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Seeking informal asylum: The case of Central Americans in the United States

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List of abbreviations

FIFO	‘First In, First Out’
LIFO	‘Last In, First Out’
TVPA	Trafficking Victims Prevention Act
UNHCR	United Nations High Commissioner for Refugees
USCIS	United States Citizenship and Immigration Services

Glossary

Affirmative asylum: The process of applying for asylum prior to apprehension. It is a non-adversarial process, in which the applicant appears before an asylum officer rather than an immigration judge. The asylum officer will either grant asylum or refer the applicant to an immigration judge for further review.

Barrio: A Spanish word that translates to ‘neighbourhood’. The term is used to refer to areas of large cities.

Coyotes: An informal term for the guides who help migrants approach and cross the U.S. border unauthorised.

Defensive asylum: The process of applying for asylum after apprehension by law enforcement or referral by an asylum officer. The applicant will appear before an immigration judge, and the process is adversarial.

Hieleras: A Spanish word that translates to ‘icebox’. These are facilities operated by U.S. Customs and Border Protection to detain unlawful entrants along the U.S.’s southern border. They are characterised by overcrowding, poor sanitation, and the cold temperatures at which they are kept, the reason for their name. They are typically windowless, concrete rooms, and do not have beds. Migrants are not supposed to be held for more than 72 hours in such facilities, though there have been reports that migrants have been held in *hieleras* for longer than one week (Garcia Bochenek 2018).

Immigration detainer: A request made by U.S. Immigration and Customs Enforcement (ICE) instructing local law enforcement to hold an immigrant up to 48 hours beyond when they would normally be released. ICE typically issues detainers when they learn that a potentially deportable individual is in custody. Some local law enforcement divisions have deliberately avoided compliance with these requests.

Northern Triangle: A region in Central America comprised of El Salvador, Guatemala, and Honduras.

Sanctuary city: In the U.S., these are cities that have implemented policies, rules, and regulations to protect undocumented city residents. This may involve refusing to use local law enforcement to carry out immigration enforcement activities, or provisions to ensure city residents are not required to disclose immigration status in order to access services. Note that the term ‘sanctuary city’ is used differently in the American context than in the U.K. As Bauder describes, ‘while sanctuary cities in [...] the USA seek specifically to protect *illegalized migrants*, in the UK, cities of sanctuary involve a general commitment to welcoming asylum seekers and refugees’ (2017: 174, emphasis mine).

Abstract

This paper uses the example of Central Americans from the Northern Triangle living in the United States as an illustration of the decisions of refugees to forego formal asylum in favour of irregular status. The question at the centre of this paper is: how might we understand the decisions of refugees to opt out of formal asylum systems? I argue that, for many refugees, ‘informal asylum’ outside of state recognition is preferable to entering the formal asylum system. In particular, I suggest that when the restrictiveness of the asylum system is high and the conditions of life outside the state are manageable, a refugee may strategically opt out of the formal asylum system, realising a kind of informal asylum instead. I use the situation of immigrants from the Northern Triangle living in the United States to illustrate this argument, highlighting the case for viewing Central Americans as presumptive refugees, the factors that deter recourse to formal asylum, and the features that make undocumented life in the United States possible. This paper does not offer conclusive evidence for the salience of various factors in immigrants’ decisions to forego formal asylum; it does, however, provide a framework through which to challenge existing assumptions about the desirability of the state’s offer of asylum and the nature of undocumented residence in the state, ultimately illustrating the plausibility of the notion of ‘informal asylum’.

1 Introduction

“When I am found dead,” [Laura] told [United States Customs and Border Patrol Agent Ramiro Garza], “it will be on your conscience” (Stillman 2018). Laura did die after her deportation, at the hands of an ex-husband who strangled her and burned her body. Laura had lived in the United States for years, and never filed an asylum claim. For Laura and hundreds of others like her, deportation has meant death. Like Laura, many have never presented an asylum claim. Why might that be the case? Why would someone with a plausible need for protection not seek asylum? I argue that, based on an evaluation of the nature of the state’s offer of asylum and features of life without state recognition, opting out of formal asylum systems in favour of irregular status – a state that I call ‘informal asylum’ – may be the most strategic decision for refugees.

In particular, I suggest that when the restrictiveness of the asylum system is high and the conditions of life outside the state are manageable, a refugee may strategically reject the formal asylum system, realising a kind of informal asylum instead. I further suggest that the strategic *rejection* of the state’s offer of asylum, even by those with legitimate protection needs, casts doubt on our understanding of the desirability of states’ offers of asylum, as well as on common characterisations of the protection needs – or lack thereof – of immigrants in irregular status.

This working paper was inspired by the situation of Central Americans from El Salvador, Guatemala, and Honduras seeking asylum in the U.S.¹ Between 2014 and 2016, the U.S. saw a 234% increase in the number of affirmative asylum applications filed by immigrants from the Northern Triangle, an increase attributed primarily to pervasive gang-related violence in the region (Mossaad and Baugh 2018: 7). Yet there are also those who have valid asylum claims who seek asylum defensively. In 2016, 39,881 asylum applications were filed defensively by immigrants from the Northern Triangle, of which 2,005 were granted (*ibid.*). While some defensive asylum seekers may

¹ El Salvador, Guatemala, and Honduras are referred to collectively as the Northern Triangle.

have previously filed an affirmative application, this is not the case for all defensive applicants.² As a result, we can conclude that there *are*, in fact, refugees with legally valid claims who do *not* affirmatively seek asylum, instead filing defensively only when faced with the threat of imminent expulsion. What explains these refugees' decisions to not seek asylum until forced to do so by the threat of removal? Moreover, of the 1.5 million undocumented immigrants from the Northern Triangle who live in the U.S., how many have potentially valid asylum claims but never present them to the state, either affirmatively or defensively?

This state of affairs prompted my inquiry: *How might we understand the decisions of refugees to opt out of formal asylum systems?* Needless to say, answering this question fully would require empirical research directly with the refugees who might be making this choice. Rather than presenting empirical findings, in this working paper my intention is to provide a framework to guide thinking about this question, to suggest features that might influence refugee decision-making, and to ultimately demonstrate the plausibility of a phenomenon of informal asylum. I use the case of Central Americans in the U.S. to illustrate a situation in which it may be strategic for refugees to opt out of formal asylum.

The concept of informal asylum

I draw the term 'informal asylum' from Gibney (2008). As he writes, '[a]n asylum seeker may opt for a kind of "informal asylum", outside the purview of the state' (*ibid.*, 151). Informal asylum is presented as a 'rational move for those with a genuine need for asylum' in response to restrictive asylum policies (*ibid.*). In this paper, I follow Gibney in his usage of the term. Informal asylum refers to the experience of living in a country of asylum, thereby achieving some measure of refuge, but without formal recognition of refugee status. This is in stark contrast to formal asylum, in which asylum claims are processed through either asylum adjudication systems or refugee status determination processes, resulting in official state recognition of refugee status. Like Gibney, I consider under what circumstances informal asylum may be a 'rational move', though I expand discussion of why it might be rational beyond the scope of his argument.

Methodology, structure, and terms

In Chapter 2 I present empirical studies acknowledging that, in some cases in the Global South, refugees choose not to seek formal asylum, pursuing self-settlement instead. I use these empirical studies to deduce a set of common themes and principles, which I argue provide a foundation for conceptualising informal asylum. I then highlight how this foundation is relevant to guiding thinking about the situation of refugees in the Global North.

In Chapter 3, I turn to establishing a basic framework for thinking about refugee decision-making: a dualism in which refugees strategically weigh the nature of the state's offer of formal asylum against the features of life in irregular status. I ground this chapter in Anthony Giddens' structuration theory, focusing in particular on actors' strategic conduct.

In Chapter 4, I explore the case of Central Americans in the United States in light of this framework. I first outline the basis for labelling Central Americans as refugees. Then, I analyse select elements of the U.S.'s offer of asylum and contemporary policies and practises shaping life as an undocumented Central American.

² For example, an asylum seeker who files affirmatively but whose application is denied by the Asylum Office may later ask for asylum defensively during a removal hearing.

In my analysis, I draw upon a range of empirical sources, including government policy documents, laws and statutes, the reports of non-governmental organisations, and media coverage of select topics. I supplement this material with anecdotes from a limited number of interviews conducted with legal service providers who represent Central American immigrants in the U.S.³ These interviews provided ‘on-the-ground’ examples to complement my interpretation of the ‘informal asylum’ phenomenon, highlighting the impact of restrictive features of the U.S. asylum system on the lived realities of undocumented immigrants in their communities. Because these legal service providers work with Central American clients daily, they were also able to provide insight on the way these features influenced clients’ decision-making. However, the depth of this information was limited by the fact that they could only speak to their experience working with immigrants who already had some level of interest in pursuing legal recourse.

Throughout this paper, I use the terms refugee and asylum seeker interchangeably. This acknowledges the presumptive nature of refugee status and helps eliminate the linguistic distinction that often results in usage of the term ‘refugee’ in the Global South and ‘asylum seeker’ in the Global North.

While I do suggest that refugees may strategically opt for informal asylum, this argument assuredly does not endorse a reality in which informal asylum absent legal status is viewed as a desirable state of affairs. Rather, by highlighting the fact that some – even many – refugees may opt out of formal asylum systems, I actually suggest that we need to re-evaluate our understanding of the desirability of the state’s offer of formal asylum and refine our view of those who do not enter formal asylum systems, conceptualising their irregular status as the realisation of informal asylum.

2 Self-settlement as informal asylum

Existing explanations for why refugees remain outside systems of asylum and recognition have focused on empirical studies of the Global South. These studies offer descriptive accounts of ‘self-settled refugees’, including explanations for why these refugees have chosen to remain outside formal systems of asylum and refugee recognition, opting instead for irregular status. In this chapter, I argue that scholarship on self-settlement provides an illustration of what I refer to as ‘informal asylum’, and highlight the ways in which this scholarship might prompt us to think similarly about the situation of refugees in the Global North.

A definition of self-settlement

In brief, as self-settlement has emerged in existing scholarship, it describes the settlement of presumptive refugees living in countries of first asylum in irregular status. For the most part, though not exclusively, this scholarship addresses refugees in Sub-Saharan Africa. In some instances, self-

³ I conducted five semi-structured interviews via Skype with legal service providers in the U.S. I selected participants based on their affiliation with non-profit legal service organisations recognised by the U.S. Board of Immigration Appeals and their location in cities with the highest number of Central American immigrants (New York City metro area; Los Angeles County, California; and Harris County, Texas). I obtained written consent before each interview, which included permission to use participants’ names and organisational affiliations. I had approval from the Central University Research Ethics Committee to conduct these interviews.

settlement has been conflated with local integration and local settlement, or described without using any of these terms (see, *e.g.*, Bakewell 2001; Banki 2004: 2n.3; Beversluis et al. 2016; Crisp 2004; Gale 2008; Polzer 2009; Janmyr and Mourad 2018). For example, Banki specifically elected to use the term ‘local integration’ *in place of* ‘self-settlement’, despite the fact that ‘local integration’ also refers to a government-authorised durable solution, a quite different arrangement than the irregular settlement of refugees in Kenya, Nepal, and Pakistan described in Banki’s paper (2004: 2n.3). In light of this definitional confusion, recent writing has specifically sought to more explicitly delineate what the concept entails (see, *e.g.*, Bakewell 2014; Ray 2013), as I also do here.

Despite the discrepancy in terminology, several distinguishing elements emerge in the literature. I identify four features that characterise self-settlement and are relevant to the notion I describe as informal asylum. First, the host government does not sanction an individual refugee’s presence, meaning that they are in an insecure legal status (*i.e.* illegally present), and do not hold official recognition of refugee status (Agier 2002: 230; Bakewell 2014: 131; Hovil 2007: 601; Jacobsen 2001: 4-10). As Jacobsen writes, ‘[a]t best they are seen by the host government and local community as temporary guests, at worst, as illegal immigrants with no right to be in the country’ (Jacobsen 2001: 4, 10). Second, self-settlement is defined by settlement among the host community rather than in areas specifically designated by the government (Bakewell 2014: 131; Jacobsen 2001: 3-6). Refugees ‘settle amongst the local community without direct official (government or international) assistance [...] and are helped with shelter and food by local families or community organizations’ (Jacobsen 2001: 6, parenthetical original). Third, in order to sustain self-settlement, refugees engage in employment or other income-generating activities to the point of self-sufficiency (Banki 2004: 2; Hovil 2007: 601; Jacobsen 2001: 9-10; Kuhlman 1991: 3). Finally, self-settled refugees achieve *de facto* integration through their participation in the local community (Jacobsen 2001: 9-10). These characteristics, which emerged as key elements of the practise of self-settlement, help us conceptualise what informal asylum looks like in practise. Informal asylum, as viewed in the example of self-settlement, does not involve official state recognition of individuals’ claims to refugee status but allows presumptive refugees to realise some measure of protection outside the country which they have fled.

These features provide a useful way of conceptualising what informal asylum might look like in other settings where presumptive refugees circumvent state structures. Because the key features of self-settlement are not necessarily geographically or nationally specific, identifying informal asylum as the concept underlying the practise of self-settlement provides a useful way to structure thinking about what informal asylum might entail, regardless of the national context in which it occurs. After outlining the existing explanations for refugees’ preference for self-settlement, I return to this point.

Existing explanations for the preference for self-settlement

Scholars have identified a number of reasons explaining refugees’ avoidance of the formal refugee regime in favour of self-settlement. In existing scholarship, these explanations are relatively under-theorised and presented in an *ad hoc* fashion. In part, this is because self-settlement is often not the subject of comprehensive study, but rather integrated within discussions of durable solutions and local integration practises. As a result, explanations for refugee *decision-making* are sometimes secondary to a descriptive account of the lived reality of self-settlement. Nevertheless, because of the repeated nature of many of these explanations, I draw upon these studies as a useful starting point for building a more generalisable understanding of the decisions of refugees to forego formal asylum in favour of informal asylum. In order to provide analytic clarity, I categorise these explanations into two groups: Those that explain why refugees may be *discouraged* from pursuing formal status, and those that explain why refugees may be *encouraged* to opt for self-settlement.

First, seeking recognition as a refugee in the formal regime entails incurring risks that some refugees prefer to avoid. Two types of risk have emerged in these studies. First, refugee recognition exposes one to the state's control. As a result, the state determines when refugee status ceases and return is required, as noted in relation to the self-settlement of Liberians in Guinea and Sudanese in Uganda (Hovil 2007; Jacobsen 2001: 8; Polzer 2008). Additionally, presenting oneself for recognition entails a risk that refugee status will not be recognised at all, potentially resulting in return (Hovil 2007; Polzer 2008). There is also a physical dimension of risk associated with the requirement of living in a camp, where refugees can be easy targets for violence, as highlighted in studies of Rwandan refugees (Harrell-Bond and Verdirame 2005; Hovil 2007).

In contrast to state-directed repatriation, self-settlement affords refugees the flexibility to control the conditions and timing of their repatriation. In other words, refugees in irregular status (who are therefore unknown to the state) might be able to avoid forced repatriation when or if status is ceased (Hovil 2007; Jacobsen 2001). Unrecognised refugees are also able to evaluate conditions in their countries or origin and prepare for return by making short, temporary trips back, as was demonstrated in a study of Congolese refugees residing in Uganda (Hovil 2007). While irregular status carries its own set of risks, refugees may feel they have greater control over the management of at least the risk of return by remaining outside a system that controls their presence.

Second, refugees pursue self-settlement in order to maintain independence, principally related to employment. Employment-motivated avoidance of camps was among the explanations advanced most frequently in the literature on self-settlement, appearing in studies of refugees in Kenya, Malawi, Tanzania, Uganda, and Lebanon (Bakewell 2014; Banki 2004; Hovil 2007; Janmyr and Mourad 2018). By self-settling, refugees have been able to avoid relegation to camps or designated settlements and associated constraints on employment opportunities (Agier 2002; Bakewell 2001; Bakewell 2014; Banki 2004; Hovil 2007; Jacobsen 2001). Employment is presented as preferable to reliance on aid because it provides autonomy over certain lifestyle choices, such as something as seemingly inconsequential as diet (Banki 2004; Hovil 2007). Even when state prohibitions on employment exist for refugees, both registered and unregistered, multiple studies found that the lack of employment authorisation was not viewed as an obstacle to obtaining work, making self-settlement feasible (Bakewell 2014; Banki 2004; Hovil 2007; Janmyr and Mourad 2018). Put simply, formal recognition of refugee status was seen as more limiting than the alternative of self-settlement.

Third, the conditions of local reception and the possibility of integrating without legal status were also identified as explanations for the preference for self-settlement. In a study of self-settled Mozambican refugees in South Africa, Polzer (2008) emphasised that social ties within the community allowed for deep integration, even without legal status. In another study, Hovil found that local government officials in Uganda were so protective of refugees living irregularly in the community that they worked to prevent national government officials from relocating self-settled refugees to camps (2007: 607). In some instances, the presence of co-ethnic networks or regions with closely linked migration histories also facilitated self-settlement, as was the case for Congolese refugees in some areas of Uganda (Hovil 2007: 614). More generally, a perception among the host community of the positive economic and social contributions of refugees increased the viability of self-settlement, as studies conducted in several Sub-Saharan contexts found (Bakewell 2001; Hovil 2007; Jacobsen 2001; Polzer 2009). Most fundamentally, these factors only mattered when the state was seen as being either unable or unwilling to locate refugees living irregularly (Jacobsen 2001).

Finally, scholars have also found that some refugees have rejected the formal refugee regime in order to avoid the connotations associated with refugee status. By some accounts, refugees may find the label limiting and stigmatising in the host community (Bakewell 1999; Bakewell 2001; Janmyr and Mourad 2018: 2). One study noted this as a particular concern for Syrians in Lebanon, who wish to avoid the connotations of vulnerability, suffering, and poverty associated with the refugee label (Janmyr and Mourad 2018: 2, 4, 16).

These explanations, while context-specific in their presentation, provide a useful basis for considering the types of issues that might matter to refugees as they make decisions about pursuing or foregoing recognition of refugee status. In the following section, I respond to possible critiques of this approach.

The applicability of these explanations to the Global North

Some might think that it is not plausible to apply lessons arising out of empirical studies conducted in the Global South to the Global North. I respond to some anticipated lines of critique below, showing that these arguments do not preclude using scholarship on self-settlement as a productive way of thinking about how some of the same explanations may apply in other contexts.

Firstly, it might be argued that refugees are more readily able to live in irregular status in the Global South than the Global North because these refugees are more culturally similar to the host population, potentially sharing language, religion, or appearance. Arguably, this similarity might increase refugees' ability to integrate even without legal status. However, legal barriers will be present even when cultural similarities exist, as exemplified by restrictive policies in Lebanon that limit Syrians' opportunities for employment (Janmyr and Mourad 2018). Alternatively, even where the 'majority' population of the host country is culturally distinct, co-ethnic groups may be large enough that the 'cultural similarity' argument applies; such might be the case for Hispanics in the U.S., where entire neighbourhoods, schools, and workplaces may be comprised of Spanish-speakers from Latin America. Cultural similarity – or dissimilarity – to the host population does not automatically facilitate or prevent settlement outside state recognition, making it plausible that integration absent legal status could occur regardless of this factor.

Second, some may contend that it is easier to live irregularly in the Global South as a result of these states' limited ability to locate and expel immigrants without status. Admittedly, this reality might contribute to the feasibility of integration without legal status and reduce its risks. However, while compelling, this argument is not wholly persuasive. Even if resource-poor states in the Global South do not have the same robust machinery for detection and deportation as Northern states, expulsion can and does still occur (Hovil 2007). Additionally, although the Global North may have more resources to deploy for purposes of expulsion of irregular migrants than states in the Global South, even Northern states do not have *sufficient* resources (or political will) to locate and expel all undocumented individuals, or even *most* undocumented individuals.⁴ Relatedly, arguments about the availability of work in the Global South's more robust informal sector as compared to the Global North are not entirely persuasive. Scholarship has indicated the extent to which Northern states are permissive of and even dependent upon undocumented labour (Castles 2007; De Genova 2013: 1181; Gibney 2008: 152). It is therefore plausible that, even in well-resourced Northern states with limited informal sectors, opting out of refugee status and living irregularly is a feasible reality, as it is in the Global South.

⁴ See, e.g., Edwards and Ortega (2016) and Gitis and Collins (2015) for progressive and conservative estimates, respectively, on the cost of deporting all undocumented immigrants from the United States. With

Third, it might also be argued that, because self-settlement is presented primarily as a rejection of the camp model, which is largely unused in the Global North, explanations for refugees' self-settlement as a basis for the framework I propose is unfounded. However, in both the Global South and Global North, registration for refugee status or application for asylum often result in physical constraints. One might reasonably draw parallels between refugees' opposition to camps and refugees' opposition to entering detention systems or reception centres, the Northern analogues to camps. Opting out of pursuing formal status might be based on a similar logic of avoiding constraints on freedom and autonomy, though the precise form that these constraints take differs between states.

Fourth, some may argue that it is impossible to discuss the question of 'choice' or decision-making in complex and restriction-ridden asylum systems. Rather than a 'choice', irregular status may be seen as the de facto reality faced by immigrants, a view held by some scholars who emphasise the impenetrability of Northern asylum systems (see, *e.g.*, Coutin 2000; Ordóñez 2008, 2015). In contrast, writing on self-settlement has presented refugees' decisions to remain in irregular status as an active decision. Bakewell, for example, refers to the '*preference* for self-settlement' among refugees (2014: 132, emphasis mine), and Jacobsen describes a '*desire* by refugees to remain flexible about their options' (2001: 8, emphasis mine). Hovil describes refugees as '*seeking* [...] to survive without external assistance', rather than being perceived as passive victims (2007: 614, emphasis mine). This approach is taken despite the fact that structural constraints and incomplete information also exist in the Global South. Even in constrained settings, refugees will make decisions on the basis of available information about the economic, social, and emotional risks and benefits of each option.

While the above arguments have addressed factors influencing refugee decisions to settle in irregular status, a final, definitional objection is the claim that refugees who self-settle in the Global South are more likely to be genuine refugees than migrants who live in irregular status in the Global North. While unlawful entrants in the Global North are often presumed to be economic migrants and discussed using language of illegality, the same is not true in Southern contexts. For example, Malkki (1995) referred to Burundian Hutus in Kigoma, Tanzania as refugees, even when self-settled and in irregular status, yet the same label likely would not have been applied to Burundians in irregular status in the Global North. I contend that we should be similarly willing to view some groups of irregular migrants in the Global North as presumptive refugees.

Despite the contextual differences between the Global South and the Global North, these differences do not undermine the usefulness of existing scholarship to a broader conceptualisation of refugee decision-making on asylum. Next, I outline the main ways that even the context-specific findings of these empirical studies contribute to a possible foundation for conceptualising informal asylum.

A foundation for conceptualising informal asylum

While the scholarship on self-settlement does not make claims to its generalisability, I contend that these empirical studies provide a starting point for conceptualising the decision of refugees to opt out of formal asylum. I derive three foundational elements from this scholarship that I find particularly useful, which I outline here.

respect to limited political will, see, *e.g.*, Ellermann (2010) on normative constraints on the state's capacity to detect and expel, and De Genova on the benefits states derive from having 'illegalized migrants' available as 'tractable labour' (2013: 1181).

First, scholarship on self-settlement encourages a focus on refugee decision-making. By explaining why refugees may opt for informal asylum through self-settlement, refugees are presented as agents who actively balance a range of factors when deciding which approach to asylum they will pursue. Notably, scholars take this approach despite the power imbalance between refugees and the state, and while acknowledging the vulnerability of refugees. Rather than leaving agency implicit in refugee decision-making on pursuing formal recognition, as these studies do, a more robust theoretical framing should consider refugee choice as a lens through which to better understand settlement decisions, something I highlight in the following chapter.

Second, scholarship on self-settlement introduces a dualism that helps us conceptualise a counterintuitive outcome. Conventional wisdom suggests that formal refugee status is appealing because it provides access to aid and international protection, and self-settlement unappealing because it is often accompanied by a hostile or exploitative local reception and the risks of living in irregular status. Yet these studies highlight that, while recognition as a refugee is most often associated with its protective capacity (Gale 2008), formal recognition is undesirable in many cases. On the one hand, a range of factors push refugees away from the formal asylum system. On the other, another set of factors pull refugees towards informal asylum through self-settlement. In the following chapter, I will use this categorisation as a framework for considering refugees' decisions to opt out of formal asylum. By focusing on the counterintuitive, these explanations help us understand why the offer of asylum and official recognition as a refugee may not be as appealing as might be initially thought, thereby leading a refugee to opt out of formal asylum.

Finally, this scholarship suggests that a potentially significant share of refugees may be opting out of the formal asylum system. Obviously, not all refugees opt out of the formal asylum system in favour of irregular status as self-settled refugees, as evidenced by the existence of large-scale refugee camps and settlements. Yet by some accounts, the 'majority of refugees' may remain outside formal recognition (Bakewell 1999, 2001), choosing to 'bypass official assistance' (Jacobsen 2001: 5). Bakewell (1999), for example, claims that this is the case for Angolan refugees living in Zambia, who have instead integrated in the country's border regions. He later broadens this claim to all refugees in Africa (2001). Notably, as mentioned above, the label 'refugee' is applied in scholarship on self-settlement to even those in irregular status who have not had any formal status determination. Such an approach is important, as it opens the analytical space for recognising that irregular status does not preclude the possibility of having a need for asylum.

I have offered a definition of self-settlement; highlighted scholarly explanations for refugees' preference for self-settlement; responded to possible arguments contesting the applicability of learning from self-settlement scholarship; and identified several foundational elements of the self-settlement literature that are useful for a general conceptualisation of the notion of informal asylum. Yet one might still ask, given Northern countries' generally robust asylum systems and the privileges that these states grant to their recognised members, why should we consider the applicability of self-settlement scholarship to the Global North at all? There is an assumption that the offer of asylum in the Global North is fundamentally attractive to refugees who reach their countries in a way that refugee recognition in the Global South is not. In the following chapter I advance a framework for considering why, just as for refugees in the Global South who pursue self-settlement, some refugees in the Global North may also opt out of formal recognition of status.

3 A framework for conceptualising asylum decision-making

In this chapter, I present a rudimentary framework conceptualising refugees as strategic agents who are actively weighing the nature of the state's offer of asylum against the features of life outside the state. Such a framework helps us consider the factors that might influence decision-making, as well as the circumstances under which the balance may tip in favour of a preference for informal asylum.

While this same framework for thinking about decision-making can be applied in all states, in this section I draw primarily on scholarship about immigrant networks and asylum systems in the Global North. Doing so underlines the possibility that, even in liberal democratic states, the offer of asylum may not be an offer that refugees readily accept. It also problematises the idea that undocumented immigrants who do not claim asylum are not refugees – something that scholars readily acknowledge in studies of the Global South, as chapter 1 has shown, but that is less prevalent in the language used to describe immigrants in irregular status in the Global North.

Notably, the framework developed here can be applied to presumptive refugees regardless of the legal strength of a refugee claim. Some refugees may have claims that would clearly fulfil existing legal requirements. Others may have claims that would be at the margins of existing asylum law, potentially broadening jurisprudence if tested in court and decided favourably. Still others might clearly not meet legal definitions, but might meet either popular understandings or broad scholarly definitions of who 'counts' as a refugee.⁵ In all these cases, refugees are strategically weighing the factors that discourage pursuing status through the formal asylum system against the factors that encourage opting for the informal asylum of life in irregular status.

Strategic conduct

While the agential decisions of refugees are implicit in writing on self-settlement, refugees' strategic decision-making should be made more explicit. This is especially true because I aim to present not just a list of factors potentially influencing decision-making, but also to suggest that a strategic actor may, under certain circumstances, opt out of formal asylum.

I draw upon Anthony Giddens' structuration theory to provide a useful way of thinking about the interaction of actors' agency with the constraining structural context in which they move. Several scholars have noted similar benefits of Giddens' framing for the study of migrants and refugees (see, e.g., Ghorashi et al. 2017; Morawska 2011). While other theories might offer similarly useful ways to understand agency, Giddens' clear expression of the ways human agency and societal structures interact provides the language to help articulate the strategic decision-making that is at the centre of my framework.

In brief, Giddens treats the human being as a 'purposive agent', basing conduct on their knowledgeability, motives, and position of power relative to other controlling forces (Giddens 1984: 3, 288-293). Knowledgeability, as Giddens defines it, refers to '[e]verything which actors know (believe) about the circumstances of their action and that of others, drawn upon in the production and reproduction of that action, including tacit as well as discursively available knowledge' (*ibid.*

⁵ For alternative definitions of the refugee that are broader than the definition enshrined in international law, see, e.g., Betts (2013: 10-28), Gibney (2004: 7), Hansen (2014: 254), Manz (1995: 151-152), and Shacknove (1985: 277).

375, parenthetical original). This definition treats knowledge very broadly, an important approach given the complexity of the state asylum system, constantly changing law and policy, and the low education levels of some refugees. It suggests that refugees' decisions can be considered as such even in contexts of imperfect and incomplete information. Motives 'refer to the *wants* which prompt [action]' (*ibid.* 6, emphasis mine). For the purposes of this paper, I assume that refugees want some measure of physical protection and self-sufficiency that they cannot achieve in their country of origin, and that decision-making is motivated by the perceived opportunities to realise these 'wants'. Finally, the 'dialectic of power' between dominant and subordinate actors shapes interactions. In many ways, refugees have a severely subordinate position of power relative to the state authorities and immigration enforcement apparatuses that are meant to control entry to and residence in the territory. However, as Giddens understands power imbalances, there are always 'resources whereby those who are subordinate can influence the activities of their superiors' (*ibid.* 16). The possibility of living without status is perhaps the ultimate expression of this influence, as it represents the immigrant's ability to obtain an outcome – informal asylum – that the state is not intending to provide, and in fact actively works to prevent.

Additionally, strategic conduct is based on an individual evaluation. While it may be the case that there are particular trends within a group of similarly situated refugees, as I will later argue is the case for Central Americans in the U.S., every individual within a group will have a slightly different strategic calculation. As Giddens writes, '[o]ne person's constraint is another's enabling' (*ibid.* 176). Factors like the refugee's education level, past experience with government authorities in the country of origin, willingness to engage in low-skill and low-wage labour, or willingness to endure an impoverished level of rights realisation while living undocumented may impact an individual refugee's strategic decision-making. This qualification helps explain why a great number of refugees *do* seek formal asylum or refugee recognition, even as some of their peers remain without status. For some individuals, entering the formal asylum system remains a desirable choice; for others, even with the disadvantages and dangers of living in irregular status, informal asylum may provide protections and opportunities that the formal asylum system would not.

In the following section, I consider the elements of the state's offer of formal asylum, the features of life without state recognition, and the way that presumptive refugees strategically respond to the constraints and opportunities of each, in light of the elements of strategic conduct outlined here.

The dualism

I propose that we can best understand why it might be strategic for refugees to opt out of formal asylum by employing two categorisations: reasons to do with the nature of the state's offer of asylum, and reasons to do with features of life outside the state's recognition. Initially, it might seem counterintuitive to suggest that a refugee would opt out of the formal asylum system. On the surface, states' offer of asylum is in accordance with obligations of international law, human rights, and liberal norms. Recognition as a refugee or asylee is accompanied by legal status, physical protection, and, in many cases, some type of aid, welfare, or other social support. Irregular status, alternatively, is associated with exploitation, poor mental and physical health, low educational attainment, and poverty. Life without state recognition is portrayed principally as the prerogative of economic migrants, and in popular discourse as cheating the system, queue-jumping, and law-breaking.

Yet, for the refugee who is acting strategically, there are a number of factors that may *discourage* recourse to the formal asylum system and *encourage* remaining without state recognition of refugee status. The restrictive nature of the state's offer of asylum and the permissive features of life outside state recognition of status may create the conditions under which a refugee will opt to pursue informal asylum.

The nature of the state's offer of asylum

Viewed in its best light, the state asylum system is assumed to be a just distributor of protection, to which those who wish to legitimate their claims are rational to submit themselves. Yet this assumption is flawed. Here, I consider how several features of the state's offer of asylum interact with refugees' strategic decision-making. When framed against a conception of refugees as strategic agents, the nature of the state's offer of asylum may understandably deter some refugees from seeking recognition in asylum determination systems, even when this means foregoing access to a welfare state. Because the precise features of every state asylum system are different – such as detention requirements, the accessibility of employment authorisation, and the manner of assessing claims – I focus on some of the broader elements that characterise the nature of asylum adjudication in the Global North.

Inherent features of the asylum system

Even if one adopts the idealistic view that asylum is a benevolent and humanitarian offer on the part of the state, there are nevertheless reasons for refugees to avoid it. Because the state's offer of asylum carries with it the risk of removal, presumptive refugees who seek physical protection may strategically opt out of seeking formal asylum. By affirmatively submitting a claim and opening oneself to the state's control, if rejected, the migrant may have 'indirectly brought about their own expulsion by coming forward in the first place' (Ordóñez 2008: 39). The risk of removal and associated logic of non-application appears in other scholarship as well (Bloch et al. 2011; Bosniak 2004; Gibney 2000, 2008). Despite this obvious rationale for foregoing the state's offer of asylum, in government discourse and popular rhetoric there seems to be a presumption that when an individual does have a plausible asylum claim, they will be interested in seeking state recognition of that claim – a presumption that my argument challenges.

The state also controls the interpretation of who qualifies as a refugee. To the refugee or casual observer, the state's interpretation of who should receive protection may seem less than intuitive, or even unpredictable. Failing to receive protection after fleeing war or violence, for example, may seem illogical without a knowledge of the intricacies of refugee law. Additionally, even assuming the state's best intentions to create a procedurally rigorous asylum system, there may nevertheless be a degree of uncertainty in outcomes. Different adjudicators working from the same set of laws and policies may arrive at antithetical decisions, with potentially disastrous consequences for refugees (Government Accountability Office 2016; Ramji-Nogales et al. 2009). As a result, refugees may have good reasons to distrust the state asylum adjudication process (Gibney 2000: 21, 2008: 151). Where outcomes are perceived as unpredictable or illogical, refugees may be dissuaded from entrusting their fate to the hands of the adjudication system – even when the system is well-developed and procedurally rigorous.

Deliberate restrictions in the asylum system

While seeking formal asylum makes sense in a welcoming atmosphere, other features of the state's offer of asylum are deliberately exclusionary and restrictive. If one takes a sceptical approach, many of these restrictions may be characterised as a means of limiting states' obligations to asylum seekers and refugees. If one takes an optimistic approach, some of these restrictions may be justified as a

means of deterring fraud and discouraging frivolous applications, thereby ensuring the integrity of the asylum regime. The amount of scholarship on deterrence in formal asylum systems has grown in recent years, but it tends to focus on the strategic use of restrictions *by the state*, rather than on the *impact* of these restrictions on refugee decision-making (see, *e.g.*, Hassan 2000). However, even if one assumes the state has the purest intentions of protecting the refugee regime and is not using restrictions as a way to limit obligations to asylum seekers, such measures might still discourage genuine refugees from participating.

The use of detention, evidentiary hurdles, and required testimony of traumatic past experiences are just some of the features that purport to distinguish those the state wants to protect from the ‘undeserving’, yet these restrictions may be powerful enough to keep even genuine refugees from entering the system. For example, submitting to detention opens a refugee to state constraints on movement and subjects refugees to conditions that often undermine human dignity, even in the most well-resourced states (Bloch et al. 2011; Gibney 2008; Mehta 2014; Scheel and Squire 2014: 195; Vasta 2011). Such a claim bears out empirically, as studies of presumptive refugees in the U.K. and U.S. have shown that those with legitimate protection needs have been deterred from filing for asylum by the prospect of long-term detention (see, *e.g.*, Bloch et al. 2011; Gogolak 2016; Mehta 2014). The process of refugee status determination, with its emphasis on assessing the ‘truth’ of applicants’ claims, also creates a ‘clear deterrent for would-be applicants who hear horror stories about what goes on in [asylum] proceedings’ (Ordóñez 2015). In-person testimony to assess an applicant’s credibility and intense questioning on sensitive topics are just some of the features outlined in existing scholarship that may constitute such deterrents (Hathaway and Foster 2014: 136-150; McKinnon 2009; UNHCR 2013). More than just challenging hurdles that refugees with legitimate claims should be willing to overcome, restrictions like these may actually lead some refugees to opt out of the formal asylum system entirely.

Ironically, a state’s asylum policies, both deliberate restrictions and inherent features of refugee status determination, may lead refugees with legitimate claims for protection to choose illegality (Black et al. 2006; Gibney 2000, 2008, 2009, 2011; Scheel and Squire 2014). In fact, those refugees who have the most to fear from return may be the most discouraged from turning to the state for asylum.⁶ Paradoxically, then, the people that states most want to protect through their asylum systems might be the most discouraged from doing so by the risk of return and the restrictive features linked to the state’s offer of asylum. For refugees who wish to remain in the country of asylum to achieve protection, the strategic option may be *not* to pursue recognition.

While existing scholarship has outlined these restrictions compellingly, decisions are not motivated solely by what is *not* desirable. There are also affirmative factors that, on balance, may tip a refugee’s decision towards opting out of the state’s offer of asylum. The features of life outside the purview of the state may make life in irregular status, if not appealing, at least not entirely objectionable, and preferable to entering the formal system.

Features of life in irregular status

Despite the ‘precariousness’ of undocumented residence in a state (Gibney 2009), some features of life outside state recognition may provide a form of informal protection that encourages refugees to opt for this alternative. While in theory every individual may prefer to hold a legal status in their

⁶ Bloch et al. (2014) make a similar point, though unrelated to asylum specifically. In a study of *sans-papier* in France, they found that Kurds from Turkey were more risk averse than Ukrainians in their decisions about employment and housing, explaining this by the ‘differential threat’ posed by deportation (*ibid.* 77, 142).

country of residence, in some instances refugees may decide that life in irregular status is the strategic choice, particularly when weighed against the factors discouraging recourse to the formal asylum system. Here, I present some of the features of life in irregular status that may encourage refugees to remain outside the formal asylum system.

Physical integrity and realisation of rights

For refugees who seek a ‘better life’ in the country of asylum, the level of rights and physical protection enjoyed relative to that of the country of origin may influence the refugee to accept informal asylum as a reasonable status quo. As Gibney writes, relative to the ‘appalling conditions on offer in the developing countries [...] from which they originate’, the ‘trade-off’ of living without status may not be viewed with such anathema (2009: 42). A refugee may accept violations of certain rights, like workplace exploitation, for example, in order to realise more basic human rights, like the right to life – especially when the most basic rights are in jeopardy in the country fled. Additionally, when refugees come from countries where they did not enjoy the rights typically associated with citizenship, like voting rights or welfare provisions, lacking these rights as a result of irregular status may not be construed as a loss, but rather the price paid for the relative security of informal asylum (Abrego 2011; Gibney 2009; Hovil 2007). As Hovil writes, ‘before they became refugees, such individuals lived independently in the cities, slums and villages of their home countries, and found ways of fending for themselves: there is no welfare state in Africa’ (2007: 614). Certainly, the successful realisation of many rights will be limited by refugees’ lack of status and related inability to alert authorities to violations (Bosniak 2004; De Genova 2002; Rubio-Marín 2000). However, the relative guarantee of a sub-standard level of rights in the country of informal asylum may be preferred to the risks that recourse to formal asylum requires, especially when framed against expected rights violations in the country of origin.

The likelihood of being able to remain in irregular status without detection and expulsion, realising the protections outlined above, may also be a consideration. Among the factors influencing this calculation may be an evaluation of the state’s material and normative capacity for carrying out efforts to detect and expel migrants. In the liberal state, there may be normative limits to the state’s ability to locate an undocumented immigrant, even if the state has an elaborate and resource-heavy apparatus for doing so (Ellermann 2010). In the interim, refugees may engage in strategies to decrease the risk of detection and facilitate long-term, irregular residence, such as attempting to ‘pass’ as citizens by learning the local language and customs (Garcia 2015) or by working and traveling only in certain ‘safe’ areas (Bloch et al. 2014). Formal asylum may become a trump card to be used only if and when informal asylum fails as a result of detection (Coutin 2000). Unlike affirmatively submitting oneself to the state’s decision-making through a request for formal asylum, remaining in irregular status in a generally rights-respecting state may give the refugee a degree of control, especially when the state is limited in its ability to carry out immigration enforcement efforts.

Integration possibilities

The prospects for realising normal, quotidian activities may encourage refugees to see irregular status as a viable – if not ideal – status quo. For a refugee aiming to secure protection and avoid return, establishing oneself in the community and securing a means of supporting oneself are essential and, if achievable, may lead a refugee to determine that life absent legal status is feasible. The prospect of being able to draw upon material and social resources provided by a robust social network of co-ethnic peers might be highly influential in refugees’ decisions to forego the formal offer of asylum. As Gibney has written, ‘[t]he phenomenon of the “refugee illegal” results in a privatising of the assistance provided to refugees (in accommodation, health, welfare, etc.) as ethnic

communities, friends, relatives and non-governmental organisations become providers of support in lieu of governments' (2000: 21-22). Empirical studies have acknowledged the importance of these networks, including in the U.S. and E.U. (see, *e.g.*, Bloch et al. 2014; Hagan 1994; Menjívar 2000). Where these support structures exist, they may augment the feasibility of life in irregular status, diminishing the importance of access to aid that the state apparatus makes available to asylum seekers and recognised refugees.

Because aid and welfare are largely not available to those whose presence is not recognised by the state and social networks cannot be permanently relied upon (Menjívar 2000), the viability of self-sufficiency may also be relevant to refugees' decisions. Readily accessible employment in a country of informal asylum may provide further reason to forego the state's formal offer of status. In many Northern states, despite highly restrictive asylum systems, tight visa regimes, and thick borders, the availability of employment and state complicity in the use of undocumented labour sends an 'economic message that jobs are there for those who do get in' (Castles 2007: 29-30). Where employment is available, and perhaps especially when asylum applications may lead to restrictions on employment, it may be strategic to forego the state's offer of asylum in favour of irregular status (Black et al. 2006; Gibney 2008, 2009). Particularly when refugees may not have radically different employment prospects as a result of legal status, the feasibility of being self-sufficient in irregular status, when weighed against the risks inherent in the offer of formal asylum, may encourage opting for the informal alternative.

Finally, an accommodating local reception, not only among immigrants' social networks but also in the host community more broadly, might encourage refugees to believe that life in irregular status will be possible. In municipalities with growing immigrant populations, city officials, operating on the imperative to 'safeguard the health, safety, and welfare of all city residents', have developed local laws and policies to promote 'the integration of undocumented immigrants into city affairs without upsetting the federal monopoly over immigration and citizenship' (De Graauw 2014: 309). Additionally, service-oriented industries like schools and hospitals have tended to be inclusive of undocumented immigrants (Marrow 2009, 2011, 2012). Local arrangements can not only help fulfil the material and practical needs of undocumented residents, but also signal to undocumented residents that they have a place in the community (Garcia 2015: 153). An accommodating local reception may mean refugees are encouraged to remain in a relatively well-received irregular status, foregoing the risks of the formal asylum process.⁷

Implications

While governments decry the strategic usage of formal asylum systems by those without legitimate claims, I suggest that the strategic *rejection* of the formal asylum system in favour of informal asylum is a phenomenon that deserves greater attention. In some instances, genuine refugees may opt for the informal asylum of irregular status, foregoing the state's offer of formal recognition. Perhaps unexpectedly, the state's offer of asylum, even in liberal democratic states, may not be a preferred choice for those with legitimate asylum claims, resulting in a reality in which genuine refugees are among a state's undocumented residents.

⁷ Note that this argument does *not* suggest that harsh local policies will push undocumented immigrants out of cities. It is rather a claim specifically about the effect of these policies on the decision-making of potential *asylum seekers* regarding whether they will pursue formal asylum. Research has shown that harsh local enforcement policies 'are not successful in reversing the processes of immigrant settlement' nor 'effective in pushing targeted immigrants out' (Garcia 2015: 32-33).

Under what conditions might we expect the strategic rejection of asylum claims and the pursuit of informal asylum to occur? I suggest that when the restrictiveness of the asylum system is high and the conditions of life outside the state are manageable, a refugee may opt out of the formal asylum system, realising a kind of informal asylum instead. In theory, the strategic rejection of formal asylum may be increasingly favoured by refugees entering the Global North today. As states implement additional restrictions in their asylum systems, refugees may be increasingly discouraged from entering them. By remaining outside the formal system, presumptive refugees may inadvertently contribute to the creation of conditions under which future refugees are encouraged to also opt out of the formal system in favour of informal asylum.

The framework presented here conceptualises refugee decision-making on asylum as a strategic balancing of the nature of the state's offer of asylum and features of life outside the state. Applying this framework to the situation of Central American immigrants from the Northern Triangle living in the United States provides an apt illustration of the phenomenon of informal asylum. On the one hand, Central Americans are faced with a restrictive asylum system that operates on them in especially exclusionary ways. On the other, Central Americans recognise the feasibility of life without status in the country. I turn to this example in the following chapter.

4 The case of Central Americans in the United States

Among the 1.5 million undocumented immigrants from El Salvador, Guatemala, and Honduras living in the United States are presumptive refugees realising a kind of informal asylum. Because of the restrictive nature of the U.S. asylum regime and the features of undocumented life in the country, for many Central Americans from the Northern Triangle, it may be in their best interests to opt out of formal recognition as refugees.

In this chapter, I will use the Central American case study as a way of illustrating the general plausibility of the notion of informal asylum. I will first establish that we should, in fact, consider Central Americans from the Northern Triangle as presumptive refugees.⁸ Then, I will consider specific elements of the U.S.'s offer of asylum and life in irregular status that lead Central American immigrants to opt for the latter.

In the U.S., an *asylee* or *asylum seeker* is typically distinguished from a *refugee* or *presumptive refugee* by virtue of where status is requested and obtained (USCIS 2015): asylum is requested and determined from within the U.S., while refugee status is established overseas. The term 'refugee' is therefore typically used in the U.S. lexicon to refer to *resettled* refugees. Central Americans are rarely subjects of refugee resettlement; those Central Americans who receive humanitarian protection typically obtain it after arriving in the U.S.⁹ However, as both asylees and refugees are determined according to the same legal definition (*ibid.*), I will use the terms interchangeably.

⁸ Going forward, I will use 'Central Americans' as shorthand for referring to Central Americans *from the Northern Triangle*.

⁹ One exception to this is the Central American Minor refugee programme, discussed below.

Central Americans from the Northern Triangle as presumptive refugees

There are persuasive reasons to view Central Americans from the Northern Triangle as presumptive refugees, primarily on the basis of extreme levels of violence in the region. The UNHCR even has a page dedicated to Central American asylum claims, referring to the movement of Central Americans to the U.S. as a ‘refugee crisis’ (UNHCR n.d.). Yet, this position requires defence, given the tenuous legal footing of claims linked to generalised violence and organised crime in U.S. asylum law.

Clearly, Central Americans have protection needs. The scale and severity of violence in the Northern Triangle is acute. In 2016, El Salvador was superseded only by Syria in the rate of violent deaths, Honduras ranked fourth, and Guatemala seventeenth (McEvoy and Hideg 2017: 25). Together, the Northern Triangle countries averaged approximately 68 deaths per 100,000 people (*ibid.*). The majority of these deaths are attributable to gang-related violence (U.S. Dept. of State 2018a, 2018b, 2018c; Amnesty International 2018). Recent UNHCR reports highlight the experiences of women and youth from the region, who may have particularly compelling claims to refugee status (UNHCR 2014, 2015). Gender-based violence is pervasive, including killing of women on account of their gender, gang-based violence targeting women and girls, and high levels of impunity in cases of gender-based violence (Amnesty International 2018: 186; Cardoletti-Carroll et al. 2015; U.S. Dept. of State 2018a, 2018b). Governments in the region are seemingly unable or unwilling to control the violence. Transnational criminal organisations in the Northern Triangle ‘wield considerably more arms, money and power than each nation’s military’ (Kennedy 2013: 50). Government corruption in the Northern Triangle is widespread (U.S. Dept. of State 2018a, 2018b, 2018c), not least because an estimated 40% to 70% of government officials receive payments from criminal groups (Kennedy 2013: 50). In high-crime areas, law enforcement has engaged in indiscriminate arrest and killing, resulting in non-gang members’ deaths and imprisonment (U.S. Dept. of State 2018b).

In light of these circumstances, movement in the region is common. An estimated 190,000 people are internally displaced in Honduras, 324,000 in El Salvador, and 256,000 in Guatemala (*World Bank Open Data*; International Rescue Committee). According to government figures, an estimated 49,376 people emigrated from El Salvador in 2017; 29,375 from Guatemala; and 9,943 from Honduras (*The World Factbook*). A significant number of those emigrating are travelling to the U.S. and will enter illegally.

To an extent, the U.S. government does recognise the protection needs of Central Americans. One obvious indication of this was the introduction of the Central American Minor refugee programme in 2014 which, until it was ceased by the Trump administration in 2017, admitted children under age 21 from the Northern Triangle for reunification with parents in the U.S.¹⁰ Coordinated through the U.S.’s Refugee Admissions Program, some children were admitted with full refugee status and associated access to permanent residency and citizenship (U.S. Dept. of State 2014; USCIS 2017). Grants of asylum also indicate at least limited recognition by the government of Central Americans’ claims. In 2016, 5,611 applicants from the Northern Triangle were granted asylum (U.S. Dept. of Homeland Security 2017: 44-45, 47-48).¹¹ Although grants of asylum are extremely low relative to the number of applications submitted – in 2016 just 14% of affirmative applications and 5% of defensive applications were approved – they represent a significant increase from the 1,093

¹⁰ The parent had to be lawfully present in the U.S. This included legal statuses other than lawful permanent resident, like Temporary Protected Status, which typically would not permit family reunification.

¹¹ These figures include affirmative grants of asylum from the Asylum Office and defensive grants of asylum by immigration judges.

applications approved in 2014 (Mossaad and Baugh 2018). In both 2015 and 2016, El Salvador, Guatemala, and Honduras ranked among the top four countries with the highest number of asylum applications approved in the U.S. (Office of Planning, Analysis and Statistics 2017).¹²

Admittedly, there may be people who we might want to consider refugees, yet who legally are not. This may be especially true of Central Americans, since many gang-based claims are at the margins of existing jurisprudence on the legal issues of nexus and particular social group formulation.¹³ However, even if Central American refugees' claims would not be recognised under U.S. asylum law, this does not undermine my argument; rather, the state's control over the interpretation and offer of asylum and the uncertainty associated with seeking formal asylum might themselves be considered factors that impact the strategic decision-making of presumptive refugees. It is in part due to the ambiguity of some areas of refugee law – such as claims related to gang-based violence – that presumptive refugees may not enter asylum systems, a point to which I will return.

In sum, on the basis of the fear and physical threats faced by Central American immigrants who flee to the U.S., the UNHCR's recognition of Central American refugees, and the examples of the U.S.'s government's own recognition of asylum claims from the region, it seems plausible to treat Central American immigrants as presumptive refugees.

Of course, treating Central Americans as presumptive refugees does not mean that every individual has a claim, or that all claims will be accepted. Some Central Americans may have a need for protection that is compelling, but that is clearly beyond the scope of the law. For them, the obvious choice may be to forego formal asylum. Others have asylum claims that are clearly legally viable, and some have claims at the margins of existing jurisprudence. Even for those with legally viable claims, and certainly for those with marginal claims, there may be good reason to opt out of formal asylum systems. I turn to the strategic decision-making of Central American refugees in the following section.

The strategic decision-making of Central Americans in the United States

If Central Americans from the Northern Triangle are treated as presumptive refugees, and if the U.S. government has recognised at least some number of their claims for asylum, how do we explain the decision of the approximately 1.43 million undocumented immigrants from the Northern Triangle who do *not* submit asylum applications?¹⁴ I argue that the strategic choice for a majority of potential refugees from Central America is to avoid entering the U.S.'s formal asylum system in favour of remaining as one of millions of undocumented immigrants living in the country. Faced with an asylum system that often fails to recognise their claims and factors that facilitate undocumented life in the state, there are good reasons to opt for informal asylum.

Drawing upon my analysis in the previous chapter, I suggest that refugees' decisions will be influenced by their knowledgeability of the U.S. asylum system and the opportunities to live outside

¹² They were surpassed only by grants to Chinese applicants, which is explained by a special statutory provision related to coercive population control policy (U.S. INA § 101(a)(42)(B) / 8 USC § 1101(a)(42)(B)).

¹³ U.S. law requires persecution be 'on account of race, religion, nationality, membership in a particular social group, or political opinion' (U.S. Immigration and Nationality Act § 101(a)(42)(A) / 8 U.S. Code § 1101(a)(42)(A)), in line with the 1951 Convention Relating to the Status of Refugees.

¹⁴ This figure is based on the estimate that 1.5 million undocumented Central Americans live in the U.S. and that 65,682 immigrants from the Northern Triangle filed asylum claims (Mossaad and Baugh 2018).

it, the motivation for leaving their country of origin and travelling to the U.S., and their power relative to the forces that control the U.S. immigration system.

Admittedly, knowledgeability about asylum may differ between refugees. Some may not know about asylum when they begin their journey and learn about it while en route to the U.S. When refugees do learn about asylum, it may be seen as a tool only to be used if apprehended by U.S. Customs and Border Protection, a strategy taught by some *coyotes* who help immigrants cross the border. Or, asylum may be viewed merely as ‘some sort of help for the poor’, without full understanding that a persecution claim underlies it (Ordóñez 2015). For some, asylum might truly be viewed as a benevolent offer of protection from the ‘land of promise’. The variety of possible understandings of the U.S. offer of asylum helps explain why some refugees do affirmatively seek formal asylum, even when faced with the factors I outline in the following section. Simultaneously, refugees likely have a great deal of information about the feasibility of living without status in the U.S., learned through the experiences of relatives and friends who have preceded them.

Central Americans’ motivations for leaving the Northern Triangle might be generally attributed to the high levels of violence described above (UNHCR 2010, 2014, 2015, n.d.). In comparison, the U.S. offers comparably greater physical security. Seeking asylum in the U.S. might also be motivated by the opportunities that come with having large in-country, co-ethnic networks and readily available employment in low-skill, low-wage jobs.

The power imbalance Central Americans face upon arrival is significant. Refugees are confronted with a state that is powerful enough to deploy a 19.3 billion USD apparatus to detect and expel unlawful entrants (U.S. Dept. of Homeland Security 2016) and a network of approximately 300 judges and 500 asylum officers adjudicating asylum claims (Drake 2016; Human Rights First 2016).¹⁵ Though the power imbalance operates in more subtle ways as well, these numbers are a striking reminder of the power of the state that Central American refugees confront. Nevertheless, by remaining in undocumented status, these refugees are, in many ways, exercising their own power over the state by subverting its control over who enters and remains.

Bearing these dynamics in mind, I turn to considering the characteristics of the U.S.’s offer of asylum and the features of undocumented life in the country. As a result of the factors outlined below, in the case of Central Americans in the U.S., the informal asylum of life undocumented may be preferable to pursuing the government’s offer of asylum.

U.S. asylum law and its impact on Central Americans

What is it about U.S. asylum law that discourages Central Americans from seeking status? While the U.S. frames itself as a nation of immigrants, welcome is not always extended to applicants for entry. As one scholar has written, Central Americans have faced ‘an exceptionally inhospitable context of reception’ under U.S. immigration law (Menjívar 2006: 1001). The possibility of rejection and removal, as well as restrictive mechanisms of adjudication that are particularly focused on Central Americans, make non-participation in the formal asylum system a potentially strategic decision. I follow the framework outlined in the previous chapter, focusing analysis on factors that are particularly relevant to Central American refugees.

¹⁵ 19.3 billion USD was the 2017 budget of U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement, the two agencies primarily responsible for immigration enforcement.

Rejection and removal

Inherent in the U.S. asylum system is the risk of rejection and removal from the state. For many Central Americans, entering the formal asylum system is little more than a pathway to removal. There is little reason to believe a claim will be accepted, as evidenced by average denial rates of 79.2% for El Salvador, 74.7% for Guatemala, and 78.1% for Honduras (Syracuse University 2017). One indicator of the relatively exceptional exclusion of Central Americans from humanitarian protection is the percentage of legal permanent residents who receive status through refugee and asylum pathways. While 14% of *all* legal permanent residents received their status through these humanitarian channels, among Central Americans that figure is just 3% (Lesser and Batalova 2017).¹⁶ Evidenced in statistics like these, asylum takes on an elusive, unattainable character for refugees.

Relatedly, the government interpretation of U.S. asylum law upheld by courts has been especially exclusionary for Central American applicants. U.S. jurisprudence evidences wide rejection of claims linked to violence perpetrated by gangs – a main basis for Central Americans’ flight north. Numerous attempts to formulate viable particular social groups have been rejected by courts, making it difficult if not impossible to establish the required link between gang-based persecution and the five protected grounds (Dizon and Wettstein 2018: 164; Gonzalez Settlage 2016). As far as legal advocates are concerned, the message to Central American refugees is clear: ‘When it comes to gang cases, [Central Americans] think, [...] “If it’s just gang violence, don’t even bother [seeking asylum]”. That’s the main message that seems to be getting around’ (Johansen-Mendez).¹⁷ While other contentious areas of the interpretation of asylum law have been met with policy guidance, such provisions have not been entertained with respect to the claims of Central American victims of gang violence. The failure of the U.S. asylum system to effectively or systematically address the types of violence experienced by Central Americans – an underlying reason for low approval rates outlined above – fuels the rational response of refugees to forego participation in the system.

Such low recognition is in line with historic trends, which also contribute to the perception that contemporary Central American asylum applicants will likely be met with rejection by the state. With asylum denial rates for Salvadorans reaching as high as 97% in the 1980s, the U.S. arguably engaged in ‘a campaign of discrediting applicants by nationality’ (Mahler 1995: 178). In 1981, UNHCR even issued a report stating that the U.S. had deliberately used high bonds and lengthy detention to discourage Salvadoran applicants from pursuing asylum claims (Wilsher 2012: 132). In 1990, the U.S. government settled a class action lawsuit that granted certain Guatemalans and Salvadorans initial and *de novo* asylum hearings, on the basis of discriminatory adjudication of their claims in the 1980s (*American Baptist Churches et al.*). As one attorney noted, ‘the historical protection that the U.S. had provided to a community or was perceived as having provided to a community matters [in refugees’ decision-making about pursuing asylum]’ (Fortin).¹⁸ Given the experiences outlined here, such a perception is justifiably absent among the Central American community in the U.S. and is likely to be passed along to new arrivals. While theoretically a reality of the past, these are unpromising legacies for contemporary adjudication of asylum claims for refugees from the Northern Triangle, and a reason for current potential applicants to have little faith in or knowledge of the asylum process.

¹⁶ Some of this percentage difference is accounted for by higher rates of family-based permanent residency among Central Americans than among legal permanent residents from other nations.

¹⁷ Yliana Johansen-Mendez is a Managing Attorney at the Immigrant Defenders Law Center (ImmDef) in Los Angeles, California. (Interview, May 2018).

¹⁸ Meredith Fortin is the Director of Immigrant Services Support at The New York Immigration Coalition (Interview, April 2018).

Mechanisms of asylum processing and adjudication

Many contemporary features of the U.S.'s offer of asylum are deliberately restrictive, creating conditions under which refugees reasonably avoid entering the asylum system. In addition to restrictions that were in place prior to President Donald Trump's election, a host of new restrictive policies contribute to this trend. Often framed as a means of preventing fraud and deterring frivolous claims, many mechanisms of asylum processing and adjudication create equally compelling reasons for 'legitimate' refugees to remain outside the system.

Claiming asylum, even affirmatively, will likely result in detention. In the U.S., over 50% of asylum seekers are detained (Byrne et al. 2016). At the southern border where most Central Americans enter the country, the infamous *hieleras*, or 'iceboxes', so-called for the often frigid temperatures are which they are kept, are used to temporarily hold asylum seekers close to the border for the possibility of a quick removal. These windowless, concrete rooms with no beds are often overcrowded, with limited sanitation facilities (Garcia Bochenek 2018). Stays may last well beyond the stated 72-hour maximum, and in some instances for more than a week (*ibid.*). Under the Trump administration, the widely publicised and controversial detention of parents in separate facilities from their children has occurred not only with unlawful entrants caught by immigration enforcement, but also in instances in which refugees followed 'proper' procedures and affirmatively requested asylum at the border (Dickerson 2018; G. 2018). As many as 700 instances of detention and separation have been documented; in one widely publicised case a Honduran asylum seeker and her child were detained at separate facilities for two months and 11 days (*ibid.*). Although punishing asylum seekers for illegal entry is legally prohibited, with practises like these, claiming asylum, especially on the southern border, takes on a punitive character. Given the realities of detention, refugees might intensely seek to avoid identifying themselves to the state.

Other mechanisms of asylum adjudication may *appear* to more directly target 'illegitimate' asylum seekers. The U.S.'s recent shift in asylum application processing procedures is one example. Beginning 29 January 2017, U.S. Citizenship and Immigration Services began processing asylum applications using a practise termed 'Last In, First Out' (LIFO), in which asylum applications are being adjudicated immediately, with interviews typically scheduled within three weeks of filing. This is in stark contrast to the previous processing framework, which reviewed applications in the order they were received ('First In, First Out' (FIFO)), resulting in a years-long backlog.¹⁹ In Los Angeles, New York City, and Houston, the three areas with the highest numbers of immigrants from the Northern Triangle, asylum interviews were being scheduled 36 months or more after filing of the initial asylum application (USCIS 2018). While the change reduces the length of time refugees spend in 'limbo', LIFO was instituted with the explicit objective of stemming 'fraud and abuse' and protecting 'national security and the integrity of the asylum system' (USCIS 2018), and has been coupled with a decision by U.S. Attorney General Jeff Sessions that allows for the summary denial of an asylum application without a hearing (*Matter of E-F-H-L-* 2018). Because the U.S. asylum system grants work authorisation to those with pending claims, one argument justifying the switch to LIFO was that claims were being filed frivolously in order to obtain employment authorisation documents. However, as one attorney explained, LIFO 'changes your risk assessment a little bit. ... For our two [clients] currently debating asylum, [before the change] they were deciding to apply for asylum, and now they've decided not to' (Campbell).²⁰ Even for those with viable claims, the

¹⁹ With the switch to LIFO processing, there is no provision for addressing the approximately 311,000 applications currently pending adjudication.

²⁰ Jill Campbell is a Managing Immigration Attorney at the Houston non-profit BakerRipley, a community-based organisation that offers legal and social services (Interview, May 2018).

immediacy of possible denial and risk of return seems, at least anecdotally, to deter application. The assumption that LIFO will remove incentives to illegitimately use the asylum system to secure work authorisation and that ‘legitimate’ refugees will not be deterred from participating as a result of this policy change is suspect. We might expect that other restrictive policies supposedly deterring fraudulent applications might similarly influence even genuine refugees.

The elaborate procedural hurdles of the asylum system itself may also create the conditions under which refugees do not enter the system. While purportedly a way to ensure the fair and just adjudication of claims, elaborate and complex rules and procedural restrictions may exclude even those the state has an interest in protecting. One result of the procedural complexity is that legal representation in the U.S. asylum system is, for all intents and purposes, essential, yet inaccessible to a majority of potential applicants. In 2017, immigrants with legal representation were five times more likely to be granted asylum (Syracuse University 2017). However, immigrants have no right to legal counsel and, despite the robust non-profit legal sector, these organisations have neither the time nor resources to serve all immigrants who could benefit from representation. These organisations make challenging decisions about who to represent, often focusing resources on those in removal proceedings: ‘If the person is undocumented and [has] never been apprehended, there’s really no service for them. [...] One lawyer can do 40 or 50 cases [a year], so there’s no way we can provide services to people who haven’t been apprehended’ (Young).²¹ When non-profit organisations cannot take on a case, the client is often referred to a private attorney, which can cost between 5,000 and 20,000 USD, depending on the complexity of the case and the number of appeals required (Johansen-Mendez). As a result, many Central Americans are effectively excluded from representation. Their claims are often at the margins of immigration law, requiring the types of complicated, time-consuming, and risky legal arguments which are frequently referred to private attorneys. Because Central Americans are among the poorest immigrant groups in the U.S. (Lesser and Batalova 2017), private fees may be especially prohibitive, and many immigrants may never follow up on these referrals. In light of these constraints, refugees may reasonably give up on seeking non-profit representation and decide against incurring themselves for an already risky application for asylum.

When viewed in the best possible light, the state asylum system, with its risk of removal and at times deliberately restrictive policies, is not meant to exclude ‘legitimate’ refugees, but rather to deter ‘abusive’ applicants, maintain the integrity of asylum, and provide protection to the ‘deserving’. Yet why would we expect that refugees would be willing to accept the risks inherent in the state’s offer of asylum, including the possibility of removal? Why would we assume that refugees would be willing to endure the very conditions and practises that are meant to deter ‘illegitimate’ asylum claimants from entering the system? As this section has illustrated, the U.S.’s offer of formal asylum creates conditions which Central American immigrants in particular might rationally avoid.

Undocumented residence in the U.S.

In addition to the reasons why opting for formal asylum is unappealing, refugees will consider the features that make informal asylum preferable. In other words, recourse to the restrictive U.S. asylum system is weighed against the feasibility of life without status in the U.S. Having discussed the former, I now turn to consider the features of U.S. policy and practise that make life in irregular status possible.

²¹ Pat Young is a Program Director at the Central American Resource Center’s (CARECEN) office in Long Island, New York. He has worked as an attorney with CARECEN since the 1980s (Interview, May 2018).

Let me be clear: identifying the factors that lead Central Americans to find irregular status acceptable is *not* an endorsement of a status quo in which the state fails to provide adequate protection and access to legal immigration pathways. Undocumented residence is characterised by precariousness, often with devastating human consequences. Undocumented immigrants may be exploited at their workplaces, suffer crimes that go unreported, be subject to the manipulation and abuse of family and friends as a result of their irregular status, have poor health outcomes, and be torn away from their families and homes by nothing more than a chance encounter with law enforcement. I do not wish to understate the challenges – even dangers – of undocumented residence, but I will nevertheless explore why, when faced with the choice between the formal asylum system’s restrictions and life in irregular status, the balance may fall in favour of the informal asylum that undocumented residence may provide.

Legal rights and protections

Although the current immigration climate is, in many ways, at its most restrictive, relative to the conditions from which Central Americans come, the U.S. may afford rights and protections not enjoyed in refugees’ countries of origin. Some rights, both those expressly extended to undocumented immigrants and others that are universally applicable, protect those in irregular status. Constitutional rights, such as the right to deny immigration officials entry to the home and the right to refuse to answer law enforcement’s questions about immigration status (U.S. Const. amend. IV and V) are vigorously defended by groups like the Immigrant Legal Resource Center. Undocumented children can attend school (*Plyler v. Doe*, 457 U.S. 202 (1982)), something that is sometimes impossible in gang-run *barrios* in the Northern Triangle. Workplace rights are by law extended to undocumented immigrants, and even publicly affirmed. As the U.S. Secretary of Labor acknowledged, ‘our [Occupational Safety and Health Administration] protections apply to every worker in the United States, including those who are undocumented’ (Solis 2010). There are even examples of undocumented farmworkers collectively lobbying for workplace rights (Orleck 2018; Migrant Justice 2015).

Of course, as discussed in chapter 3, rights realisation can be limited due to the fear of exposing irregular status. However, in an effort to make rights realisable in practise, in some instances the U.S. government has implemented protective measures. The Occupational Safety and Health Administration, for example, offers grants for workplace safety programmes benefitting underserved workers, low-literacy workers, and workers in high-hazard industries, of which undocumented Central American labourers in jobs like construction or farm labour are often the beneficiaries (Wolkin, personal communication). The introduction of the U visa in 2000 is another example. The provision, integrated in the *Trafficking Victims Prevention Act* (TVPA) (2000), provides a means of regularising status for victims of certain violent crimes who report the crime to police. U visas have often been granted to victims of domestic violence, for example. While this provision serves a law enforcement function, it also contributes to the realisation of rights by undocumented immigrants who otherwise might not report a crime for fear of immigration consequences. These few protections and others like them by no means surmount the challenges of life in irregular status, but they may create the conditions under which it is possible to carry out the functions of everyday life in relative security. As a result, life in irregular status, while perhaps not the ideal, may be viewed as an acceptable state of affairs given the alternative – seeking asylum in a restrictive and risky process.

Additionally, despite the incredible capacity of the U.S. to detect and expel immigrants, refugees may bank on the fact that it is impossible for the government to detect and expel *every* immigrant in irregular status. By one estimate, deporting all undocumented immigrants in the U.S. would cost

between 400 and 600 billion USD (Gitis and Collins 2015), a sum large enough to make mass deportation impossible. According to the Pew Research Center, approximately 726,000 Central Americans have lived in irregular status in the U.S. for 10 years or more, suggesting that residence without detection and expulsion is possible (Krogstad et al. 2017). At least until stepped-up enforcement under the Trump administration, there was also, at least anecdotally, a sense among immigrants that, if you obeyed the law, you might successfully avoid being a target for enforcement. According to one attorney, who has been practising in the New York metro area since the 1980s, ‘[T]he Central American community understood why particular people were being arrested’ (Young). Admittedly, with a 40% increase in interior immigration enforcement efforts, this sense of security may be diminishing (Bialik 2018).²² However, while it might seem that increased enforcement would encourage recourse to asylum for the legal protection it provides, this will not necessarily be the case: For immigrants, heightened immigration enforcement might rightly be interpreted to signal a generally unwelcoming immigration climate. Moreover, despite heightened enforcement, there may still be a perception that targeting by immigration enforcement is more controlled and avoidable than, for instance, targeting by gangs in refugees’ countries of origin. For refugees weighing their options, and if the experiences of their undocumented peers are any indication, one might rationally conclude that is possible to manage and mitigate the threat of detection and deportation, and therefore feasible to ‘get by’ without status.

Social, economic, and municipal integration

The immigrant-heavy character of the U.S. also contributes to the ability of Central Americans to remain in the country without status. Living in irregular status can be a long-term reality; as indicated above, approximately 726,000 Central Americans, or fully 66% of the undocumented immigrant population, had been living in the country for 10 years or more (Krogstad et al. 2017). For Central Americans, the scale of their social networks provides a relatively wide safety net and support structure, and also clearly signals the possibility of carrying out the functions of everyday life over an extended period of time in the country. Additionally, and especially for Central Americans, family networks will often include individuals with mixed statuses. Many Salvadorans and Hondurans hold Temporary Protected Status, and some Central American immigrants who have been in the U.S. since the 1980s have been able to receive permanent residency under the Nicaraguan Adjustment and Central American Relief Act. In addition to the material and social support that co-ethnic networks can provide, networks that include those in legal status may also facilitate access to certain services and opportunities that require lawful presence, increasing the viability of life in irregular status.

Economic opportunities are also available to undocumented immigrants. By one estimate, undocumented labour contributes 434.4 billion USD to the national economy (Edwards 2016). Though the jobs held by undocumented immigrants are often low-skill, low-wage, and highly physically demanding, many Central American immigrants would remain in the same types of jobs even with work authorisation by virtue of education level and language abilities; by one estimate 49% of Central American immigrants have not finished high school (Lesser and Batalova 2017), a figure that is significantly higher than that of immigrants generally, and that severely limits employment opportunities. According to one scholar, the U.S. economy benefits so significantly from this undocumented labour force that efforts to disrupt it are relatively limited (De Genova 2013). Given the availability of economic opportunities even without formal work authorisation, as well as the arguable complicity of the U.S. government in permitting undocumented labour, the

²² Interior immigration enforcement is measured by the number of arrests.

prospect for self-sufficiency even without formal recognition of status may, on balance, encourage opting for informal asylum.

Finally, there are numerous examples of cities implementing legal protections and social services for their undocumented residents, likely contributing to the feasibility of life in irregular status. In the cities with the highest numbers of Central Americans – Houston, Los Angeles, and New York City – there are several relevant examples. In Los Angeles, for instance, local law enforcement has refused to comply with federal immigration detainers (Su 2013: 304). Even where state-level policy has been restrictive, as is the case in Texas, municipalities have attempted to mitigate its effects. In response to Texas’s recently passed anti-sanctuary city law, which, among other things, requires local law enforcement to comply with federal immigration detainers and permits law enforcement to check immigration status of anyone at any time (*An Act Relating to the Enforcement...* 2017), the Houston police chief emphasised that his department’s compliance would be the bare minimum: ‘[The law] prohibits me from *prohibiting* [my officers] from asking a question in terms of immigration status, [...] but it doesn’t *require* them to make the inquiry’ (Aguilar 2017, emphasis mine). When Hurricane Harvey devastated Houston just days before the anti-sanctuary law was to go into effect, Houston mayor Sylvester Turner assured undocumented residents that they should confidently take advantage of relief services, including registering at disaster relief shelters, which were instructed not to check immigration status (Allen 2017). Turner even promised legal representation to any undocumented residents detained as a result of seeking aid after the hurricane (Allen 2017). While municipalities have by no means been universally accommodating of undocumented residents, where such policies are in place, they may matter to undocumented residents. According to one Los Angeles attorney, speaking about the experience of her own clients, ‘People take some refuge in the idea that their city is willing to protect them. [People think], “I can walk around, I can go to the store. I can go to work. And no one’s going to bother me. [...] I don’t have papers, I don’t have a work permit, and I don’t have asylum, but I’m doing okay”’ (Johansen-Mendez). If it is feasible to live without status, successfully carrying out the necessities of everyday life, with a local government apparatus supporting that reality, a refugee might reasonably turn to informal asylum as a preferred form of protection.

In addition to responding to restrictive federal- or state-level policy, municipalities have also implemented affirmative measures to improve life for their undocumented residents. New York City, for example, provides municipal identification cards for undocumented residents who cannot obtain state identification, facilitating greater access to banks, hospitals, and other services (Su 2013: 305). New York established the Mayor’s Office of Immigrant Affairs to ‘facilitate the successful integration of immigrant New Yorkers into the City’s civic, economic, and cultural life’ (Mayor’s Office of Immigrant Affairs 2018). Programming includes, for example, immigration legal services, which are accessible to immigrants in regular and irregular status. In Houston, the Harris Health Financial Assistance Program offers low-income individuals, including those without immigration status, low-cost healthcare access – especially important because private health insurance schemes are prohibitively expensive and state-supported schemes for low-income residents are only available to those with immigration status. Opportunities like these contribute to the realisation of a dignified standard of living for Central Americans and signal the support of local authorities, making irregular status an acceptable alternative when weighed against the state’s offer of asylum.

Despite its risks, the features of life outside the purview of state recognition are such that it is feasible, if not easy, to remain without legal status in the U.S. Particularly for the Central American community, with the millions of peers whose experiences evidence the possibility of remaining long-term and navigating the necessities of daily life, living in irregular status may seem like a more

viable option than formal asylum. As a result, for some refugees, remaining undocumented may be a strategic choice that facilitates the realisation of a kind of informal asylum.

The above illustration raises two important concerns. First, it problematises the tendency of some to cast Central American immigrants in irregular status as ‘economic migrants’ or ‘illegals’ undeserving of protection. For many Central Americans, the strategic choice may be foregoing the state’s offer of asylum in favour of life in irregular status. As a result, among the 1.5 million undocumented Central Americans living in the U.S. are some who are genuine refugees with legitimate protection needs, to whom greater attention should be paid.

Second, it suggests that a phenomenon of informal asylum may be increasingly preferred by Central Americans. As the Trump administration continues to implement additional, deliberately restrictive asylum practises, presumptive refugees may be increasingly discouraged from pursuing formal status.²³ Simultaneously, as refugees opt out of the asylum system, the network of Central Americans in the country will continue to grow, the U.S. government’s capacity to detect and expel will decrease, and additional integrative municipal practises may emerge, augmenting the feasibility of life in irregular status. This raises important concerns for refugee protection, as well as the integrity of the U.S. asylum system.

Rather paradoxically, and problematically for both the realisation of refugees’ protection needs and the integrity of the asylum system, for many Central Americans, and potentially other presumptive refugees as well, the most strategic choice may be to seek informal asylum.

5 Conclusion

Prompted by the scale of undocumented Central American immigration to the United States and the plausibility of refugee claims from the Northern Triangle, I ask, ‘How might we understand the decisions of refugees to opt out of formal asylum systems?’ Rather than provide conclusive empirical evidence in response to this question, I have aimed to provide a rudimentary framework to guide thinking about the possible factors affecting this decision.

Building upon self-settlement scholarship, I identified themes and explanations that are relevant beyond the geographic contexts to which empirical studies of self-settlement are confined. Using that learning as a foundation, I elaborated a framework to guide thinking about refugee decision-making on asylum. The framework emphasised consideration of the refugee as a strategic actor, weighing the nature of the state’s offer of asylum against the features of life outside the purview of the state. Finally, I illustrated how this framework might apply to the situation of Central Americans in the U.S., building the case that we might expect them to realise informal asylum through undocumented residence in the country.

This argument has led me to a number of often overlooked possibilities, which I believe raise important concerns. I first highlighted that the state’s offer of asylum is not always appealing. Significantly, this upturns the assumption that ‘legitimate’ refugees will submit themselves to the

²³ For example, on 11 June 2018, U.S. Attorney General Jeff Sessions overruled a precedent decision that allowed certain Central American women to claim asylum on the basis of domestic violence (*Matter of A-R-C-G-* 2014 overruled by *Matter of A-B-* 2018). This move will assuredly discourage some refugees from pursuing formal asylum in favour of the informal asylum of irregular status.

state's asylum determination system, an assumption that holds particular power in the Global North. As a result, among the people living in irregular status in both the Global North and the Global South, some are likely to be refugees. This provides grounds for challenging existing negative conceptualisations regarding unauthorised immigrants, so common in contemporary rhetoric. It also suggests a problematic reality in which opportunities for formal, legal protection are foregone for legitimate, rational reasons.

Counterintuitive though it may seem, for immigrants like Laura and potentially thousands of other Central Americans, foregoing the state's offer of asylum in favour of seeking the informal asylum of irregular status may be a highly strategic move. Yet Laura's case also illustrates the gravest concern: that informal asylum can sometimes fail, and the limited protection that it provides can be lost, potentially with deadly consequences. Informal asylum, then, is not a 'solution' for protection needs, but is often the only solution available for those seeking some form of asylum.

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