



STATEMENT OF THE AMERICAN IMMIGRATION COUNCIL

**SUBMITTED TO THE U.S. HOUSE OF REPRESENTATIVES JUDICIARY COMMITTEE,
SUBCOMMITTEE ON IMMIGRATION AND BORDER SECURITY**

**HEARING ON “ANOTHER SURGE OF ILLEGAL IMMIGRANTS ALONG THE SOUTHWEST
BORDER: IS THIS THE OBAMA ADMINISTRATION’S NEW NORMAL?”**

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The American Immigration Council is a non-profit organization which for over 25 years has been dedicated to increasing public understanding of immigration law and policy and the role of immigration in American society. We write to share our analysis and research regarding the children and families that have fled Central American violence to the United States.

Our report, *A Guide to Children Arriving at the Border: Laws, Policies and Responses* (June 2015) (Attachment A), provides information about the tens of thousands of children—some traveling with their parents and others alone—who have fled their homes in Central America and arrived at our southern border. It also seeks to explain the basic protections the law affords them, what happens to the children once they are in U.S. custody, and what the government has done in response.

As described in the *Guide*, unaccompanied children and families are still fleeing Central American violence in large numbers. As explained in the paper *No Childhood Here: Why Central American Children Are Fleeing Their Homes* (July 2014) (Attachment B), organized crime, gangs, and violence are driving children, families, women, and men out of their home towns and countries. Of more than 300 children interviewed in the first five months of 2014 for *No Childhood Here*, 59 percent of Salvadoran boys and 61 percent of Salvadoran girls cited these factors as a reason for their emigration. Since 2014, El Salvador's murder rate has increased 70%, making the small country the murder capital of the hemisphere.¹ In August 2015 alone, there were 911 murders in El Salvador—a number not seen since the country's civil war ended in 1992.² Moreover, these children, families, women, and men are encountering a fierce enforcement crackdown in Mexico, which only increases the risks they face in seeking protection.³

¹ <https://www.washingtonpost.com/news/worldviews/wp/2016/01/05/why-el-salvador-became-the-hemispheres-murder-capital/>.

² <http://www.theguardian.com/world/2015/sep/02/el-salvador-gang-violence-murder-rate-record>.

³ http://www.nytimes.com/2015/10/11/opinion/sunday/the-refugees-at-our-door.html?_r=1.

The country conditions in El Salvador, Honduras, and Guatemala, known as the “Northern Triangle” of Central America, have concerned members of Congress as well as civil, faith, immigrant, labor rights, and legal services organizations. In a letter sent to the President in January, 273 groups requested temporary protected status (TPS) for Central Americans, citing the Northern Triangle’s 2015 death toll of 17,500—a number surpassed only by the war-torn countries of Iraq, Afghanistan, and Syria.⁴ In Congress, 146 House Democrats and 22 Senate Democrats also sent letters to the President calling for TPS for Central Americans.⁵ This current situation demonstrates how essential it is for the United States to uphold its obligations to protect vulnerable populations.

Many legal protections for children are codified in the 2008 Trafficking Victims Protection Reauthorization Act (TVPRA). Indeed, the influx of children since over the past few years shows the need to better implement TVPRA protections. With respect to adults fleeing these conditions, they must navigate the complex asylum application and credible fear process in the United States, described in the May 2014 report *Mexican and Central American Asylum and Credible Fear Claims: Background and Context* (Attachment C).

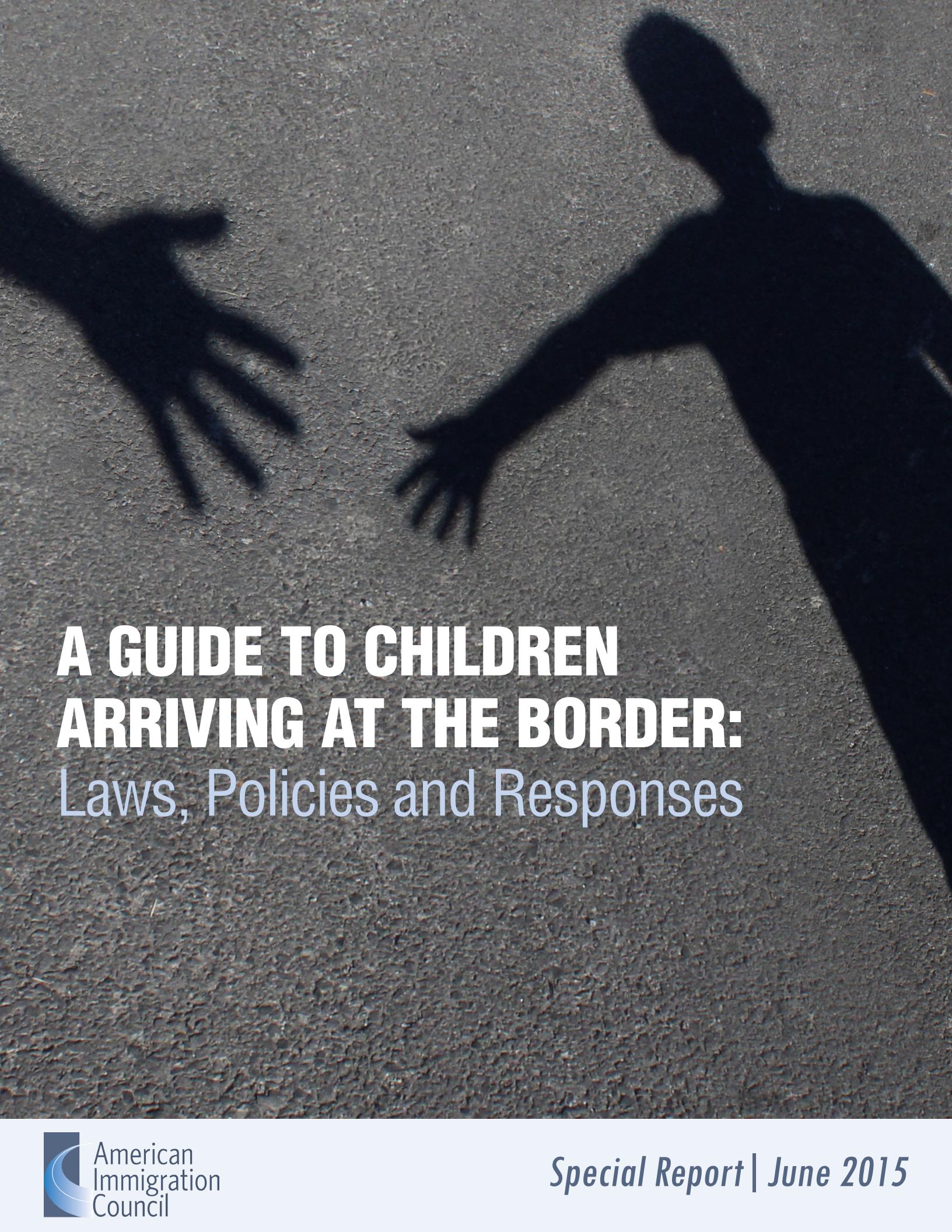
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We continue to urge Congress to strengthen protections for vulnerable populations, and to work to comprehensively reform our outdated immigration system, in a way that meets our needs and reflects our proud history as a nation of immigrants.

⁴ <http://immigrantjustice.org/sites/immigrantjustice.org/files/images/Northern-Triangle-TPS-National-Letter-January-25-2016.pdf>.

⁵ <https://lofgren.house.gov/news/documentsingle.aspx?DocumentID=398049>;
<http://www.menendez.senate.gov/imo/media/doc/1-21-16%20Senators%20to%20Pres%20%20Obama%20re%20DHS%20targeted%20enforcement%20operations1.pdf>.

ATTACHMENT A



A GUIDE TO CHILDREN ARRIVING AT THE BORDER: Laws, Policies and Responses

A GUIDE TO CHILDREN ARRIVING AT THE BORDER: LAWS, POLICIES AND RESPONSES

ABOUT THE AMERICAN IMMIGRATION COUNCIL

The American Immigration Council's policy mission is to shape a rational conversation on immigration and immigrant integration. Through its research and analysis, the Immigration Council provides policymakers, the media, and the general public with accurate information about the role of immigrants and immigration policy in U.S. society. Our reports and materials are widely disseminated and relied upon by press and policymakers. Our staff regularly serves as experts to leaders on Capitol Hill, opinion-makers, and the media. We are a non-partisan organization that neither supports nor opposes any political party or candidate for office.

Visit our website at www.immigrationpolicy.org and our blog at www.immigrationimpact.com.

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The American Immigration Council is updating this Guide which was first issued in summer 2014. It provides information about the tens of thousands of children—some travelling with their parents and others alone—who have fled their homes in Central America and arrived at our southern border. This Guide seeks to explain the basics. Who are these children and why are they coming? What basic protections does the law afford them? What happens to the children once they are in U.S. custody? What have the U.S. and other governments done in response? What additional responses have advocates and legislators proposed? The answers to these questions are critical to assessing the U.S. government’s responses and understanding the ongoing debate about whether reforms to the immigration laws and policies involving children are needed.

BACKGROUND: WHO ARE THE CHILDREN, WHY ARE THEY COMING, AND WHAT OBLIGATIONS DO WE HAVE?

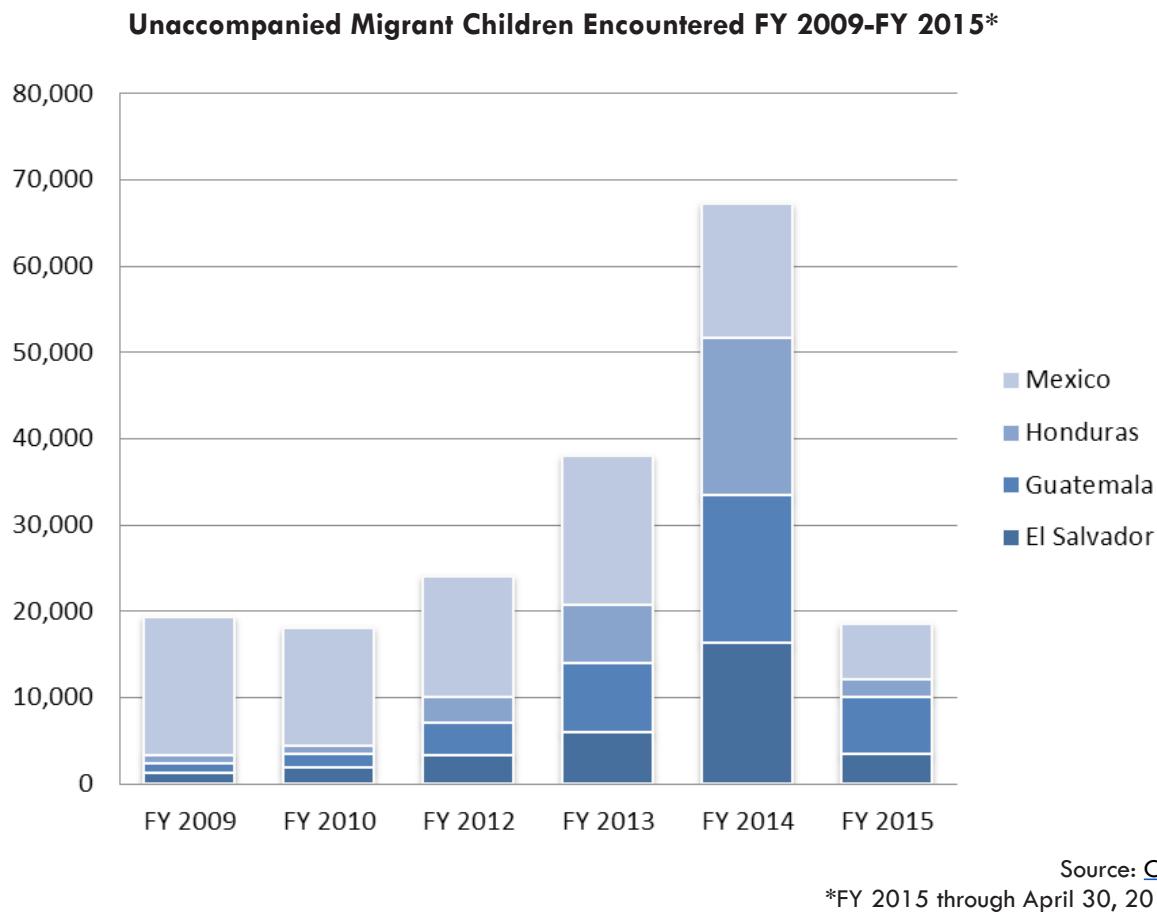
What does “unaccompanied children” mean?

Children who arrive in the United States alone or who are required to appear in immigration court on their own often are referred to as unaccompanied children or unaccompanied minors. “Unaccompanied alien child” (UAC) is a technical term defined by law as a child who “(A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom—(i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody.”¹ Due to their vulnerability, these young migrants receive certain protections under U.S. law. The immigration laws do not define the term “accompanied” children, but children arriving in the United States with a parent or guardian are considered accompanied.

Where are these children and families coming from?

The vast majority of unaccompanied children and families arriving at the southwest border come from Mexico, Guatemala, Honduras, and El Salvador, although unaccompanied children may arrive from any country. Over the past few years, increasing numbers of children and families have been fleeing violence in Guatemala, Honduras, and El Salvador—a region of Central America known as the “Northern Triangle.” According to U.S. Customs and Border Protection ([CBP](#)), a component of the Department of Homeland Security (DHS), between October 1, 2013 and September 30, 2014, CBP encountered 67,339 unaccompanied children. The largest number of children (27 percent of the total) came from Honduras, followed by Guatemala (25 percent), El Salvador (24 percent), and Mexico (23 percent).² The number of unaccompanied children arriving at the southern border has decreased since its peak in the summer and fall of 2014. Between October 1, 2014 and April 30, 2015, CBP apprehended 3,514 unaccompanied minors from El Salvador, 6,607 from Guatemala, 1,977 from Honduras, and 6,519 from Mexico.³ This represents approximately a 45 percent decrease from the same time period the prior year.⁴ The apprehensions of “family units” (children with a parent or legal guardian) also declined. There were 16,997 family unit apprehensions from October 1, 2014 to April 30, 2015, a 35 percent decrease from 26,341 apprehensions during the same time frame the year before.⁵

As discussed below, this decrease in apprehensions likely is tied to increases in apprehensions in Mexico and increased security measures along Mexico's southern border.



Why are children and families leaving their home countries?

Researchers consistently cite increased Northern Triangle violence as the primary motivation for recent migration, while identifying additional causes including poverty and family reunification.⁶ A report by the [Assessment Capacities Project](#) (ACAPS), citing 2012 United Nations Office on Drugs and Crime (UNODC) data, highlighted that Honduras had a homicide rate of 90.4 per 100,000 people. El Salvador and Guatemala had homicide rates of 41.2 and 39.9, respectively.⁷ A 2014 analysis conducted by Tom Wong, a University of California-San Diego political science professor, took the UNDOC data and compared it to the data on unaccompanied children provided by CBP. Wong found a positive relationship between violence and the flow of children: "meaning that higher rates of homicide in countries such as Honduras, El Salvador, and Guatemala are related to greater numbers of children fleeing to the United States."⁸

While a child may have multiple reasons for leaving his or her country, children from the Northern Triangle consistently cite gang or cartel violence as a primary motivation for fleeing. Research conducted in El Salvador on child migrants who were returned from Mexico found that 60 percent listed crime, gang threats, and insecurity as a reason for leaving.⁹ In a United Nations High Commissioner for Refugees (UNHCR) survey of 404 unaccompanied children from El Salvador, Guatemala, Honduras, and Mexico, 48 percent of the children "shared experiences of how they

had been personally affected by the...violence in the region by organized armed criminal actors, including drug cartels and gangs or by State actors.”¹⁰ Furthermore, the violence frequently targets youth. Recruitment for gangs begins in adolescence—or younger—and there are incidents of youth being beaten by police who suspected them of gang membership.¹¹

Are children coming to the United States because of DACA?

No. U.S. immigration enforcement policy, including deferred action programs that would allow certain undocumented immigrants to remain in the United States temporarily, is not a primary cause of the migration. Notably, the rise in violence and corresponding increase in unaccompanied child arrivals precede both the Deferred Action for Childhood Arrivals (DACA) program and Senate passage of an immigration reform bill S.744—positive developments that are sometimes cited as pull factors by Obama Administration critics. In fact, in its 2012 report, the Office of Refugee Resettlement (ORR) stated that “in a five month period between March and July 2012, the UAC program received almost 7,200 referrals—surpassing FY2011’s total annual referrals,” showing that the rise in UACs predated the implementation of the DACA program. Furthermore, individuals who arrived in the country after January 1, 2007 would not be eligible for DACA.

Would more Border Patrol resources deter border crossers?

There is little evidence to support the proposition that the border must be further fortified to deter an influx of children and families. Treating the current situation as simply another wave of unauthorized immigration misses the broader policy and humanitarian concerns driving these children and families’ migration. In fact, many women and children are turning themselves over to Border Patrol agents upon arrival and are not seeking to evade apprehension.¹²

Furthermore, CBP’s resources along the southwest border are already significant. There were 18,156 Border Patrol agents stationed along the southwest border as of Fiscal Year (FY) 2014.¹³ The annual Border Patrol budget stood at \$3.6 billion in FY 2014.¹⁴ The Border Patrol has at its command a wide array of surveillance technologies: ground radar, cameras, motion detectors, thermal imaging sensors, stadium lighting, helicopters, and unmanned aerial vehicles.¹⁵

What are our obligations under international law?

The United States has entered into treaties with other countries to ensure the protection and safe passage of refugees.¹⁶ Among the most important are the 1951 United Nations Convention Relating to the Status of Refugees and the 1967 Protocol. Under these treaties, the United States may not return an individual to a country where he or she faces persecution from a government or a group the government is unable or unwilling to control based on race, religion, nationality, political opinion, or membership in a particular social group. A separate treaty, known as the Convention Against Torture, prohibits the return of people to a country where there are substantial grounds to believe they may be tortured.¹⁷

The United States has implemented these treaties in various laws and regulations. They form the basis for both our refugee program and asylum program. (An asylee is simply a refugee whose case is determined in the United States, rather than outside it.) In fact, under our laws, anyone in the United States may seek asylum, with some exceptions, or protection from torture with no exceptions. It can be difficult and complicated to determine whether an individual has a valid claim for asylum

or protection from torture. To meet its protection obligations, the United States should ensure that children are safe, have an understanding of their situation and their rights, and have adequate representation when they tell their stories to a judge.

Do Central American children qualify for protections under international and U.S. law?

Many of the children fleeing to the United States have international protection needs and could be eligible for humanitarian relief. According to UNHCR's [survey](#) of 404 unaccompanied children from Mexico, El Salvador, Honduras, and Guatemala, 58 percent "were forcibly displaced because they suffered or faced harms that indicated a potential or actual need for international protection." Notably, of those surveyed, UNHCR thought 72 percent of the children from El Salvador, 57 percent from Honduras, and 38 percent from Guatemala could merit protection.¹⁸ While international protection standards are in some cases broader than current U.S. laws, the fact that over 50 percent of the children UNHCR surveyed might qualify as refugees suggests that a thorough and fair review of these children's claims is necessary to prevent them from being returned to danger.

Moreover, children may qualify for particular U.S. forms of humanitarian relief for victims of trafficking and crime, or for children who have been abused or abandoned by their parents. A 2010 survey conducted by the Vera Institute of Justice indicated that 40 percent of children screened while in government custody could be eligible for relief from removal under U.S. laws.¹⁹ Given their age, the complexity of their claims, and the trauma that generally accompanies their journey, determining whether these children qualify for some form of protection can be a time-consuming process.

What types of U.S. immigration relief do children potentially qualify for?

The most common types of U.S. immigration relief for which children potentially are eligible include:

Asylum: Asylum is a form of international protection granted to refugees who are present in the United States. In order to qualify for asylum, a person must demonstrate a well-founded fear of persecution based on one of five grounds: race, religion, nationality, political opinion, or membership in a particular social group.

Special Immigrant Juvenile Status (SIJS): SIJS is a humanitarian form of relief available to noncitizen minors who were abused, neglected, or abandoned by one or both parents. To be eligible for SIJS, a child must be under 21, unmarried, and the subject of certain dependency orders issued by a juvenile court.

U visas: A U visa is available to victims of certain crimes. To be eligible, the person must have suffered substantial physical or mental abuse and have cooperated with law enforcement in the investigation or prosecution of the crime.

T visas: A T visa is available to individuals who have been victims of a severe form of trafficking. To be eligible, the person must demonstrate that he or she would suffer extreme hardship involving unusual or severe harm if removed from the United States.

What is the Trafficking Victims Protection Reauthorization Act (TVPRA)?

The original Trafficking Victims Protection Act was signed into law in 2000 to address human trafficking concerns. It was subsequently reauthorized during both the Bush and Obama Administrations in 2003, 2005, 2008, and 2013.

The TVPRA of 2008, signed by President Bush, responded to concerns that unaccompanied children apprehended by the Border Patrol “were not being adequately screened” for eligibility for protection or relief in the United States.²⁰ The TVPRA also directed the development of procedures to ensure that if unaccompanied children are deported, they are safely repatriated. At the outset, unaccompanied children must be screened as potential victims of human trafficking.²¹ However, as described further below, procedural protections for children are different for children from contiguous countries (i.e., Mexico and Canada) and non-contiguous countries (all others). While children from non-contiguous countries are transferred to the Department of Health and Human Services (HHS) for trafficking screening, and placed into formal immigration court removal proceedings, Mexican and Canadian children are screened by CBP for trafficking and, if no signs of trafficking or fear of persecution are reported, may be summarily returned home pursuant to negotiated repatriation agreements.²² The TVPRA in 2008 also ensured that unaccompanied alien children are exempt from certain limitations on asylum (e.g., a one-year filing deadline).²³ It also required HHS to ensure “to the greatest extent practicable” that unaccompanied children in HHS custody have counsel, as described further below—not only “to represent them in legal proceedings,” but to “protect them from mistreatment, exploitation, and trafficking.”²⁴

Can new arrivals obtain a grant of Temporary Protected Status?

Although Salvadorans and Guatemalans in the United States have been eligible for Temporary Protected Status (TPS) in the past, there currently is no category that would include children or families arriving today or at any point since the spring of 2014. TPS is a limited immigration status that allows an individual to remain temporarily in the United States because of civil war, natural disasters, or other emergency situations that make it difficult for a country to successfully reintegrate people. TPS requires a formal designation by the Secretary of Homeland Security, in consultation with the Secretary of State, and requires, among other things, that a country formally request this designation from the U.S. government.

How have other countries in the region responded to the increase in child migrants?

Mexico, with support from the United States, has responded to the increasing number of children and families fleeing Central America by expanding its security measures along its southern border as well as its internal enforcement. Part of the Mexican government’s southern border security plan is funded through the Mérida Initiative and as of October 2014, about \$1.3 billion dollars in U.S. assistance went to Mexico through this initiative.²⁵

According to the Migration Policy Institute, migrants report an “increased presence of immigration officials in pickup trucks patrolling the roads and bus stations en route to the train line. Raids on hotels and restaurants where migrants shelter in traditional cities [i.e., cities along previously established migrant routes] have occurred. And immigration agents, in raids supported by federal

police and the military, are targeting the trains, removing migrants from the train cars and detaining them.²⁶ The companies that run the cargo trains on whose roofs migrants travel (referred to as “La Bestia”) also are working with the Mexican government to increase train speed in order to prevent migrants from riding on them.²⁷

Deportations from Mexico to the Northern Triangle countries increased significantly over the course of 2014, and this trend has continued into 2015. Mexico apprehended more than 15,795 minors between January and August of 2014, compared to 9,727 minors for all of 2013.²⁸ According to a Pew Research Center analysis of data from the Mexican government, Mexico deported 3,819 unaccompanied minors from Central America during the first five months of FY 2015—a 56% increase over the same period from FY 2014.²⁹

A report by the Human Rights Institute at Georgetown Law School found that while “Mexican officials are supposed to screen unaccompanied children for international protection needs, they often fail to meet this responsibility.”³⁰ The report also found that the detention conditions deterred children from accessing the asylum process and that the Mexican government is failing to consistently inform children of their rights or screen them for international protection eligibility.³¹ Without these practices, the report argued, “current practices place a burden on migrant children to investigate the law and procedures and affirmatively apply for asylum.”³²

What is in-country processing?

In November 2014, the U.S. Department of State announced the launch of its in-country refugee processing program in El Salvador, Guatemala, and Honduras. The program is intended “to provide a safe, legal, and orderly alternative to the dangerous journey that some children are currently undertaking to the United States.”³³ The new program allows parents from El Salvador, Guatemala, and Honduras who are lawfully present in the United States to submit an application to have their children join them in the United States if they qualify for refugee status or humanitarian parole.

Parents may submit applications for this program to the State Department. Once the application is submitted, the International Organization for Migration (IOM) will work with the child in country and invite them to pre-screening interviews. Both the child and the parent will have to submit to DNA testing to ensure the biological relationship, and DHS will conduct an interview for refugee eligibility. As with all refugees, the children will have to submit to and pass security checks to be eligible for refugee status.³⁴ If they do not qualify for refugee status, it is possible that they may qualify for humanitarian parole on a case-by-case basis. Although humanitarian parole permits a person to travel safely to the United States to reunite with a parent, unlike refugee status, it does not provide a path to citizenship.

While this program will help some eligible children and a parent, its impact is expected to be limited. Any refugees admitted under this program would count against the current limit of 4,000 refugee admissions for Latin America and the Caribbean. In contrast, 68,541 children crossed the border in FY 2014. The program itself is rigorous, and its requirements—a parent with legal status and DNA and security checks—will limit who qualifies. Eleanor Acer of Human Rights First argued that “[p]ractically speaking, the program will need to actually extend protection in a timely manner to a meaningful number of applicants if it is to be viewed as a credible alternative to some families with at-risk children.” Additionally, Acer note that in the past, U.S. officers have used “the existence of in-country resettlement...to limit access to protection.”³⁵

PROCEDURES AND POLICIES: WHAT HAPPENS TO CHILDREN AND FAMILIES WHEN THEY ARRIVE AT THE BORDER?

How are unaccompanied children treated compared to adults and children arriving in families?

How a noncitizen is treated upon apprehension depends on where the person is apprehended (near the border or in the interior), what country he or she is from (a contiguous country or a noncontiguous country), and whether he or she is an unaccompanied minor.

Adults and families, when apprehended in the interior, typically are placed in removal proceedings before an immigration judge.³⁶ However, that is not necessarily the case for adults or families apprehended at or near the border. In FY 2013, 83 percent of adults removed by the U.S. were deported through summary, out-of-court removal proceedings by a DHS officer rather than appearing before an immigration judge.³⁷ The most common summary removal processes are expedited removal, used when a noncitizen encounters immigration authorities at or within 100 miles of a U.S. border with insufficient or fraudulent documents,³⁸ and reinstatement of removal, used when a noncitizen unlawfully reenters after a prior removal order.³⁹

As discussed in detail below, unaccompanied children receive greater protections under U.S. law.

What happens to unaccompanied children once they are in U.S. custody?

The majority of unaccompanied children encountered at the border are apprehended, processed, and initially detained by CBP.⁴⁰ Unlike adults or families, though, unaccompanied children cannot be placed into expedited removal proceedings.⁴¹

Children from non-contiguous countries, such as El Salvador, Guatemala, or Honduras, are placed into standard removal proceedings in immigration court. CBP must transfer custody of these children to Health and Human Services (HHS), Office of Refugee Resettlement (ORR), within 72 hours, as described below.

Each child from a contiguous country—Mexico or Canada—must be screened by a CBP officer to determine if he or she is unable to make independent decisions, is a victim of trafficking, or fears persecution in his home country. If none of these conditions apply, CBP will immediately send the child back to Mexico or Canada through a process called “voluntary return.” Return occurs pursuant to agreements with Mexico and Canada to manage the repatriation process.⁴²

Non-governmental organizations (NGOs) have expressed concern that CBP is the “wrong agency” to screen children for signs of trauma, abuse, or persecution.⁴³ The public justice group Appleseed issued a report that stated, “as a practical matter” CBP screening “translates into less searching inquiries regarding any danger they are in and what legal rights they may have.”⁴⁴ Appleseed also expressed concern that the U.S.-Mexico repatriation agreement has been geared towards “protocols of repatriations logistics,” rather than best practices for child welfare.⁴⁵

Do children get attorneys?

In general, children facing deportation—just like adults facing deportation—are not provided government-appointed counsel to represent them in immigration court. Under the immigration laws, all persons have the “privilege” of being represented “at no expense to the Government.”⁴⁶ This means that only those individuals who can afford a private lawyer or those who are able to find pro bono counsel to represent them free of charge are represented in immigration court. And, although Congress has directed the Secretary of Health and Human Services (HHS) to ensure the provision of counsel to unaccompanied children “to the greatest extent practicable,” Congress further explained that the Secretary “shall make every effort to utilize the services of pro bono counsel who agree to provide representation to such children without charge.”⁴⁷

A vast network of pro bono legal service providers has responded to the call, and during the past year, the Obama Administration provided some funding to legal service providers in order to increase representation for unaccompanied children. The justice AmeriCorps program, announced in June 2014, awarded \$1.8 million for representation of certain children in immigration court,⁴⁸ and HHS subsequently provided an additional \$9 million for representation in FY 2014 and FY 2015.⁴⁹

But while pro bono legal service providers represent many children nationwide, they still are unable to meet the need. As of April 2015, children in over 38,000 pending cases remained unrepresented.⁵⁰ These children are forced to appear before an immigration judge and navigate the immigration court process, including putting on a legal defense, without any legal representation. In contrast, DHS, which acts as the prosecutor in immigration court and argues for the child’s deportation, is represented in every case by a lawyer trained in immigration law. As a result, advocates, including the American Immigration Council, filed a nationwide class-action lawsuit challenging the federal government’s failure to provide children with legal representation in immigration court. The case, *JEFM v. Holder*, is currently pending before a federal district court in Washington State.

How have immigration courts responded to the increased volume of cases?

In the summer of 2014, the Executive Office for Immigration Review (EOIR), the division within the Department of Justice which houses the immigration courts, adopted a new policy with respect to prioritizing cases for adjudication. The stated goal of this new policy was to “[f]ocus the department’s immigration processing resources on recent border crossers” (i.e., individuals who arrived on or after May 1, 2014). Under the policy, the immigration courts are to prioritize the following cases: (1) unaccompanied children who recently crossed the southwest border; (2) families who recently crossed the border and are held in detention; (3) families who recently crossed the border but are on “alternatives to detention” and (4) other detained cases.⁵¹ Immigration courts now schedule a first hearing for unaccompanied children within 21 days of the court’s receiving the case.⁵² Given the speed at which these cases progress, the expedited children’s dockets often are referred to as “rocket dockets.” Children on the rocket dockets may be provided with less time to find attorneys before immigration courts move forward with their cases—and, as a result, may be required to explain why they should not be deported without the help of an attorney. If they are unable to do so, unrepresented children may be ordered removed or required to “voluntarily” depart from the United States.⁵³

Can unaccompanied children be detained?

Yes, but special laws govern the custody of children based on child welfare standards that take the “best interests” of the child into account. Unaccompanied children must be transferred by DHS to the custody of HHS within 72 hours of apprehension, under the Homeland Security Act of 2002 and TVPRA of 2008.⁵⁴ HHS’s Office of Refugee Resettlement (ORR) then manages custody and care of the children until they can be released to family members or other individuals or organizations while their court proceedings go forward.

Under the TVPRA of 2008, HHS is required to “promptly place” each child in its custody “in the least restrictive setting that is in the best interests of the child.”⁵⁵ As such, children in ORR care are generally housed through a network of state-licensed, ORR-funded care providers, who are tasked with providing educational, health, and case management services to the children.⁵⁶

Under international law, children “should in principle not be detained at all,” according to UNHCR.⁵⁷ Detention, if used, should only be a “measure of last resort” for the “shortest appropriate period of time,” with an overall “ethic of care.”⁵⁸ Detention has “well-documented” negative effects on children’s mental and physical development,⁵⁹ including severe harm such as anxiety, depression, or long-term cognitive damage, especially when it is indefinite in nature.⁶⁰

Children who arrive with a parent may be detained by DHS in family detention centers, described below.

Can unaccompanied children be released from custody?

Yes. ORR seeks to reunify children with family members or release them to other individual or organizational sponsors whenever possible, on the grounds that children’s best interests are served by living in a family setting. ORR also is required to ensure that individuals taking custody of the children are able to provide for their well-being.⁶¹ Federal regulations, following a court settlement in the case *Flores v. Reno*, outline the following preferences for sponsors: (1) a parent; (2) a legal guardian; (3) an adult relative; (4) an adult individual or entity designated by the child’s parent or legal guardian; (5) a licensed program willing to accept legal custody; or (6) an adult or entity approved by ORR.⁶² The sponsor must agree to ensure that the child attends immigration court.

As of May 2014, ORR reported that the average length of stay in its facilities was approximately 35 days and that about 85 percent of the children served are released while their deportation proceedings are in progress.⁶³

Does the Government detain families?

Yes. The increase in families fleeing violence and arriving at the southwest border—frequently mothers with children—has reignited a debate over the appropriate treatment of families in the immigration system. Family immigration detention has a complicated and troubled history in the U.S.⁶⁴

Prior to 2006, ICE commonly detained parents and children separately. In FY 2006 appropriations language, however, Congress directed ICE to either “release families,” use “alternatives to detention

such as the Intensive Supervised Appearance Program,” or, if necessary, use “appropriate” detention space to house families together.⁶⁵ ICE responded by opening the T. Don Hutto Residential Center in Texas, with over 500 beds for families. But, as the Women’s Refugee Commission explained, the “Residential Center” was a “former criminal facility that still look[ed] and [felt] like a prison.”⁶⁶ The Hutto detention center became the subject of a lawsuit, a human rights investigation, multiple national and international media reports, and a national campaign to end family detention.⁶⁷ In 2009, ICE ended the use of family detention at Hutto, withdrew plans for three new family detention centers, and said that detention would be used more “thoughtfully and humanely.”⁶⁸

Yet, in the summer of 2014, in response to the increase in families fleeing violence and arriving at the southwest border, the federal government established a makeshift detention center on the grounds of the Federal Law Enforcement Training Center in Artesia, New Mexico, a remote location more than three hours’ drive from the nearest major city. According to the DHS Secretary, the detention and prompt removal of families was intended to deter others from coming to the United States.⁶⁹

Over the course of the summer and fall 2014, over hundreds of women and children were detained in Artesia. The facility was ultimately closed several months later, but the government has continued its policy of detaining women and children. Currently families are housed in three facilities: the South Texas Family Residential Center in Dilley, Texas, Karnes County Residential Center in Karnes City, Texas, and Berks Family Residential Center in Leesport, Pennsylvania. Both the Dilley and Karnes facilities are owned and operated by private prison companies. By the end of May 2015, Dilley’s capacity will be 2,400, making it by far the largest family detention center in the United States.

Family detention is rarely in the “best interests of the child,” as opposed to community-based alternatives.⁷⁰ Detaining children leads to serious mental health problems and chronic illnesses, and detaining families can have long-lasting effects on the psychological well-being of both parents and children.⁷¹

In 2014 and 2015, several detained families filed lawsuits to challenge various aspects of family detention. One case challenges the government’s policy of detaining families as a means to deter others from coming to the United States. In this case, *RILR v. Johnson*, a federal court issued a preliminary injunction to prevent the government from using deterrence as a factor in making a bond determination.⁷² In a second case, lawyers for children held in family detention facilities have claimed that the government is violating the terms of the settlement agreement in *Flores*, discussed above. This settlement established national standards for the detention, release and treatment of children detained by DHS for deportation.

Can alternatives to detention be used for families?

Yes. ICE operates two alternatives to detention (ATD) programs for adult detainees—a “full service” program with case management, supervision, and monitoring (either by GPS or telephone check-in), and a “technology-only” program with monitoring only.⁷³ According to U.S. government data, 95 percent of participants in ICE’s full service program appeared at scheduled court hearings from fiscal years 2011 to 2013.⁷⁴ Further, in FY 2012 only 4 percent were arrested by another law enforcement agency.⁷⁵ ICE’s alternatives program, as well as being more humane, is also less expensive than detention—\$10.55/day as opposed to \$158/day.⁷⁶ As to asylum seekers, a prior

U.S. government-commissioned study found that “asylum seekers do not need to be detained to appear,” and “[t]hey also do not seem to need intensive supervision.”⁷⁷ Bipartisan support has emerged for alternatives to immigration detention.⁷⁸ ICE, in early 2015, issued requests for proposals for “family case management services” for up to 300 families apiece in Baltimore/Washington, NYC/Newark, Miami, Chicago and Los Angeles.⁷⁹

U.S. GOVERNMENT RESPONSE, AND OTHER PROPOSED RESPONSES

During the summer of 2014, the Obama Administration’s response to Central American children and families arriving in the U.S. focused largely on enforcement measures, rather than humanitarian measures that had previously received legislative support, and would have been more tailored towards the vulnerable arriving population.

The Administration requested significant funding to support an “aggressive deterrence strategy” and implemented family detention and “rocket dockets” for children and families. Its in-country refugee processing program has been expected to assist relatively few people. Congressional legislative proposals, at the time and since, have largely focused on rolling back procedural protections for children. That said, proposals also exist to more holistically protect children and families reaching the United States, several of which passed the Senate in 2013 as part of its comprehensive immigration reform bill.

U.S. Government Response—Administration’s and Congress’ Actions

The following table summarizes the Administration’s and Congress’ major actions since summer 2014:

Date	Who	Action Taken
June 2, 2014	President Obama	Declared “ urgent humanitarian situation ” and directed a coordinated federal response under emergency homeland security authorities. ⁸⁰
June 20, 2014	DHS	Announced intention to detain families at the Border Patrol training center in Artesia, NM. ⁸¹ Detainees arrived in Artesia around the beginning of July. ⁸²
June 30, 2014	President Obama	Sent letter to Congressional leaders declaring intent to seek emergency funding for “an aggressive deterrence strategy focused on the removal and repatriation of recent border crossers.” ⁸³
July 8, 2014	President Obama	Sent letter to Speaker Boehner (attaching OMB analysis) requesting \$3.7 billion in emergency appropriations. ⁸⁴ Request included: ⁸⁵ <ul style="list-style-type: none">• HHS: \$1.8 billion for care of unaccompanied children• DHS-ICE: \$1.1 billion (incl. \$879 million for detention and removal)• DHS-CBP: \$432 million (incl. \$364 million for additional apprehensions)• State: \$295 million in Central American foreign aid• DOJ-EOIR: \$45 million for additional immigration judges, \$15 million to provide lawyers for children.
July 9, 2014	DOJ-EOIR	Immigration courts prioritized cases of recent border crossers who are unaccompanied children, families in detention, and families on alternatives to detention. ⁸⁶

July 11, 2014	DHS	Modified contract with Karnes County, TX to detain families at ICE's existing detention facility for adults there. ⁸⁷
July 31, 2014	Senate	Bill to provide \$2.7 billion in emergency appropriations failed in procedural vote. ⁸⁸
August 1, 2014	House of	<ul style="list-style-type: none"> Passed legislation to repeal DACA.⁸⁹ Also passed legislation to provide \$694 million in emergency appropriations,⁹⁰ and the “Secure the Southwest Border Act” to roll back procedural protections for Central American unaccompanied children.⁹¹
August 1, 2014	DHS	<ul style="list-style-type: none"> Announced intent to transfer \$405 million from other DHS programs to address humanitarian challenge. Congressional Appropriations Committees finished approving transfers to ICE on August 6.⁹² ICE began to detain families at Karnes, TX detention facility.⁹³
September 22, 2014	DHS	Agreed to pay town of Eloy, AZ to modify its existing agreement with ICE so that the private company CCA can build a new family detention facility in Dilley, TX. ⁹⁴ DHS publicly confirmed the opening of Dilley the next day. ⁹⁵
November 18, 2014	DHS	Announced ICE will close the Artesia, NM family detention facility and transfer the detainees to the new Dilley, TX family detention facility. ⁹⁶
December 3, 2014	State Dep’t	Launched in-country refugee processing program in El Salvador, Guatemala, and Honduras. ⁹⁷
December 16, 2014	Congress and President Obama	FY 2015 “Cromnibus” appropriations bill, signed by President, provided: ⁹⁸ <ul style="list-style-type: none"> HHS: \$80 million increase to care for unaccompanied children⁹⁹ State: \$260 million to implement a “prevention and response strategy” in Central America¹⁰⁰ DOJ-EOIR: \$35 million increase for immigration courts¹⁰¹ Education: \$14 million to assist state and local educational agencies experiencing increases in immigrant youth.¹⁰²
February 2, 2015	President Obama and DHS	The Administration’s request for DHS funding for FY 2016 included: ¹⁰³ <ul style="list-style-type: none"> DHS-ICE: \$893 million for salaries and expenses over FY ’15 request, incl. \$615 million increase for detention (\$435 million for family detention) DHS-CBP: \$743 million increase for salaries and expenses over FY ’15 request.
March 4, 2015	Congress and President Obama	FY 2015 DHS Appropriations bill, signed by President, provided: ¹⁰⁴ <ul style="list-style-type: none"> DHS-ICE: \$703 million increase for salaries and expenses, incl. \$539 million increase for detention (\$362 million for family detention)¹⁰⁵ DHS-CBP: \$314 million increase for salaries and expenses over FY ’14.
May 27 and June 1, 2015	House and Senate	136 Representatives and 33 Senators wrote letters asking DHS Secretary Johnson to end family detention. ¹⁰⁶

Recent Legislative Proposals

Since the summer of 2014, most legislative proposals have focused on rolling back the procedural protections that the TVPRA affords to Central American unaccompanied children. For example, the House's 2014 "Secure the Southwest Border Act" would have amended the TVPRA to (1) treat children from non-contiguous countries similarly to Mexican and Canadian children, but (2) strike the current requirement that the child be able to make an "independent decision to withdraw the child's application for admission" before proceeding with voluntary return; (3) require those children who may have been trafficked or fear return [or require the remaining children] to appear before an immigration judge for a hearing within 14 days of screening; and (4) impose mandatory detention until that hearing.¹⁰⁷

Other proposals have offered variations on these themes. For example, the "Protection of Children Act of 2015," which the House Judiciary Committee moved forward on March 4, 2015, would enact the above four changes—but additionally, expand from 72 hours to 30 days the time limit for CBP to transfer remaining unaccompanied children to HHS custody.¹⁰⁸ That bill, among others, also proposes restricting HHS' ability to provide counsel to unaccompanied children.¹⁰⁹ Or, the "HUMANE Act," sponsored by Sen. John Cornyn (R-TX) and Rep. Henry Cuellar (D-TX) in 2014,¹¹⁰ would have gone further to place children with a fear of return into a new 7-day expedited process, during which the child would be required to prove her eligibility for immigration relief to an immigration judge while mandatorily detained, before moving on to a standard removal proceeding in immigration court.¹¹¹

Proposed Solutions

Before summer 2014, bipartisan support existed for legislative reforms to more holistically protect children and families reaching the United States. Since then, NGOs and advocacy groups have reiterated support for those reforms, as well as for aid to address root causes of child and family migration from Central America.

These reforms include:

Incorporating a "best interests of the child" standard into all decision-making, not just custody decisions.¹¹² Bipartisan immigration reform legislation which passed the Senate in 2013 (S. 744) would have required the Border Patrol, in making repatriation decisions, to give "due consideration" to the best interests of a child, "family unity," and "humanitarian concerns."¹¹³ Amendment 1340 to S. 744, which was not voted on as part of a compromise, would have made the best interests of a child the "primary consideration" in all federal decisions involving unaccompanied immigrant children.¹¹⁴ Organizations have also recommended adopting more child-specific procedures.¹¹⁵

Child welfare screening to replace or augment Border Patrol screening. Border Patrol agents are currently tasked with screening Mexican and Canadian children for trafficking and persecution and preventing their return to persecutors or abusers. NGOs have uniformly questioned Border Patrol's ability to do so adequately,¹¹⁶ and reform proposals have ranged from improved training for CBP officers (included in S. 744),¹¹⁷ to pairing CBP screeners with child welfare experts (also in S. 744)¹¹⁸ or NGO representatives,¹¹⁹ to replacing CBP screeners with USCIS asylum officers.¹²⁰ CBP Commissioner Kerlikowske recently expressed openness towards similar proposals.¹²¹

Due process protections and resources. NGOs have advocated for a system that provides procedural protections and resources to appropriately protect children and families from violence, under international and U.S. laws, without unduly delaying decision making.¹²² Proposals include appointed counsel,¹²³ additional resources to legal orientation programs¹²⁴ and additional resources to backlogged immigration courts (all included in S. 744).¹²⁵ More recent proposals also include additional U.S. Citizenship and Immigration Services (USCIS) asylum officers,¹²⁶ and additional post-release caseworker services, to protect children, assist families, and ensure attendance at proceedings.¹²⁷

Detention reforms. NGOs have proposed that children be detained as little as possible,¹²⁸ released to families or other sponsors whenever appropriate,¹²⁹ and if detained, supervised in a community-based setting¹³⁰ because of detention's severe impact on children.¹³¹ At least one Senator has promised legislation to end the detention of asylum-seeking families if no family member poses a threat to the public or a flight risk.¹³² Along these lines, organizations and legislators have recommended improving detention conditions,¹³³ and expanding alternatives to detention (as S. 744 proposed),¹³⁴ by reallocating detention funding to those cheaper alternatives.¹³⁵

Aid to sending countries. NGOs have proposed aid to sending countries and Mexico, to invest in systems that protect and care for children, help youth live productive lives, and ultimately reduce violence and address root causes of flight.¹³⁶ In January 2015, the White House announced it was seeking \$1 billion in Central American assistance in its FY 2016 budget.¹³⁷

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⁷⁶ Ibid., p. 14. See also National Immigration Forum, "The Math of Immigration Detention," August 2013 (calculating potential savings from use of alternatives to detention), <http://www.immigrationforum.org/images/uploads/mathofimmigrationdetention.pdf>.

⁷⁷ Vera Institute, *Testing Community Supervision for the INS: An Evaluation of the Appearance Assistance Program 2000*, http://www.vera.org/sites/default/files/resources/downloads/INS_finalreport.pdf, p. 31. The Vera study showed 84 percent compliance by asylum seekers even with minimal supervision without potential redetention, and 78 percent compliance by those simply released without supervision. Ibid.

⁷⁸ Council on Foreign Relations, Jeb Bush and Thomas F. McLarty III, Chairs, *Independent Task Force Report No. 63, U.S. Immigration Policy*, July 2009, http://www.cfr.org/immigration/us-immigration-policy/p20030?breadcrumb=/bios/2472/edward_alden?page=2, pp. 106-107; Human Rights First, "Elisa Massimino and Grover Norquist on Immigration Detention," May 2, 2013, <https://www.youtube.com/watch?v=r06c7PWdhWg>.

⁷⁹ "Family Case Management Services," FedBizOpps.Gov, <https://www.fbo.gov/index?s=opportunity&mode=form&id=ce539b68d84cd9aa9f59ea99c906b56a&tab=core&cview=1> (Baltimore/Washington); "Family Case Management Services—NY," FedBizOpps.Gov, <https://www.fbo.gov/index?s=opportunity&mode=form&id=ec67398fe25f07d71361dc09c11a2394&tab=core&cview=1> (New York City and Newark); "Family Case Management Services—Miami," FedBizOpps.Gov, <https://www.fbo.gov/index?s=opportunity&mode=form&id=a9cc4a72fd8a46d5165d40da4a1ec68b&tab=core&cview=1>; "Family Case Management Services—CHI," FedBizOpps.Gov, <https://www.fbo.gov/index?s=opportunity&mode=form&id=3278335b5d772d1beaea5b237590778a&tab=core&cview=1> (Chicago); "Family Case Management Services—LA," FedBizOpps.Gov, <https://www.fbo.gov/index?s=opportunity&mode=form&id=8009f850fc1b7f29f5915d3da81f72d2&tab=core&cview=1> (Los Angeles).

⁸⁰ Barack Obama, "Presidential Memorandum -- Response to the Influx of Unaccompanied Alien Children Across the Southwest Border," June 2, 2014, <https://www.whitehouse.gov/the-press-office/2014/06/02/presidential-memorandum-response-influx-unaccompanied-alien-children-acr>, citing e.g., 6 U.S.C. § 111(b)(1)(D), <https://www.law.cornell.edu/uscode/text/6/111>; The White House, Homeland Security Presidential Directive/HSPD-5, "Management of Domestic Incidents," Feb. 28, 2003, <http://fas.org/irp/offdocs/nspd/hspd-5.html>. See also The White House, "Fact Sheet: Unaccompanied Children from Central America," June 20, 2014, <https://www.whitehouse.gov/the-press-office/2014/06/20/fact-sheet-unaccompanied-children-central-america>.

⁸¹ Alicia Caldwell, "US to open immigrant family detention center in NM," Associated Press, June 20, 2014, <http://news.yahoo.com/us-open-immigrant-family-detention-center-nm-002246367-politics.html>.

⁸² U.S. DHS Secretary Jeh Johnson, “Statement by Secretary of Homeland Security Jeh Johnson Before the Senate Committee on Appropriations,” July 10, 2014, <http://www.dhs.gov/news/2014/07/10/statement-secretary-homeland-security-jeh-johnson-senate-committee-appropriations>.

⁸³ Barack Obama, Letter, “Efforts to Address the Humanitarian Situation in the Rio Grande Valley Areas of Our Nation’s Southwest Border,” June 30, 2014, [hereinafter “June 30 Letter to Congress”], <https://www.whitehouse.gov/the-press-office/2014/06/30/letter-president-efforts-address-humanitarian-situation-rio-grande-valle>.

⁸⁴ Barack Obama, Letter, July 8, 2014, [hereinafter “July 8 Letter to Speaker”], p. 1, https://www.whitehouse.gov/sites/default/files/omb/assets/budget_amendments/emergency-supplemental-request-to-congress-07082014.pdf.

⁸⁵ Ibid., p. 5-6.

⁸⁶ Department of Justice, “EOIR Factsheet on New Priorities to Address Migrants Crossing into the U.S.,” July 9, 2014, <http://www.justice.gov/iso/opa/resources/214201479112444959.pdf>; Department of Justice, “EOIR Announcement of New Priorities to Address Migrants Crossing into the U.S.,” July 9, 2014, <http://www.justice.gov/opa/pr/department-justice-announces-new-priorities-address-surge-migrants-crossing-us>.

⁸⁷ U.S. DHS, “South Texas ICE Detention Facility to House Adults With Children,” July 31, 2014, <http://www.dhs.gov/news/2014/07/31/south-texas-ice-detention-facility-house-adults-children>.

⁸⁸ The bill did not include DACA repeal or rollbacks of procedural protections. “Emergency Supplemental Appropriations Act, 2014,” S. 2648, 113th Cong., <https://www.congress.gov/bill/113th-congress/senate-bill/2648>. This bill appropriated \$1.2 billion to HHS, \$763 million to ICE (with no limit on detention funding), \$343 million to CBP, over \$60 million for immigration judges, \$50 million for lawyers for unaccompanied children, \$212.5 million to the President’s “Economic Support Fund” to address root causes of Central American migration, and \$85 million to the Department of State for “International Narcotics Control and Law Enforcement.” U.S. Senate Committee on Appropriations, “Chairwoman Mikulski Releases Summary of Emergency Supplemental Funding Bill,” July 23, 2014, <http://www.appropriations.senate.gov/news/chairwoman-mikulski-releases-summary-emergency-supplemental-funding-bill>. The bill died in a cloture vote, with 50 Senators voting to continue and 44 opposed. Democratic Sens. Mary Landrieu of Louisiana and Joe Manchin of West Virginia joined with Republicans in opposing the bill. Elise Foley, “Senate Fails on Border Control Funding,” *Huffington Post*, July 31, 2014, at http://www.huffingtonpost.com/2014/07/31/senate-border-crisis_n_5639727.html.

⁸⁹ “An Act to prohibit certain actions with respect to deferred action for aliens...,” H.R. 5272, 113th Cong. (2014), <https://www.congress.gov/bill/113th-congress/house-bill/5272>. The bill passed 216 to 192, largely along party lines. “Four Democrats -- Reps. John Barrow (D-Ga.), Nick Rahall (D-W.Va.) Mike McIntyre (D-N.C.) and Collin Peterson (D-Minn.) -- voted with Republicans. A larger group of 11 Republicans voted with Democrats against the bill: Reps. Jeff Denham (R-Calif.), David Valadao (R-Calif.), Cory Gardner (R-Colo.), Mike Coffman (R-Colo.), Ileana Ros-Lehtinen (R-Fla.), Mario Diaz Balart (R-Fla.), Dave Reichert (R-Wash.), Adam Kinzinger (R-Ill.), Joe Heck (R-Nev.), Mark Amodei (R-Nev.) and Fred Upton (R-Mich.).” Elise Foley, “House Votes To Strip Deportation Relief From Dreamers,” *Huffington Post*, Aug. 1, 2014, http://www.huffingtonpost.com/2014/08/01/house-bill-daca_n_5643287.html.

⁹⁰ “An Act making supplemental appropriations....,” H.R. 5230, 113th Cong., <https://www.congress.gov/bill/113th-congress/house-bill/5230>. That bill appropriated \$197 million to HHS, \$334 million to ICE (\$262 million for detention), \$71 million to CBP, \$70M to various National Guard units, \$40 million in Central American aid, and \$22 million for temporary immigration judges and video technology. Ibid., Division A, “Supplemental Appropriations and Rescissions.” The bill also expanded waivers of other federal laws (such as environmental laws) for CBP activities on federal land, but prohibited placing unaccompanied alien children at military installations if it would “interfere with activities of the Armed Forces.” Ibid., Division B, Title III. The bill passed 223 to 189. One Democrat, Rep. Henry Cuellar of Texas, joined Republicans voting for the bill, while four Republicans joined Democrats in opposition: Reps. Stephen Fincher of Tennessee, Paul Broun of Georgia, Thomas Massie of Kentucky and Walter Jones of North Carolina. Elise Foley, “House Passes Dead-On-Arrival Bill to Address Border Crisis,” *Huffington Post*, Aug. 1, 2014, http://www.huffingtonpost.com/2014/08/01/house-border-bill_n_5643259.html.

⁹¹ “Secure the Southwest Border Act of 2014,” H.R. 5230, 113th Cong., Division B, Title I, at <https://www.congress.gov/bill/113th-congress/house-bill/5230>. Other sections in this Title would have prioritized removal hearings for unaccompanied children for those children whom had “most recently arrived” (i.e., “last in, first out”) (Sec. 102); directed EOIR to designate up to 40 temporary immigration judges for the duration of the humanitarian crisis (Sec. 103); tightened screenings for custodians of unaccompanied children to require “a mandatory biometric criminal history check” based on fingerprints, and prohibit as custodians whom had been convicted of a sex offense or human trafficking (Sec. 104); and unrelated to unaccompanied children, barred from asylum any individual who had committed “any drug-related offense punishable by a term of imprisonment greater than 1 year” before arriving in the United States (Sec. 105).

⁹² Mark Felsenthal, “U.S. administration transferring \$405 million for border operations,” *Reuters* (Aug. 1, 2014) (DHS notified Congress on August 1 that it would “reprogram” funds), at <http://news.yahoo.com/u-administration-transferring-405-million-border-operations-024645833.html>. Ultimately, DHS reprogrammed \$333.8 million from other DHS agencies into ICE—\$267.6 million from the Federal Emergency Management Agency’s (FEMA’s) disaster relief fund, \$31.5 million from the Coast Guard, and \$34.7 million from the Transportation Security Administration (TSA) into (1) ICE’s Custody Operations account (\$261.1 million), which operates ICE detention, and (2) ICE’s Transportation and Removal Programs account (\$72.7 million), which operates planes that deport individuals. U.S. DHS, “Budget-in-Brief Fiscal Year 2016,” p. 54, February 5, 2015, <http://www.dhs.gov/publication/fy-2016-budget-brief>. The Senate Appropriations Committee approved that transfer on August 4, and the House Appropriations Committee approved that transfer on August 6. Ibid. Reuters also reported on August 1 that CBP would internally move \$70.5 million from other activities to “meet increased demands from the border situation.” It is not clear from public budget documents if and from where that transfer occurred.

⁹³ U.S. DHS, “South Texas ICE Detention Facility to House Adults With Children,” July 31, 2014, <http://www.dhs.gov/news/2014/07/31/south-texas-ice-detention-facility-house-adults-children>.

⁹⁴ John Burnett, “How Will A Small Town In Arizona Manage An ICE Facility In Texas?,” *NPR*, Oct. 28, 2014, <http://www.npr.org/2014/10/28/359411980/how-will-a-small-town-in-arizona-manage-an-ice-facility-in-texas>; “City of Eloy Request for Council Action,” requested Sept. 17, 2014 (obtained through the Freedom of Information Act, on file with American Immigration Council).

⁹⁵ Daniel González, “Feds detaining migrant families despite criticism,”

⁹⁵ Arizona Republic, Sept. 24, 2014, <http://www.azcentral.com/story/news/politics/immigration/2014/09/24/migrant-family-detentions-expanded-despite-criticism/16139209/>.

⁹⁶ Amanda Peterson Beadle, “DHS Announces the Transfer of Immigrant Families from Artesia to New Facility,” *Immigration Impact*, Nov. 18, 2014, <http://immigrationimpact.com/2014/11/18/dhs-announces-transfer-immigrant-families-artesia-new-facility/#sthash.6kRqvWw.dpuf>.

⁹⁷ U.S. Department of State, “Launch of In-Country Refugee/Parole Program for Children in El Salvador, Guatemala, and Honduras with Parents Lawfully Present in the United States,” Dec. 3, 2014, <http://www.state.gov/r/pa/prs/ps/2014/12/234655.htm>.

⁹⁸ “Consolidated and Further Continuing Appropriations Act, 2015,” H.R. 83, Pub. L. No. 113-235, 113th Congress, Dec. 16, 2014, <https://www.congress.gov/bill/113th-congress/house-bill/83/text>.

⁹⁹ Ibid., Division G, Title II, “Administration for Children and Families, Refugee and Entrant Assistance”; see also U.S. Senate Committee on Appropriations, “Summary: Fiscal Year 2015 Omnibus Appropriations Bill,” Dec. 9, 2014, p. 34 [hereinafter “Senate Cromnibus Summary”], <http://www.appropriations.senate.gov/news/summary-fiscal-year-2015-omnibus-appropriations-bill>.

¹⁰⁰ Ibid., Division J, Title VII, Sec. 7045(a) (“Central American Migration Prevention and Response,”) and (d) “Guatemala,” (f) “Honduras,” and (g) “Mexico.” See also Senate Cromnibus Summary, note 99, p. 53. Explanatory Statement Submitted By Mr. Rogers of Kentucky, Chairman of the House Committee on Appropriations Regarding the House Amendment to the Senate Amendment on H.R. 83, Cong. Record H9307-H10003, at p. H9951-52, H9956-57 (Dec. 11, 2014) [hereinafter “Cromnibus Explanatory Statement”], available at <https://www.congress.gov/crc/2014/12/11/CREC-2014-12-11-pt2-PgH9307.pdf>.

¹⁰¹ Ibid., Division B, Title II, “Administrative Review and Appeals.” See also U.S. DOJ, “Administrative Review and Appeals, Executive Office for Immigration Review (EOIR), FY 2015 Budget Request At a Glance,” accessed May 31, 2015, p. 1-2 (requesting \$35 million increase for FY 2015, from \$312.2 million to \$347.2 million), <http://www.justice.gov/sites/default/files/jmd/legacy/2014/07/09/eoir.pdf>; Cromnibus Explanatory Statement, note 100, p. H9345. The Explanatory Statement states, “The agreement includes funding for 35 new Immigration Judge Teams Allowing EOIR to adjudicate up to 39,000 more cases annually.” Ibid. The Explanatory Statement also provides generally supportive language regarding legal orientation programs and lawyers for children, although it does not provide specific funding amounts. Ibid. (“Within the amounts provided, EOIR shall take steps as specified in the House and Senate reports to expand adjudication capacity, enhance the Legal Orientation Program, improve court efficiency and better serve vulnerable populations such as children through continuation of fiscal year 2014 pilot programs.”).

¹⁰² Ibid., Division G, Title III, “English Language Acquisition.”

¹⁰³ U.S. DHS, “Congressional Budget Justification FY 2016,” Feb. 2, 2015, <http://www.dhs.gov/publication/congressional-budget-justification-fy-2016>.

¹⁰⁴ Department of Homeland Security Appropriations Act, 2015, H.R. 240, Pub. L. No. 114-4, Mar. 4, 2015, <https://www.congress.gov/bill/114th-congress/house-bill/240/text>. See also Mark Noferi, “DHS Funding Controversy Over, But Enforcement-First Approach Remains,” *Immigration Impact*, Mar. 6, 2015, <http://immigrationimpact.com/2015/03/06/dhs-funding-controversy-enforcement-first-approach-remains/>.

¹⁰⁵ Explanatory Statement Submitted By Mr. Rogers of Kentucky, Chairman of the House Committee on Appropriations, Regarding H.R. 240, Department of Homeland Security Appropriations Act, 2015, Jan. 15, 2015, <http://docs.house.gov/billsthisweek/20150112/114-HR240-ES.pdf>, pp. 25-26.

¹⁰⁶ Roque Planas, “House Democrats Tell Obama Administration to End Family Detention,” *Huffington Post*, May 27, 2015, http://www.huffingtonpost.com/2015/05/27/democrats-family-detention_7453008.html; Elise Foley, “Backlash Against Mass Family Immigrant Detention Grows As Senate Democrats Pile On,” *Huffington Post*, June 2, 2015, http://www.huffingtonpost.com/2015/06/02/family-immigrant-detention_n_7495282.html.

¹⁰⁷ “Secure the Southwest Border Act of 2014,” note 91, Sec. 101, amending U.S.C. § 1232(a)(2), (5).

¹⁰⁸ “Protection of Children Act of 2015,” H.R. 1149, 114th Cong., Sec. 2, <https://www.congress.gov/bill/114th-congress/house-bill/1149/text>.

¹⁰⁹ Ibid., Sec. 2(a)(3)(b), amending 8 U.S.C. § 1132(c)(5), to change the statutory direction to HHS from ensuring that children “have counsel” to “have access to counsel” (emphasis added), and clarifying that such access will be “at no expense to the Government.” See also “Asylum Reform and Border Protection Act of 2015,” H.R. 1153, 114th Cong., Sec. 2 (“Notwithstanding any other provision of law, in no instance shall the Government bear any expense for counsel for any person in removal proceedings”), <https://www.congress.gov/bill/114th-congress/house-bill/1153/text>.

¹¹⁰ “Helping Unaccompanied Minors and Alleviating National Emergency Act” (HUMANE Act), S. 2611, 113th Cong., <https://www.congress.gov/bill/113th-congress/senate-bill/2611/text>.

¹¹¹ Ibid. at Secs. 101(1)-(2), 102.

¹¹² The “best interests of the child” standard is internationally recognized. In the U.S. child welfare system, it applies special importance to “family integrity, health, safety, protection of the child, and timely placement.” The United States Conference of Catholic Bishops (USCCB) has thus recommended a “transnational family approach,” with a holistic assessment of all family members for potential reunification, performed by child welfare professionals. United States Conference of Catholic Bishops (USCCB), Testimony of Most Reverend Mark Seitz, Bishop of the Diocese of El Paso, Texas, House Judiciary Committee, June 25, 2014, [hereinafter USCCB HJC Testimony], http://judiciary.house.gov/_cache/files/c8aea408-278a-4f3a-9fac-c790681f2611/bishop-mark-seitz-uac-hearing-testimony.pdf, p. 12.

¹¹³ “Border Security, Economic Opportunity, and Immigration Modernization Act,” S. 744, 113th Cong., Sec. 1115(b)(1)(B), <https://www.lawandsoftware.com/bseoima/bseoima-senate-1115.html>. If repatriation occurs, the ABA first recommends screening by a legal advocate, and the involvement of a formal intercountry child welfare agency. James Silkenat, President, American Bar Association, Statement before the Committee on the Judiciary of the U.S. House of Representatives, for the record of the hearing on “An Administration Made Disaster: The South Texas Border Surge of Unaccompanied Alien Minors,” June 25, 2014, [hereinafter ABA HJC Statement], http://www.americanbar.org/content/dam/aba/unategorized/GAO/2014june25_unaccompaniedalienminors_t.authcheckdam.pdf, p. 3.

¹¹⁴ S. 744, 113th Cong., Amt. 1340, <https://beta.congress.gov/amendment/113th-congress/senate-amendment/1340/text>. See also The Young Center for Immigrant Children’s Rights, <http://theyoungcenter.org/news/historic-senate-bill-protecting-children>.

¹¹⁵ USCCB and others have thus recommended procedures reflecting this paradigm—an appointed lawyer and child advocate in the process, repatriation only after screening by a child welfare advocate, the development of child-appropriate asylum procedures, and separate children’s dockets in immigration court, with specialized training for judges. USCCB HJC Testimony, note 112, p.11-12; National Immigrant Justice Center (NIJC), Statement before the Committee on the Judiciary of the U.S. House of Representatives, for the record of the hearing on “An Administration Made Disaster: The South Texas Border Surge of Unaccompanied Alien Minors,” June 25, 2014 [hereinafter NIJC HJC Statement], <http://www.immigrantjustice.org/sites/immigrantjustice.org/files/NIJC%20statement%20for%20House%20Judiciary%20Hearing%20on%20Unaccompanied%20Children%206-25-14.pdf>, p. 8. S. 744 would also have instituted a multi-year program to ensure “safe and sustainable repatriation.” S. 744, 113th Cong., Sec. 3612 (i), <http://www.lawandsoftware.com/bseoima/bseoima-senate-3612.html>.

¹¹⁶ Appleseed, *Children at the Border*, 2011, note 43, p. 6, 32. As one organization put it, children “do not divulge their complex histories of abuse and neglect during a first meeting with strangers,” let alone “armed strangers in uniform.” Center for Refugee and Gender Studies, *Calling on President Obama to Protect Child Migrants*, June 30, 2014 (relaying story of child who only divulged details of rape to her attorney), <http://cgrs.uchastings.edu/our-work/june-2014-policy-statement-children>. Border Patrol representatives have also publicly expressed frustration with assuming a child welfare role. CBP union head Brandon Judd stated, “Forty percent of our agents have been pulled from the field to babysit, clean cells, change diapers.... That’s not our job.” David Nakamura, “Border agents decry ‘Diaper Changing, Burrito Wrapping’ with influx of children,” *Washington Post*, June 20, 2014, http://www.washingtonpost.com/politics/border-agents-decrys-diaper-changing-burrito-wrapping-with-influx-of-children/2014/06/20/1a6b6714-f579-11e3-8aa9-dad2ec039789_story.html.

¹¹⁷ S. 744, 113th Cong., Sec. 3611 (requiring training by child welfare professionals of CBP officials “likely to come into contact with unaccompanied alien children”), <http://www.lawandsoftware.com/bseoima/bseoima-senate-3611.html>; Sec. 1115(c) (requiring training on preserving children’s best interests), <http://www.lawandsoftware.com/bseoima/bseoima-senate-1115.html>; see also Women’s Refugee Commission, *Halfway Home*, Feb. 2009, note 43, p. 2; American Immigration Lawyers Association (AILA), Statement before the Committee on the Judiciary of the U.S. House of Representatives, for the record of the hearing on “An Administration Made Disaster: The South Texas Border Surge of Unaccompanied Alien Minors,” June 25, 2014 [hereinafter AILA HJC Statement], <http://www.aila.org/content/default.aspx?docid=49015>, p. 6.

¹¹⁸ “Child Trafficking Victims Prevention Act,” S. 744, 113th Cong., Sec. 3612(d), (e), (requiring HHS to hire child welfare professionals to be placed in seven largest Border Patrol offices, screen children, and provide assessments), <http://www.lawandsoftware.com/bseoima/bseoima-senate-3612.html>; USCCB HJC Testimony, note 112, p. 10.

¹¹⁹ Lutheran Immigration and Refugee Service (LIRS), Statement before the Committee on the Judiciary of the U.S. House of Representatives, for the record of the hearing on “An Administration Made Disaster: The South Texas Border Surge of Unaccompanied Alien Minors,” June 25, 2014, p. 2 [hereinafter LIRS HJC Statement] (on file with American Immigration Council).

¹²⁰ Appleseed, *Children at the Border*, 2011, note 43, p. 6.

¹²¹ Mark Noferi, “Commissioner Kerlikowske Offers Vision of Change at CBP,” *Immigration Impact*, Apr. 24, 2015, at <http://immigrationimpact.com/2015/04/24/commissioner-kerlikowske-offers-vision-of-change-at-cbp/>, citing House Committee on Appropriations, “Budget Hearing - United States Customs and Border Protection” (Apr. 23, 2015), <http://appropriations.house.gov/calendararchive/eventsingle.aspx?EventID=394143>.

¹²² Conversely, USCCB and other organizations have stated that “subjecting these families to expedited removal procedures, as intended by the Administration, could undercut their due process rights.” USCCB HJC Testimony, note 112, p. 10.

¹²³ S. 744, 113th. Cong, Sec. 3502 (providing counsel to unaccompanied children, the mentally disabled, and the particularly vulnerable), <http://www.lawandsoftware.com/bseoima/bseoima-senate-3502.html>. The Vulnerable Immigrants Voice Act, introduced by Rep. Hakeem Jeffries (D-NY) and others in the 113th and 114th Congresses, would provide counsel to unaccompanied children and the mentally disabled. <https://www.congress.gov/bill/114th-congress/house-bill/1700/text>; Richard Simon, “Lawmakers seek legal aid for youths caught crossing Southwest border,” *Los Angeles Times*, June 23, 2014, <http://www.latimes.com/nation/nationnow/la-na-nn-immigrants-legal-aid-20140623-story.html>. Those bills would not provide counsel in DHS expedited removal processes, were Congress to change the law to allow DHS expedited removal or summary return of unaccompanied children.

Organizations have uniformly recommended counsel for unaccompanied children. See American Immigration Council, *Two Systems of Justice*, March 2013, http://www.immigrationpolicy.org/sites/default/files/docs/aic_twosystemsofjustice.pdf, p. 12 (“Counsel should be appointed in cases where an immigrant is unable to retain a lawyer, beginning with minors”). See also, e.g., USCCB HJC Testimony, note 112, p. 12; AILA HJC Statement, note 117, p. 6; NIJC HJC Statement, note 115, pp. 5-7; ABA HJC Statement, note 113, p. 3. Children fleeing abuse and violence are often particularly incapable of articulating a fear of return by themselves, let alone arguing legal claims. USCCB HJC Testimony, note 112, p. 11.

Organizations have also reported that counsel assists in ensuring children attend court proceedings. American Immigration Council, *Taking Attendance: New Data Finds Majority of Children Appear in Immigration Court* (July 2014) (92.5 percent of children represented in immigration proceedings appear), http://immigrationpolicy.org/sites/default/files/docs/taking_attendance_new_data_finds_majority_of_children_appear_in_immigration_court_final_1.pdf; Safe Passage Project, Statement to the House Judiciary Committee, June 25, 2014, (“Out of the approximately three hundred children screened by Safe Passage, only two young people failed to appear for immigration court hearings after we were able to match them with pro bono counsel.”), <http://www.safepassageproject.org/safe-passage-testimony-to-congress-on-child-migrants/>, p. 2.

Organizations have also called the “justice AmeriCorps” program of pro bono lawyers it a “step in the right direction,” but “not adequate to meet overwhelming need.” See, e.g., NIJC HJC Statement, note 115, p. 6 (“given its modest size, geographic application to only 29 cities, limitation to children under the age of 16, and the time it will take to get the program operational, the overwhelming need for legal services for unaccompanied immigrant children remains.”)

¹²⁴ Organizations also have recommended increasing Legal Orientation Program funding to provide know-your-rights presentations to all detainees nationwide. Lutheran Immigration and Refugee Service (LIRS) and Women’s Refugee Commission (WRC), *Locking Up Family Values Again*, October 2014, http://lirs.org/wp-content/uploads/2014/11/LIRSWRC_LockingUpFamilyValuesAgain_Report_141114.pdf, p. 17; Human Rights First, *How to Manage the Increase in Families at the Border*, June 2014, <http://www.humanrightsfirst.org/sites/default/files/Families-at-the-Border.pdf>. S. 744 would have

provided such an increase. S. 744, 113th Cong., Sec. 3503, <http://www.lawandsoftware.com/bseoima/bseoima-senate-3503.html>.

¹²⁵ Bipartisan support has emerged for providing additional resources to backlogged immigration courts, even before the recent children's crisis. See American Immigration Council, *Empty Benches: Underfunding of Immigration Courts Undermines Justice*, May 2015, <http://immigrationpolicy.org/just-facts/empty-benches-underfunding-immigration-courts-undermines-justice>, p. 1 & n. 10. Recently, the House of Representatives passed appropriations legislation that would provide the largest increase in immigration judges in history—\$74 million for 55 new immigration judge teams. H.R. 2578, 114th Cong., <https://www.congress.gov/bill/114th-congress/house-bill/2578/text>; Mark Noferi, “Bi-Partisan House Bill Recommends Largest Increase Ever in Immigration Judges,” *Immigration Impact*, May 21, 2015, <http://immigrationimpact.com/2015/05/21/bi-partisan-house-bill-recommends-largest-increase-ever-in-immigration-judges/#sthash.4lkzFDxk.dpuf>. S. 744 would have added 75 immigration judges in each of the 2014-2016 fiscal years, nearly doubling immigration court capacity. S. 744, 113th Cong., Sec. 3501(a). S. 744 did not include extra funding for USCIS asylum officers.

¹²⁶ Human Rights First, *How to Manage the Increase*, June 2014, note 124, p. 2.

¹²⁷ USCCB HJC Testimony, note 112, p. 10-11 (recommending an increase in post-release funding for caseworkers, community-based reception services, and health care and medical care services); LIRS and WRC, *Locking Up Family Values Again* 2014, note 124, p. 21-22. USCCB also recommended improving background checks for sponsors, as well as increased funding to the Legal Orientation Program for Custodians (LOPC), to inform sponsors of their responsibilities. USCCB HJC Testimony, note 112, p. 11.

¹²⁸ UNHCR *Detention Guidelines*, note 57, “Guideline 9.2, Children,” ¶¶ 51-57, 2012; LIRS and WRC, *Locking Up Family Values Again* 2014, note 124, p. 2-3.

¹²⁹ USCCB HJC Testimony, note 112, p. 11.

¹³⁰ More broadly, organizations have recommended appropriate HHS facilities for children—smaller, community-based facilities with services, rather than larger, detention-like facilities. Women’s Refugee Commission, *Halfway Home*, 2009, note 43, p. 37-38; USCCB HJC Testimony, note 112, p.13.

¹³¹ UNHCR Detention Guidelines, ¶ 52; LIRS and WRC, *Locking Up Family Values Again* 2014, note 124, p. 7-8.

¹³² Senator Richard Blumenthal, “Stop locking up child refugees,” *The Hill*, Feb. 25, 2015, <http://thehill.com/opinion/op-ed/233659-stop-locking-up-child-refugees>.

¹³³ In particular, groups have criticized conditions in CBP’s short-term detention facilities. ABA HJC Statement, note 113, p. 2; AILA HJC Statement, note 117, p. 5; WRC, *Halfway Home*, note 43, p. 5-12. On June 11, 2014, a group of civil, immigrant, and human rights organizations filed an administrative complaint on behalf of 116 children who had reported abuse and mistreatment while in CBP custody, such as shackling, inhumane conditions, inadequate access to medical care, and verbal, sexual, and physical abuse. ACLU, *Unaccompanied Immigrant Children Report Serious Abuse by U.S. Officials During Detention*, June 11, 2014, <https://www.aclu.org/immigrants-rights/unaccompanied-immigrant-children-report-serious-abuse-us-officials-during>. Additionally, the American Immigration Council released a report detailing the lack of accountability for complaints filed against CBP officials by individuals in custody. American Immigration Council, *No Action Taken: Lack of CBP Accountability in Responding to Complaints of Abuse*, May 4, 2014 (of 809 complaints of alleged abuse, 97 percent resulted in “no

action taken”), <http://www.immigrationpolicy.org/special-reports/no-action-taken-lock-cbp-accountability-responding-complaints-abuse>.

Several legislative proposals have been introduced to address short-term CBP detention conditions. These include H.R. 3130, the Protect Family Values at the Border Act, introduced by Rep. Lucille Roybal-Allard (D-CA) in the 113th Congress, <http://thomas.loc.gov/cgi-bin/query/z?c113:H.R.3130>; and Amendment 1260 to S. 744, introduced by Sen. Barbara Boxer (D-CA) in the 113th Congress, <https://beta.congress.gov/amendment/113th-congress/senate-amendment/1260/text>. Additionally, H.R. 4303, the Border Enforcement Accountability, Oversight, and Community Engagement Act of 2014, introduced by Rep. Steve Pearce (R-NM) and Rep. Beto O’Rourke (D-TX) in the 113th Congress, would have established an ombudsman over border-related concerns. <https://beta.congress.gov/bill/113th-congress/house-bill/4303/>.

¹³⁴ S. 744, 113th Cong., Sec. 3715 (establishing “secure alternatives programs that incorporate case management services,” with “nongovernmental community based organizations”); United States Conference of Catholic Bishops and Center for Migration Studies, *Unlocking Human Dignity: A Plan to Transform the U.S. Immigrant Detention System* (Washington, DC: May 2015), <http://www.usccb.org/about/migration-and-refugee-services/upload/unlocking-human-dignity.pdf>, p. 28; Human Rights First, *How to Manage the Increase*, June 2014, note 124.

¹³⁵ ICE requested \$122 million for alternatives to detention in fiscal year 2016—an increase of \$28 million over the President’s budget for FY 2015, to increase the daily population in ATD from 27,219 participants at the end of FY 2014 to 53,000 participants. U.S. DHS, “U.S. Immigration and Customs Enforcement Salaries and Expenses,” 45, 64-67, February 2015, http://www.dhs.gov/sites/default/files/publications/DHS_FY2016_Congressional_Budget_Justification_15_0325.pdf.

¹³⁶ LIRS and WRC, *Locking Up Family Values Again* 2014, note 124, p. 21-22; Council on Foreign Relations, *Independent Task Force Report No. 63*, pp. 106-107.

¹³⁷ USCCB HJC Testimony, note 112, p. 13-15.

¹³⁸ Joseph R. Biden Jr., “Joe Biden: A Plan for Central America,” N. Y. Times, Jan. 29, 2015, <http://www.nytimes.com/2015/01/30/opinion/joe-biden-a-plan-for-central-america.html>; The White House, Office of the Vice President, “FACT SHEET: Promoting Prosperity, Security and Good Governance in Central America,” Jan. 29, 2015, <http://www.whitehouse.gov/the-press-office/2015/01/29/fact-sheet-promoting-prosperity-security-and-good-governance-central-ame>. Some have criticized the White House aid request as overly focused on security. Alexander Main, “Will Biden’s Billion Dollar Plan Help Central America?” *North American Congress on Latin America*, Feb. 27, 2015, <https://nacla.org/news/2015/02/27/will-biden%27s-billion-dollar-plan-help-central-america>.

ATTACHMENT B



NO CHILDHOOD HERE

WHY CENTRAL AMERICAN CHILDREN ARE FLEEING THEIR HOMES

By Elizabeth Kennedy

NO CHILDHOOD HERE: WHY CENTRAL AMERICAN CHILDREN ARE FLEEING THEIR HOMES

ABOUT THE AUTHOR

Elizabeth Kennedy is a Fulbright Fellow currently working with returned child and youth migrants from Mexico and the United States in El Salvador. Her work and research focuses on the experiences and needs of child, youth, and forced migrants. She has over a decade's experience in youth programming and organizing and co-founded and directs an internship program for undergraduates to mentor detained child migrants. She received her MSc in Refugee and Forced Migration Studies from Oxford University in 2011, and since beginning her doctoral program at San Diego State University and the University of California, Santa Barbara in 2011, has published in academic and popular press. She has also provided expert testimony in Central American asylum seekers' cases in Canada, Sweden, the United Kingdom, and the United States.

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INTRODUCTION & SUMMARY

Over a decade before President Barack Obama described the influx of unaccompanied child migrants to the United States as an “urgent humanitarian situation requiring a unified and coordinated Federal response,”¹ child and refugee advocates warned that children who shared experiences of years-long family separation, widespread violence in home countries, and higher rates of neglect and abuse were fleeing from South of our border in alarming numbers.² Then as now, over 95 percent were from Mexico and the Central American nations of El Salvador, Guatemala, and Honduras. When these children were apprehended in the U.S., the Trafficking and Victim’s Protection Reauthorization Act (TVPRA)³ required agents to ask limited and straightforward abuse questions. If the child was determined to be without a parent or legal guardian, s/he had to be transferred to Office of Refugee Resettlement (ORR) care within 72 hours.⁴

Yet, even though 8,000 to 40,000 unaccompanied child migrants were apprehended annually between 2003 and 2011, only 4,800 to 8,300 entered ORR’s care each year. A 2011 report by the Appleseed Foundation documented that most Mexican child migrants did not receive TVPRA screening and thus could not transition to ORR care.⁵ Instead,

an agreement between the Mexican and U.S. governments that Obama would like emulated among Central American countries, Mexican children were quickly deported.⁶ Nonetheless, those from indigenous areas or areas with high levels of drug

violence were able to receive the “Unaccompanied Alien Child”⁷ (UAC) designation, alongside thousands from the three countries that make up the so-called Northern Triangle of Central America.⁸ In 2012, nearly 14,000 UAC entered ORR care, with 88 percent from the Northern Triangle. In 2013, over 24,000 arrived, with 93 percent from the same three

nations.⁹ This year, as many as 60,000 could arrive,¹⁰ and while numbers from Mexico have declined, numbers from the Northern Triangle continue rising.

What drives these children to flee their homes? What causes their parents to put them and their life’s savings in the hands of smugglers?¹¹ What happens if they fail to reach the U.S.? Since October 2013, with funding from a Fulbright Fellowship, I have lived in El Salvador and worked toward answering these questions through my research into the causes of child migration and the effects of child deportation (see appendix).

Based on the evidence I collected and analyzed to date, violence, extreme poverty, and family reunification play important roles in pushing kids to leave their country of origin. In particular, crime, gang threats, or violence appear to be the strongest determinants for children’s decision to emigrate. When asked why they left their home, 59 percent of Salvadoran boys and 61 percent of Salvadoran girls list one of those factors as a reason for their emigration. In some areas of El Salvador, however, extreme poverty is the most common reason why children decide to leave. This is particularly true for adolescent males, who hope to work half the day and study the other half in order to remit money to their families and help them move forward in life. In addition, one in three children cites family reunification as a primary reason for leaving home. Interestingly, over 90 percent of the children I interviewed have a family member in the US, with just over 50 percent having one or both parents there.¹² Most referenced fear of crime and violence as the underlying motive for their decision to reunify with family now rather than two years in the past or two years in the future. Seemingly, the children and their families had decided they must leave and chose to go to where they had family, rather than chose to leave because they had family elsewhere. Essentially, if their family had been in Belize, Costa Rica, or another country, they would be going there instead.

When asked why they left their home, 59 percent of Salvadoran boys and 61 percent of Salvadoran girls list crime, gang threats, or violence as a reason for their emigration.

¹ AMERICAN IMMIGRATION COUNCIL | No Childhood Here: Why Central American Children Are Fleeing Their Homes

ORGANIZED CRIME, GANGS AND VIOLENCE ARE DRIVING CHILDREN FROM THEIR HOMES

When asked why they left their home, 59 percent of Salvadoran boys and 61 percent of Salvadoran girls list crime, gang threats, or violence as a reason for their emigration. Whereas males most feared assault or death for not joining gangs or interacting with corrupt government officials, females most feared rape or disappearance at the hands of the same groups. While over half of Salvadoran children list more than one reason for migrating, nearly 100 list only this fear.

Of the 322 minors I interviewed, 145 have at least one gang in their neighborhood, and about half of these live in a contested gang territory. They report hearing gunshots nightly and are often afraid to walk even two or three blocks from their home since they fear crossing an always changing boundary. Those who did not note a gang presence often followed their response with “Gracias a Dios [Thank God]” or “todavía [yet]” and frequently indicated that they expect one to arrive soon. When sharing these concerns, they often mentioned either strangers arriving to where they live or criminal groups coming to their neighborhoods on an irregular basis in order

to scout its potential. Three families told of their neighborhoods being taken over in exactly this manner over the past year. Another 130 said they attend a school with a nearby gang presence.

This usually means that the gang either congregates in a park across the street or waits on the streets to and from the school at start and end times. One hundred attend a school with gangs inside, with marijuana or other drugs often present and school directors or teachers occasionally helping gangs recruit students. One hundred and nine have been pressured to join the gang, 22 of whom were assaulted after refusing. Seventy have quit school. While most minimize their time on the streets, saying they go only to and from school, work, or church, more than 30 said they have made themselves prisoners in their own homes; some do not even go to church. One described himself as

“paralyzed with fear,” as he began crying. Another’s mom told me that he had a psychological breakdown when she tried to get him to leave the home. She had to take him to the emergency room to calm him, and the doctor recommended that she get him out of the country as soon as possible. Four families told how their children now find numerous tasks to do around the house to excuse themselves from family outings. Another told me: “people are always dying. I never feel safe.” Then, a girl stated that she felt “trapped.” She is afraid to enter other neighborhoods, and her father explained that even if the gangs do not harm her, the police or military in their neighborhood could because they “shoot [their firearms] freely, and sometimes innocent people are killed in the crossfire.”

To date, I have randomly selected at least one child’s story from each department (similar to states in the U.S.) and searched local news reports to see whether what they said could be verified.¹³ In all 14 cases, news articles supported the high crime rates they described and included names of friends and family members they mentioned as victims. For example, one girl said that her father and cousin had been killed five years apart and that three murders had taken place in her neighborhood in the past year. All three elements of her story had been reported in both La Prensa Grafica and El Diario de Hoy. Another father told me that eight murders, two of which involved children, took place in his neighborhood and the one next to it. Again, press supported his accounts.

While I believed that gang violence was primarily an urban problem before arriving to El Salvador, I have found that this violence is widespread, with children from rural and urban areas of 11 of 14 of El Salvador’s departments most likely to list this as the primary cause of their emigration. In Cuscatlán and Usulután, over 85 percent flee for this reason, and in the following departments more than 50 percent flee for this reason: La Libertad (53.8%), La Paz (64.7%), La Union (67.6%), Morazán (52.6%), San Miguel (67.6%), San Salvador (65.9%), San Vicente (61.1%), Santa Ana (58.8%), and Sonsonate (67.7%).

Of the 322 minors I interviewed, 145 have at least one gang in their neighborhood, and about half of these live in a contested gang territory.

IN RURAL AREAS, EXTREME POVERTY MOTIVATES SOME TO SEEK WORK

The exception to this trend occurs in three of the most rural and impoverished departments in El Salvador—Ahuachapán, Cabañas, and Chalatenango. While children from these areas cite violence as their reason for leaving over 30 percent of the time, more actually cite the desire for an improved life. Over 40 percent of the children, predominantly adolescent males,

hope to work half the day and study the other half in order to remit money to their families and help them move forward in life. This desire for a better life is hardly surprising, given that many of these children began working in the fields at age 12 or younger and live in large families, often surviving on less than USD \$150 a month.

ONLY 1 IN 3 CHILDREN CITES FAMILY REUNIFICATION AS A PRIMARY REASON FOR LEAVING HOME

Over 90 percent of the children I interviewed have a family member in the U.S., with just over 50 percent having one or both parents there. Despite these high numbers, only 35 percent list reunification as a reason for their emigration, although girls and younger children are more likely to list this reason.¹⁴ Whenever children note a family member in the U.S., we ask them why they wish to see this person now instead of a few years ago or several years in the future. The responses to these questions more often than not referenced fear of crime and violence as the underlying motive. The children and their families had decided they must leave and chose to go where they had family, rather than chose to leave because they had family elsewhere. Essentially, they would be going to another country like Belize or Costa Rica if their family was there instead of in the U.S.

Parents and guardians typically express great distress about weighing the risks of an incredibly dangerous journey to the U.S. versus an incredibly dangerous childhood and adolescence in El Salvador. Over and over again, I have heard that “there is no childhood here,” and that “it is a crime to be young in El Salvador today.” One father said he never wanted to be away from his son, but after a string of murders in their town, he worried all the time. He felt he was being selfish to keep him here longer, especially since his mother in the U.S. has been asking for him for nearly a decade. Two single mothers shared that gangs were forcibly using their homes as passageways to escape from one neighborhood to another and to stash drugs. They believed they were targeted because no adult males lived with them, and they feared that they and their teenage sons would

be arrested as gang members if they reported the events, because each knew a community member who had been. Grandparents feel they are too old to fend off gang threats for their grandchildren. One grandmother stopped working in order to be better able to protect her granddaughter at home, but she felt that the gang knew they could enter her home by force to take her granddaughter at any moment. An aunt worried that keeping her nephew put her own children at risk. In all these cases, the family decided that long-term safety in the U.S. was worth the short-term—and high—risk of migrating.

The adolescents themselves referenced a decreasing risk in migrating related to their bigger and stronger bodies and an increase in danger of staying upon reaching the age of 13. They indicated that since they were more emotionally and physically mature, the risks associated with the dangerous journey to the U.S. were less than they once were, even though they had fairly accurate understanding of what could happen to them. At the same time, they indicated that while some gangs will recruit younger children, most do not recruit intensively until adolescence. Several said they had hoped to never turn 13, and a few mothers indicated that this birthday was celebrated with great sadness. Adolescents thus felt that their risk of staying increased as they aged and would continue to be high until they entered their late twenties. They often said there was nothing here for them and frequently referenced news stories on homicides, in which most victims are in their teens and twenties. They believed that the U.S. would offer them both more opportunities and safety to take advantage of them.

LEAVING THEIR COUNTRY IS OFTEN A LAST RESORT

Importantly, the U.S. is not always the first option. Many move within El Salvador, and there are whole neighborhoods that have been abandoned.¹⁵ According to the Central American University's Institute of Public Opinion (IUDOP) 2012 Survey,¹⁶ approximately 130,000 Salvadorans were forced to relocate within the country in 2012. One-third had moved previously, because often,

Notably, these children are not just arriving to the U.S. in search of protection. UNHCR documented an increase of 432 percent in asylum requests in the neighboring countries of Belize, Costa Rica, Nicaragua, Panama, and Mexico.

arrived to his new neighborhood, because they assumed he was already a rival member. An adolescent girl who witnessed her mom's, brother's and boyfriend's murders by gang members has lived in six different parts of El Salvador—and even Guatemala—and

each time, the same gang tracked her down.

Likewise, police who have asked me about my study have shared several related pieces of information. First, they are often required to move every two years because of concerns that gangs will target them for corruption or death. Second, several police and military members have sent their children to the U.S. because they feared for their lives, and the media has indeed documented increased attempts by gangs to murder these agents of the state.¹⁷ Third, two policemen who were threatened by gangs explicitly told me that if threatened, your only option is to flee and hope for the best within the country. They both said that if the gang decided to find you, they could, and you then needed to go abroad if you wanted to survive.

Notably, these children are not just arriving to the U.S. in search of protection. UNHCR documented an increase of 432 percent in asylum requests in the neighboring countries of Belize, Costa Rica, Nicaragua, Panama, and Mexico.¹⁸ Despite being one of the poorest countries in Latin America, Nicaragua alone saw an increase in asylum requests of 240 percent between 2012 and 2013.¹⁹

CHILDREN AND THEIR FAMILIES DO NOT TRUST THE SALVADORAN GOVERNMENT TO HELP THEM

Children and their families do not feel the Salvadoran government can protect them. Press reports and government authorities in various agencies say that the two child protection agencies in El Salvador—the National Council for Childhood and Adolescence (CONNA) and the Salvadoran Institute for Childhood and Adolescence (ISNA)—infrequently respond to reported abuse²⁰ or parental homicide²¹. Legislation passed in 2009 makes which agency is responsible for what unclear. Neither is adequately funded nor has programs for children persecuted by gangs or for children wanting out of gangs.

There is also little confidence in the police, military, or other government agencies.²² Only 16 child migrants who said they had experienced insecurity reported it. The police refused to write up a report for eight of those who reported problems; six said nothing

happened after they spoke to authorities, and two of the 16 who made reports said they had received increased threats. One's accused rapist still lives next door.

Fear of authorities is well-founded. Many say gangs have sources of information among police, attorney general offices, and neighborhood residents so that, as several of them told me, "You never know who is who." Three told stories of youth who made complaints and were then detained as suspected, rival gang members by police. Police beat one youth three times because he worked late and was accused of being a gang member since he was on the streets. Thus, because gangs and, at times, police target young people, a number of children and family members have again told me that El Salvador is "no place for children."

THOSE WHO ARE RETURNED FROM THE U.S. FACE ADDITIONAL THREATS OF VIOLENCE

Four families I met were hoping to return to their lives in the United States. All of them had resided with their children there for more than seven years. They elected voluntary departure, and upon arriving to El Salvador, decided to start small businesses. Each of them was extorted for large amounts of money (more than \$3,000 per month) within six months of opening. They believed that besides having their businesses, they also stood out because their homes were nicer, and they dressed differently. Unable to pay, and afraid to report the crime to authorities, they were fleeing. They were so afraid that they did not plan to sleep in their homes that evening after being deported from Mexico on their way to the U.S. and were instead looking for a hostel before embarking again the next day.

I also met two men in their early twenties who were fleeing with their adolescent sisters. In both cases, the brothers had received numerous threats in El Salvador and had fled to the U.S. in the previous year. Upon reaching the U.S., they tried to seek asylum. One was told inside the detention center where he was kept that since he was not “black or Muslim,” he could not do

so. They both stated they were returned against their will and without ever talking to a lawyer. Within days of their return, the gangs began forcibly recruiting their sisters to be “girlfriends²³”. Where both lived, girls who refused such advances

had been kidnapped and never heard from again or found murdered, which I cross referenced with a Twitter site called Angel Desapercido.²⁴ With their families, they decided to accompany their sisters to the U.S., but neither had much hope for their or their sister’s prospects of obtaining protection.

Within this context, many children report that their parents who had planned to return to El Salvador after paying for their education now fear doing so because of high violence and these kinds of stories. At least once a month, local news report the homicide of a recent deportee from the U.S.,²⁵ and several of the Salvadoran families I have met here indicated that

they were extorted because of the remittances they receive from relatives in the U.S.

My study is taking place in El Salvador, but I visited Guatemala and Honduras in October 2013 and know over 100 UAC from each country. The initial findings presented in this piece are common in the other two nations, as is reported in aforementioned publications by KIND, UNHCR, UCCSB, and the WRC. Primarily, while family reunification, poverty, and lack of opportunities are common considerations in UAC’s decision to emigrate, the most common cause of UAC’s exodus from Central America has been and continues to be increasing gang and cartel violence that disproportionately affects them as young people.

As a result, U.S. and regional response must realize that the majority of these children have significant protection needs. Thus, they should continue to receive access to the services and due process guaranteed them in the Flores Settlement Agreement and TVPRA, should have access to free legal counsel, and should await their immigration hearings with family. Whether they remain in the U.S. or return to their home countries, they must have access to services that assist them in transitioning successfully, which would ideally offer them career and educational development and health services alongside mechanisms for better participating in transnational families. Most broadly, in home countries, emphasis must shift from militaristic solutions to those that invest in economic and social development. In doing so, the influence of gangs would likely decrease as they have alternative opportunities, and fewer children will emigrate.

As a final note, I am in contact with 20 UAC who arrived to the U.S. from 2011 to 2013. They now live in different parts of the country, Guatemala, Honduras, and Mexico and have various legal statuses. Their experiences migrating to the U.S. and transitioning from that journey have deeply affected them and me. Even those who are happy in the U.S. greatly miss their home countries. If they could return and live in them safely, most would. At the same time, they are incredibly motivated and talented youth, and whichever nation gets them should make a minimal front-end investment to maximize the return we get from them.

The most common cause of UAC’s exodus from Central America has been and continues to be increasing gang and cartel violence that disproportionately affects them as young people.

APPENDIX: METHODOLOGY

My subjects have been local, regional, and national government officials; the press; and children and their families, who have told horror stories of violence and despair.²⁶ I have met hundreds of people fleeing areas where their neighbors, family, or friends have been extorted, threatened, or killed. Many were on their way to the U.S. for the first time, but a few hoped to return to their life in the U.S. since their decision to voluntarily depart in the past year put them and their families in danger within months.

To reach the U.S., Central Americans must traverse Mexico, and an increasing number are being detained and deported there before reaching the U.S. border.²⁷ Children apprehended below Mexico City are deported by bus to San Salvador twice per week; children detained above Mexico City are deported by commercial plane to the international airport in San Luis Talpa on an as-needed basis. When I began interviewing children deported by bus in January, between five and 15 came two days per week, but between 60 and 80 now arrive each of these two days.²⁸ Through June, I have completed nearly 500 interviews with these children and their waiting family members, over half of whom intended to attempt migrating again. Indeed, in paying the smuggler, each received three chances for that price that was sometimes equivalent to 20 years' salary. For this piece, I analyzed the 322 interviews I completed between January 27 and May 1, 2014. Within that group of children, 106 (33%) were females, and 216 (67%) were males. Nearly 80 percent (78.5) were between the ages of 13 and 17.²⁹ The largest numbers come from the departments of San Salvador (41), Santa Ana (34), San Miguel (34), and La Unión (34). The top four destinations in the United States were: New York (39), Los Angeles (38), Houston (38), and Virginia (31).³⁰

Through May, I went to the migrant return center on both days that children were deported. There, family members await their children for hours, and I arrived early to talk with them before the bus came. Often, I had the chance to interview the family prior to the bus's arrival and the child after completing her migration interview. In April, I recruited and trained a Salvadoran assistant due to an increase in arrivals. During these first five months, our goal was to complete interviews with at least half of child migrants if together and with at least one quarter if alone. Starting this June, my assistant goes one day per week, and I go the other day. Our goal now is to interview a statistically representative sample based upon sex, age, and origin, and I have begun follow-up interviews by phone.

Interviews have a mixture of closed and open questions and usually take 10 to 30 minutes to complete.³¹ We begin by collecting basic demographic information like age, gender and with whom the child lives (including age and relationship of each person in the home). We then ask where they live and what living there is like, with follow up questions about gang, police and military presence, religious involvement, land ownership, and remittances. Before transitioning to where the child's mother and father are (which is always sensitive since

some have a father who was not active), in what each parent or guardian works, and where and with whom they wanted to live in the U.S., we ask if they ever lived anywhere else. If so, we want to know where and why they moved. Then, we ask if they were actively studying, what grade they last completed, how they performed academically, what type of school they attended, and if not studying, why they quit when they did. We ask a similar set of questions about if they are actively working. After that, we explicitly ask them why they wanted to leave the country, and depending on the reason(s) they give, a series of follow up questions specific to that reason. For example, if they say they fear for their life, we ask them why; whether they, their family or friends have been threatened, and if so, when the threats began and with what frequency they have occurred; how many murders or other crimes have occurred where they live; names of anyone they know who has been killed; and whether or not they reported these crimes. Finally, we ask with whom they traveled (smuggler, family, friends, other, or alone), whether they will try to reach the U.S. again, and what they hope to do in the U.S. if they arrive. At the end, we share with them possible legal options to travel to or stay in the U.S., if any exist, and answer their questions. All are given my contact information and encouraged to follow up with me if they would like. Over 30 have done so.

The interviews have four major limitations. First, we cannot complete interviews with children alone,³² so our questions about abuse, mistreatment, or negligence likely yield underestimates. Just 3.1 percent report migrating for this reason to us, but upward of 20 percent from El Salvador reported migrating for this reason to KIND³³ and UNHCR³⁴ in 2013. Second, because we conduct interviews at the migrant return centers, finding privacy can be difficult, and some child migrants and their families are afraid to talk openly. On more than 10 occasions, they have followed up with me by email after leaving the center to share a much more detailed history. Third, the later the busses arrive, the fewer interviews we can complete since migrants and their families are in a hurry to leave before dark. The return center is in a very bad neighborhood (Colonia Quiñonez): it was named one of 10 municipalities in El Salvador where taxis normally will not go in March³⁵, and in April, two people were murdered on the only street that can be used to exit.³⁶ Finally, some speculate that migrants may tell their stories strategically since I am from the U.S. While this may occasionally occur, I have nearly a decade's experience conducting qualitative interviews with children in the Spanish language (and more experience performing youth work with the same population). I am adept at noticing such things and note when I suspect withholding information. Importantly, when my assistant and I conducted interviews with the same children on her first two days, we received similar responses. Then, my field interviews are consistent with what other groups like KIND³⁷, UNHCR, the United States Conference of Catholic Bishops³⁸, and the Women's Refugee Commission³⁹ have reported in the last two years—rampant violence has made it unsafe to be a child in Central America.

ENDNOTES

¹ The White House Office of the Press Secretary, "Presidential Memorandum -- Response to the Influx of Unaccompanied Alien Children Across the Southwest Border," (2014), available at: <http://www.whitehouse.gov/the-press-office/2014/06/02/presidential-memorandum-response-influx-unaccompanied-alien-children-acr>.

² See reporter Sonia Nazario's six-part series about a Honduran unaccompanied child migrant hoping to reunify with his mom and leave a life of instability and crime with the Los Angeles Times here: <http://dlib.nyu.edu/undercover/enriques-journey-sonia-nazario-los-angeles-times>. It became a full-length book, *Enrique's Journey* (2006).

Also see Administration for Children and Families, "Annual ORR Reports to Congress - 2003," (2003), available here: http://archive.acf.hhs.gov/programs/orr/data/arc_03.htm, which states: "[m]ost Unaccompanied Alien Children (UAC) in ORR's care are Central American males between the ages of 15 and 17 who come to the U.S. to join family and work. They are fleeing poor socioeconomic conditions, gang victimization, abuse, neglect, abandonment, or other trauma in their home countries." Prior to FY 2003, the UAC program did not exist. See also reporter Melissa del Bosque's stories for The Texas Observer: "Children of the Exodus" (4 November 2010) at <http://www.texassobserver.org/children-of-the-exodus/> and "Central America's Lost Boys" (30 April 2012) at <http://www.texassobserver.org/central-americas-lost-boys/>.

³ U.S. State Department, "U.S. Laws on Trafficking in Persons," <http://www.state.gov/j/tip/laws/>

⁴ Prior to 1997, UAC were placed in Immigration and Naturalization Services detention facilities with adults, where a number of abuses occurred. A class action suit was brought, and after nine years of litigation, the Flores Settlement Agreement was negotiated. Under it, UAC must be transferred from adult care within 72 hours to the "least restrictive setting appropriate" in facilities meeting state standards for children in foster care. Paramount to their care is "dignity, respect and special concern for their particular vulnerability as minors," as is assuring their appearance at immigration courts. Facilities for UAC must, at a minimum, have: safe and sanitary conditions, toilets and sinks, drinking water and food, medical assistance in cases of emergency, adequate temperature control and ventilation, adequate supervision to protect minors from others, contact with family members, and separation from unrelated adults. For those who have special needs, including health, mental or physical conditions requiring special services or treatment by staff, those needs must be met whenever possible, in licensed programs. While only 25 of these shelters existed in 2005, we have over 90 today.

See Flores v. Meese - Stipulated Settlement Agreement (1997) at <https://www.aclu.org/immigrants-rights/flores-v-meese-stipulated-settlement-agreement>.

⁵ See Cavendish, Betsy and Cortazar, Maru, "Children at the Border: The Screening, Protection and Repatriation of Unaccompanied Mexican Minors," Appleseed Foundation (2011), available at: <http://appleseednetwork.org/wp-content/uploads/2012/05/Children-At-The-Border1.pdf>.

See also Kennedy, Elizabeth, "US immigration bill: silence on the deportation of children," openDemocracy 50.50 (2013), available at: <http://www.opendemocracy.net/5050/elizabeth-kennedy/us-immigration-bill-silence-on-deportation-of-children>. Since 2005, over 150,000 unaccompanied child migrants from Mexico have been deported in contradiction of U.S. law, as laid out in the TVPRA and the 1997 Flores Settlement Agreement.

⁶ Mexican officials assert their ability to provide all services and support that Mexican unaccompanied minors need and thus ask that their youth be repatriated as quickly as possible per these agreements. However, their statements clash with overflowing orphanages in Mexican border towns and accounts of these youth being targeted for both drug and human trafficking (see del Bosque 2010). Then, despite assumptions by Mexican and US officials that these minors have families willing to support them, my conversations with advocates lead us to believe that as many as 20 percent of unaccompanied minors lived on the streets prior to emigrating and will once again find themselves destitute if deported.

See Ryan, Kevin, "Stop the Murders of Street Kids," Huffington Post (2012), available at: http://www.huffingtonpost.com/kevin-m-ryan/honduras-children-violence_b_1574086.html.

⁷ The Homeland Security Act amended the United States Code in 6 USC §279(g)(2) to define UAC as those who: (a) have no lawful immigration status in the US; (b) are under the age of 18; and (c) have no parent or legal guardian either present or available to provide care and physical custody in the U.S.

⁸ The Northern Triangle is composed of the three Central American nations of El Salvador, Guatemala and Honduras who share economic, political and social characteristics. In 1991, Guatemala and El Salvador signed a free trade agreement, which Honduras signed in 1992. While the Northern Triangle originally designated the free trade area the three share, it is now known as the world's deadliest region because of its high homicide and crime rates. To learn more, you can read ICESI University's background note here: <http://www.icesi.edu.co/blogs/icecomex/2008/10/17/triangulo-norte-centroamericano/>.

⁹ See Immigration Task Force, "Issue Brief: Child Migration by the Numbers," Bipartisan Policy Center (2014), available at: <http://bipartisan-policy.org/library/research/child-migration-numbers>.

¹⁰ Prior to this year, neither Customs and Border Patrol (CBP), who apprehends UAC, nor ORR, who houses them, willingly released their numbers. In an unexplained move, CBP officials changed course in 2014 and became much more vocal about the increasing number of child arrivals. They have consistently estimated to the public that from 60,000 to 90,000 children will arrive, but they are not differentiating between accompanied and unaccompanied child migrants or Mexican and non-Mexican children. Differentiation is critical since accompanied and Mexican children rarely enter ORR care, meaning those who have entered ORR care in 2014 are likely markedly lower than the recently released 47,000 number.

¹¹ As was painstakingly portrayed in the film, *Under the Same Moon*

(2008), even young children may decide to migrate without telling their families. It could be days before families know where their children are and how to get them.

¹² 54 percent of KIND's Central American children had one parent living in the U.S. UNICEF found that children in kinship care in Africa were more vulnerable to increased poverty, abuse, neglect, exploitation, and unequal treatment in the household. See Roby, Jini L. "Children in Informal Alternative Care, Discussion Paper," UNICEF Child Protection Section. June 2011. UCCSB additionally found that children with family in the U.S. are vulnerable for two reasons: they are more likely to lack a stabilizing element in the home and can become targets for extortion since gangs are able to acquire lists of who receives remittances.

¹³ Before concluding this investigation, I will do this for each child's story. I am hoping to create a public database of these articles and several interactive maps of the violence.

¹⁴ 46.7 percent of girls list this reason, compared to 30.5 percent of boys. Nearly all children younger than 12 years old list reunification as a motivating factor.

¹⁵ See Valencia Caravantes, Daniel, "La legión de los desplazados [The legion of the Displaced]," El Faro (2012), available at http://www.especiales.elfaro.net/es/salanegra_desplazados/.

¹⁶ Central American University's Institute of Public Opinion (IUDOP) 2012 Survey (Spanish), Instituto Universitario de Opinión Pública Universidad Centroamericana "José Simeón Cañas" San Salvador, El Salvador, Diciembre de 2012; available at <http://www.uca.edu.sv/publica/iudop/archivos/informe131.pdf>.

¹⁷ Servir, proteger, y sobrevivir, March 27, 2011 available at: <http://www.elfaro.net/es/201103/fotos/3775/> Castro, Ángela, "Mareros torturan y matan a policía en Soyapango," Elsalvador.com, January 26, 2014, available at: http://www.elsalvador.com/mwedh/nota/nota_completa.asp?idCat=47859&idArt=8509092 Hernández, Carlos, "Al menos 37 asesinatos se reportan durante el fin de semana," La Página, February 16, 2014, available at: <http://www.lapagina.com.sv/nacionales/92873/2014/02/16/Al-menos-28-asesinatos-se-reportan-durante-el-fin-de-semana>

¹⁸ UNHCR, Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection (2014), available at: <http://unhcrwashington.org/children>

¹⁹ Dara Lind, "The Central American migrant crisis isn't just a US problem, in one chart," Vox, June 24, 2014, available at: <http://www.vox.com/2014/6/24/5839236/the-central-american-migrant-crisis-isnt-just-a-us-problem-in-one>

²⁰ Flores, Ricardo. "Quien protege a Monica? [Who protects Monica?]" La Prensa Grafica 7 July 2013 <http://www.laprensagrafica.com/-quien-protege-a-monica>

²¹ Ramirez, Sigfredo. "El pais de los huérfanos [The country of orphans]." La Prensa Grafica 6 April 2014. <http://www.laprensagrafica.com/2014/04/06/el-pais-de-los-huerfanos>

²² Numerous reports have documented widespread impunity in El Salvador, including Amnesty International, Human Rights Watch, the United Nations Office of Drug and Crime, the United States Department of State.

²³ While one gang member will typically request a girl to be his girlfriend, after a certain period of time, she is viewed as property of the entire gang. She essentially becomes a prostitute for the gang.

²⁴ Alerta Angel Desparecido, Twitter, available at: <https://twitter.com/AlertaAngels>.

²⁵ La Prensa Grafica, "La tragedia de todo un país," June 15, 2014, available at: <http://www.laprensagrafica.com/2014/06/15/la-tragedia-de-todo-un-pais>

La Prensa Grafica, "Asesinan a pandillero deportado de EUA en Tejutla," May 21, 2014, available at: <http://www.laprensagrafica.com/2014/05/21/asesinan-a-pandillero-deportado-de-eua-en-tejutla>

Elsalvador.com, "Matan a una mujer por pleito entre pandilleros," April 29, 2014, available at: http://www.elsalvador.com/mwedh/nota/nota_completa.asp?idCat=47859&idArt=8741481.

El Salvador.com, "Matan a pandillero deportado de EE. UU.," January 24, 2014, available at: http://www.elsalvador.com/mwedh/nota/nota_completa.asp?idCat=47859&idArt=8503815.

²⁶ Kennedy, Elizabeth, "'No place for children': Central America's Youth Exodus" InSight Crime (2014), available at: <http://insightcrime.org/news-analysis/no-place-for-children-central-americas-youth-exodus>.

²⁷ This trend is concerning in historical perspective, because the United States provided funding and training to Mexican migration officials to return more Central Americans to their home countries when people from those nations fled civil war in the 1970s, 1980s, and 1990s.

²⁸ Through May, only four Salvadoran children have been deported by plane from the U.S., as reported through private communication with El Salvador's government. This number is likely to increase substantially if the U.S. decides to expedite immigration proceedings for child migrants. See Gilha, Lori Jane and Amin, Sameen, "El Salvador ambassador: US proposed child-only migrant flights," Al Jazeera America (2014), available at: <http://america.aljazeera.com/watch/shows/america-tonight/articles/2014/6/25/u-s-proposed-child-onlymigrantflightssayselsalvadorambassador.html>.

For the month of July, I will spend the day at the airport four days a week to conduct interviews with Salvadoran children deported by plane from Mexico and the U.S. I have not done so earlier because the airport is over an hour from the capital city where I reside, and I always received no notice or too little notice to arrive in time to complete interviews.

²⁹ An equal number of girls as boys traveled until age 14, and then sometimes four times as many boys traveled as girls at ages 15, 16, and 17.

³⁰ Outside of California and Texas, children and their families were rarely able to name cities within the states. Thus, while they knew where they wanted to go in the first two states, they were sometimes unaware that Virginia, for example, was not the name of a city.

³¹ Closed questions are those with simply a yes or no answer, and open questions are those that require elaboration and individual response.

³² In 2009, the Salvadoran government passed a new law for child protection: the Integrated Protection Law for Childhood and Adolescence (LEPINA). See Asamblea Legislativa de El Salvador, Centro de Documentación Legislativa, April 16, 2009; available at: <http://www.asamblea.gob.sv/eparlamento/indice-legislativo/busador-de-documentos-legislativos/ley-de-proteccion-integral-de-la-ninez-y-adolescencia>.

It created a new governing body for this purpose, the National Council for Childhood and Adolescence (CONNA) but did not terminate the existence of the previous National Institute for Childhood and Adolescence (ISNA) or make clear what each organization's role would be under the LEPINA. Whereas ISNA used to perform the intake interviews with deported children, no one from either office currently attends return centers. Because migration officials fear they lack expertise to adequately meet children's needs and vulnerabilities, they place the child with her waiting family member as soon as she disembarks from the bus. They believe this is in the best interest of the child. As a result, neither I, the migration officials, nor anyone else completes an interview with the child alone. This is problematic for a number of reasons, not least of which is that the child is not effectively screened for past abuse, mistreatment, or negligence.

³³ In February 2013, Kids in Need of Defense (KIND) released The Time is Now (at <http://www.supportkind.org/en/about-us/resources>) which drew upon a random sample of over 100 UAC cases they represented. It began: "[a] child migrating alone signals a much deeper protection issue that has caused them to leave their homes, family, and community." It pointed to the lack of "robust national child protection systems" in the Northern Triangle, which resulted in most of their child clients fleeing gang violence or long-term domestic violence by their caregivers. Children reported that police could not be trusted to protect them, moving within the country or region did not offer protection, having family in the U.S. and receiving remittances make one a target for extortion, and not paying extortion demands could result in serious harm or death.

³⁴ See UNHCR, Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection (2014), available at: <http://unhcrwashington.org/children>.

In March, UNHCR released their results of extensive interviews with 404 detained UAC. Among UAC, they found that no less than 58 percent were forcibly displaced and potentially in need of international protection: 48 percent had personally experienced cartel or gang violence, and 22 percent had survived abuse in the home. UNHCR also reported that since 2009, more and more Central American adults and children have been requesting asylum in the United States and in Belize, Costa Rica, Mexico, Nicaragua, and Panama, where their requests have increased by a combined 432 percent.

³⁵ See "Los 10 principales sitios donde taxistas no van por miedo [The top 10 places where taxis won't go because of fear]" El Diario de Hoy (2014), available at: http://www.elsalvador.com/mwedh/nota/nota_completa.asp?idCat=47673&idArt=8602296.

³⁶ See "Hallan cadáveres de dos jóvenes [Two youths' bodies found]," El Diario de Hoy (2014), available at: http://www.elsalvador.com/mwedh/nota/nota_completa.asp?idCat=47859&idArt=8706438.

³⁷ See also University of California, Hastings Center for Gender and Refugee Studies and Kids in Need of Defense, A Treacherous Journey: Child Migrants Navigating the U.S. Immigration System, (2014), available at: <http://www.supportkind.org/en/about-us/resources>. In

February 2014, KIND and UC-Hastings teamed to release a report on challenges UAC face while navigating the U.S. system. In calling for legal and policy reforms to ensure basic protections for UAC, it also highlighted that while many UAC seek to reunite with family once in the U.S., their migration is frequently motivated by violence rather than family separation.

³⁸ See United States Conference of Catholic Bishops (USCCB), Mission to Central America: The Flight of Unaccompanied Children to the United States, (2013), available at: <http://www.usccb.org/about/migration-policy/upload/Mission-To-Central-America-FINAL-2.pdf>.

Based upon three weeks in the Northern Triangle, while this report noted the absence of economic and educational opportunities, the strong desire to reunify with family, and a breakdown in the rule of law so significant that all three nations have a "culture of fear and hopelessness." At the macro level, it discussed increasing interaction between Central American gangs and drug cartels, partially evidenced by the U.S. Department of Treasury's decision to designate MaraSalvatrucha 13 as a significant Transnational Criminal Organization in October 2012 (See U.S. Department of Treasury, "Treasury Sanctions Latin American Criminal Organization," Executive Order (E.O.) 13581.). It then commented on regional skepticism around the gang truce and noted that whether or not it actually existed, it did demonstrate the gangs' emerging roles as political actors, capable of sitting at the table with government officials and controlling crime rates.

See Archibald, RC, "Gangs' Truce Buys El Salvador a Tenuous Peace" New York Times 27 August 2013 and Farah, Douglas, "What the Kids are Fleeing: Gang Violence Spikes in Central America," Fusion (2014), available at: <http://fusion.net/justice/story/guns-drugs-money-anti-socials-form-social-order-807005>.

I have yet to meet any researcher or citizen in El Salvador or Central America that has faith in the truce. They often indicate that even when homicide rates were initially halved, disappearance, extortion, kidnapping, and robbery increased. Then, many large clandestine graves are being found this year and last so that many speculate they were just better at hiding the bodies. Finally, homicide rates now exceed pre-truce levels. In May, 401 people were murdered, which is a daily average of 12 in a nation of only six million people.

³⁹ See Jones, Jessica and Podkul, Jennifer, Forced From Home: The Lost Boys and Girls of Central America, Women's Refugee Commission (2012), available at: <http://womensrefugeecommission.org/forced-from-home-press-kit>.

Based upon interviews with 146 detained child migrants from Mexico and the Northern Triangle, The report found that the extent and scale of rising crime, systemic state corruption and entrenched economic inequality were culminating, allowing for growing influence of gangs and cartels, which most listed as their reason for leaving. Specifically, many were threatened by gangs to join or die, saw dead bodies regularly, and lived in constant fear. They were so desperate for safety, that even after enduring horrendous journeys through Mexico that often included abuse, assault, inconsistent access to food or water and witnessing or experiencing death, drowning, kidnapping, maiming or rape, most said they would do it again. The report surmised that until these countries change substantially, the upward trend would become "the new norm," which has proven true in the two years that followed.

ATTACHMENT C

MEXICAN AND CENTRAL AMERICAN ASYLUM AND CREDIBLE FEAR CLAIMS

Background and Context

By Sara Campos, Esq. and Joan Friedland, Esq.



MEXICAN AND CENTRAL AMERICAN ASYLUM AND CREDIBLE FEAR CLAIMS BACKGROUND AND CONTEXT

ABOUT THE AUTHORS

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Joan Friedland, Esq., was Managing Attorney at the National Immigration Law Center in Washington, D.C. until 2011. She worked for many years with non-profits and in private practice in New Mexico and Florida, practicing primarily in the areas of civil rights, immigration, and criminal law. She is a graduate of Harvard Law School and currently lives in New Mexico.

ABOUT THE AMERICAN IMMIGRATION COUNCIL

The American Immigration Council's policy mission is to shape a rational conversation on immigration and immigrant integration. Through its research and analysis, the Immigration Council provides policymakers, the media, and the general public with accurate information about the role of immigrants and immigration policy in U.S. society. Our reports and materials are widely disseminated and relied upon by press and policymakers. Our staff regularly serves as experts to leaders on Capitol Hill, opinion-makers, and the media. We are a non-partisan organization that neither supports nor opposes any political party or candidate for office.

Visit our website at www.immigrationpolicy.org and our blog at www.immigrationimpact.com.

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INTRODUCTION AND SUMMARY

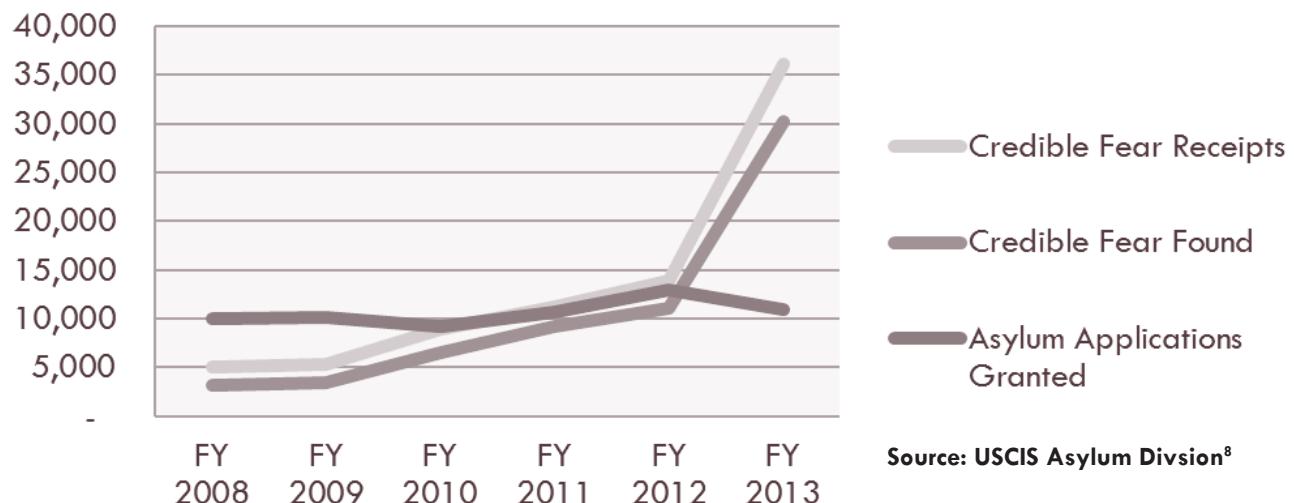
Carlos Gutierrez, a successful businessman in Chihuahua, Mexico, and the married father of two, refused to comply with a criminal cartel's monthly demands of \$10,000. In retribution for his refusal and as an example to other businessmen, his feet were cut off and he was left for dead. According to his former attorney, that kind of "organized crime is not possible without the complicity of the municipal, state and federal police."¹

Gutierrez's friends rushed him to the hospital. He was later able to make his way to the United States to seek asylum and turned himself in to border agents in El Paso.² After passing a credible fear screening, he was placed in removal proceedings in immigration court, where his asylum case could be decided. His case was later administratively closed³ as a matter of prosecutorial discretion.⁴ The immigration judge's order leaves Mr. Gutierrez in a precarious situation—a legal limbo with no permanent right to remain in the country and with no decision on his asylum claim unless removal proceedings are reopened.

Gutierrez's case is just one of the thousands of asylum requests that Mexicans and Central Americans have presented along the U.S.-Mexico border in recent years. As described more fully below, persons seeking admission to the U.S. at a port of entry or near the border who express a fear of return to their countries must be interviewed to determine whether there is a significant possibility that they can establish persecution or a fear of persecution before an immigration judge. If the applicant meets this "credible fear" standard, the case proceeds to a removal hearing in immigration court. There the applicant may apply for asylum or other protections from removal based on persecution or torture. If the applicant cannot meet the initial threshold, he or she is deported immediately under an order of expedited removal.⁵

Recently, the credible fear process has become the target of political attacks. Detractors argue that it is too easy to obtain favorable credible fear determinations and avoid deportation. They point to rising credible fear claims as evidence that people are abusing the system. According to the Acting Chief of the U.S. Citizenship and Immigration Services (USCIS) Asylum Division, there were an "unprecedented number of credible fear referrals" during Fiscal Year (FY) 2012.⁶ In draft Congressional testimony in mid-2013, USCIS Associate Director Joseph Langlois noted that two-thirds of such claims came from Salvadorans, Hondurans, and

Credible Fear & Asylum FY 2008 - FY 2013



Source: USCIS Asylum Division⁸

Guatemalans, most of which were presented in the Rio Grande Valley in South Texas. He attributed the rise “to reports of increased drug trafficking, violence and overall rising crime in those countries.”⁷

While the numbers are rising, political attacks are made without reference to how the credible fear and asylum processes actually work, to escalated violence in Mexico and Central America, and to the barriers to obtaining asylum in the United States. This paper addresses these issues, summarizes the concerns and experiences of numerous advocates in the field, and concludes that the credible fear and asylum process poses obstacles for applicants that far surpass the supposed abuses claimed by its detractors.

RECENT ATTACKS ON ASYLUM SEEKERS USING THE CREDIBLE FEAR PROCESS

Prior to 1996, persons seeking asylum in the United States could apply directly to the immigration service or, if they were charged with immigration violations, they could apply for asylum in the context of deportation or exclusion proceedings in immigration court. The asylum process was essentially the same regardless of whether someone was intercepted at the border, deemed inadmissible while attempting to enter the United States at an airport or other port of entry, or arrested and placed in proceedings after many years in the U.S.

In 1996, however, Congress enacted a streamlined removal procedure known as “expedited removal” (explained below) that allows immigration officers to issue orders of removal under certain circumstances without affording the person an opportunity to appear before an immigration judge. If applicants establish a credible fear of persecution, they are allowed to apply for asylum in removal proceedings. This process has been criticized as both too harsh and too lenient. Detractors claim that increased claims come from ineligible individuals who apply and subsequently disappear.⁹ Yet, as country conditions deteriorate in Mexico, Central America, and other parts of the world, more people arrive at the border intending to apply for asylum. Upon stating their intent to apply for asylum, they are taken into custody, and may languish in detention, often in remote facilities. And if released from detention, immigration courts are so under-resourced that individuals must wait for years for the merits of their cases to be adjudicated.

In August 2013, House Judiciary Committee Chairman Bob Goodlatte (R-VA) called the credible fear process a “loophole.” Contrary to the actual numbers, he claimed Mexicans with fraudulent claims were responsible for the increase.¹⁰ Conservative media joined the fray, pointing to increased numbers of asylum seekers from Mexico and Central America and calling it an “effective tactic” to remain in the U.S., and suggesting that many asylum claims are fraudulent.¹¹ The release from detention of young DREAMer activists in the summer of 2013 after passing credible fear interviews also “provoked the ire of House Republicans, drawing attention to a broader policy that has led to large increases in the numbers of migrants gaining entry by requesting asylum at the southwest border.”¹²

In response to these concerns, the U. S. House of Representatives Judiciary Committee held hearings in December 2013 and February 2014 provocatively entitled, “Asylum Abuse: Is It Overwhelming Our Borders?” and “Asylum Fraud: Abusing America’s Compassion?”¹³ The premises of those hearings were that criminals were “gaming” the system by claiming a credible fear of persecution and that such abuse and fraud in the credible fear process warranted tightening of the process.¹⁴

Answering the claims of Representative Goodlatte, Eleanor Acer, Director of the Refugee Protection Program at Human Rights First, testified that preventing abuse of the asylum system is critical. But, as she pointed out, U.S. authorities already have a range of effective tools to address abuses. Furthermore, Congress and the Obama administration could take further steps to ensure the integrity of the asylum process, including providing more resources to the asylum office and immigration court system to prevent backlogs. Equally important is lessening the “many barriers and hurdles” that Congress has placed in the path of asylum seekers over the years.”¹⁵

More recently, USCIS also responded to the increase in credible fear claims and perceptions of abuse. In February 2014, without requesting public comment or providing notice, the USCIS revised its credible fear instruction materials for asylum officers.¹⁶ Applicants now must “demonstrate a substantial and realistic possibility of succeeding” in their cases. Many advocates fear that the new guideline undermines the role of a credible fear finding as a threshold determination. According to Professor Bill Ong Hing, “[A] fair reading of the Lesson Plan leaves one with the clearly improper message that asylum officers must apply a standard that far surpasses what is intended by the statutory framework and U.S. asylum law.”¹⁷

The reality is that the entire credible fear and asylum process, from refugee attempts to enter and apply for asylum through subsequent interviews and hearings, is replete with hurdles. In the words of Paul Rexton Kan, Associate Professor of National Security Studies at the U.S. Army War College, “enduring the asylum process is not easy.”¹⁸ The obstacles to asylum stem from the government’s failure to follow laws, rules, and policies, as well as inadequate funding for the administrative bodies and courts that hear asylum claims.

The reality is that the entire credible fear and asylum process, from refugee attempts to enter and apply for asylum through subsequent interviews and hearings, is replete with hurdles.

NAVIGATING THE ASYLUM PROCESS

The General Rules for Applying for Asylum

In 1980, President Ronald Reagan signed the Refugee Act into law,¹⁹ thereby bringing the United States into compliance with the 1967 United Nations Protocol Relating to the Status of Refugees.²⁰ Under the act, in order to apply for asylum, an individual must be present in the United States and demonstrate a well-founded fear of persecution based on one of five grounds: race, religion, nationality, political opinion, or membership in a particular social group.²¹

An individual can apply for asylum affirmatively or defensively.²² If immigration officials have never apprehended the individual, he or she may apply before the USCIS Asylum Office within one year of entering the United States.²³ If the individual is not granted asylum, the case is referred to the immigration court for removal proceedings under the Executive Office of Immigration Review (EOIR).²⁴ The individual may renew the asylum request in court and also apply for withholding of removal and relief under the Convention Against Torture (CAT).²⁵ Both withholding of removal and CAT have higher burdens of proof than asylum. And unlike asylum,²⁶ these remedies do not offer a path to permanent resident status, as is offered to asylees after one year of residence.²⁷

Individuals may also apply for asylum defensively after they have been apprehended by U.S. Customs and Border Protection (CBP) or U.S. Immigration and Customs Enforcement (ICE) agents and are placed in removal proceedings in immigration court.²⁸ Individuals may be deportable unless they can show eligibility for a remedy such as asylum, withholding of removal, or relief under CAT. Prior to 1997, individuals with asylum claims arrested at the border or in the interior of the country could present their cases at adversarial hearings before immigration judges.

The Special Expedited Removal Rules for Applying for Asylum

In 1996, as part of the Illegal Immigration and Immigrant Responsibility Act (IIRIRA),²⁹ Congress enacted a new provision called “expedited removal.” It allows the summary expulsion of noncitizens who have not been admitted or paroled into the U.S., have been in the U.S. for less than two years, and who are inadmissible because they presented fraudulent documents or have no documents. Unless they express a fear of persecution or torture upon return to their home countries or indicate an intention to apply

for asylum, such individuals may be removed right away and will be barred from returning to the U.S. for at least five years (but often much longer).³⁰

Initially, the former Immigration and Naturalization Service (INS) applied expedited removal only to individuals arriving at ports of entry. However, over time, the Department of Homeland Security (DHS) announced that it would apply expedited removal along the entire U.S. border, including all coastal areas adjacent to the country's maritime borders.³¹ Currently, the government applies expedited removal to apprehensions made within 100 miles of the border.

In addition to expedited removal, IIRIRA also instituted two provisions that affect and bar asylum. The first is a one-year filing deadline.³² With limited exceptions, an applicant who does not file for asylum within a year of entering the country is barred from doing so.³³ The second bar is Reinstatement of Removal. If an individual is removed or voluntarily leaves under an order of removal and subsequently reenters illegally, he or she faces the reinstatement of the previous removal order.³⁴ Upon return, DHS bars the individual from asylum and other remedies except for withholding of removal or CAT protection.³⁵

As explained below, the expedited removal process involves three agencies within DHS: 1) CBP, which makes the initial determination of removal and refers an individual to a 2) USCIS asylum officer who conducts an interview to determine whether the individual has a credible or reasonable fear of persecution; and 3) ICE, which detains the individual and makes parole decisions. Individuals who are not deemed "arriving aliens,"³⁶ are eligible for bonds, and an immigration judge within EOIR, a branch of the Department of Justice, may review bond amounts. In all of these cases, an immigration judge determines eligibility for relief from removal.

Currently, the government applies expedited removal to apprehensions made within 100 miles of the border.

The Initial Encounter with Immigration Officers

Immigration officers must interview individuals who are subject to expedited removal.³⁷ If an individual expresses an intention to apply for asylum or expresses a fear of persecution or torture upon returning to his or her home country, the inspection officer must refer the individual to a USCIS asylum officer for a credible fear interview.³⁸ Regulations mandate that inspection officers inform individuals of their rights and create a record of their statements.³⁹ If an individual requires interpretation, it must be provided.⁴⁰ In addition, individuals who wish to apply for asylum must be detained, subject to limited exceptions, during the credible fear process.⁴¹

The Credible Fear Interview

Credible fear of persecution is defined by statute as “a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien’s claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under section 1158 of this title.”⁴² Until recently, this standard was to be a preliminary threshold, designed as a fairly low bar due to its use as a screening mechanism. But USCIS has recently issued instructions to asylum officers to use a more rigorous standard that is more akin to the standard applied at merit hearings. The new instructions may prevent many asylum seekers from passing the credible fear stage and having their asylum claims fully considered in immigration court.

If the individual cannot demonstrate a credible fear of persecution or torture, she or he can ask an immigration judge to review the negative decision.⁴³ If the judge concurs with the prior negative decision, the individual has no right to appeal and must be removed from the United States.⁴⁴ If, due to a previous deportation or other bar, the individual cannot apply for asylum, but nevertheless expresses fear of persecution or torture, he or she can apply for withholding of removal or protections under the CAT. Asylum officers must interview such individuals to determine whether they have “reasonable fear” of persecution or torture.⁴⁵ If they pass that interview, they can bring their claims to immigration court and have them heard before a judge. If they do not pass the interview, they are summarily removed.⁴⁶

The Process After the Credible Fear Interview

If the USCIS asylum officer issues a favorable determination of credible or reasonable fear, the officer issues a Notice to Appear (NTA) requiring the individual to appear in immigration court for removal proceedings.⁴⁷ While USCIS asylum officers must ensure that applicants understand the credible fear process,⁴⁸ they are not required to advise applicants on what follows their credible fear interviews, leaving individuals in the dark as to how to pursue their claims. After ICE files the NTA with the court, a removal hearing is held before an immigration judge. Asylum and other claims such as withholding of removal or relief under CAT can be heard in that proceeding.⁴⁹

Release from Detention

Although detention of asylum seekers in expedited removal proceedings is mandatory,⁵⁰ it becomes discretionary as soon as individuals pass credible fear.⁵¹ Due to inconsistent application of ICE’s own policies and high bonds, however, asylum seekers may languish in detention for months, if not years, thus exacerbating post-traumatic stress and other

harms asylum seekers may have suffered in their own countries.⁵²

In 2009, in an effort “to ensure transparent, consistent, and considered” determinations for arriving aliens seeking asylum, ICE issued parole guidelines. Effective January 2010, individuals with favorable credible fear determinations who can prove their identity and are not flight risks and do not pose a danger to the community, may be paroled from detention.⁵³ The guidelines only affect “arriving aliens,” i.e., individuals who present themselves at a port of entry. Regulations allow such individuals to be paroled for urgent humanitarian or significant public interest reasons.⁵⁴ Immigration judges do not have jurisdiction to review ICE’s parole decisions. Individuals subject to the expedited removal process who are not deemed “arriving aliens” (i.e., those who have been apprehended after entering the United States, but within 100 miles of the border), may ask an immigration judge to set a bond for their release.⁵⁵

COUNTRY CONDITIONS DRIVE REFUGEES FROM MEXICO AND CENTRAL AMERICA TO THE U.S.

At the December 2013 House Judiciary Committee hearing, Ruth Ellen Wasem, Specialist in Immigration Policy at the Congressional Research Service, reported a “surge” in credible fear requests in FY 2013, noting that “a handful of countries lead the increase: El Salvador, Guatemala, Honduras, and to a lesser extent Mexico, India, and Ecuador....”⁵⁶ But as Ms. Wasem pointed out, “an increase in asylum or credible fear claims in and of itself does not signify an increase in the abuse of the asylum process any more than a reduction in asylum or credible fear claims signifies a reduction in the abuse of the asylum process.”⁵⁷ From October 2010 to the present, USCIS data show that El Salvador, Guatemala, Honduras, and—in smaller numbers—Mexico have tended to be among the top five countries of origin of individuals presenting credible fear claims.⁵⁸

Though the numbers of credible fear claims have increased and may create a strain on the adjudication system, the raw numbers are not enormous. Credible fear claims represent “a tiny portion of the millions of travelers who legally enter the country each year.”⁵⁹ Moreover, the numbers of asylum claims in general have not reached the levels of the mid-1990s.⁶⁰ Nevertheless, the numbers are rising, and these increases are not surprising. Even the U.S. government concedes that these countries have abysmal human

rights conditions. U.S. State Department Reports on Country Conditions show that while the particularities may vary, each of these countries suffers from widespread institutional corruption; police and military complicity in serious crimes; societal violence, including brutality against women and exploitation of children; and dysfunctional judicial systems that lead to high levels of impunity.⁶¹

Central Americans began seeking asylum in the U.S. in 1980 due to civil wars that ravaged the region.⁶² Their cases faced a decades-long history of wrongful practices and unfair asylum denials by the U.S. government. Salvadorans and Guatemalans have had to file several major lawsuits in order to obtain fair and equal treatment by immigration officials.⁶³ Recent claims from those countries arise from escalating gang violence, narco-trafficking, and the failure of judicial systems to institute justice.⁶⁴

Mexico's increase in claims is largely due to violence by a combination of cartel, military, and government actors, accompanied by widespread judicial impunity.⁶⁵ Since 2006, when former President Felipe Calderon initiated a war on drugs, at least 130,000 Mexicans have been murdered and 27,000 have officially disappeared.⁶⁶ Former Secretary of State Hillary Clinton described Mexico as an "insurgency" that is "looking more and more like Colombia looked 20 years ago."⁶⁷ The murder of six members of the Reyes Salazar family, community activists in the Juarez Valley of the state of Chihuahua—"the deadliest place in Mexico"—and the flight of the remaining extended family to the U.S., illustrates the nature of violence in Mexico in recent years.⁶⁸

STATE OF CREDIBLE FEAR AND ASYLUM PROCESS TODAY

In 2005, the U.S. Commission on International Religious Freedom (USCIRF) conducted a legally mandated study of expedited removal to determine whether the new procedure impaired U.S. obligations to asylum seekers.⁶⁹ The report concluded that some CBP agents dissuaded people from requesting asylum, did not record their fears of persecution, and did not refer them for credible fear interviews; immigration judges based decisions on "unreliable and incomplete" reports in the initial stages of the process; and asylum seekers were detained in jails and not released according to established criteria after they passed credible

fear interviews.⁷⁰ The report concluded that the procedure was replete with deficiencies and set forth numerous recommendations. Additional studies have also noted these problems.⁷¹

Many of those same flaws still plague the expedited removal system. During telephonic interviews conducted in February 2014⁷² and in correspondence, advocates reported that asylum seekers face significant hurdles beginning with their initial encounters with CBP officers and continuing to their merit hearings in immigration court. We heard frequent complaints that CBP officers often dissuade people from seeking asylum, sometimes berating and yelling at them. Some advocates complained that clients were harassed, threatened with separation from their families or long detentions, or told that their fears did not amount to asylum claims.

El Paso private immigration attorney: “We’ve encountered people who say they expressed a fear of persecution and were told by CBP that the U.S. doesn’t give Mexicans asylum, and they are turned back.”

Florida non-profit organization attorney in facility where detainees are transferred from the border: “CBP doesn’t do its job and ask the right questions about fear of return. People are removed under expedited removal and then come right back because they are afraid. Then they are only eligible for a reasonable fear interview and withholding of removal and are detained for a long time.”

Other attorneys noted that CBP conducted initial interviews too rapidly, without confidentiality, and without properly interpreting interviews or translating documents back to applicants. The resulting discrepancies, such as erroneous birth dates, were later used against applicants in court. Many attorneys stated that they routinely saw identical boilerplate statements in officers’ reports and that officers often failed to record asylum seekers’ statements even though clients told attorneys they had provided specific information to the officers.

El Paso attorney at non-profit: “Judges look at discrepancies between the immediate interview at the port of entry and a credible fear interview. CBP and asylum officers speak Spanish but our clients speak indigenous languages and little Spanish. They rarely get adequate interpretation.”

Similarly, even if an applicant is passed on for a credible fear interview, lack of resources and confusing policies reduce the

chances that an applicant may pass the threshold test. In our interviews, attorneys and advocates also complained that detained asylum seekers may wait from one to two months for credible fear interviews. An attorney in Harlingen reported that until recently waits were as long as five months. Attorneys in some locations such as El Paso and South Florida report waiting periods from three months to a year for reasonable fear interviews. Several advocacy organizations and a private law firm recently filed a class action lawsuit challenging the long delays in reasonable fear interviews for detained persons.⁷³

Advocates also reported that credible fear decisions lack consistency and sometimes result in conflicting decisions on the same facts. In one case in El Paso, for example, a family reported the wife's brutal sexual assault to the police and subsequently received threats. The woman did not pass credible fear, but her husband did, even though his claim was based on the assault against her. A December 2013 *New York Times* story reported similar disparities in treatment of asylum claims based on identical facts. Amparo Zavala fled from Michoacan, Mexico with her extended family to escape cartel violence after a bullet was shot into their house. Two weeks later, Ms. Zavala and her daughter-in-law were deported while the rest of her family was allowed to remain and pursue their asylum claim.⁷⁴

Even when a positive credible fear determination is made, there are reports of failure to actually file charging documents with courts. Applicants whose cases are delayed are at risk that they will be unable to file their asylum claim before the one-year filing deadline ends.

Attorney with non-profit organization: “There are jurisdictional issues. The asylum office won’t take jurisdiction because there was a credible fear interview at the border, but ICE hasn’t filed a notice to appear with the court. People are not told of the one-year deadline. That combined with the notice to appear not filed with the court, results in them missing the one-year deadline. They don’t know where to file their applications and can’t request a change of venue until proceedings are initiated.”

In some areas, advocates report that parole is currently denied to detained persons without regard to the factors listed in the 2009 parole memo. Parole practices change without explanation and are inconsistent between and even within detention facilities, sometimes for individuals who present the same facts.

Advocates also reported that credible fear decisions lack consistency and sometimes result in conflicting decisions on the same facts

Attorney in AZ: “Generally, people aren’t getting paroled. A year ago, people provided information and identity docs to deportation officer and if there was a denial, reasons would be provided. Now people are routinely denied, even when people have stacks of corroborating documents.”

Attorney in El Paso: “Parole is discretionary, and they are denying anyone and everyone parole. We have heard that some deportation officers have recommended parole for certain individuals and then get overruled. My last client paroled was in November 2013.”

Advocates in El Paso report that officers sometimes split families and their cases; some family members—usually mothers and children—are released under Orders of Supervision and may not undergo credible fear interviews while other family members—usually fathers—remain detained and are often denied asylum and deported. Attorneys in Texas and Arizona report that people who are eligible for bonds because they are not “arriving aliens” are ordered bonds ranging from \$5,000 to \$10,000 that are impossible for them to pay.

These problems are compounded by lack of access to counsel, and a myriad of other issues relating to limited resources in immigration courts. For example, advocates report long waiting periods for hearings. Merits hearings for non-detained asylum seekers are often scheduled years away, exacerbating family separations and/or precarious situations for families remaining in the home countries. Attorneys in El Paso report master calendar hearings scheduled 1-2 years away and merits hearings 1-2 years after that. An attorney with a non-profit organization in Chicago that has clients whose asylum cases started at the border reported that an immigration judge in Chicago has a 4½ year backlog.

Further, free or low-cost services are stretched thin because of the numbers needing representation. Asylum seekers are often held in or transferred to detention facilities where representation is unavailable or limited. An attorney at a non-profit in South Florida reported an influx of detained female Central American asylum seekers transferred from the border, only a small number of whom can receive direct representation. Attorneys in El Paso and Berkeley have reported that they must file Freedom of Information Act (FOIA) requests to obtain records of credible fear interviews for their clients.

Perhaps the most difficult issue of all, however, is the general hostility to many of the Mexican and Central American asylum claims currently being filed. Despite reports of horrific violence,

most Mexican and Central American claims continue to be rejected. Some Mexican journalists⁷⁵ and human rights activists⁷⁶ have been granted asylum, as have family members of law enforcement and union activists⁷⁷ and Central American family members of murdered or tortured persons.⁷⁸ But many claims asserted by Central Americans are based on forced gang recruitment, and many claims presented by Mexicans are based on violence, including torture and murder, resulting from resistance to extortion or kidnapping by cartels, military, government officials, and sometimes by a combination of all three. Those claims do not fit neatly within the ever-narrowing definitions established by the Board of Immigration Appeals (BIA) through its decisions, of political opinion or membership in a particular social group.⁷⁹

While the numbers of asylum claimants from Central America and Mexico have increased, USCIS shows low numbers of affirmative asylum grants to Salvadorans, Guatemalans, Hondurans, and Mexicans from FY 2003 to FY 2012.⁸⁰ Likewise, immigration courts granted similarly low numbers of defensive asylum claims during those same years. In FY 2012, immigration courts granted asylum at rates of 6% to Salvadoran applicants, 7% to Guatemalan, 7% to Honduran, and 1% to Mexican applications.⁸¹ These figures contrast with asylum grant rates of more than 80% to applicants from Egypt, Iran, and Somalia for the same period.⁸²

The federal courts of appeal are not in agreement regarding the required showing for recent Central American and Mexican asylum cases⁸³, and despite horrific facts of persecution emanating from this region, they have reversed few BIA decisions denying relief. But some courts have rejected the BIA's narrow interpretation for eligibility for asylum, with one recent decision disputing the BIA's analysis of a particular social group for a Mexican police officer who had suffered persecution. The court even expressed wonder at why the U.S. government "wants" to deport him.⁸⁴ And some immigration judges have recognized refusal to submit to extortion by gangs as an expression of political opinion, particularly in the context of police involvement and the broader political context.⁸⁵

Given the undisputed levels of violence in Mexico and Central America, it is understandable that its victims flee and seek asylum in the U.S. And while their cases may present complicated legal questions, those issues can only be answered through a fair process allowing asylum cases to be heard in court. Getting there requires the credible fear phase to operate fully and fairly and for its deficiencies to be recognized and remedied.

While the numbers of asylum claimants from Central America and Mexico have increased, USCIS shows low numbers of affirmative asylum grants to Salvadorans, Guatemalans, Hondurans, and Mexicans from FY 2003 to FY 2012

CONCLUSION

Asylum seekers in the expedited removal process must navigate a lengthy and complex labyrinth to have their asylum claims considered. And, as new waves of Mexican and Central American applicants raise claims, some lawmakers are attempting to politicize and attack the asylum process, irrespective of the relatively minor role credible fear plays in overall admissions or entries into the U.S.

When Congress instituted expedited removal, it created a procedure that was intended to operate rapidly without compromising U.S. obligations to protect refugees. That balancing of obligations, necessitated by Congress's decision to create a streamlined process, is often at the heart of allegations of abuse of the system. Human rights organizations have explained that the government already has tools at hand to combat fraud, and that these should be enhanced to make sure that fraud can be effectively identified and combated when it occurs. The courts and asylum offices desperately need additional resources to adjudicate claims in a timely manner. But the government also needs to ensure that officers in the agencies charged with implementing expedited removal and asylum strictly adhere to the regulations, policies, and laws that have been instituted. Otherwise, the government will fail in its obligations of offering protection to refugees.

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⁵ Immigration and Nationality Act (“INA”) §235.

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