that the trend will reverse, especially considering the strong anti-immigration sentiment in the United States that so often vilifies Mexican migrants.<sup>14</sup>

Mexican nationals are denied asylum in disproportionate numbers when compared to other nationalities and to past rates experienced by the group. Although

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<sup>14</sup> Interestingly, even as legislation narrows the definition of asylum, overall asylum grant rates have been increasing.

political influence is less obvious in the asylum system than in decades past, policy concerns often still trickle down and influence individual asylum decisions. Political influence in Mexican asylum seems obvious when considering the many reasons approving asylum cases from Mexico directly contradicts US policy concerns. Although direct political influence is hard to scientifically “prove”, it seems possible in the Mexican case by the decline in asylum approval rates while violence rapidly increased in Mexico and by the softened tone of the State Department’s Human Rights reports during the spike in violence. This softened tone, used to deemphasize the Mexican government’s role in human rights abuses and to ensure funding under the Mérida Initiative, is highly problematic as the Mérida Initiative is contingent upon a certain adherence to human rights standards.

Asylum’s conflation into the highly politicized immigration reform debates further contribute to disproportionate denial rates for the group because political ideology plays a key role in individual judge’s denial rates. The conflation may have also inhibited political organization around the issue (in contrast to the Central American solidarity movements). Another factor influencing denial rates is that gang-based claims are generally assumed to diverge from the current definition of refugee. However, recent scholarship on insecurity in the region counters claims that the violence is not political with the theory of dual-sovereignty. Still, as Bibler Coutin (2001) notes, the definition of refugee represents a narrow interpretation of persecution and oppression that focuses on liberal notions of the state and the individual rather than on global contexts.

Although some scholars argue for an expanded definition of refugee, the change is not likely to occur anytime soon, considering US foreign policy interests and recent legislation that has actually worked to narrow the definition of refugee. This indicates that there will continue to be a significant “protection gap” for Mexican asylum seekers who cannot prove that they have been singled out and persecuted for any of the five acceptable reasons. These individuals will likely continue to be denied asylum regardless of the severity of the violence they have endured. This lack of legal validation coupled with the fact that many of these individuals will be deported back to threatening situations represents a continuation of violence for both asylum seekers and other Mexican immigrants who have migrated due to violence. The cyclical nature of the legal system, that bases decisions on precedent, further intensifies patterns of denial. In such a system, the more Mexican asylum cases are denied, the more likely it becomes that others will also be denied (and vice versa).

## Human Rights Reports Compared

These are the changes made to the introduction of the State Department's Human Rights Reports from 2008 to 2009:

Bolded text indicates the words deleted from the 2009 report. New text is enclosed in brackets. Note that the 2008 version was softened from the 2007 version. The changes noted are only the most significant, and may not represent all changes.

Mexico, with a population of 110 million, is a federal republic composed of 31 states and a federal district, with an elected president and bicameral legislature. President Felipe Calderon of the National Action Party (PAN) was elected in 2006 to a six-year term in generally free and fair multiparty elections. The country continued its fight against organized crime, which involved frequent clashes between security forces and drug traffickers. While civilian authorities generally maintained effective control of the security forces, there were instances in which elements of these forces, acted **independently of government authority** [changed to: "outside of the government's policies"].

The government generally respected and promoted human rights **at the national level by investigating, prosecuting, and sentencing public officials and members of the security forces**. However, the following **human rights** problems were reported: unlawful killings by security forces; kidnappings; physical abuse; poor and overcrowded prison conditions; arbitrary arrests and detention; corruption, inefficiency, and lack of transparency in the judicial system; confessions coerced through torture; criminal intimidation of journalists leading to self-censorship; **impunity and corruption at all levels of government**; domestic violence against women, **often perpetrated with impunity**; violence, including killings, against women; trafficking in persons, **sometimes allegedly with official involvement**; social and economic discrimination against some members of the indigenous population; and child labor.

### **Chapter 3**

#### **“We Are Not Criminals”: The El Paso/Ciudad Juárez Case**

The first two chapters of this thesis focus on the statistics and legal policies concerning Mexican asylees. This last chapter will more closely examine the human impact that these policies have. This will be achieved by presenting information gained through the interviews I conducted during the summer of 2013 and through contact I had with journalists while working at the Knight Center for Journalism in the Americas from January 2012 to the present. For reasons I will outline in this chapter, these interviews have given me reason to believe that there are significant differences in the ways in which Mexican asylees experience the asylum system compared to applicants from other countries. I will also discuss some universal difficulties faced by asylees of all nationalities that are worth highlighting because of the extreme influence they have on individual lives.

Because the majority of the asylees I met filed their cases in El Paso, I think it is valuable to briefly explore the statistics for the El Paso/ Ciudad Juárez area. This will also help illustrate how variable grant rates are between courts and jurisdictions. Even though national rates of asylum grants are around 8%, in El Paso the rate is often 0%. Ciudad Juárez and El Paso are in essence one city divided by the border wall, but on one side rates of violence are some of the highest in the world, on the other side crime rates are some of the lowest in the United States. Furthermore, Mexico’s overall homicide rates are rising, but Juárez’s are declining (although they are still very high). The two following charts show that asylum applications directly correspond with homicide rates

even when those rates are declining. In other words, asylum does not represent a floodgate that once opened cannot be closed.

Chart 7: Juarez Homicide Figures; Molly Molloy, Frontera List

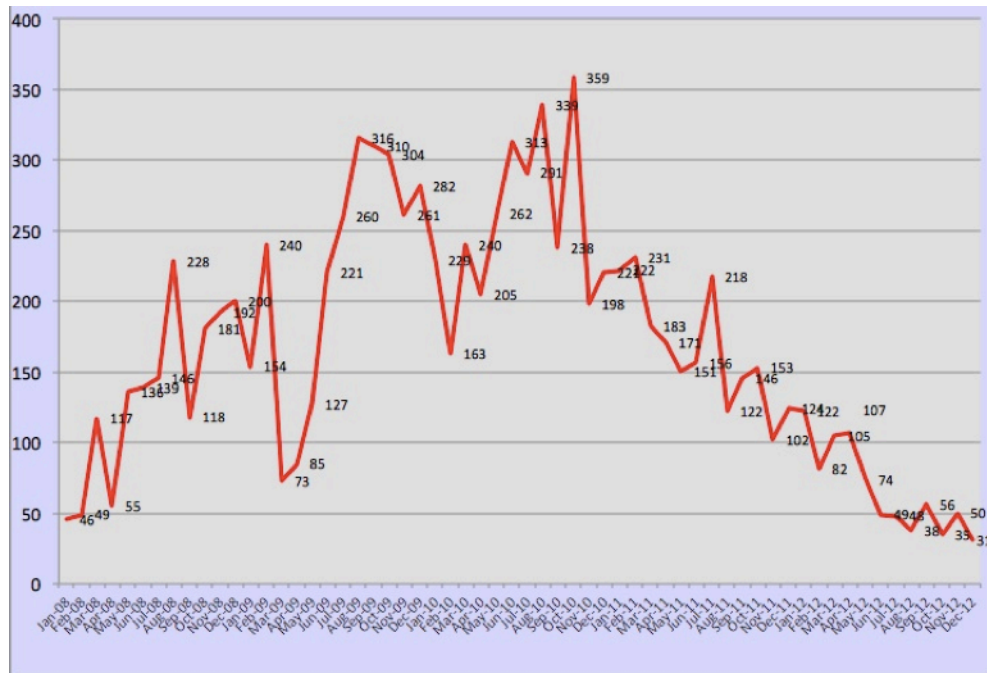
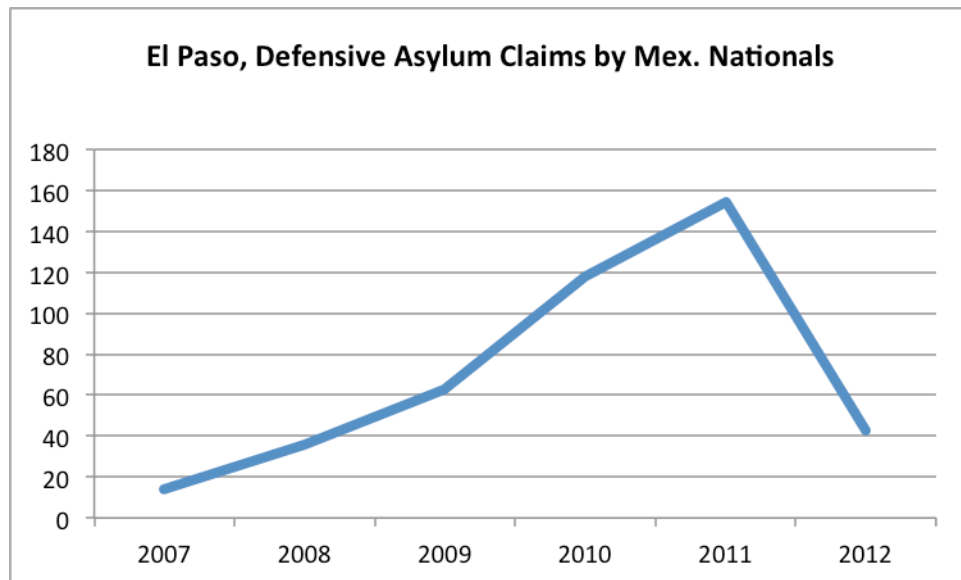


Chart 8:



In 2011, El Paso's two immigration courts (one for detained and another for non-detained defendants) received a total of 154 asylum applications from Mexican nationals. However, that year none of the 49 defensive cases decided on merit in El Paso were granted asylum. Furthermore, according to DOJ data received through email exchanges, in 2011 Mexican applicants represented 45.6% of applicants applying for asylum from detention and 132.3% applying defensively in the other court (obviously, there are inconsistencies in DOJ figures considering the number of Mexican asylum applications cited is more than the total number received for this court).

It is also worth reiterating that allegations that Mexican asylum applicants are applying for asylum to gain entry to the United States and then abandoning their cases, are unfounded. The charts below show that the number of abandoned cases for Mexican applicants is actually below the average and on par with Chinese applicants. In 2009 the number was higher, but according to an El Paso attorney this may have been because Mexican applicants did not yet understand the system. As asylum has become a more common form of immigration relief for Mexican nationals, word-of-mouth exchanges about the intricacies of the system may have helped reduce misunderstandings. Recall, that this same attorney said he received several inquiries from Mexican asylees who thought that they had been granted asylum after passing a credible fear interview in detention.

The second chart shows national figures for cases decided in "other" ways. This category includes many alternatives to merit-based decisions, including cases where withholding of removal was granted, those closed under prosecutorial discretion, and

those transferred out of the jurisdiction. It is clear that the cases of Mexican applicants are decided in alternative ways more often than others. However, it is unclear whether this is because more Mexican applicants are not eligible for asylum for the reasons discussed below or whether courts are just reluctant to grant asylum to Mexican applicants. A mixture of factors may be contributing to the trend. However, the increase (rather than a steady, high rate) in the percent of cases labeled “other” by the DOJ seems to suggest that courts are deliberately choosing to opt for more temporary types of protection rather than granting Mexican applicants asylum.

Chart 9:

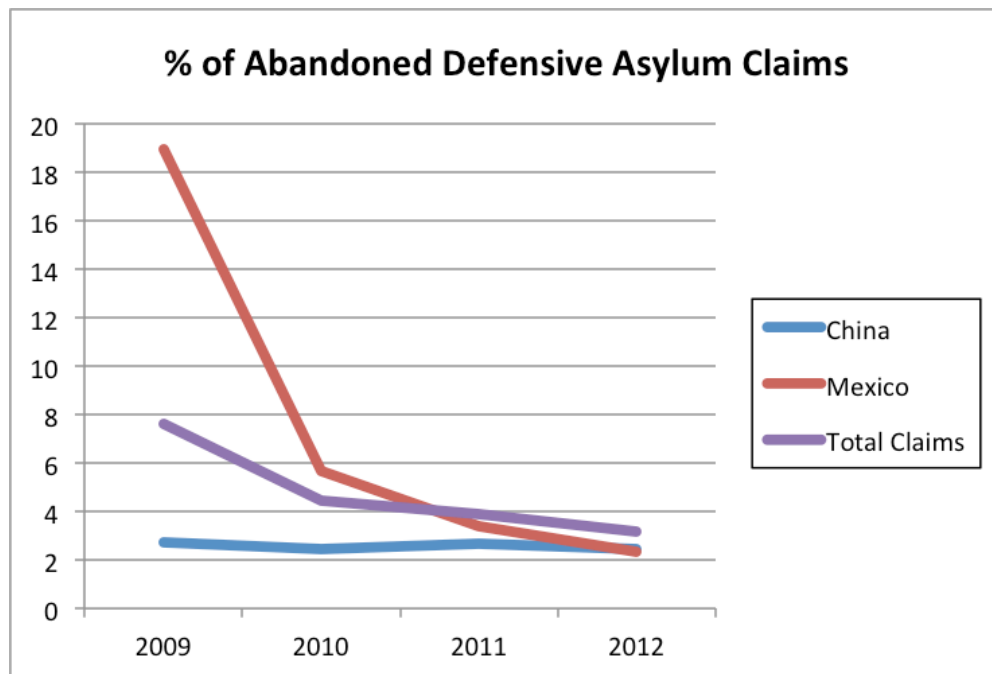
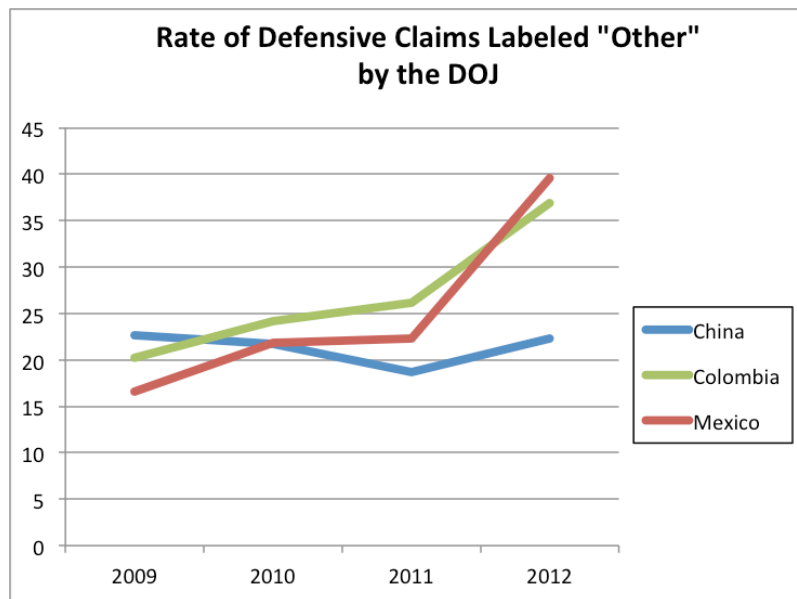


Chart 10:



### **Christian Chaidez**

While conducting fieldwork in El Paso, Carlos Spector invited me to hear the final decision in the case of Christian Chaidez, a young man, seeking asylum from detention in El Paso. In this case, I am using the asylee's real name because I will not be releasing any sensitive information that has not already been published by area newspapers. Christian was born in Mexico; he then moved with his family to the United States when he was five years old. Eventually, after finishing high school in the United States, he was deported back to Juárez following an arrest for an unpaid traffic violation. Most of his immediate family, including US-citizen siblings, stayed in the United States. Christian's time in Ciudad Juárez coincided with one of the most brutally violent periods the city experienced, and at one time the city was called the most dangerous on Earth with a homicide rate that consistently surpassed 300 murders a month from late 2009 to

the end of 2010 (see Chart 8). During a three year time-period, eleven of Christian's family members were murdered. Christian, fearing for his life, fled to the United States in 2011 where he lived until he was served with a notice from ICE in 2012 that said he was to be removed from the United States. From immigration detention, Christian applied for asylum. He remained detained for more than a year while his case was pending in court. In an interview Spector said that Christian's mental state was extremely precarious, and that he had been repeatedly denied adequate mental care. Spector said in one meeting with Christian, he said he would rather die in Mexico than spend any more time in detention.

After Christian passed his reasonable fear interview, ICE could have released him but decided not to, citing his previous immigration record. Depending on how far a person is from the border when they are detained, their detention times can greatly vary. In Christian's case, ICE had complete and full discretion regarding the length of his detention, and Christian was not allowed to request a judicial appeal. In other words, Christian was not permitted to see a judge and was at the complete mercy of ICE regarding the length of his detention. If Christian's case had taken 3 years to decide, he could have theoretically been detained for the entire period if ICE said it was a matter of public safety. There is no way to challenge ICE's determinations in such cases.

Having a previous deportation from the United States increases the chance that an individual will be detained for a long period of time. And because of the long migration history between the two countries, Mexican nationals are more likely to have US records than some other groups. Furthermore, it is likely that the same stereotypes discussed

earlier, play into determining whether Mexican asylees are released or not. My interviews strongly suggest that Mexican asylum seekers are being detained for longer periods of time than other asylees. It is a suggestion that should be further investigated in the future, and will require a considerable amount of data that is not publicly available at this time.

The day I went to court, Christian's case was granted favorably, but he was not awarded asylum. Because Christian had been deported before, he was only eligible for a status known as "withholding of removal." Still, the news came as a pleasant surprise for Spector and as an overwhelming joy for Christian and his family, who wept and held each other tightly for the short period of time they were allowed to meet in the fluorescently lit hall outside of the courtroom. But while "withholding of removal" was the most favorable outcome that could have resulted from Christian's case, it is not the same as asylum. Asylum provides a path to permanent residency and citizenship: withholding of removal allows a recipient to live and work in the United States for an unspecified period of time. However, the government could decide at anytime that circumstances have changed enough to re-open the case in immigration court.

Christian's case raises two key points that I will discuss. The first is the close connection that many asylees from Mexico have with the United States that makes them ineligible for asylum. The second is the continuation of violence on the US side of the border including the lack of adequate mental care and the long detention times that Mexican asylees may face to a greater degree. Although, I intend to keep the discussion narrowly focused on Christian's case, based on other interviews, I do not believe the following findings are unique to him.

Christian was in essence a DREAMer, but ineligible for DACA<sup>15</sup> because of his previous deportation. He also clearly had a reasonable fear of persecution in Mexico. Christian's family presumably relocated to El Paso when he was a child for economic reasons, and Christian became very Americanized. His case shows the ambiguity present in many immigration cases. As Boehm highlights, the factors affecting migration are becoming increasingly grey. The case of the DREAM-9 also highlights this ambiguity. The Dream-9 were largely seen as political activists fighting to return to their adopted home through the asylum channel, but they presented evidence of persecution compelling enough for them to be released after credible fear interviews. In fact, although they have many motives for returning to the United States, members of the group have said that they were targeted in Mexico for their ties to the United States. Thus, these asylum cases highlight the dysfunction of the entire immigration system regarding Mexican immigration. If Christian had not been deported in the first place, he would never have faced the grave threats that he did nor would he have had to apply for asylum. Similarly, because of the United States' contradictory and violent policies toward economic migrants, Christian was deported and was therefore ineligible for asylum and other forms of relief. Asylees like Christian and the Dream-9 find themselves between a rock and a hard place. They feel like Americans but are denied the privilege of full citizenship. Yet when they return to Mexico they are targeted for being American and face the severe insecurity plaguing the country, an insecurity that is supported and encouraged by US policies such as the Mérida Initiative. Then when they return to the United States fearful

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<sup>15</sup> Deferred Action for Childhood Arrivals

for their lives, they are systematically rejected along with other Mexican nationals who do not have ties to the United States.

Except, of course, for Christian. In some kind of miracle, Christian was granted withholding of removal. Withholding of removal is usually applied for in conjunction with asylum, but is harder to win because applicants must prove that they are “more likely than not” to face persecution. The other benefit of withholding of removal is that the one-year filing deadline for asylum does not apply. That is where the benefits end. Withholding of removal is not asylum. It is a temporary status that allows the grantee to work and prohibits the United States from deporting the person. However, unlike asylum, withholding of removal does not allow the beneficiary any pathway to permanent residency or citizenship. Furthermore, the cases can be re-opened by the immigration courts at any time. In this way, withholding of removal is a status similar to the Temporary Protective Status (TPS) granted to Salvadorans in the 80’s and 90’s, and the problems with such temporary statuses are becoming increasingly evident in their cases.

Many of the recipients of TPS have been limited in their ability to fully integrate into US society because TPS does not provide a path to citizenship. Also, some recipients of TPS are now being deported 20 or more years after their arrival to the United States and after having established deep roots in the United States (some since childhood). They are deported for failing to renew the status, committing a felony, or having two or more misdemeanors, among other reasons. Furthermore, TPS is meant to be temporary and even though Salvadorans’ eligibility has been extended through 2015, it is not clear if it will be extended again (USCIS 2014).

Still, for now, withholding of removal allows Christian to live, because if he were deported he would undoubtedly face life-threatening danger. When I asked Spector why he thought Christian won his case, he replied, “At some point the judges simply can’t ignore the facts.” Unfortunately, Christian’s case represents the exception and not the rule. Later though, Spector said that he was beginning to suspect that immigration judges were resorting to alternative means of deciding cases rather than granting asylum. Chart 11 demonstrates that the rates of Mexican asylum cases decided in alternative ways has in fact increased and is currently at a rate higher than that experienced by other groups.

The second point that Christian’s story raises is the matter of a continuation of violence on the US side of the border. Cécilia Menjivar (2013) says:

Perhaps linked to my long-standing interest in systems of state terror and violence in Latin America (see Menjívar and Rodriguez, 2005) and in what multiple forms of violence -- structural, symbolic, gender, and political -- can do to social relations and to individuals (see Menjívar, 2011), I was able to identify key parallels between the lives of individuals living in manifold, direct and indirect forms of violence in Latin America and the immigrants’ stories I heard in Phoenix.

I was able to make similar connections. In my analysis, which is supported by Menjívar and Boehm (2011), Christian’s initial deportation was an act of violence, and the violence started way before his deportation. US socio-economic policies that spurred the undocumented immigration that included a young Christian and then the subsequent denial of legal relief and validation for him are manifestations of violence. However, Christian’s deportation proved to be even more violent than many because he was forced into a life-threatening situation, created by a long trajectory of global policy initiatives supported by the United States.

Christian's story is probably not unique; even the clearly biased US State Department reports acknowledge that migrants are a targeted group for violence in Mexico. Eventually, Christian crossed the border clandestinely to El Paso, a process that is widely acknowledged as increasingly dangerous, only to be forced to live in fear of deportation again. Soon, Christian was once again targeted for deportation. He applied for asylum, a status he was not eligible for and that he knew Mexicans were rarely granted no matter how horrific the persecution experienced. He endured over a year in detention, never really knowing when he would be released and if he would be allowed to stay in the United States. During his time there, his attorney was only allowed to provide him with a mental healthcare professional once. That professional said she was very concerned about Christian's emotional state, but she was never allowed to return. Eventually, Christian was granted withholding of removal, a status only providing a more secure limbo. Although he has been awarded some long-term validity, it still may only be temporary, and it does not allow him a path to permanent residency or citizenship. But even after providing legal relief for Christian, the United States continues its violence through its support for the Mexican government that is complicit in the crimes committed against Christian and his family. Asylee after asylee that I spoke with said, "We want Justice in Mexico". They toured the United States, a country that treats them like criminals, spreading their message about the grave human rights abuses happening in Mexico, and pleading to audiences of students, activists and reporters for answers to their demands for justice.

These pleas may come as a surprise for some US residents. However, the US government is aware of the abuses in Mexico and its own exclusionary policies regarding immigrants. In fact, many policies are constructed explicitly to deter immigration from Mexico by making life as hard as possible (see Méndez). Regarding asylum seekers, detention is one such deliberate practice. Also, as I illustrated earlier, State Department reports were systematically revised to downplay official involvement in the abuses taking place in Mexico. This awareness makes the United States' involvement in the construction of a militarized border and insecure conditions in Mexico, the systematic denial of the violence inflicted on Mexican nationals, and the criminalization of these individuals all the more violent.

### **Assimilation and Coping**

Even for those granted asylum, the legal battle is only the first obstacle in a long line of struggles. The struggle for assimilation has been well documented in immigration literature and is felt by economic immigrants and refugees alike. However, there were some obstacles that I found to be unique to asylum seekers.

The lack of adequate mental healthcare was a recurring theme across interviews, and it was quite clear that some asylees were in better off emotionally than others. One employee in a refugee aid organization told me that it was incredibly hard to find mental healthcare professionals able to deal with such severe trauma. She told me in one case a psychiatrist broke down mid-session with one of the asylees and was unable to move forward with the counseling session. The issue of money is also a relevant one in this case. The fact that one of the larger aid organizations had trouble finding adequate care

for their clients does not bode well for the many asylees who do not have the support of similar institutions. Most interviewees told me that they had no or very little psychological care after arriving in the United States. Once individuals were granted asylum (or some related form of relief) it was up to them to learn to cope, and they chose to heal in myriad ways. Some joined Spector's activist organization Mexicanos en Exilio (Mexenex), others removed themselves completely from politics in an attempt to move on. Carlos Gutierrez, an asylee and double-amputee chose to ride a bike from El Paso to Austin, TX to raise awareness about the situation in Mexico. Upon his arrival in Austin, Gutierrez tearfully urged a room full of reporters, "We are not criminals."

Some asylees find the large community of Mexican immigrants in Texas to be helpful, others lament that the Mexican community does not understand their plight. "They chose to come here, we were forced to come," several interviewees said. Regardless, the proximity of Texas to the border with Mexico, and especially the proximity between El Paso and Ciudad Juarez, means that asylum seekers from Mexico are in a unique position compared to other refugee groups. For example, one asylee (still waiting for a court date 4 years after originally applying) in Las Cruces, New Mexico said that he once saw a known sicario<sup>16</sup> from his former hometown walking down a Las Cruces street. "I don't go out to bars he told me, I can't. Why, to get into trouble? Maybe it is safer on this side of the border, but people are still killed on this side." The real, physical threat of violence is still a close reality for some asylees, especially those from northern Mexico who have relocated short distances just across the fluid divide.

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<sup>16</sup> Cartel hit-man

For some the proximity is a good thing; many of the most vocal asylees are those who are fighting for justice for the murders of their loved ones. These individuals were targeted for their demands in Mexico and so continue the work on this side of the border. In their cases, the proximity of the United States to Mexico allows them to feel like they are able to effectively continue their struggles for justice. Among this group are three young girls whom I met during a Mexicanos en Exilio event in Austin, Texas. Twins Nitza and Mitzi (now 18) and younger sister Daisy bravely stood in front of reporters and told them how their mother was kidnapped by soldiers and has not been seen since. “We just want our mom back,” they said between tears. The girls’ mother’s case is currently being seen by the Inter-American Court for Human Rights in Costa Rica and represents the first of its kind from Mexico to be tried there. Despite rulings by the international court requiring Mexico to protect the girls and their family, they faced continued threats during their quests for justice in Mexico. Now they face the daunting task of winning their asylum cases in the United States, learning English, finishing school in a foreign country and continuing the fight for their mom from Texas.

For many asylees this fight for justice on the US side of the border is cathartic. For others it is a media circus. However, media attention and activism in the United States is a key part of Carlos Spector’s success. In fact, in El Paso no other attorney that I spoke with had ever won an asylum case for a Mexican national. Spector relies on the media attention and publication of news stories to create judicial pressure. For some this is not a problem, in fact it is part of their healing process. For others, publicly talking about the extreme trauma they experienced is in itself traumatic. The problem lies not

with the strategy but in the fact that, at least in El Paso, this public display is the only way to win asylum. This obligatory media display represents a continuation of violence for some, and an unnecessary burden for others. And it is not a burden shared by many asylum seekers of other nationalities.

It is important to note that despite my own analysis about a continuation of violence on the US side of the border, with the exception of one, every asylee I spoke with praised the US government. For them the United States represented their only hope for a new life and a functioning system that worked to protect its citizens. Asylees would condemn their detention or the difficulty in obtaining asylum, but mostly they would attribute this to a misunderstanding rather than a fault of the US government. This however, does not mean that asylees expressed a desire to be in the United States. On the contrary, most felt they had been ripped from their homes and were being forced to start over from the very bottom. They lost loved ones, their homes, their lives' savings, their cars and all of their possessions. In some cases family members were left behind. In others, asylees had to learn to cope with extreme physical debilitations. The asylee in Las Cruces told me he could not even call his remaining family members in Mexico for fear of putting them in danger. All interviewees talked about the challenge of finding work. "I used to be the owner of a bakery, now I work in a grocery store," said one man. One former journalist now works selling snow cones, another works at a fast food restaurant. "It is really difficult learning English," they all said. Those with children said that their kids were able to adapt more quickly.

It was clear that most of the interviewees, felt a huge amount of gratitude to the United States for affording them protection or even just the possibility of it. However, as I mentioned earlier, all of these asylees had already been granted some form of relief or still had pending asylum cases. The response to the United States may have been different if I had interviewed applicants who had been denied protection. In fact, the one interviewee who expressed a certain amount of resentment toward the United States had been waiting on a decision in his case for more than 4 years.

## **Chapter 4: Conclusions**

Because this research represents the first academic inquiry into the topic of Mexican asylum, it may seem that it raises more questions than answers. Indeed, there is much further research needed regarding how violence is influencing migration and how asylum fits into that picture.

This thesis establishes that a portion of Mexican nationals are not eligible for asylum because of past immigration infractions, but it is unable to provide specifics such as the exact percentage of Mexican asylum seekers that are ineligible. Similarly, I discussed the case of Christian Chaidez who grew up in the United States before being deported back to Mexico. He faced considerable persecution there and was eventually granted “Withholding of Removal” by an immigration judge. I also discussed the case of the DREAM-9, but how many other asylees grew up in the United States and claimed asylum after being deported? Many Mexican asylees that I met were detained for long periods of time, and I provided an understanding for why Mexicans may be detained longer than other asylees. However I was unable to find data on the average length of detention for Mexican asylees compared to other groups. Furthermore, this thesis has not examined issues of gender, age, race or economic status among asylees, variables that could prove very important in decisions. Another area warranting further investigation is whether and how patterns of violence in different regions of Mexico affect asylum numbers, especially since the proximity to the border is so varied across regions. Other questions include: How are asylees reacting to high denial rates? Are they changing their

migration strategies? Perhaps they are entering illegally to apply for affirmative asylum instead of presenting themselves at a port of entry. Are they bypassing asylum all together and opting to enter and live undocumented? Or maybe some are choosing to apply for asylum in other countries such as Canada or Spain. More questions include: What percentage of Mexican asylees are represented in immigration court? How does representation affect outcomes for this particular group? How are these asylees being accepted into society—by other immigrant groups and by citizens? What happens to the majority of Mexican asylees who are rejected?

There are also several recent changes that may affect future research on this topic. In February 2014, the 2013 State Department Human Rights Report was released, and it contained noticeably harsher language than previous reports, especially regarding the involvement of the Mexican government in abuses. It remains to be seen how this will affect asylum decisions in 2014. However, it is likely that denial rates will stay high because of the influence of individual judges' ideologies and the increasing prominence of asylum in the media, where it is often considered within the context of politicized immigration reform debates. Another quite ironic change is the coalition that has formed within the Mexican legislature to advocate on the behalf of Mexican asylees in the United States. This coalition is led by former President Calderón's sister and former presidential candidate, Senator María Luisa Calderón (Washington Valdez 2014, "Piden Legisladores" 2014). The second chapter of this thesis stressed the importance the United States places on keeping good relations with Mexico and established that accepting asylum seekers is often seen as punitive for the sending country. So it is really a strange

change of events that members of the Mexican legislature would lobby on the behalf of asylum seekers (who are often fleeing official abuse). Future investigations may want to consider these factors when examining changes in asylum.

I do not necessarily think of these and the many other remaining questions as limitations of this thesis. My only intent was to provide an academic overview of the situation regarding Mexican asylum, and I consider the lingering questions testament to the importance and complexity of the topic. Despite its constraints, this work serves to outline the general situation regarding asylees from Mexico and to highlight key issues that warrant further investigation. Furthermore, it provides the following key conclusions:

There has been a rapid increase in asylum applications filed by Mexican nationals, but a decrease in the percentage of cases granted. Despite the increase, asylum applicants only represent a small fraction of overall Mexican migration, but the trend reinforces claims made by scholars that violence is becoming an important factor influencing migration for Mexican nationals. Moreover, it has been established that, although there may be some “bogus” or “frivolous” claims, the overall increase in asylum applications from Mexico directly corresponds with homicide statistics. Fears that asylum is an “immigration loophole” for criminals and economic migrants are unfounded because of the difficulty Mexicans face in obtaining asylum and because of the strong correlation between homicide rates and application numbers. The case of Ciudad Juárez and El Paso further demonstrates that homicide statistics are a strong predictor of asylum rates. In this case, there was a decline in asylum numbers in El Paso as homicide figures decreased in Ciudad Juárez. This shows that asylum does not represent a “floodgate”

holding back waves of Mexicans waiting to enter the United States and that asylum numbers do decrease as homicide rates decline.

The low approval rates experienced by Mexican asylees after 2008, that actually decreased even as human rights concerns increased, can be attributed to several factors. First is the noticeable de-emphasis placed on official involvement in human rights abuses in the State Department's annual human rights reports. This de-emphasis regarding the level of official involvement in abuses directly contradicts independent assessments of the situation made at the time and the stories of individual asylees. However, because the reports represented the official assessment of the situation in Mexico, softened reports undermined the credibility of asylees. This finding should call into question the objectivity and neutrality of State Department Human Rights Reports and render asylum denials made under the softened reports problematic. It should also raise questions regarding the legality of the Mérida Initiative amid allegations of widespread human rights abuses by Mexican officials.

Furthermore, this thesis adds to the large body of work calling for more judicial consistency when deciding asylum claims. Based on the legal scholarship and the particularly politicized nature of any discussion concerning Mexican migration of any kind, it is likely that the politics of individual judges plays a considerable role in the high denial rates faced by Mexican asylees. Moreover, based on previous academic work it is clear that media coverage of immigration does affect individual opinions. Therefore it is important that journalistic depictions regarding immigration and the drug-war become

more integrated because, as this thesis shows, the two discussions are not mutually exclusive.

Furthermore, it is widely recognized that “gang-based” asylum claims are usually not considered political by narrow asylum system standards but instead represent cases of “generalized violence”. Therefore it is hard to argue that Mexican asylees are being targeted for a political opinion or membership in a particular social group. However, the idea that the situation is not political is in direct contradiction to asylees’ own claims, independent reports, and is a misconception reinforced by “softened” human rights reports that deemphasize the political nature of violence. The idea is also challenged by the theory of “dual sovereignty” that questions existing interpretations of organized crime claiming that, in places like Mexico, criminal organizations work with the state (controlling complete sectors of the economy) rather than under the state. Moreover, from interviews it is evident that there are many Mexican asylum cases that fit the traditional definition of refugee. However, even in some of these “ideal” cases, interviewees had not received a decision years after the initial application was filed (even though there was a selective bias in this research towards interviewees with strong claims). Therefore, I conclude that although the nature of asylum claims from Mexico may contribute to high denial rates, this is not the principle reason for the disproportionately high rates. This is most evident when considering that Mexicans face higher rates of denial than other nationalities with similar types of “gang-based claims” such as Colombians.

I also argue that the experience of individuals on the US side of the border represents a type of continued violence for asylum seekers. This is evident in the socio-

economic factors that have led to migration for decades, the lack of legal relief and validation afforded asylees, deportation and detention practices, and the refusal of the US government to formally recognize the insecurity and official involvement in abuses, which lead Mexican nationals to apply for asylum. Furthermore, applying for asylum only represents the first great obstacle that individuals must face. They also must cope with the many struggles of starting over without anything and assimilating into a society where they are stigmatized for being Mexican. Furthermore, the fact that there is already a large Mexican immigrant community in Texas is simultaneously a good and bad thing. It eases the assimilation process a little by providing familiarity, but many asylees still feel alienated by their experiences. The proximity of Texas to the border is also a mixed blessing. For some it means they are able to continue in their struggles for justice, for others it leads to a continued sense of insecurity. On top of all these challenges, the severe trauma and PTSD that many asylees experience usually goes completely untreated.

Although this thesis focuses on asylum as a form of relief, I do not argue simply that asylum should be granted in higher numbers. Although clearly regulations prohibiting nationality from factoring into asylum decisions indicate that grant rates should be higher, especially considering that reports of human rights abuses correspond with the rise in applications. Instead, I also argue that the United States should work to curb violence in Mexico. It is clear that US economic policies, foreign policies, and anti-drug efforts have contributed to the violence in Mexico today. It is just as clear that the United States is implicated in human rights abuses by its continued funding of the

Mexican military under the Mérida Initiative and by its own enforcement efforts that have allowed abuses to occur in order to build cases against targeted individuals. Therefore, there should be a drastic reimagining of the ways in which the United States supports Mexico. Considering the independent reviews of human rights conditions in Mexico, the United States should cut funding under the Mérida Initiative and open third-party investigations into its own enforcement tactics that often ignore violent crimes committed by informants. If the United States wants to aid stability in Mexico, it should stop supporting militarized enforcement tactics and consider funding such things as judicial reform, which former president Zedillo said, during a talk at the University of Texas, should be Mexico's number one priority.

Still the concerns regarding Mexican asylees should be addressed so that practice more accurately reflects law-- this is literally a matter of life and death. Reforms to the asylum system to bring practice in line with current law will undoubtedly save lives. Therefore, I argue that the asylum system should be reformed so that nationality and politics factor less into decisions. Part of this reform should include providing representation to all asylum seekers who are unable to secure their own. Second, there should be an independent review of the conditions faced by Mexican asylees in the United States (by an international organization like the UNHCR or by an NGO). This review should address detention practices and conditions, psychological treatment of asylees (especially those in detention), ideological factors influencing judges, and allegations that US agents are refusing Mexican asylum seekers entry at US ports of entry. Third, the process by which human rights reports are allowed to contradict

concurrent independent reports and be changed to deemphasize official involvement in human rights abuses must be reviewed by an independent agency. Mexican nationals denied asylum using softened human rights reports should be entitled to new asylum hearings.

Lastly, I cannot reiterate enough how important it is that there is a merging, in all spheres of discussion, drug-war talks with immigration talks so that the human impact and political ramifications of US/Mexico drug-war policies are more fully understood within academia, the political sphere and by the general public. Only through awareness can the necessary pressure form to change current realities of physical violence in Mexico and violent negations of that reality in the United States.

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