



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).

* * *

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?

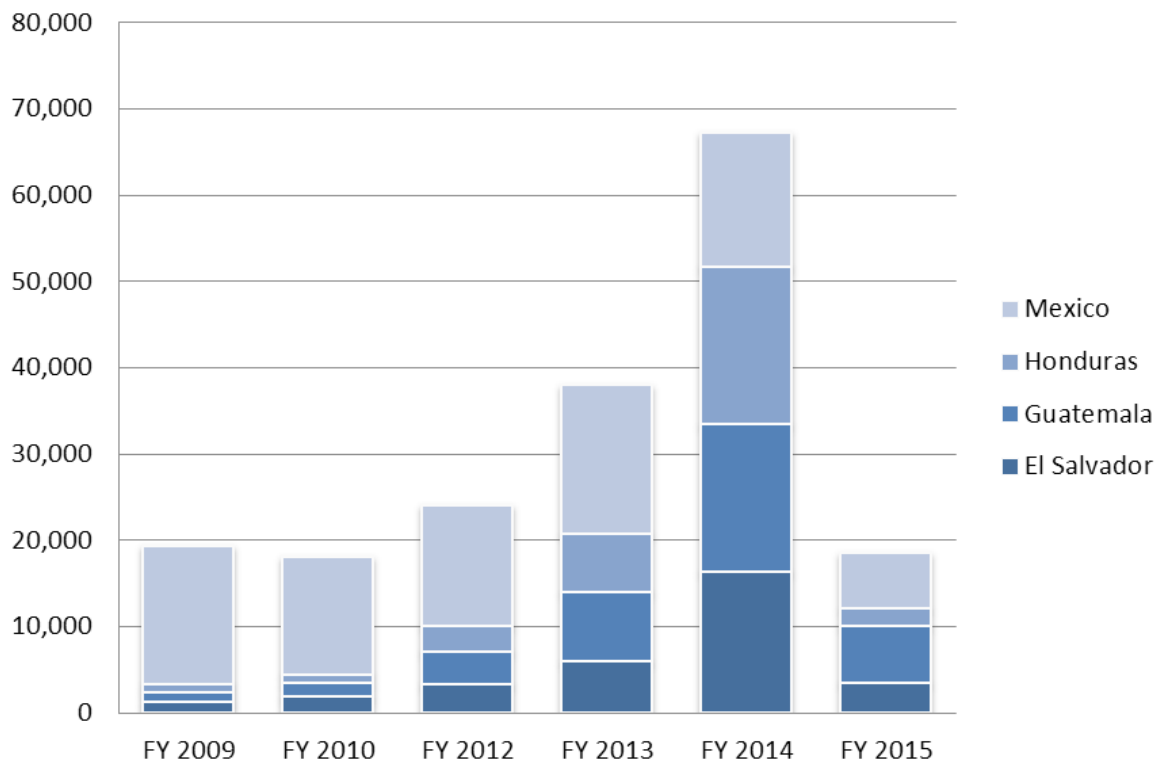
Children who arrive in the United States alone or who are required to appear in immigration court on their own often are referred to as unaccompanied children or unaccompanied minors. “Unaccompanied alien child” (UAC) is a technical term defined by law as a child who “(A) has no lawful immigration status 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.

Unaccompanied Migrant Children Encountered FY 2009-FY 2015*



Source: CBP.

*FY 2015 through April 30, 2015.

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 docket” 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	<p>FY 2015 "Cromnibus" appropriations bill, signed by President, provided:⁹⁸</p> <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	<p>The Administration's request for DHS funding for FY 2016 included:¹⁰³</p> <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	<p>FY 2015 DHS Appropriations bill, signed by President, provided:¹⁰⁴</p> <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

ENDNOTES

¹ 6 U.S.C. § 279(g) (2012), <https://www.law.cornell.edu/uscode/text/6/279>.

² U.S. Customs and Border Protection, “Southwest Border Unaccompanied Alien Children,” May 12, 2015, <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children>.

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ United Nations High Commissioner for Refugees, *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection*, March 2014, http://www.unhcrwashington.org/sites/default/files/1_UAC_Children%20on%20the%20Run_Full%20Report.pdf; Elizabeth Kennedy, *No Childhood Here: Why Central American Children Are Fleeing Their Homes*, American Immigration Council, July 1, 2014, <http://www.immigrationpolicy.org/perspectives/no-childhood-here-why-central-american-children-are-fleeing-their-homes>.

⁷ Assessment Capacities Project, “Other Situations of Violence in the Northern Triangle of Central America: Invisible Borders, Vicious Spirals, and the Normalisation of Terror,” May 2014, http://acaps.org/resourcecats/downloader/other_situations_of_violence_in_the_northern_triangle_of_central_america_executive_summary_may_2014/230.

According to the Observatorio de la Violencia de la Universidad Nacional Autónoma, in 2014 the murder rate in Honduras dropped to 68 per 100,000. While still one of the world’s highest homicide rates, this is lower than the rate for Honduras reported in the UNDOC study. Hispantv Nexa Latino, “Disminuye en Honduras tasa de homicidios en 2014,” March 26, 2015, <http://www.hispantv.com/newsdetail/Sociedad/25421/Disminuye-en-Honduras-tasa-de-homicidios-en-2014>.

⁸ Professor Tom Wong, “Statistical Analysis Shows that Violence, Not U.S. Immigration Policies, Is Behind the Surge of Unaccompanied Children Crossing the Border,” University of California-San Diego Center for Comparative Immigration Studies, July 11, 2014, <http://ccis.ucsd.edu/wp-content/uploads/Wong-UACs1.pdf>, p. 2.

⁹ Kennedy, 2014, note 6, p. 2, 6.

¹⁰ UNHCR, *Children on the Run*, 2014, note 6, p. 6.

¹¹ Kennedy, 2014, note 6, p. 4.

¹² Molly Hennessey-Fiske, “On the Texas border, patrol chief sees younger faces,” *LA Times*, June 27, 2014, <http://www.latimes.com/nation/nationnow/la-na-nn-texas-border-patrol-20140627-story.html>.

¹³ U.S. Border Patrol, “Border Patrol Agent Staffing by Fiscal Year (as of September 20, 2014),” accessed May 20, 2015, http://www.cbp.gov/sites/default/files/documents/BP%20Staffing%20FY1992-FY2014_0.pdf, p. 3.

¹⁴ U.S. Border Patrol, “Enacted Border Patrol Program Budget by Fiscal Year,” accessed May 20, 2015, <http://www.cbp.gov/sites/default/files/documents/BP%20Budget%20>

[History%201990-2014_0.pdf](#).

¹⁵ Marc R. Rosenblum, *Border Security: Immigration Enforcement Between Ports of Entry*, Congressional Research Service, May 3, 2013, <http://www.isn.ethz.ch/Digital-Library/Publications/Detail/?lng=en&id=146454>, pp. 6, 17-18.

¹⁶ UNHCR, *Convention and Protocol Related to Refugees*, (Text of the 1951 Convention Relating to the Status of Refugees; Text of the 1967 Protocol Relating to the Status of Refugees), 2010, <http://www.unhcr.org/3b66c2aa10.html>; United Nations, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 1985, <http://www.hrweb.org/legal/cat.html>.

¹⁷ United Nations, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 1985, <http://www.hrweb.org/legal/cat.html>.

¹⁸ UNHCR, *Children on the Run*, March 2014, note 6, p. 6.

¹⁹ Vera Institute of Justice, *The Flow of Unaccompanied Minors Through the Immigration System*, 2012, <http://www.vera.org/sites/default/files/resources/downloads/the-flow-of-unaccompanied-children-through-the-immigration-system.pdf>, pp. 24-25.

²⁰ Lisa Seghetti, Alison Siskin, and Ruth Ellen Wasem, “Unaccompanied Alien Children: An Overview,” Congressional Research Service, June 13, 2014 [hereinafter “CRS, UAC Overview”], <http://fas.org/sgp/crs/homsec/R43599.pdf>, p. 4.

²¹ William Wilberforce Trafficking Victims Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (2008), at <http://www.gpo.gov/fdsys/pkg/PLAW-110publ457/pdf/PLAW-110publ457.pdf>. See also Polaris Project, “Current Federal Laws,” accessed May 12, 2014, <http://www.polarisproject.org/what-we-do/policy-advocacy/national-policy-current-federal-laws>.

²² 8 U.S.C. § 1232 (2013), <https://www.law.cornell.edu/uscode/text/8/1232>. See also Deborah Lee et. al., “Update on Legal Relief Options for Unaccompanied Alien Children Following the Enactment of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008: Practice Advisory,” February 19, 2009, pp. 2-5, http://www.ilrc.org/files/235_tvpra_practice_advisory.infonet.pdf.

²³ Pub. L. No. 110-457, 122 Stat. 5044, § 235(d)(7)(A), <http://www.gpo.gov/fdsys/pkg/PLAW-110publ457/pdf/PLAW-110publ457.pdf>. See also Deborah Lee et. al., 2009, note 22, p. 9.

²⁴ Pub. L. No. 110-457, 122 Stat. 5079, sec. 235(c)(5), <http://www.gpo.gov/fdsys/pkg/PLAW-110publ457/pdf/PLAW-110publ457.pdf>; 8 U.S.C. § 1232(c)(5).

²⁵ Clare Ribando Seelke, “Mexico: Background and U.S. Relations,” Congressional Research Service, December 16, 2014, <https://www.fas.org/sgp/crs/row/R42917.pdf>, p. 15.

The U.S. government has also historically supported Mexico’s border security efforts through donated helicopters, patrol boats, intelligence sharing, and “training on interdictions, operations of checkpoints, and capacity building” by CBP. See also Jesuit Refugee Service & Washington Office on Latin America, “U.S. Support and Assistance for Interdictions, Interceptions, and Border Security Measures in Mexico, Honduras, and Guatemala Undermine Access to International Protection,” 2014, <http://www.jesuit.org/>

[assets/Publications/File/US_Border_Externalization_2014_v1.pdf](#), p. 7.

²⁶ Rodrigo Dominguez Villegas, “Central American Migrants and ‘Le Bestia’: The Route, Dangers, and Government Responses,” Migration Policy Institute, September 10, 2014, http://www.migrationpolicy.org/print/14816#.VKv_yCvF98E.

²⁷ Ibid.

²⁸ Seelke 2014, note 25, p. 23.

²⁹ Ana Gonzalez-Barrera and Jens Manuel Krogstad, “With help from Mexico, number of child migrants crossing U.S. border falls,” Pew Research Center, April 28, 2015, <http://www.pewresearch.org/fact-tank/2015/04/28/child-migrants-border/>.

³⁰ Georgetown Law Human Rights Institute, “The Cost of Stemming the Tide: How Immigration Enforcement Practices in Southern Mexico Limit Migrant Children’s Access to International Protection,” April 13, 2015, http://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/fact-finding/upload/HRI-Fact-Finding-Report-Stemming-the-Tide-Web-PDF_English.pdf, p. 2.

³¹ Ibid., pp. 35-37, 48-50.

³² Ibid., p. 25.

³³ U.S. Department of State, “In-Country Refugee/Parole Program for Minors in El Salvador, Guatemala, and Honduras With Parents Lawfully Present in the United States,” November 14, 2014, <http://www.state.gov/j/prm/releases/factsheets/2014/234067.htm>.

³⁴ American Immigration Council, “Refugees: A Fact Sheet,” December 2014, <http://immigrationpolicy.org/just-facts/refugees-fact-sheet>.

³⁵ Eleanor Acer, “In-Country Refugee Processing for At-Risk Children in Central America: Potential Benefits and Risks,” *Human Rights First Blog*, October 3, 2014, <http://www.humanrightsfirst.org/blog/country-refugee-processing-risk-children-central-america-potential-benefits-and-risks>.

³⁶ 8 U.S.C. § 1229a (2012), <https://www.law.cornell.edu/uscode/text/8/1229a>.

³⁷ Mark Noferi, “Latest Numbers Show Record-Breaking Deportations in 2013,” *Immigration Impact*, October 6, 2014, <http://immigrationimpact.com/2014/10/06/latest-numbers-show-record-breaking-deportations-in-2013/>.

³⁸ 8 U.S.C. § 1225(b)(1)(A)(i) (2012) (expedited removal provisions), <https://www.law.cornell.edu/uscode/text/8/1225>; § 1182(a)(6)(C) (fraud and misrepresentation provisions), § 1182(a)(7)(A)(i)(I) (insufficient documents provisions), <https://www.law.cornell.edu/uscode/text/8/1182>.

³⁹ 8 U.S.C. § 1231(a)(5) (2012), <https://www.law.cornell.edu/uscode/text/8/1231>; 8 C.F.R. § 1241.8 (2014), <https://www.law.cornell.edu/cfr/text/8/1241.8>.

⁴⁰ CRS, UAC Overview, note 20, p. 4.

⁴¹ Pub. L. No. 110-457, 122 Stat. 5044.

⁴² CRS, UAC Overview, note 20, p. 4.

⁴³ Appleseed, *Letter to Congressional Research Service* (on file with American Immigration Council), May 23, 2014 [hereinafter Appleseed 2014], p. 2; Appleseed, *Children at the Border: The Screening, Protection and Repatriation of Unaccompanied Mexican Minors*, 2011, <http://appleseednetwork.org/wp-content/uploads/2012/05/Children-At-The-Border1.pdf>, p. 6, 32; Women’s Refugee Commission, *Halfway Home: Unaccompanied Children in Immigration Custody* (Feb. 2009), <https://womensrefugeecommission.org/component/zdocs/document/196-halfway-home-unaccompanied-children-in-immigration-custody>.

⁴⁴ Appleseed 2014, note 43, p. 4.

⁴⁵ Ibid.

⁴⁶ 8 U.S.C. § 1362 (2012), <https://www.law.cornell.edu/uscode/text/8/1362>.

⁴⁷ 8 U.S.C. § 1232(c)(5) (2013), <https://www.law.cornell.edu/uscode/text/8/1232>.

⁴⁸ Dep’t of Justice Office of Public Affairs, “Justice Department and CNCS Announce \$1.8 Million in Grants to Enhance Immigration Court Proceedings and Provide Legal Assistance to Unaccompanied Children,” Sept. 12, 2014, <http://www.justice.gov/opa/pr/justice-department-and-cnccs-announce-18-million-grants-enhance-immigration-court-proceedings>.

⁴⁹ “Announcement of the Award of Two Single-Source Program Expansion Supplement Grants To Support Legal Services to Refugees Under the Unaccompanied Alien Children’s Program,” 79 Fed. Reg. 62159, Oct. 16, 2014, <https://federalregister.gov/a/2014-24555>.

⁵⁰ Transactional Records Access Clearinghouse, “Juveniles—Immigration Court Deportation Proceedings, Court Data through April 2015,” accessed June 2, 2015, <http://trac.syr.edu/phptools/immigration/juvenile/>.

⁵¹ 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>.

⁵² Brian M. O’Leary, “Docketing Practices Relating to Unaccompanied Children Cases in Light of New Priorities,” Memorandum from Brian M. O’Leary, Chief Immigration Judge to All Immigration Judges, Department of Justice, Executive Office for Immigration Review, September 14, 2014, <http://www.justice.gov/sites/default/files/eoir/legacy/2014/09/30/Docketing-Practices-Related-to-UACs-Sept2014.pdf>, p. 1.

⁵³ Kristin Macleod-Ball, “Unrepresented Children Still Being Fast-Tracked Through Immigration Hearings,” *Immigration Impact*, February 6, 2015, <http://immigrationimpact.com/2015/02/06/unrepresented-children-still-fast-tracked-immigration-hearings/>.

⁵⁴ 8 U.S.C. § 1232(b)(3) (2013).

⁵⁵ 8 U.S.C. § 1232(c)(2).

⁵⁶ U.S. Department of Human Services, Administration for Children and Families, “Fact Sheet,” May 2014, https://www.acf.hhs.gov/sites/default/files/orr/unaccompanied_childrens_services_fact_sheet.pdf.

⁵⁷ UNHCR, *Detention Guidelines: Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, <http://www.unhcr.org/505b10ee9.html>, p. 34.

⁵⁸ UNHCR *Detention Guidelines* 2012, note 57, p. 35.

⁵⁹ *Ibid.*

⁶⁰ PHR (Physicians for Human Rights) *Punishment before Justice: Indefinite Detention in the US*, 2011, https://s3.amazonaws.com/PHR_Reports/indefinite-detention-june2011.pdf, p. 2, 11; Alice Farmer, “The impact of immigration detention on children,” *Forced Migration Review*, September 2013, <http://www.fmreview.org/detention/farmer>.

⁶¹ 8 U.S.C. § 1232(c)(3).

⁶² 8 C.F.R. § 1236.3(b) (2014), <https://www.law.cornell.edu/cfr/text/8/1236.3>; see also CRS, UAC Overview, note 20, p. 8.

⁶³ U.S. Department of Human Services, Administration for Children and Families, 2014, note 56.

⁶⁴ Women’s Refugee Commission (WRC) and Lutheran Immigration and Refugee Service (LIRS), *Locking Up Family Values: The Detention of Immigrant Families*, 2007, http://www.womensrefugeecommission.org/component/docman/doc_download/150-locking-up-family-values-the-detention-of-immigrant-families-locking-up-family-values-the-detention-of-immigrant-families?q=locking+family, p. 2.

⁶⁵ *Ibid.*, p. 6.

⁶⁶ *Ibid.*, p. 2.

⁶⁷ Margaret Talbot, “The Lost Children,” *The New Yorker*, March 3, 2008, http://www.newyorker.com/reporting/2008/03/03/080303fa_fact_talbot?currentPage=all.

⁶⁸ Nina Bernstein, “U.S. to Reform Policy on Detention for Immigrants,” *N.Y. Times*, Aug. 5, 2009, http://www.nytimes.com/2009/08/06/us/politics/06detain.html?pagewanted=all&_r=0.

⁶⁹ Jeh Johnson, Written Testimony, “Written testimony of DHS Secretary Jeh Johnson for a Senate Committee on Appropriations hearing titled ‘Review of the President’s Emergency Supplemental Request,’” July 10, 2014 (citing government’s “aggressive deterrence strategy,” and stating “Our message is clear to those who try to illegally cross our borders: you will be sent back home”), <https://www.dhs.gov/news/2014/07/10/written-testimony-dhs-secretary-jeh-johnson-senate-committee-appropriations-hearing>.

⁷⁰ Human Rights Watch, “Trauma in Family Immigration Detention,” May 15, 2015, <http://www.hrw.org/news/2015/05/15/us-trauma-family-immigration-detention>.

⁷¹ Declaration of Luis H. Zayas, *RILR v. Johnson*, No. 15-cv-11, Dkt. #38-7 (D.D.C. April 17, 2015), https://www.aclu.org/sites/default/files/field_document/38_2015.4.17_declaration_of_luis_zayas.pdf, p. 2-3.

⁷² *R. I. L-R. v. Johnson*, No. 15-cv-11, Memorandum Opinion, Dkt. #33 (D.D.C. Feb. 20, 2015), <https://www.aclu.org/legal-document/rilr-v-johnson-memorandum-opinion>; *R. I. L-R. v. Johnson*, No. 15-cv-11, Order, Dkt. #32 (D.D.C. Feb. 20, 2015), <https://www.aclu.org/legal-document/rilr-v-johnson-order>.

⁷³ U.S. Government Accountability Office (GAO), “Alternatives to Detention: Improved Data Collection and Analyses Needed to Better Assess Program Effectiveness,” GAO-15-26, November 13, 2014, <http://www.gao.gov/products/GAO-15-26>, pp. 9-10. In the full-service program, 52 percent are monitored by telephone and 48 percent by GPS, while in the “technology-only” program, 97 percent are monitored by telephone and 3 percent by GPS. *Ibid.*, p. 26.

⁷⁴ *Ibid.*, p. 30-31.

⁷⁵ U.S. Department of Homeland Security, Office of Inspector General, “U.S. Immigration and Customs Enforcement Alternatives to Detention (Revised),” OIG-15-22, Feb. 4, 2015, https://www.oig.dhs.gov/assets/Mgmt/2015/OIG_15-22_Feb15.pdf, pp. 6-7, 23.

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=rOGc7PWdhWg>.

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=a9cc4a72fd8a46d5165d40a4a1ec68b&tab=core&_cview=1; “Family Case Management Services—CHI,” FedBizOpps.Gov, https://www.fbo.gov/index?s=opportunity&mode=form&id=3278335b5d772d1beae5b237590778a&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-acc>, 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/nsdp/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 Balarat (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-hill_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/ty-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,”

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.6kRqlyWw.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 Omnibus Summary”], <http://www.appropriations.senate.gov/newsroom/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 Omnibus 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 “Omnibus Explanatory Statement”], available at <https://www.congress.gov/crec/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/imm/legacy/2014/07/09/eoir.pdf>; Omnibus 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/bills/thisweek/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_n_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” (HUMAN 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), <http://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/unacategorized/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->

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 (j), <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://cgrrs.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-decry-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-](http://immigrationimpact.com/2015/04/24/commissioner-kerlikowske-offers-vision-of-change-at-cbp/)

[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.safeassageproject.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 USSCB 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. USSCB 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. USSCB 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 USSCB 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; USSCB 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 shacking, 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-lack-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 USSCB 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

A high-contrast, black and white close-up photograph of a child's face, focusing on the eye and nose. The lighting is dramatic, highlighting the texture of the skin and the intensity of the gaze.

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, per

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.

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

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.

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.

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.

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 Unión (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%).

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, the same threats to life re-surface. For example, one adolescent male who had been beat three times for not joining the gang in his neighborhood has already moved three times, and each time, the same gang has found him. Another adolescent male fleeing his neighborhood's gang had even greater problems with the rival gang when he

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

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.

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

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.

so. They both stated they were returned against their will and without every 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.

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.texasobserver.org/children-of-the-exodus/> and “Central America’s Lost Boys” (30 April 2012) at <http://www.texasobserver.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/icomex/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://bipartisanpolicy.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/mwdh/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/AlertaAngelsv>.

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/mwdh/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/mwdh/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-childonly-migrant-flightssayselsalvadorambassador.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/buscador-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 cadaveres de dos juvenes [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 Mara Salvatrucha 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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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.

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INTRODUCTION AND SUMMARY

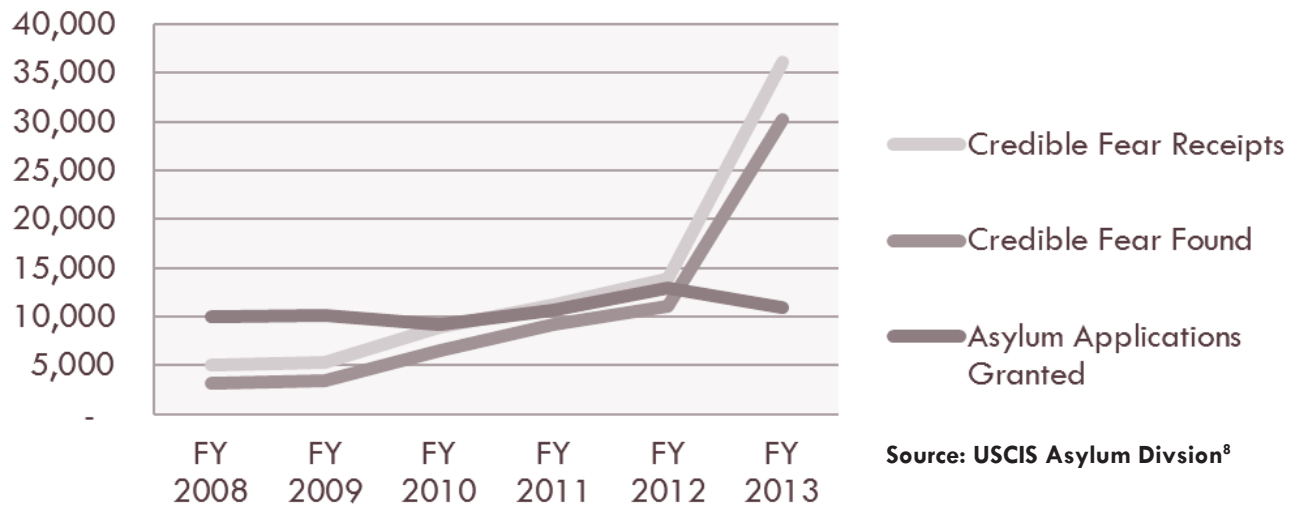
Carlos Gutierrez, a successful businessman in Chihuahua, Mexico, and the married father of two, refused to comply with a criminal cartel’s monthly demands of \$10,000. In retribution for his refusal and as an example to other businessmen, his feet were cut off and he was left for dead. According to his 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

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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.

ENDNOTES

¹ Priscila Mosqueda, “Exiled Mexican Seeking Justice Pedals for Justice,” *Texas Observer*, November 9, 2013.

² Deborah Hastings, “Fleeing Wrath of Vicious Cartels, Record-Breaking Numbers of Mexicans Seek Political Asylum in the U.S.,” *New York Daily News*, October 13, 2013.

³ *Supra*, note 1.

⁴ Administrative closure is one form of the exercise of prosecutorial discretion. It is an ICE policy intended to focus resources on immigration enforcement priorities. John Morton Memo re Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens, Immigration and Customs Enforcement, June 17, 2011.

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

⁶ Memorandum from Ted H. Kim, Acting Chief of the Asylum Division, re Implementation of Credible Fear Determination Checklist Pilot, January 14, 2013.

⁷ Alicia A. Caldwell, “Immigrant Asylum Requests on the Rise in the U.S.,” *Associated Press*, July 16, 2013. Mr. Langlois’ later submitted testimony that does not include these facts.

⁸ Compiled from three charts: USCIS Asylum Division, “Asylum Applications Granted by Asylum Office FY 2008 — FY 2014Q2,” “Credible Fear Found Rates by Asylum Office FY 2004 — FY 2014 Q2 (October 2003 — March 2014),” “CF Receipts 2004 — 2014 Q2.” Because the processing of asylum cases may take a long time, the number of asylum cases granted each year may include applications that were filed in a previous year.

⁹ Statement of Judiciary Committee Chairman Bob Goodlatte for the hearing on “Asylum Abuse: Is It Overwhelming Our borders,” December 12, 2013.

¹⁰ Press Release, “Goodlatte to Napolitano: Asylum Process Loophole Needs to Be Addressed,” August 21, 2013.

¹¹ *Associated Press*, “Report Shows Modest Rise in Requests for Asylum,” August 17, 2013; Joel Millman, “More Illegal Immigrants Ask for Asylum,” *Wall Street Journal*, October 17, 2013. For a response, see Eleanor Acer, “Asylum and the Border: Setting the Record Straight,” Human Rights First, August 14, 2013.

¹² Julia Preston, “Young Immigrants Protest Deportations,” *New York Times*, August 22, 2013. See also Brian Skoloff, “Asylum Seekers at U.S., Mexico Border Double,” *Huffington Post*, August 16, 2013. For recent restrictionist claims, See Dan Cadman, “Malfunctioning Asylum System Fosters Fraud, Executive action, agency inaction, and judicial activism at fault,” Center for Immigration Studies, March 26, 2014).

¹³ “Asylum Abuse: Is It Overwhelming Our Borders?” December 12, 2013; “Asylum Fraud: Abusing America’s Compassion?” February 11, 2014.

¹⁴ Statement of Judiciary Committee Chairman Bob Goodlatte for the hearing on “Asylum Abuse: Is It Overwhelming Our borders,” December 12, 2013.

¹⁵ Statement for the Record of Eleanor Acer, for the hearing on “Asylum Fraud: Abusing America’s Compassion?” Dec. 12, 2013. Tools that currently exist to counter abuses include criminal prosecutions of immigration fraud rings. Kirk Semple, Joseph Goldstein, and Jeffrey E. Singer, “Asylum Fraud in Chinatown: An Industry of Lies,” *New York Times*, February 22, 2014.

¹⁶ John Lafferty, Release of Updated Asylum Division Officer Training Course (ADOTC) Lesson Plan, *Credible Fear of Persecution and Torture Determinations*, February 28, 2014.

¹⁷ Memo from Bill Ong Hing to John Lafferty, Chief of the USCIS Asylum Division, re “*Lesson Plan, Credible Fear of Persecution and Torture Determinations*,” April 21, 2014.

¹⁸ Paul Rexton Kan, “Mexico’s ‘Narco-Refugees’: The Looming Challenge for U.S. National Security,” Strategic Studies Institute, June 22, 2012.

¹⁹ Pub. L. 96-212

²⁰ The protocol is the principal international agreement affecting U.S. obligations to refugees. 19 U.S.T. 6223, T.I.A.S. No 6577, 606 U.N.T.S. 267 (1967).

²¹ §208 of the Immigration and Nationality Act (hereinafter “INA”); 8 U.S.C. §1158

²² U.S. Citizenship and Immigration Services, Obtaining Asylum in the United States, Last Reviewed/Updated March 10, 2011.

²³ INA §208; 8 USC §1158.

²⁴ 8 CFR §1208.14(c)(1)

²⁵ 8 CFR §208.14 and §208.16.

²⁶ 8 CFR §208.16(b); 8 CFR §208.17(a).

²⁷ INA §209; 8 USC §1159

²⁸ 8 CFR §1208.4 (c)(1).

²⁹ Pub. L. 104-208

³⁰ INA §235(b), 8 U.S.C. §1225(b), 8 CFR 235.3(b)(c); INA 241(c), 8 U.S.C. §1231(c), 8 CFR §241; INA §212(a)(9)(A) and (a)(9)(C)(i), 8 U.S.C. 1182(a)(9)(A) and (a)(9)(C)(i)

³¹ 69 Fed. Reg. 48877 (Aug. 11, 2004) and DHS Press Release, *DHS Streamlines Removal Process Along Entire U.S. Border* (Jan. 30, 2006).

³² INA §208(a)(2)(B); 8 USC §1158(a)(2)(B); 8 CFR §208.4(a)(2)(B).

³³ *Id.*

³⁴ 8 USC §1231(a)(5); INA §241(a)(5).

³⁵ *Id.*

³⁶ Arriving aliens are individuals who present themselves at a port of entry. See 8 CFR §1.1(a).

³⁷ 8 CFR §235.3(b)(2).

³⁸ 8 CFR §235.3(b)(4).

³⁹ 8 CFR §235.3(b)(2).

⁴⁰ *Ibid.*

⁴¹ 8 CFR §235.3(b)(2).

⁴² INA §235(b)(1)(B)(iii)(v); 8 USC §(b)(1)(B)(iii)(v).

⁴³ 8 USC §1225(b)(1)(B)(iii)(III), INA §235(b)(1)(B)(ii)(III), 8 CFR §208.30(f).

⁴⁴ 8 CFR §235.3(b)(ii)

⁴⁵ 8 CFR §§208.16 and 208.17. A reasonable fear interview is available to persons whose prior order of removal is being re-instated after an

illegal re-entry or who have an administrative removal order because of aggravated felony conviction, U.S. Citizenship and Immigration Services, Questions & Answers: Reasonable Fear Screenings, Last Reviewed/Updated: June 18, 2013.

⁴⁶ 8 CFR §235.3(b)(8)

⁴⁷ 8 CFR §208.30(f).

⁴⁸ 8 CFR §208.30(d)(2)

⁴⁹ 8 CFR §235.6(a)(1)(iii)

⁵⁰ INA §235(b)(1)(B)(iii)(IV); 8 USC §1225(b)(1)(B)(iii)(IV)

⁵¹ 8 CFR §235.3(b)(2)(ii).

⁵² Center for Victims of Torture, Torture Abolition Survivor Support Coalition, International and Unitarian Universalist Service Committee, “Torture and Detained Survivor Stories of U.S. Immigration Detention” (2013).

⁵³ U.S. Immigration and Customs Enforcement, Parole of Arriving Aliens Found to have a Credible Fear of Persecution or Torture, December 8, 2009.

⁵⁴ 8 CFR § 212.5(b).

⁵⁵ 8 CFR §1003.19.

⁵⁶ Testimony of Ruth Ellen Wasem, Specialist in Immigration Policy, Congressional Research Service, for the U.S. House of Representatives Committee on the Judiciary Hearing on “Asylum Abuse: Is it Overwhelming our Borders?” December 12, 2013, at 14. Ms. Wasem notes that “El Salvador, Guatemala, and Honduras have histories of sending significant numbers of asylum seekers to the United States in the past.”

⁵⁷ *Id.* at 16.

⁵⁸ These same countries have also been among the top five for the number of reasonable fear claims presented during the same period. USCIS, Monthly Credible and Reasonable Fear Nationality Reports, Top Five Countries, FY 2010, FY 2011, FY 2012, FY 2013, FY 2014.

⁵⁹ Associated Press, “Report Shows Modest Rise in Requests for Asylum,” August 17, 2013.

⁶⁰ *Supra*, note 56.

⁶¹ U.S. Department of State, Bureau of Democracy Human Rights, and Labor, “Country Reports on Human Rights Practices for 2012.”

⁶² Susan Gzesch, “Central Americans and Asylum Policy in the Reagan Era,” MPI, April 1, 2006.

⁶³ *Orantes-Hernandez v. Meese*, 919 F.2d 549 (9th Cir. 1990); *American Baptist Churches v. Thornburgh*, 760 F. Supp. 796 (N.D. Cal 1991).

⁶⁴ Mesoamerican Working Group, “Rethinking the Drug War in Central America and Mexico,” Americas Program, November 2013.

⁶⁵ Peter Watt, “U.S. Alarmism Denies Complicity in Rising Mexican Asylum Requests,” NACLA, November 29, 2013.

⁶⁶ Molly Molloy, “The Mexican Undead: Toward a New History of the ‘Drug War’ Killing Fields,” Small Wars Journal, August 21, 2013.

⁶⁷ Adam Entous and Nathan Hodge, “US Sees Heightened Threat in Mexico,” *Wall Street Journal*, September 10, 2010.

⁶⁸ Melissa del Bosque, “The Deadliest Place in Mexico,” *Texas Observer*, February 29, 2012.

⁶⁹ The United States Commission on International Religious Freedom, “Asylum Seekers in Expedited Removal” (2005).

⁷⁰ *Ibid.*

⁷¹ Michele R. Pistone and John J. Hoeffner, “Rules Are Made to Be Broken: How the Process of Expedited Removal Fails Asylum Seekers,” Villanova University School of Law, 2006.

⁷² This summary is based on interviews with Amy Gottlieb, AFSC, Newark, New Jersey; Judy London, Public Counsel, Los Angeles, CA; Lauren Major, AFSC, Newark, New Jersey; Lynn Marcus, Immigration Clinic, University of Arizona, Tucson, AZ; Pat Murphy, Casa de Migrante, Centros Scalabrini, Tijuana, Mexico; Krishma Prasad, Immigration Justice Project, ABA, San Diego, CA; Alyssa Simpson, Canal Community Alliance, San Rafael, CA; Kaveena Singh and Michael Smith, East Bay Sanctuary Covenant, Berkeley, CA; Ali Boyd, Annunciation House, El Paso, TX; Jessica Anna Cabot, volunteer attorney, Las Americas, El Paso, TX; Jodi Goodwin, Harlingen, TX; Ashley Huebner, National Immigrant Justice Center Chicago, IL; Melissa Lopez, Diocesan Migrant & Refugee Services, El Paso, TX; Jessica Shulruff, Americans for Immigrant Justice, LUCHA project, Miami, FL; Pamela Muñoz, El Paso, TX; Denise Gilman, University of Texas Law School, Austin, TX; Adela Mason, Casa Cornelia Law Center, San Diego, CA; individuals at Florence Immigrant and Refugee Rights Project, Florence, AZ.

⁷³ National Immigrant Justice Center, “Detained Asylum Seekers Sue Obama Administration to End Long Waits for Initial Interviews,” April 17, 2014.

⁷⁴ Damien Cave, “A Civil Servant in Mexico Tests U.S. on Asylum,” *New York Times*, December 28, 2013.

⁷⁵ Diana Washington Valdez, “Mexican journalist granted US asylum, El Paso lawyer says,” *El Paso Times*, June 6, 2013.

⁷⁶ Melissa Del Bosque, “Member of Well-Known Mexican Activist Family Granted Asylum,” *Texas Observer*, August 12, 2013.

⁷⁷ Redacted decision of Immigration Judge, July, 2013; “Mexican Family Wins Asylum in Florida After Fleeing Violence,” *Miami Herald*, April 21, 2013.

⁷⁸ *Henriquez-Rivas v. Holder*, 707 F. 3d 1081 (9th Cir. 2013).

⁷⁹ *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985); *Matter of C-A-*, 23 I&N Dec. 951 (2006); *Matter of S-E-G-*, 24 I&N Dec. 579 (BIA 2008); *Matter of W-G-R*, 26 I&N Dec. 208 (BIA 2014); *Matter of M-E-V-G*, 26 I&N Dec. 227 (BIA 2014)

⁸⁰ Department of Homeland Security, *Yearbook of Immigration Statistics: 2012*, table 17.

⁸¹ U.S. Department of Justice, Executive Office for Immigration Review, Office of Planning, Analysis, and Technology, Immigration Courts, *Asylum Statistics FY 2009-2013*.

⁸² *Ibid.* The Immigration Court numbers do not distinguish by country between those who filed defensively following a favorable credible fear determination or whose cases were referred to Immigration Court by the asylum office or who otherwise were in removal proceedings.

⁸³ For an excellent analysis of gang-related cases, see Lisa Frydman and Neha Desai, “Beacon of Hope or Failure of Protection? U.S. Treatment of Asylum Claims Based on Persecution by Organized Gangs,” *Immigration Briefings*, No. 12-10, October 2012. See also Tom Boerman, “Central American Gang Related Asylum Cases: Background, Leverage Points and the Use of Expert Witnesses,” *Immigration Daily*, December 15, 2009.

⁸⁴ *R.R.D. v. Holder*, Case No. 13-2141 (C.A. 7, Mar. 19, 2014).

⁸⁵ *Matter of O.L.G.*, unpublished Immigration Judge decision, January 26, 2012.

February 4, 2016

United States House Judiciary Sub-Committee on Immigration and Border Security
2138 Rayburn House Office Building
Washington, DC 20515

Statement for Hearing Record United States House of Representatives Judiciary Committee Sub-Committee on Immigration and Border Security

RE: Hearing concerning women and children fleeing violence in Central America

Dear Chairman Trey Gowdy, Ranking Member Zoe Lofgren, members of the Subcommittee,

The undersigned faith-based, organized labor, civil and immigrant rights organizations appreciate the opportunity to submit this statement for the record on behalf of the immigrant communities across the state of California to express our concerns and disappointments over this Committee's continued efforts to scapegoat immigrant families and unaccompanied minors fleeing violence in Central America in search of refuge in the United States of America.

Central America is currently experiencing a high volume in violence from organized criminal groups. Many fear for their life on a daily basis, children cannot go to and from school in peace, women and young girls are harassed if not raped by gang members. In 2015, the Northern Triangle accounted for 17,500 homicides related to the ferocious violence. Most recently, the United Nations declared Honduras to be the deadliest country in the world, followed by El Salvador and Guatemala. The aforementioned countries, warrant for Temporary Protection Status (TPS) designation due to the dramatic levels of violence, which, in turn, has presented a humanitarian crisis of refugees fleeing their home countries.

In early January 2016, the Department of Homeland Security (DHS) conducted raids across the country resulting in the arrest of 121 Central American mothers and children, of which 77 individuals have already been deported back to their home countries. Deporting Central Americans seeking refuge in our country is not a reasonable nor rational response. Additionally, the New York Times reported that at least 90 migrants who were deported by the U.S. were murdered days after their arrival.

Moreover, of those individuals apprehended earlier this year, twelve of those families were able to file for asylum, present their strong cases, and were granted emergency stays of deportation. It is believed that if more refugees were granted access to counsel, many more would meet the criteria for emergency stays, and refugee status; however, attaining asylum status has become a strenuous process for Central Americans due to the lack of resources, right to counsel, and poor screening mechanisms. Under the Trafficking Victims Protection Act, asylum seekers are provided important procedural protections for unaccompanied children and assistance to maneuver the complicated immigration process to accurately determine if they meet eligibility for relief as victims of trafficking or prosecution, yet many contend that said resources have not been provided to them.

We suggest the following proposals to protect Central American refugees:

- 1) Protect those who may potentially qualify for DACA/DAPA from deportations.

- 2) Expand Temporary Protected Status (TPS) to individuals in the U.S. from Honduras, El Salvador, and Guatemala.
- 3) Expand and enhance the Central American Minors (CAM) Program, which has only Appoint child advocates for vulnerable children.
- 4) Improve safety mechanisms for children and families applying for the CAM Program.
- 5) Develop a comprehensive regional humanitarian response plan
- 6) Ensure due process protections are in place to ensure human and civil rights of migrants are protected.

Lastly, this crisis, speaks to the need to pass a humane and comprehensive immigration reform. Scapegoating and turning the blind eye to current realities of these refugees goes against the values of our nation.

Sincerely,

Central American Resource Center – Los Angeles
Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA)
COGOP
Iglesia Vida Abundante
KIWA
Korean Resource Center
La Red de Pastores y Líderes del Sur de California
Mobilize the Immigrant Vote
North County Immigration Task Force
Pilgrim United Church of Christ, Carlsbad
Pilipino Workers Center
SEIU California
Services, Immigrant Rights, and Education Network (SIREN)



Friends Committee on National Legislation

A Quaker Lobby in the Public Interest

**Friends Committee on National Legislation's Statement for the Record for the U.S. House of
Representatives Judiciary Committee, pertaining to its hearing:
*Another Surge of Illegal Immigrants along the Southwest Border:
Is this the Obama Administration's New Normal?*
Thursday, February 4, 2016**

Quakers seek to answer to that of God in each and every person, and the Friends Committee on National Legislation is especially called to act with openness to refugees, asylum seekers, and victims of trafficking. Individuals, children, and families in crisis throughout the Northern Triangle and fleeing from unimaginable gang and state violence are particularly deserving of protection.

Enforcement will not solve this humanitarian crisis, nor will it prevent people from fleeing for their lives. The United States must act quickly in the short term to address the safety and legal needs of those seeking safe-haven, while also addressing the root causes of violence in Central America. Any effective long-term response must incorporate a radical shift in U.S. policies toward the region.

Increasing the deportations of children and other migrants, along with increased military aid to weakened institutions, has only proven to make situations worse. In fact, the gang violence that is causing many families to flee is a direct result of irresponsible U.S. deportation and foreign policies. Central American gangs (MS-13 and the 18th Street Gang) originated on the streets of Los Angeles, California, formed by migrants who fled the U.S.-funded civil wars of the 1980s. State institutions in Honduras, Guatemala, and El Salvador, significantly weakened by the civil wars, were ill-prepared to handle a flood of deportees spurred by the so-called "war on drugs", allowing current gangs in Central America to flourish.

Today these same countries, fortified by U.S. funding, are repeatedly turning to militarized security programs to address gangs and organized crime. Yet within the context of weak state institutions, rampant corruption, and impunity, these "security" measures only breed more violence and insecurity in the region. The U.S. should instead invest more in strengthening judicial systems, promoting journalistic freedoms, and creating spaces for local civil society members to hold their own governments accountable.

The fear of returning home is credible. Expedited procedures used to deport asylum seekers from the United States has already resulted in 83 deaths accounted for last year. The number is predicted to be much higher including individuals deported from Mexico at the behest of the U.S.-led interdiction program, another example of a deeply flawed enforcement heavy approach.

There is an opportunity to address deep-seeded problems in our region, but proposed and enacted enforcement only policies will only repeat past mistakes. Beefed up border security, weakened legal protections, and expedited deportations will only add to the suffering of traumatized refugees.

Children and families do not want to leave their homes. In the long term, the United States must pursue sound policies that make it safe for them to build a life in their home communities. In the short term, Congress and the Administration must strengthen processes that uphold U.S. and international laws that protect refugees' and asylum seekers' due process and right to seek safe haven.



**Statement for the Hearing Record United States House of Representatives Judiciary
Committee Subcommittee on Immigration and Border Security**

Hearing concerning women and children fleeing violence in Central America

February 4, 2016

Chairman Gowdy, Ranking Member Lofgren, members of the Subcommittee, on behalf of the Fair Immigration Reform Movement our 32 member groups from 44 states, we thank you for the opportunity to submit this statement for inclusion in the record for today's hearing.

As the nation's largest immigrant rights coalition, we submit this statement for the record on behalf of immigrant communities across the country to express our concern and disappointment over this Committee's continued efforts to politicize and scapegoat the women, children, and families fleeing violence in Central America in search of refuge in the U.S.

Parts of Central America are experiencing pervasive and systemic levels of violence, connected to increasing territorial influence of criminal armed groups. The United Nations recently declared Honduras to be the deadliest country in the world, with El Salvador and Guatemala close behind. Organized criminal groups are so powerful that international law experts have analogized the situation in the Northern Triangle to a conventional armed conflict.

Deporting those experiencing this violence back to these horrific conditions is not a reasonable or rational response. We call on our leaders to reflect the values of our country and provide real assistance to those seeking refuge.

We believe the use of harsh enforcement tactics such as home raids and eroding fundamental protections guaranteed under the 2008 Trafficking Victims Protection Reauthorization Act (TVPRA) will not stop the women and children who are facing sexual assault, brutal beatings, and even death from seeking refuge in the U.S. These women and children come to the U.S. seeking protection, rounding them up with little to no due process and returning them to the same violent conditions from which they fled violates who we are and what we stand for as a nation.

We are deeply concerned that this Committee continues to undermine due process and human rights by promoting hateful, politically motivated attacks on at-risk Central American families rather than pursuing common-sense policy solutions to address the

current flow of families seeking refuge. As this Committee well knows, it has become exceedingly difficult for asylum-seekers from Central America to obtain protection despite having strong claims due to high evidentiary burdens and a lack of resources such as legal representation, poor screening mechanisms, and expedited “rocket dockets.” Despite these facts, this Committee has repeatedly worked to further erode the rights guaranteed under the TVPRA, which provides important procedural protections for unaccompanied children and assistance in navigating the complex immigration process in order to accurately determine if they are eligible for relief as victims of trafficking or persecution.

These children and families have the right under U.S. and international law to seek protection from persecution and violence. Any effort to weaken existing legal protections for them would undermine the U.S. government’s moral authority as a leader in combating trafficking, and would increase vulnerabilities for trafficking victims by limiting access to due process and legal representation.

We strongly urge our leaders to reverse course on these inhumane and ineffective attacks on Central American families and instead ensure that women and children seeking refuge have a fair and meaningful chance to have their cases heard. Specifically, Temporary Protected Status should be expanded to individuals in the U.S. from Honduras, El Salvador and Guatemala -- conditions in El Salvador, Guatemala and Honduras more than justify a current TPS designation.

This Committee, instead of eroding longstanding due process protections, should work to ensure all immigrants in adversarial proceedings have an attorney and prohibit the so-called “rocket dockets” for unaccompanied children and mothers with children. Furthermore, all individuals should receive appropriate screening for humanitarian relief by trained, experienced personnel. There are widespread reports of inadequate screening for asylum and other humanitarian relief by U.S. Customs and Border Protection officials.

Finally, this Committee should explore ways to ensure child advocates are appointed for vulnerable children – federal law already permits the appointment of child advocates for child trafficking victims and other vulnerable unaccompanied children. Their role is to advocate for the best interests, safety and wellbeing of a child. Child advocates are particularly necessary for infants and toddlers who are too young to seek the advice of an attorney, or for other children who may lack capacity to make informed decisions about their cases.

We believe how the U.S. government responds to these families in need is a moment of truth for our country and urge you to stand on the right side of history by doing what’s right for these families and upholding our fundamental values as a nation.



**Welcome the stranger.
Protect the refugee.**

**Statement submitted to the Subcommittee on Immigration and Border Security of the U.S.
House of Representatives**

**Hearing: Another Surge of Illegal Immigrants Along the Southwest Border: Is this the Obama
Administration's New Normal?**

February 4, 2016

There are more displaced people in the world today than there has been at any other time in our history. Violence in the Middle East and Africa contribute to the increasing numbers of displaced people, but these distant conflicts are not the only source of refugees. We are seeing a growing refugee crisis just to the south of the U.S. in Central America. El Salvador, Guatemala, and Honduras (collectively referred to as the Northern Triangle) are three of the most violent countries on earth. El Salvador has the highest murder rate in the world, with an increase of 70% between 2014 and 2015.¹ Violence against women and girls is rampant and most times goes unpunished. Children are vulnerable to recruitment by gangs and exploitation.

A recent report released by the UN Refugee Agency (UNHCR) noted that two-thirds of the women they interviewed stated that they tried to find protection from harm by fleeing within their home country with no success.² Eventually, the women felt that they had no option but to flee. With no protection or recourse at home, people have fled and sought asylum in surrounding countries. UNHCR reported a 1,185% increase in asylum applications throughout the region.³ This is a refugee crisis and we will continue to see arrivals in the United States until people are able to find protection in their community or are provided alternative ways to find safety.

The U.S. response to the increase in arrivals from the Northern Triangle has largely been one rooted in the idea of border security rather than humanitarian assistance. Legislation has been introduced in Congress that would make seeking asylum more difficult and would erode the protections guaranteed to unaccompanied children. The Administration implemented a policy of detention for families and helped Mexico increase capacity to intercept asylum seekers traveling through the country, despite the country's poor record of providing protection. Most recently, the Department of Homeland Security began arresting, with the intent to deport, women and children from the Northern Triangle.

¹ Joshua Partlow, "Why El Salvador became the hemisphere's murder capital,"

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

² UNHCR, *Women on the Run*, <http://www.unhcr.org/5630f24c6.html>.

³ UNHCR, *Children on the Run*, <http://unhcrwashington.org/children>.

These policies, aimed at deterring asylum seekers from coming to the United States, have not stopped people from leaving their home countries. As dangerous as the journey from the Northern Triangle is or as unlikely success in an asylum claim may be, the alternative of staying is far worse. The current strategy of the U.S. government ignores the fact that staying in a home country for many asylum seekers will result in death or injury and that the risks associated with fleeing are worth the risk. If the U.S. wants to discourage dangerous migration by asylum seekers then policy must reflect the reality of the situation. The U.S. must recognize that we are dealing with a refugee crisis.

HIAS, the global Jewish nonprofit that protects refugees, is a partner to the U.S. government in the resettlement of refugees. The U.S. is a humanitarian leader in providing aid and resettlement to refugees coming from almost everywhere in the world. HIAS is concerned that despite the U.S.'s history with refugee protection that our country continues to largely ignore the refugee crisis in the Northern Triangle. The current approach of the U.S. government is largely inconsistent with American and Jewish traditions of offering a chance at a new beginning to those who seek safety and freedom. HIAS encourages the U.S. to work with UNHCR, other governments in the region, NGOs and civil society to create alternatives for people who are victims of or are targets of persecution or violence in the Northern Triangle.

A comprehensive plan must include a strategy for addressing the causes of flight and capacity building for local NGOs to provide shelter and services to those in need. The plan must also include the ability for NGOs to identify and refer vulnerable people to UNHCR and/or the U.S. government for a safe evacuation from their home country if necessary. Finally, immigration options must be available, not only in the United States but throughout the region. One option would be offering temporary protected status to people from the Northern Triangle countries that are already in the U.S. Resettlement must be expanded and neighboring countries should be encouraged to strengthen domestic asylum systems. The current U.S. in-country processing program in the Northern Triangle countries should be expanded to include more types of asylum seekers and greater protection for applicants. Only when options are available will we begin to see a decrease in arrivals at our southern border.

It is important to note that even with alternative options the U.S. must still provide a meaningful opportunity for asylum. Seeking asylum in the United States is not a crime. The right to seek asylum without fear of punishment is recognized in both US law under Section 208 of the Immigration and Naturalization Act and international law under Article 31 of the United Nations Refugee Convention, which the US acceded to in 1968. The U.S. must adhere to these principles or there will be little incentive for other countries in the region to do likewise. U.S. leadership in this area is imperative for any progress to be made in addressing this crisis.



**Statement for the Record of Eleanor Acer
Director, Refugee Protection
Human Rights First**

House Judiciary Subcommittee on Immigration and Border Security Hearing

**“Another Surge of Illegal Immigrants Along the Southwest Border: Is this the
Obama Administration’s New Normal?”**

February 4, 2015

Human Rights First is a non-profit, nonpartisan human rights advocacy organization that challenges America to live up to its ideals. For over 30 years, we’ve built bipartisan coalitions and teamed up with frontline activists and lawyers to tackle issues that demand American leadership, including the protection of the rights of refugees. With offices in Houston, New York, and Washington D.C., Human Rights First oversees one of the largest pro bono legal representation programs for refugees in the country including Central American families and unaccompanied children, working in partnership with volunteer attorneys at many of the nation’s leading law firms. Human Rights First appreciates the opportunity to submit its views for this hearing.

Regional Refugee Crisis Stemming from Violence and Human Rights Abuses in Central America

Fueled by lack of government accountability, the capture of state institutions by organized crime, and corruption, the three countries of the Northern Triangle of Central America—El Salvador, Guatemala, and Honduras—consistently rank among the most dangerous countries in the world. In 2015, El Salvador’s homicide rate climbed to ninety per 100,000 individuals, making it the most violent country in the world not at war.¹ The United Nations refugee agency and others have highlighted systemic violence in the Northern Triangle against women and children in particular.² All three Northern Triangle countries rank among the highest in the world for rates of femicide, and El Salvador and Guatemala claim the highest rates of homicide against children in the world, though violence is not restricted to these groups.³ As a result, tens of thousands of

¹ Danielle Renwick, “Central America’s Violent Northern Triangle,” Council on Foreign Relations, January 19, 2016.

² United Nations High Commissioner for Refugees, *Children on the Run*, Washington, D.C. 2014; United Nations High Commissioner for Refugees, *Women on the Run*, Washington, D.C. 2015.

³ Tessa Wardlaw, *Hidden in Plain Sight: A statistical analysis of violence against children*, UNICEF, Sept. 2004, available at http://www.unicef.org/publications/index_74865.html; Ami Sedghi, *The world's most dangerous countries for young people: homicide rates for under 20-year-olds mapped*, THE GUARDIAN, Sept. 5, 2014, <http://www.theguardian.com/news/datablog/ng-interactive/2014/sep/05/the-worlds-most-dangerous-countries-for-young-people-homicide-rates-for-under-20-year-olds-mapped>.

children and adults have been forced to flee, or face death. In fact, recent research has identified at least 80 cases in which individuals deported by the United States to Central America since January 2014 have been murdered upon their return.⁴

UNHCR has called upon all countries in the region to recognize that there is a growing refugee situation in parts of Central America.⁵ Recent reports indicate that other countries in the region have seen asylum applications from people fleeing violence in the Northern Triangle increase by a factor of 13.⁶ U.S. government data also confirms that many who flee these countries have a significant possibility of establishing eligibility for asylum: in the second quarter of fiscal year 2015, U.S. asylum officers found that 88 percent of families seeking asylum from family detention centers had a credible fear of persecution. Even those who do not meet the technical requirements for asylum may face life-threatening dangers if returned to their home countries. Given the dangerous conditions in the region, 273 civil rights, labor rights, faith-based, immigrant, human rights, humanitarian, and legal service organizations recently recommended that the United States designate the three Northern Triangle countries for Temporary Protected Status (TPS).⁷

American Values and Refugee Protection Commitments

Protecting the persecuted is a core American value. Reflecting this country's deep-seated commitment to liberty and human dignity, as well as its pledge under the Refugee Convention's Protocol, the United States has long led efforts to protect those who flee from political, religious, and other persecution. In the wake of World War II, the United States helped lead efforts to draft the Refugee Convention, so that refugees would never again be returned to places where they would face persecution.

The U.S. asylum system has protected thousands of refugees from return to places where they would face political, religious, or other persecution. Through our pro bono legal representation initiatives, we see these people day in and day out: they are victims of religious persecution from China; women targeted for honor killings, trafficking and horrific domestic violence; gay men attacked in countries where they face constant threats; human rights advocates who stand up against oppression in Syria or against the perpetrators of brutal violence in Central America; and ordinary people who are persecuted for who they are or what they believe.

Refugees should not be penalized for seeking protection, and it is not illegal to seek asylum. The right to seek asylum is affirmed in the Universal Declaration of Human Rights. U.S. law created a process for seeking asylum, and U.S. treaty commitments prohibit the return of refugees to persecution.

⁴ Sibylla Brodzinsky and Ed Pilkington, "U.S. government deporting Central American migrants to their deaths," *The Guardian*, October 12, 2015.

⁵ United Nations High Commissioner for Refugees, "UNHCR warns of looming refugee crisis as women flee Central America and Mexico," Press Release, October 28, 2015.

⁶ United Nations High Commissioner for Refugees, *Women on the Run*, Washington, D.C. 2015.

⁷ Cite to TPS letter.

Failing to Live Up to Our Values and Obligations to Children and Families Fleeing Persecution

In June 2014, the Obama Administration launched a misguided family detention policy that has taken a punitive approach to asylum-seeking families, contrary to refugee protection and child welfare principles. Rather than implementing a refugee protection response to the increased number of women and children seeking asylum at the southern border, the Administration chose to send families to detention facilities and subject them to expedited removal proceedings, not only compromising due process and children's health, but also creating unnecessary strains on an already stretched and backlogged system.

Growing evidence shows that detention—even for relatively short periods of time—is harmful to the health of children. The American Academy of Pediatrics wrote to Secretary of Homeland Security Jeh Johnson in July 2015 urging the government to reconsider its renewed policy of detaining families.⁸ In a December 2015 op-ed, Dr. Benard Dreyer, president-elect of the American Academy of Pediatrics, described his concern “that the federal government's current policy of detaining children is exacerbating [children's] risk for physical and mental health problems and needlessly exposes them to additional trauma.”⁹

In a March 2015 report, Juan Mendez, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment summarized: “Even very short periods of detention can undermine a child's psychological and physical well-being and compromise cognitive development. Children deprived of liberty are at a heightened risk of suffering depression and anxiety, and frequently exhibit symptoms consistent with posttraumatic stress disorder. Reports on the effects of depriving children of liberty have found higher rates of suicide and self-harm, mental disorder and developmental problems.”

The Obama Administration's continued use of detention for families is not only harmful to children's health, but also unnecessary from a justice and law enforcement perspective.¹⁰ Community-based programs are effective in securing appearance at court hearings, and recent government data shows that 98 percent of families with legal counsel have complied with immigration court obligations.¹¹ Alternatives are also much less expensive than detention, which

⁸ Letter to Jeh Johnson from Sandra Hassink, President of the American Academy of Pediatrics, July 24, 2015, <https://www.aap.org/en-us/advocacy-and-policy/federal-advocacy/Documents/AAP%20Letter%20to%20Secretary%20Johnson%20Family%20Detention%20Final.pdf>.

⁹ Dr. Benard Dreyer, “Dreyer: Immigration detention centers are no place for children,” Houston Chronicle, December 16, 2015, <http://www.houstonchronicle.com/opinion/outlook/article/Dreyer-Immigration-detention-centers-are-no-place-6703363.php>.

¹⁰ See Human Rights First, *Family Detention: Still Happening, Still Damaging*, October 2015.

¹¹ Human Rights First, “Myth vs. Fact: Immigrant Families' Appearance Rates in Immigration Court,” Fact Sheet, July 2015, available at <http://www.humanrightsfirst.org/sites/default/files/MythvFact-Immigrant-Families.pdf>.

costs \$1,029 per day for a family of three. Past studies show that even intensive community-based programs come at only 20 percent of the cost of detention.¹²

Human Rights First has issued several reports over the past year highlighting the human rights, due process, and health concerns associated with DHS' policy of detaining families. In June 2015, one year after the Obama Administration announced its large-scale increase in detention of families, Human Rights First found that the government employed a deterrence-based approach to asylum-seeking families, contrary to international legal obligations that require a case-by-case assessment in order to justify detention of an asylum seeker.¹³ The Berks County Residential Center was the focus of a subsequent report, highlighting the negative health consequences of detention—even for relatively short periods of time—on immigrant children.¹⁴ In October, Human Rights First issued another report in the wake of the decision in the U.S. District Court for the Central District of California and the Administration's policy changes, reiterating that family detention is not only damaging to the health and well-being of children, but an unnecessary measure in light of the availability of effective and less expensive alternatives that place less burdens on an already backlogged immigration system.¹⁵

The Proposals in H.R. 1153 and H.R. 1149 Would Send Legitimate Refugees and Children Back to Danger

Human Rights First strongly opposes the “Asylum Reform and Border Protection Act” (H.R. 1153), and the “Protection of Children Act” (H.R. 1149). The provisions included in the Asylum Reform and Border Protection Act of 2015 (H.R. 1153) would severely undermine access to asylum in the United States. The bill, along with the “Protection of Children Act” of 2015 (HR 1149), would lead to the deportation of legitimate refugees with well-founded fears of persecution, leave others in immigration detention for months, and put children at risk of return to trafficking, death, and persecution in their home countries. Various provisions would deny asylum to refugees even if they are credible and have well-founded fears of persecution. The bills are inconsistent with American ideals and would erode the United States' legacy as a global leader in protecting refugees and victims of trafficking.

Among many changes to law, the Asylum Reform and Border Protection Act of 2015 would:

- **Raise the expedited removal screening standard to an unduly high level.** The bill would require that an asylum seeker – in order to even be allowed to apply for asylum – not only show a “significant possibility of establishing eligibility for asylum” but also prove it is more likely than not that his or her statements are true. This high standard is not appropriate for a screening

¹² Oren Root, “The Appearance Assistance Program: An Alternative to Detention for Noncitizens in U.S. Immigration Removal Proceedings,” April 30, 2000, available at <http://www.vera.org/pubs/appearance-assistance-program-alternative-detention-noncitizens-us-immigration-removal>.

¹³ Human Rights First, U.S. Detention of Families Seeking Asylum: A One-Year Update, June 2015.

¹⁴ Human Rights First, Family Detention in Berks County, Pennsylvania, August 2015.

¹⁵ Human Rights First, Family Detention: Still Happening, Still Damaging, October 2015.

process, and the conditions under which interviews are conducted – in immigration detention facilities, sometimes over the phone, with traumatized applicants, using interpreters of variable quality – would lead to the deportation of many asylum seekers with legitimate claims. Even under the current standard, legitimate asylum seekers are sometimes denied “credible fear” and the chance to file an application for asylum. For example, a transgender asylum seeker was denied credible fear despite supporting letters from human rights organizations and extensive country information backing up his request.

- **Deny asylum to large numbers of refugees based on transit or stays in countries where they had no legal status**, or no lasting legal status, and to which they cannot be returned in most cases. Refugees with valid claims would be left in a state of uncertainty, with no prospects for a durable solution and no secure future for themselves and their children. Many would be left in the United States under orders of removal and could spend the rest of their lives unable to be returned to their countries of origin without another place to go.
- **Appear to prevent arriving asylum seekers who have passed the credible fear screening process from being paroled from immigration detention**, instead leaving them in jails and facilities with conditions that resemble jails for months or longer, even though there are more fiscally-prudent and humane alternatives that have been proven effective. Although other provisions of the bill assume the release on parole of some applicants, the changes to the parole statute itself are so significant that they would not only impact asylum seekers but would prevent the United States from quickly bringing prominent political dissidents or human rights advocates at risk abroad to safety here.
- **Drastically narrow the definition of an “unaccompanied child”** and allow unaccompanied children to be held in the custody of Immigration & Customs Enforcement (ICE) for as long as one month rather than being transferred to the more appropriate care of the Dept. of Health and Human Services.
- **Subject unaccompanied children to the arbitrary one-year asylum filing deadline bar.** The flawed asylum filing deadline has already led the United States to deny asylum to refugees with well-founded fears of persecution and has created inefficiencies by unnecessarily putting the cases of legitimate refugees into the overstretched immigration court system. To apply this legal technicality to children would subject the most vulnerable to an already arbitrary and harmful bar to protection.
- **State that the government not bear expense for counsel.** The bill also states that in no instance will the government bear expense for counsel for anyone in removal or appeal proceedings. Children – including toddlers - the mentally disabled, and other vulnerable people cannot represent themselves in our complex immigration system. Studies have confirmed that representation encourages appearance for court and saves the government money.
- **Allow asylum applicants, unaccompanied children, to be bounced to third countries** in the absence of any agreement between the United States and the countries in question for the reception of asylum seekers. This would lead to “refugee ping pong.” The transit country would be likely to return the person to his home country despite fears of persecution, attempt to send him to another country, or bounce him back to the United States.

Recommendations

Congress should not enact legislation that undermines the ability of those fleeing violence and persecution to secure U.S. protection. Congress should not pass proposals, like those included in H.R. 1153 that would prevent refugees from accessing or receiving asylum from persecution. Instead, Congress should take the steps outlined below. These recommendations are informed by Human Rights First's multiple visits to key border points, border patrol stations, and immigration detention facilities in Arizona, California, New Jersey, New Mexico, Pennsylvania and Texas as well as our first-hand experience assisting and providing pro bono representation to asylum seekers including some who have come to this country through the southern border.

In addition to supporting efforts to address the human rights conditions in Central America prompting many to flee their homes, Congress should take steps to strengthen the asylum system, including:

- **End the Detention of Children and their Families, Effectively Implement Parole and Release Procedures.** Department of Homeland Security should end the detention of families, a policy that runs contrary to American values and sets a poor example for the rest of the world. DHS should also effectively implement the existing asylum parole guidance, ensuring that eligible arriving asylum seekers are assessed for parole under the specified criteria, and released when they meet those criteria; and – in accordance with that guidance – not releasing any individual who presents a danger to the community or flight risk. Human Rights First has assisted many individuals who fled persecution and arbitrary detention for their prodemocracy or human rights advocacy only to languish in jail-like facilities in the United States while awaiting adjudication of their asylum requests. The traumatizing effects of detention on a torture survivor are immense and have been well documented.
- **Rather than invoking expedited removal, DHS should refer all families directly into removal proceedings before an immigration judge.** The children and families fleeing the Northern Triangle countries to seek protection in the United States are part of a recognized refugee crisis. Rather than subjecting children and their parents to expedited removal, DHS should refer children and their parents into normal removal proceedings before an immigration judge under section 240 of the Immigration and Nationality Act and refrain from detaining families. By eliminating the use of expedited removal against children and families, the due process impediments associated with expedited removal will be avoided. It will also save government resources that have been dedicated to expedited removal—a process that has proven needless for the vast majority of families who pass protection screening interviews and are subsequently referred to regular removal proceedings anyway.
- **Immigrant families seeking asylum should have their claims heard by the Asylum Office, rather than by an immigration judge.** Preparing and presenting a claim for asylum is often a traumatic experience for refugees, who often have to rehash horrific events from the past. The adversarial setting of immigration court can exacerbate the stress and trauma associated with making a claim for asylum, particularly for children. The affirmative asylum

process, which involves one asylum officer asking questions of the applicant, allows for a more child-friendly and less traumatizing approach than a courtroom setting.

- **Increase Immigration Court Staffing to Address Removal Hearing Delays and Eliminate Hearing Backlog.** To address the incoming removal caseload and the backlog, the immigration courts will need at least 280 additional immigration judge teams – significantly more than the 55 additional immigration judge teams added in the FY16 budget. Both the American Bar Association and the Administrative Conference of the United States (ACUS) have expressed concern that the immigration courts do not have the resources necessary to deal with their caseloads. The delays and backlogs resulting from insufficient staffing and resources undermine the integrity of the system by exposing it to potential abuse and by leaving individuals who are desperately awaiting their asylum hearings in limbo for years.
- **Increase Asylum Office Staffing to Address Backlogs, Provide Timely Referrals into Removal Proceedings.** As asylum officers have been redeployed to conduct credible fear interviews, delays and backlogs for affirmative asylum interviews have grown. A timely and effective asylum office interview process is essential for maintaining the integrity of the U.S. asylum system and will ensure that those who are not eligible for asylum are promptly referred into immigration court removal proceedings. Delays also undermine the ability of refugees to rebuild their lives and bring stranded spouses and children to safety in this country. While the use of expedited removal should be limited, when expedited removal is used, the USCIS asylum office should have sufficient resources to conduct timely and effective credible fear and reasonable fear interviews, and to conduct its interviews in person. These interviews are integral components of expedited removal and reinstatement of removal, and when those procedures are invoked, these interview components should be funded commensurately with the funding provided to CBP to conduct these summary removal processes.
- **Use Cost-Effective Alternatives to Detention rather than more detention.** Where individual asylum seekers are in need, based on an assessment of their individual circumstances, of supervision and/or case management to assure their appearance, Immigration and Customs Enforcement should utilize cost-effective alternatives to detention. Family detention costs \$1,029 per day for a family of three—Human Rights First has estimated that the Administration's family detention policy could cost taxpayers \$400 ~~260~~ million over the course of a year.¹⁶ By contrast, community-based support programs and other alternative measures, proven to uphold appearance for immigration hearings and deportation, are much more fiscally prudent. Past studies show that even intensive community-based programs come at only 20 percent of the cost of detention. The U.S. Conference of Catholic Bishops and Lutheran Immigration and Refugee Services have also piloted community-based appearance support programs that can help make sure immigrants show up for hearings. Groups from across the political spectrum, including the Council on Foreign Relations' Independent Task Force on U.S. Immigration Policy, the International Association of Chiefs of Police, and the Texas Public Policy Foundation (home to Right on

¹⁶ Human Rights First, Family Detention: Still Happening, Still Damaging (October 2015).

Crime), have recommended alternatives to detention for their cost-savings. Many states are increasingly turning to the use of alternatives in the criminal justice system, prompted by Right on Crime and other reform experts. Congress should shift funding from detention to alternatives, or at least support flexibility in funding, so that Immigration and Customs Enforcement can utilize these alternatives to save costs in cases where detention is not necessary to meet the government's need for appearance, where additional supervision would assure appearance, and the individual poses no danger.

- **Support Legal Orientation Programs and Access to Counsel Measures that Improve Fairness and Efficiency of the Immigration System.** Legal Orientation Programs (LOP), which have been praised for their cost-effectiveness and for increasing immigration court efficiency, currently provide legal information and, in some cases, referrals to counsel, to some but not all immigration detainees. A recent analysis of government data found that 86 percent of individuals in immigration detention were unrepresented.¹⁷ LOPs – and quality legal counsel - can help non-represented individuals understand their eligibility, and in some cases lack of eligibility, for asylum and other potential forms of immigration relief. Congress should sufficiently fund DOJ to ensure that LOPs are funded and in place at all facilities used for immigration detention. According to a 2012 DOJ report, LOP reduced the amount of time to complete immigration proceedings by an average of 12 days. Factoring in the savings – primarily to DHS through reduced length of time spent in detention – LOP has been shown to have a net savings of approximately \$18 million. Rather than seeking to restrict funding for legal representation, Congress should support increased funding for counsel. Recent studies have confirmed that counsel in immigration proceedings encourages appearance for hearings, and saves government money.
- **Remove Unnecessary Impediments that Delay Cases and Block Refugees from this Country's Protection.** This includes elimination of the asylum filing deadline which bars legitimate refugees from asylum, and needlessly adds to the number of cases in the immigration courts. As Dr. Richard Land, President of Southern Evangelical Seminary, has described, “When people escape horror and come to the United States in desperate need of freedom and safety, we shouldn't turn them away because of a bureaucratic technicality.” Under no circumstances should this flawed deadline be applied to the asylum requests of children.

¹⁷ Ingrid V. Eagly and Steven Shafer, "A National Study of Access to Counsel in Immigration Court," 164 U. Penn. L. Rev. 1 (2015).



Statement of the American Immigration Lawyers Association
Submitted to the House Judiciary Subcommittee on Immigration and
Border Security

**Hearing: “Another surge of illegal immigrants Along the Southwest Border: Is this
the Obama Administration’s new normal?”**

February 4, 2016

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As the national bar association of more than 14,000 immigration lawyers and law professors, the American Immigration Lawyers Association (AILA) respectfully submits this statement for the record.

During the summer of 2014, the United States experienced a peak in the number of unaccompanied children and families from El Salvador, Guatemala and Honduras arriving at our southwestern border, fleeing from extremely high murder rates, gang violence, domestic violence, and sexual assault. The life threatening dangers in these Northern Triangle countries have not subsided.

Conclusive evidence shows that high percentages of migrants from the Northern Triangle have suffered persecution and have valid claims for protection under U.S. asylum and humanitarian law. Government data shows that 88 percent of the mothers and children detained in family detention facilities are proving to the government they are likely to be found eligible for asylum and other forms of humanitarian relief by an immigration judge. The UN High Commissioner for Refugees similarly concluded that Central American (as well as Mexican) women and girls qualify at extremely high rates for asylum and other legal protection under U.S. law.

Our nation was founded on the principle that we will give shelter and protection to those fleeing persecution and violence, and that we will never forcibly return someone to face the persecutions from which they fled. But our commitment to these values and America’s moral authority in the international community is being shaken to its core by the Obama Administration’s harsh and inhumane treatment of vulnerable Central American migrants. Despite initially calling the situation "an urgent humanitarian crisis" in June 2014, the Administration quickly shifted toward aggressive enforcement measures with the clear purpose of deterring future asylum seekers and migrants from coming.¹ The Administration increased the use of family detention and applied fast-track removal processes against the Central American families and children. In early January of this year, the Administration further escalated its tactics by conducting raids across the country resulting in the arrest of 121 mothers and their children. As recent as February 2, 2016, the DHS Secretary Jeh Johnson announced that raids on recent border crossers and deportations will continue. This Administration is using the most aggressive enforcement actions available on the most vulnerable population. These

¹ June 30, 2014 Letter from President Obama to Congress, available at www.aila.org/uac.

tactics have severely eroded the guarantees of due process and fairness in our legal system. They are not consistent with our nation's most fundamental values and must end.

Our laws guarantee that every individual fleeing persecution and violence is afforded a fair and meaningful opportunity to seek asylum and protection under U.S. law. Removal proceedings need to be conducted in a way that ensures frightened children or women still traumatized by rape will understand their legal rights and be able to tell their story in a safe environment. No child, mother, or family member should face deportation to life-threatening dangers without being able to speak to and receive legal counsel. Each asylum seeker who comes to our shores and borders presents an opportunity for our nation to demonstrate its continuing commitment and leadership to humanitarian protection.

AILA's Recommendations on Legal Standards and Protections for Children, Families and Other Border Arrivals

- **Enhance TVPRA protections for children:** The existing legal standards protecting unaccompanied children, principally embodied in the 2008 Trafficking Victims Protection Reauthorization Act (TVPRA) and the *Flores Settlement Agreement*, are designed to ensure that child victims of trafficking and persecution are not returned to life-threatening dangers. Congress should not scale back these protections for vulnerable children.

In addition, the standards of care, screening and protection for Mexican children should be brought on par with the treatment accorded to unaccompanied children from other countries that are not contiguous with the United States. Mexican children are treated differently under the TVPRA and face nearly automatic repatriation, with limited screening for relief, without the advice of counsel. Their deportation decisions are not made by immigration judges, but by CBP officers and agents. All unaccompanied children should be screened by a professional with training in child welfare, trauma, counseling, and international humanitarian and immigration law, and should appear in removal proceedings before an immigration judge.

- **End the policies of fast-track deportations:** Summary removal procedures, such as expedited removal or pre-hearing voluntary departure, should never be used for children, families or other vulnerable populations. Every individual facing deportation should have the opportunity to appear before an immigration judge in removal proceedings.
- **Strengthen support for immigration courts:** The Department of Justice Executive Office for Immigration Review (EOIR) should be funded to hire enough judges and staff so it can provide prompt hearings without compromising standards of due process and fairness. With about 470,000 cases in the current EOIR backlog, scheduling delays are a leading reason cases cannot move forward promptly. Under no circumstances should pressure be placed on immigration judges to handle cases at a faster rate by denying legitimate requests for continuances.
- **Affirm the fundamental right to counsel:** No one should face deportation alone. But unfortunately, most still do. The government should create policies that promote and respect the role of counsel in every phase of the proceeding, and should provide counsel for individuals in removal proceedings when they cannot afford a private attorney. The lack of counsel

compounds the vulnerability of children, families, and other vulnerable individuals as they move through our nation's complicated removal system.

- **Fully fund the Legal Orientation Program (LOP):** Know-your-rights and legal screening programs should be sufficiently funded to ensure that every child and adult receives the benefits of these programs. Although not a substitute for legal representation, these programs are the only opportunity for most individuals to obtain information about their rights and responsibilities under the law, information vital for them to be able to make informed decisions about how to proceed. Research shows that EOIR's LOP participants move through the immigration court process an average of 12 days faster than detainees who do not have access to LOP, resulting in significant savings in court and detention costs.
- **Expand the use of trained asylum officers:** The Asylum Division of United States Citizenship and Immigration Services (USCIS) should be funded to hire more asylum officers to ensure prompt adjudications of asylum applications. Asylum officers have better training than CBP and Immigration and Customs Enforcement (ICE) officers in reviewing the petitions of vulnerable individuals. Currently, the Asylum Division has a substantial backlog in asylum applications, and increasing its capacity would improve overall efficiency in the process.
- **Improve the interviewing and screening of vulnerable individuals:** Research demonstrates that Border Patrol screenings fail to protect individuals who have legitimate fears of returning home. In 2014, AILA and other organizations submitted a complaint to the Department of Homeland Security Office for Civil Rights and Civil Liberties (CRCL) citing many case examples of individuals in whose cases CBP never asked about fear of return in the first place or ignored statements of fear.² In response, CRCL has opened an investigation. The current screening mechanisms are ineffective and often result in the return of asylum seekers to the hands of their traffickers and persecution. All unaccompanied children and other vulnerable individuals should be screened by professionals with training in trauma, counseling, and international humanitarian and immigration law.

Protocols for screening unaccompanied children could be improved upon by adopting best practices from the criminal justice and child welfare fields which have developed comprehensive protocols for rape, sexual assault and child abuse cases. These criminal justice and child abuse practices are designed to ensure that complainant victims are given adequate time to report such incidents given the trauma victims suffer and the need for time to recover emotionally and physically. Interviews should be done in a safe setting and manner that minimizes the likelihood of re-traumatizing the victim.

As Congress examines the recent surge in migrants along our southwestern border, AILA urges elected leaders to ensure that our laws and practices continue to uphold our commitment to protect those who have escaped danger and who still face danger if forced to return home. These values can be

² National Immigrant Justice Center et al., *Complaint re: inadequate U.S. Customs and Border Protection (CBP) screening practices block individuals fleeing persecution from access to the asylum process*, available at <http://www.aila.org/infonet/aila-nijc-and-others-file-crcl-complaint>.

maintained even as we strive to secure our borders. Indeed, we cannot meaningfully protect this nation without defending these most sacred values.



Statement for the Record

U.S. House of Representatives Committee on the Judiciary

"Another Surge of Illegal Immigrants along the Southwest Border: Is This the Obama Administration's New Normal?"

February 4, 2016

The National Immigration Forum (the Forum) advocates for the value of immigrants and immigration to the nation. Founded in 1982, the Forum plays a leading role in the national debate about immigration, knitting together innovative alliances across diverse faith, labor, law enforcement, veterans and business constituencies in communities across the country. Coming together under the Forum's leadership, these alliances develop and execute legislative and administrative policy positions and advocacy strategies. Leveraging our policy, advocacy and communications expertise, the Forum works for comprehensive immigration reform, sound border security policies, balanced enforcement of immigration laws, and ensuring that new Americans have the opportunities, skills, and status to reach their full potential.

Introduction

The National Immigration Forum appreciates the opportunity to provide its views on the influx of mostly-Central American families and unaccompanied alien children (UAC) crossing the southern border in recent years. We look forward to a bipartisan solution that includes measures to support efforts in El Salvador, Guatemala, and Honduras to root out the gang and drug-related violence that is pushing so many families to seek refuge and safety in the U.S.

The Forum believes one part of the solution to the current humanitarian issue is legislation to reform our broken immigration system, which includes border security, as well as an earned path to citizenship for those currently residing in the U.S. The current immigration system is supporting a lucrative business for cartels and other criminal organizations rather than protecting our communities. The lack of legal avenues for family members to be reunited with their loved ones in the U.S. is leading immigrants to the hands of criminal organizations.

Specific to this hearing, we must both address the short-term needs of those fleeing violence and find a long-term solution to the problem of families and UAC coming from Central America, including addressing the root causes in Honduras, El Salvador and Guatemala, to ensure their safety as well as our nation's safety. In addition to living in countries with some of the highest murder rates in the world,¹ families and children from Central America face extreme poverty, exploding levels of gang violence and terror, unchecked domestic violence, and deepening social

¹ United Nations Office on Drugs and Crime: <http://www.unodc.org/gsh/>

unrest. In addition, sex trafficking and forced labor are becoming increasingly prevalent in these three countries.² Children from Honduras, El Salvador and Guatemala are increasingly recruited to participate in armed conflicts or to join gangs.³ Faced with these horrific options, desperate Central American families and children are increasingly choosing to risk everything to come to the U.S. to escape violence in their native countries and seek refuge.⁴

The Asylum Process

Central American families and UAC are coming to the United States to escape perilous and dangerous situations. According to reports,⁵ the majority of these UAC are escaping extreme poverty and violence in their native countries or seeking to reunite with family members in the U.S. The influx represents a true humanitarian crisis and the U.S. response should reflect the seriousness of the threat experienced by families and children facing gang and cartel violence.

In accordance with the Refugee Act of 1980,⁶ asylum seekers possess the legal right to apply for asylum under U.S. law within or at the U.S. border. The majority of those seeking asylum turn themselves over to the Border Patrol to initiate the legal process for seeking asylum. Upwards of 75 to 90 percent of families from these Central American countries⁷ can establish “credible fear” of persecution or torture to an asylum officer, demonstrating that they have a colorable claim of asylum to bring before an Immigration Judge. While the proportion of those ultimately prevailing on asylum claims is significantly smaller, it is important to provide due process to asylum seekers, allowing those with valid claims to make their case in Immigration Court, consistent with the goals set out in the Refugee Act of 1980. In some instances, individuals may face life-threatening peril without falling into a traditional category for asylum. Recognizing the seriousness of the situation in Central America, the Forum would urge Congress to examine alternative ways to afford relief to those who face serious dangers in Central America.

Due Process

Central American children and families seeking protection in the U.S. are an incredibly vulnerable population and should be treated humanely and with dignity. Many children and families lack the appropriate legal assistance to help them navigate our difficult and complex immigration court system, preventing them from a meaningful opportunity to present their cases. They should not be removed without confirmation that they had legal representation, adequate time and notice for preparation, and a full, objective and timely hearing.

² U.S. State Department. “Trafficking in Person’s Report” 2014. <http://www.state.gov/documents/organization/226846.pdf>

³ *Id.*

⁴ Women’s Refugee Commission. “Forced from Home: the Lost Boys and Girls of Central America” Oct. 2012; and UNHCR “Children on the Run – Unaccompanied children leaving Central America and Mexico and the Need for International Protection.”

⁵ Women’s Refugee Commission. “Forced from Home: the Lost Boys and Girls of Central America” Oct. 2012; and UNHCR “Children on the Run – Unaccompanied children leaving Central America and Mexico and the Need for International Protection.”

⁶ The Refugee Act of 1980, Public Law 96-212. <https://www.gpo.gov/fdsys/pkg/STATUTE-94/pdf/STATUTE-94-Pg102.pdf>

⁷ USCIS Asylum Division, Family Facilities Credible Fear. <https://www.uscis.gov/sites/default/files/USCIS/Outreach/PED-CF-RF-family-facilities-FY2015Q2.pdf>.

In processing those families and UAC fleeing danger in Central America, the United States must remain strong in our commitment to due process and allow asylum seekers to pursue legitimate asylum claims. This includes maintaining existing protections for Central American children under the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), properly funding the Executive Office of Immigration Review (EOIR), and providing families and (especially) UAC with legal representation. Conditions for those held in detention should be humane and adequate, and alternatives to detention should be favored over detention, when practicable.

Uphold the due process protections of the TVPRA. The TVPRA's protections were the result of bipartisan compromise, crafted with great consideration of the unique circumstances facing UAC. They include proper screening for trafficking and persecution, as well as the opportunity for the UAC to receive fair and full consideration of their legal claims before an immigration judge. It is important for Congress to preserve these protections for Central American children.

Any proposals to weaken the TVPRA to expedite the removal of the children or truncate the screening process for these children will result in more victims going unidentified, leading many to be sent back to unstable, dangerous situations. Honduras, Guatemala, and El Salvador are unsafe countries with spiraling crime and gang activity and some of the highest murder rates in the world.⁸ Gangs, drug cartels and militias will prey upon hundreds, if not thousands of children who are improperly returned to Central America before they are given the chance to obtain the humanitarian relief which our laws provide for.

Increase funding for the Executive Office of Immigration Review (EOIR). EOIR includes funding for our nation's immigration courts and judges. For years, funding for EOIR has failed to keep pace with increases in immigration enforcement. From FY 2003 to FY 2015, Customs and Border Protection and Immigrations and Customs Enforcement spending increased approximately \$9.6 billion or 105 percent, yet EOIR spending increased only \$158 million or 74 percent.⁹ During this same time period, the immigration court backlog increased by 163 percent.¹⁰ By April 2015, immigration courts had a backlog of nearly 450,000 cases, with an average wait time of 604 days – nearly a year and eight months.¹¹ Exacerbating the problem are budget cuts, retirements and attrition that have led to a reduction in judges from 270 in April 2011 to 233 in May 2015.¹² In FY 2014, each immigration judge was handling an average of 1,400 matters a year.¹³ The most recent influx of families and UAC only further underscores the need to adequately fund the immigration court system.

⁸ United Nations Office on Drugs and Crime: <http://www.unodc.org/gsh/>

⁹ See U.S. DHS [Budgets-in-Brief, FY 2003-2016](#).

¹⁰ American Immigration Council. "Empty Benches: Underfunding of Immigration Courts Undermines Justice." May 21, 2015. <http://www.immigrationpolicy.org/just-facts/empty-benches-underfunding-immigration-courts-undermines-justice>.

¹¹ *Id.*

¹² *Id.*

¹³ Executive Office of Immigration Review. "FY 2014 Statistics Yearbook." March 2015. <http://www.justice.gov/sites/default/files/eoir/pages/attachments/2015/03/16/fy14syb.pdf>.

Provide legal counsel to families and UAC. Under existing regulations, families and UAC are permitted to obtain legal counsel, but are not entitled to counsel at government expense. We urge Congress to pass legislation to provide legal representation to families and UAC during immigration proceedings. In addition to providing more funding for attorneys and judges, the DOJ could partner with service organizations, law firms, and other organizations to provide pro-bono legal services to those needing legal assistance. Effective legal assistance would ensure that families and UAC have clear and accurate information, including clear notice when they are to appear for a screening interview or in immigration court and ensure that they have the opportunity to attend scheduled immigration court hearings.

When families and UAC are represented by legal counsel, those with valid claims are better able to efficiently and properly make these cases to an immigration judge. Those without valid claims are likely to receive a realistic assessment of their chances from their lawyers and act accordingly. Providing counsel to those in immigration proceedings avoid the necessity of lengthy and costly appeals for those with valid immigration claims. In the long-run, this will streamline and provide certainty to those in proceedings, the government, and Immigration Judges, ultimately saving time and resources.

Conclusion

We must both address the short-term needs of those fleeing violence and find a long term solution to families and UAC coming from Central America seeking refuge in our country, including addressing the root causes in Honduras, El Salvador and Guatemala that created their need to flee their country. Finding a solution to UAC coming from Central America will ensure the safety of these children as well as ensure that our nation's laws are respected. The United States has been looked to as a world leader and moral beacon. Unfortunately, the federal government's response to the UAC influx in 2014 did not live up to this ideal. Our nation should not make that mistake again.

The Forum believes one part of the solution to the humanitarian issue is legislation to reform our broken immigration system, which includes border security, as well as an earned path to citizenship for those currently residing in the U.S. The current immigration system is supporting a lucrative business for cartels and other criminal organizations rather than protecting our communities. The lack of legal avenues for family members to be reunited with their loved ones in the U.S. is leading immigrants to the hands of criminal organizations.

It is also important to safeguard asylum seekers' rights to bring valid asylum claims, as provided under the Refugee Act of 1980. Central American families and UAC seeking asylum in the U.S. are fleeing violence and death, and the U.S. response to reflect the humanitarian crisis they are trying to escape. Congress can help in ensuring those with colorable asylum claims receive due process, including maintaining existing TVPRA protections for Central American UAC, properly funding EOIR, and providing families and UAC with legal representation.

Statement for Hearing
on
“Another Surge of Illegal Immigrants Along the Southwest Border”

House Judiciary Committee
Subcommittee on Immigration and Border Security

February 4, 2016

By Lutheran Immigration and Refugee Service
and the Women’s Refugee Commission

Lutheran Immigration and Refugee Service (LIRS)¹ and the Women’s Refugee Commission (WRC)² appreciate the opportunity to submit our views for this hearing. Our organizations have long advocated for the protection of unaccompanied children, refugees, asylum-seekers and trafficking victims, and we believe the response to violence in Central America requires a holistic response that includes attention to improving conditions in the Northern Triangle and ensuring that refugees who are fleeing persecution receive protection in the U.S. and their due process rights are respected.

Children and families seeking protection

Brutal violence and political turmoil in Central America continue to push migrants to seek refuge elsewhere. Although the majority of those fleeing violence seek protection in the United States, other countries bordering the Northern Triangle countries also receive refugees displaced by the violence. The United Nations High Commissioner for Refugees (UNHCR) documented a 1,185% increase in asylum applications in the Central American and Mexican region from 2008 to 2014, though the vast majority fleeing their home countries still head for the United States.³ Between 2008 and August 2015, Costa Rica alone saw a sixteen-fold increase in asylum requests from the Northern Triangle countries.⁴ Request for asylum in Mexico, primarily from Northern Triangle countries, have more than doubled since 2013.⁵

Unaccompanied children and mothers with their children are disproportionately affected by the violence in Central America. As refugees fleeing Central America, they are forced from their home

¹ Lutheran Immigration and Refugee Service (LIRS) is the national organization established by Lutheran churches in the United States to serve uprooted people. LIRS is nationally recognized for its leadership advocating on behalf of refugees, asylum seekers, unaccompanied children, immigrants in detention, families fractured by migration and other vulnerable populations, and for providing services to migrants through over 60 grassroots legal and social service partners across the United States.

² The Women’s Refugee Commission’s mission is to improve the lives and protect the rights of women, children and youth displaced by conflict and crisis. We research their needs, identify solutions and advocate for programs and policies to strengthen their resilience and drive change in humanitarian practice.

³ UNHCR, *Children on the Run*, <http://unhcrwashington.org/children>.

⁴ http://www.nacion.com/sucesos/seguridad/Violencia-lanza-salvadorenos-buscar-refugio_0_1533846604.html

⁵ http://www.comar.gob.mx/es/COMAR/Estadisticas_COMAR

countries to escape worsening violence by armed criminals, gender-based violence, forced gang recruitment, domestic abuse, human trafficking, and political instability. The situations in these countries have not improved over the past year. Violence and turmoil have only increased; local governments are powerless to protect their citizens, especially families and children. The factors emphasize the need for humane protection of migrants: as refugees, these migrants are fleeing their home countries because of a well-founded fear of persecution.

The strife in Guatemala, El Salvador and Honduras has not lessened in the past year. Homicide rates for Guatemala, Honduras, and El Salvador are currently all in the top five globally. In 2014, Honduras had more homicides than all 28 countries of the European Union (EU) combined. El Salvador's 2015 national murder rate reached approximately 103 homicides per 100,000 people which is a higher murder rate than during El Salvador's decade long civil war.⁶ In fact, insecurity in El Salvador is of such concern to the Administration that the Peace Corps recently suspended operations there due to dangerous levels of community violence.⁷ A 2015 report by the United Nations High Commissioner for Refugees (UNHCR) found that women in particular face a "startling" degree of violence in the Northern Triangle, including rape, assault, extortion, and threats by armed criminal groups.⁸ Sixty-four percent of women interviewed for the study cited targeted threats or attacks as one of their primary motivations for leaving their communities. In the last six years, the three countries have also ranked within the world's top-four countries for rates of femicide, with El Salvador and Honduras again first and second.⁹ The State Department recently wrote about Guatemala that "in most killings of women and girls, sexual assault, torture, and mutilation were evident...the conviction rate was only 1 or 2 percent for femicide."¹⁰

Victims of violence, extortion, sexual abuse, and death threats rarely find protection from the authorities. In fact, many victims fear the police as much as the criminals. In the Northern Triangle countries, rule of law and law enforcement institutions are weak and corrupted. The majority of police forces are underfunded, plagued by poor leadership, and sometimes complicit in criminal activity.¹¹ To fill the void criminal gangs have begun to function like quasi-governments exacting taxes on businesses, run social welfare programs to garner loyalty and having its own quasi judicial system designed to control undesirable behavior.¹²

These tragic statistics underscore our obligation under international and national law to ensure individuals fleeing these levels of violence and instability have a meaningful opportunity to access asylum and protection, both in our own country, and by conducting refugee processing in the region. We support the Administration's efforts to develop refugee processing to help identify persons in need of international protection before they are forced to leave their home. We want to make sure the existing Central American Minors program and the recently announced adult refugee processing program in the region are successful in protecting the most vulnerable. These programs

⁶ Washington Office on Latin America,

http://www.wola.org/commentary/five_facts_about_migration_from_central_america_s_northern_triangle

⁷ Peace Corps, <http://www.peacecorps.gov/media/forpress/press/2618/>

⁸ UNHCR, Women on the Run, <http://www.unhcr.org/5630f24c6.html>

⁹ UN Women <http://www.unwomen.org/en/news/stories/2013/4/femicide-in-latin-america>

¹⁰ Department of State 2014 Human Rights Report Guatemala, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>

¹¹ Washington Office on Latin America,

http://www.wola.org/commentary/five_facts_about_migration_from_central_america_s_northern_triangle

¹² Douglas Farah, Foreign Policy Magazine, [Central American Gangs are all Grown Up](#), January 19, 2016.

must be fully funded to quickly process those in risk and provide relocation and resettlement as quickly as possible. Funding such programs, will also disrupt criminal organizations focused on human smuggling. They must be offered as a compliment to other protection mechanisms including the ability to request protection at our border.

All aid directed to this region must be conditioned on strengthening protection systems to ensure that migrants are able to exercise their rights. Funding on immigration enforcement in Mexico and other countries must include toward training and implementation of meaningful screenings to identify migrants with international protection needs, providing alternatives to detention, and protecting vulnerable migrants.

The Trafficking Victims Protection Reauthorization Act of 2008 Saves Children's Lives

Given the extreme violence in the region, we believe protections for asylum seekers, trafficking victims, children and other vulnerable migrants are critically important. Our organizations support safeguarding the protections in the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) because we believe this bi-partisan legislation helps the U.S. to meet our domestic and international legal obligations towards refugees and asylum-seekers, to protect children from trafficking and to ensure appropriate and humane care that takes into account children's best interests. Many unaccompanied migrant children who have survived trafficking are afraid to come forward or may not understand that they were victimized and need protective services. They are often unaware of the illegality of the abuse or that laws and services exist to protect them. The TVPRA's intent was to better identify trafficking survivors, disrupt cross-border trafficking, provide services to children while in the custody of the Department of Health and Human Services in the Office of Refugee Resettlement (ORR), identify those children in need of protection and safely reunify them with family as they pursue their legal relief claim in immigration court.

When unaccompanied children are first encountered at border, they are processed and then screened for protections under our immigration laws by Customs and Border Protection (CBP). Unlike families or adults who express a fear of return, who must be interviewed by U.S. Citizenship and Immigration Services (USCIS) Asylum Division, these children are never screened for a credible fear or other legal relief by USCIS. For unaccompanied children from Mexico, a screening by CBP is their only chance at access to protection. Numerous studies have shown these screenings are inadequate and DHS is not complying with the Congressional mandate. The limited screening by agents who lack the proper training in asylum, trafficking, child welfare, trauma, abuse, and sexual assault means that many children will be returned to dangerous situations.¹³ For children from non-contiguous countries, their transfer from CBP to the child welfare agency ORR is a significant child protection measure as it is often the first time a child feels safe enough to reveal the life threatening situations they faced in their home country. This measure is also consistent with state child welfare laws and best practices developed by states to protect children at risk of neglect and abuse. All children, regardless of country of origin, deserve to be adequately screened for protection concerns and treated with compassion and care.

¹³ See e.g. Confidential Report UNHCR Regional Office Washington, D.C. for the United States and Caribbean, "Findings and Recommendations Relating to the 2012-2013 Missions to Monitor the Protection Screening of Mexican Unaccompanied Children Along the U.S.-Mexico Border (June 2014). See also Betsy Cavendish & Maru Cortazar, *Children at the Border: The Screening, Protection and Repatriation of Unaccompanied Mexican Minors*, Appleseed (2011) ("Children at the Border").

To illustrate the importance of ORR in screening children in safe environment, here are two examples from LIRS:

- A young girl named Maria was kidnapped by a local gang and raped daily in her home country in Central America. She managed to escape and fled to the United States. Maria did not reveal what had happened to her until she was interviewed in ORR custody by a social worker trained to interview children. CBP custody and processing limitations do not provide an environment in which children like Maria feel safe to divulge what they went through.
- Jesus, a 3 year old boy, was sent by his family to the U.S. for his safety after his family had received threats of harm against Jesus. Jesus's family in his home country had witnessed the torture and beheading of another toddler in their community by gangs as a punishment for not cooperating. Children like Jesus arriving alone at a CBP station would be unable to express the fear of persecution without ORR reaching out to family to discover the reason for his flight.

The TVPRA also provides for minimum due process protections for unaccompanied children. Unaccompanied children may be eligible for various forms of immigration relief, including asylum or Special Immigrant Juvenile status. Recognizing the special vulnerabilities of children and the immense difficulty of arguing an asylum case in immigration court, the TVPRA also directed that any unaccompanied child identified as seeking asylum have their case transferred to the jurisdiction of the U.S. Citizenship and Immigration Services (USCIS) Asylum Division in order to first present their asylum case to specially trained adjudicators in a non-adversarial setting.¹⁴ In the last year, only a fraction of unaccompanied children have applied for asylum, and many of those cases are still pending before USCIS. Lower asylum rates, may be an indicator of the continued lack of legal representation among unaccompanied children.

Despite key child protections in the TVPRA, there is still no legislation to require children have access to legal representation at government expense. Because of this lack of due process protection, children of all ages—even toddlers are put in the unconscionable position of arguing a case for immigration relief. In the last six months of 2014, 94 percent of those unaccompanied ordered removed did not have an attorney.¹⁵ This illustrates how impossible it is for a child to secure relief without representation. In 2014, at the height of the influx, the representation rates reached all-time lows of only 15 percent of children represented in April. In 2015 the current rate of representation is still at a low of 38 percent of children. This failure in access to due process only increases court inefficiencies as documented by the Executive Office of Immigration Review (EOIR) and the National Association of Immigration Judges (NAIJ).¹⁶

¹⁴ This is the same setting as adults or children submitting affirmative asylum applications from within the United States. Like those who apply affirmatively, when those who are not in status in the U.S. are denied asylum by a USCIS adjudicator, they are referred to the immigration court for removal proceedings, where they may present an asylum claim as a defense from removal.

¹⁵ See Rogers, David. "Child migrants without lawyers pay a high price." *Politico*. April 27, 2015.

¹⁶ See e.g., NAIJ Letter to Senate Committee Staff, "Special Concerns Relating to Juveniles in Immigration Courts," (July 22, 2014).

Even with low representation rates among unaccompanied children, they still appear to their immigration hearings at high rates: 90 percent in Fiscal Year 2015. With representation the number is well over 99 percent appearance rate for Fiscal Year 2015.

Children Reunified with Family and In Removal Proceedings

CBP aims to transfer children to ORR within 24 hours in order to free their resources to focus on other law enforcement priorities. The children are then placed in ORR placements according to their level of risk and protection need: secure juvenile detention facilities, medium secure facilities, shelters and foster care for children of tender age or pregnant girls. Of the children placed, roughly about 85 percent are reunified with their families for the duration of their removal hearings. This safeguards the child's rights to family unity and prevents long-term family separation.

Upon release from ORR, some children receive home studies and post-release services for the duration of their court case, limited post-release services, release with a safety plan, or just straight release. Evidenced-based research shows that children who receive case-management style post-release services are more likely to comply with the requirement to appear at all immigration court hearings.¹⁷ Through post-release services children benefit from additional information about what to expect in immigration court proceedings, as well as referrals for local legal service providers. In addition to legal orientation, post-release services also help connect children to schools, mental health services, medical providers, and other supports, as well as provide cultural orientation to both the child and the parent.

Currently only a small percentage of unaccompanied children receive home studies or post-release social services. In FY2014, ORR did home studies for 1,434 children, 2.5% of those placed with sponsors, and provided post-release services to 3,989 children, about 7% of the total children placed.¹⁸ According to the recent Majority and Minority report from the U.S. Senate Permanent Subcommittee on Investigations, ORR performed home studies in less than 4.3% of cases from 2013 through 2015.¹⁹

The following case example illustrates how these services assist children:

- Maricel a 15 year old female minor was reunified with her sister in January 2014. The minor left her home country to escape ongoing community violence. While in home country, Maricel was kidnapped and raped by a local gang. In order to find protection and safety she traveled with her older sister to the US. During the journey, Maricel and her sister were taken by unknown persons and held for three (3) days. Her sponsor paid \$200.00 US and the minor was released. When she was finally reunified with her older sister in Maryland she notified her local worker that she was 7 months pregnant. The local worker connected her with medical and mental health resources and got her involved in a prenatal care program in her local community. Maricel responded well to the resources and gave birth to a healthy young daughter. With the assistance of her sponsor, she has grown into an engaged and

¹⁷ Benjamin J. Roth and Breanne L. Grace, "Post-Release: Study Summary and Policy Recommendations," *University of South Carolina College of Social Work*, available at: <http://bit.ly/1cpMtvZ>

¹⁸ Molly Hennessy-Fiske, "Young immigrants placed in sponsor homes are at risk of abuse, experts say," (LA Times August 2015), available at: <http://www.latimes.com/nation/la-na-immigrant-sponsors-20150818-story.html>

¹⁹ "Protecting Unaccompanied Alien Children from Trafficking and Other Abuses: The Role of ORR," available at: http://www.hsgac.senate.gov/download/majority-and-minority-staff-report_-protecting-unaccompanied-alien-children-from-trafficking-and-other-abuses-the-role-of-the-office-of-refugee-resettlement

loving mother. Her sponsor is assisting with financial resources while the minor continues her education. In addition, Maricel has been very active securing a lawyer and working on her asylum case. Her lawyer indicated that she has a strong claim for legal relief and they are hopeful she will find the safety and protection she has been seeking in the near future.

- In the case of a young girl named Maria, recent improvements by ORR such as their creation of a new hotline, are leading to increased protections for children. In Maria's community in El Salvador, a gang member put a gun near Maria's head and shot once, she stated that he told her, "I give you one month for you to leave or I will kill or rape you." She was not harmed when the gun was shot. Gang members then attempted to rape her, but stopped because her screams were so loud. They instead cut her and warned her they would rape her. At 17 years, she fled to the U.S. and was reunified with a sister without any post-release services. However, her sister decided to move in with her boyfriend. Maria called the new ORR hotline, explained that she had lived on her brother's couch but had moved out. She also was working in order to pay rent. ORR contacted LIRS Post Release Services and a report was made to CPS, Maria was placed in CPS custody and placed into foster care.

We believe, that ORR can and should strengthen its family reunification procedures in order to ensure a child's access to family unity and protection. ORR has the expertise and knowledge to implement better family reunification procedures and Congress should support these efforts by adequately funding ORR so that every child is protected.

We believe ORR can further improve its processes related to the release of UACs to sponsors:

- First, ORR should prioritize child protection and safety in reunification decisions over reunification timelines based on fiscal concerns. We need to see these as children first whom are needing safety and deserving of protection and family unity.
- Second, ORR should ensure that all children have access to some post-release services. These services should be based on an individualized assessment intervention, community-based, case management services which are trauma informed permitting for a more flexible and tiered approach base on the child and family's needs. Congress should also appropriate the necessary funds so that ORR can provide these services. This would ensure that all children receive at least one home visit to check on the released child's well-being.
- Third, ORR should revise the sponsor assessment tool and sponsor reunification packet to ensure gathering of relevant information. This should include an in-person risk assessment of the sponsor, a sponsor needs assessment, and an in-person sponsor orientation that accompanies a more user-friendly sponsor handbook that promotes children's safety, stability, and well-being.
- Fourth, ORR should monitor the impact of changes to fingerprint background check requirements and revise policy accordingly. The safety of children and the screening of sponsors, including parents, must be more consistent and appropriately balanced.
- Fifth, ORR should enhance their engagement with NGOs and stakeholders in order to help improve their policies in order to utilize best practices in meeting the best interest of unaccompanied children. In consultation with ORR's various grantees we could work together in identify and mitigating some of the risks associated with changes to policy or practices.

- Sixth, Congress and HHS should provide resources for a nationalized child abuse and neglect database system for Child Abuse and Neglect checks so that long waits for multi-state checks do not mean children are waiting reunification for extended periods of time.
- Finally, Congress should provide ORR with contingency funds so that in times of higher arrivals of unaccompanied children or refugees, ORR can adequately provide the bed space and services required.

1. Responsibility for the care and custody of unaccompanied children should remain with the Department of Health and Human Services, the federal agency whose mission is child protection. Care and custody should not be transferred to DHS, the agency tasked with immigration and border enforcement. For good reason, Congress decided, through the Homeland Security Act of 2002, that the agency charged with enforcement, the former INS (now DHS) should not also have responsibility for the care and custody of unaccompanied children.
2. ORR should be provided the resources necessary to ensure child safety and well-being in family reunification decisions. As with other HHS programs, Congress has the authority to mandate reporting, and in this instance, Congress should require vigorous reporting on sponsor screening. Children should be released from ORR custody to sponsors who have been thoroughly screened—and in particular, to parents, who are vested with certain rights and responsibilities. Screening shall include a FBI Criminal background check and Child Abuse and Neglect check on all sponsors, and review of results of those checks, prior to release of a child. Screening shall also include, at minimum, one in-home visit to assess the safety and suitability of the sponsor and the placement prior to release of the child. ORR has the infrastructure and the capacity to ensure the safety and well-being of children released to sponsors, and such services should be expanded. ORR must not require subcontractors to complete reunifications within unreasonable deadlines. The current deadline of 10 days is sufficient for many sponsors if Child Abuse and Neglect checks and FBI background checks are received prior to the Home Study worker making a final recommendation. ORR must be flexible with extensions in situations where potential red flags are identified during home study requiring further assessment and/or if the FBI background checks and Child Abuse and Neglect check results have not been received within the deadline
2. ORR should be provided the resources to provide some type of post-release services to all children reunified with a sponsor, which should include at least one home visit per child. These. ORR has a variety of post-release programs that successfully ensure children’s safety and also ensure children comply with the requirements of the immigration court process. Specifically, ORR contracts with non-governmental agencies to provide post-release follow-up services, legal representation and child advocates for vulnerable unaccompanied children. Provision of these services should be based on an individualized assessment intervention. The services should be community-based, case management services which are trauma informed permitting for a more flexible and tiered approach based on the child and family’s needs. Congress should appropriate the necessary funds so that ORR can provide these services and should require HHS to report on the post-release services provided to individual children and families.
3. Children must be provided legal representation regardless of whether they have been identified as eligible for relief during an initial screening. At present, upon release from ORR custody, the majority of unaccompanied children appear in immigration court without representation. While the

child is unrepresented, the government is represented by an attorney who has been trained specifically in the complexities of U.S. immigration law. A child who does not have an attorney may be fearful of going to court, walking into the courtroom, figuring out what to say—especially in an adversarial setting. Children who are represented are more likely to appear in immigration court, allowing another opportunity for adults other than the sponsor—attorneys, Child Advocates and immigration judges—to interact with a child and verify their safety.

4. The most vulnerable children should be appointed a Child Advocate to advocate for the child's best interests on issues including placement and permanency. Federal law permits the appointment of independent child advocates—best interests guardians ad litem—for child trafficking victims and other vulnerable unaccompanied children. Because ORR must consider the best interests of the child when making decisions regarding placement, and because every decision-maker should consider a child's best interests when making a decision regarding a child, Child Advocates play a critical role. For over a decade, immigration judges, immigration officers and other federal and state officials have relied upon reports received from independent Child Advocates in order to consider children's best interests in part of the decision-making process—whether that decision involves release to a sponsor or the grant of a discretionary immigration benefit. It is important that Congress continue to provide resources to ensure that the most vulnerable children have a Child Advocate, whether those children are identified as particularly vulnerable while still in custody or after their placement with a sponsor.
5. ORR should revise the sponsor assessment tool and sponsor reunification packet to ensure gathering of relevant information including a sponsor needs-assessment and orientation for all sponsors. ORR should conduct an in-person risk assessment of all category 2 and 3 sponsors. All sponsors should receive a user-friendly sponsor handbook that promotes children's safety, stability, and well-being.
6. ORR should implement a uniformed approach rather than a multi-faceted, tiered approach based on the sponsor category or subjective view of each case manager. With consistent background checks for all sponsors, ORR will then be able to monitor outcomes and assess the best evidence-based approach for screening of sponsors. Such information should inform ORR policy on other screening, i.e. in-person risk assessments and home studies.
7. ORR should consult with and utilize the expertise of NGOs, state child welfare experts and stakeholders in revising and implementing policies with respect to assessing sponsors, check-ins and providing follow-up services.
8. Congress and HHS should provide resources for a nationalized child abuse and neglect database system for Child Abuse and Neglect checks so that long waits for multi-state checks do not mean children are waiting reunification for extended periods of time. This also will enable checks in states the sponsor previously resided, but have not disclosed.
9. Congress should provide ORR with funds for family reunification services and other post-release services so that in times of higher arrivals of unaccompanied children or refugees, ORR can adequately provide the bed space and associated supportive services required. ORR should also submit a budget request that is not based on the assumption that only 10% of children should receive home studies and post-release services, instead it should be a needs-based funding assessment. For contingency funds requests, ORR should also plan for the full continuum of additional services need with higher arrival rates

Detention, Due Process, and the Right to Seek Asylum

Although the crisis facing the Northern Triangle is a regional one that requires regional solutions, the displacement of thousands of children and families from Honduras, El Salvador, and Guatemala has also resulted in a dramatic increase in the number of adults and families crossing the southern U.S. border seeking protection. Many have portrayed this influx as a border security crisis or problem, calling for stronger measures to apprehend, detain, and deport those seeking protection at our southern border, and to implement measures to deter their migration altogether. This characterization is fundamentally misguided. It is not illegal to exercise the right to seek asylum at a U.S. border or to a U.S. border official; instead, it triggers a process intentionally created to ensure that the United States would uphold its international and domestic obligations to protect those fleeing persecution or future harm. The United States has long been a global leader on asylum and refugee protection; ensuring that those seeking protection have access to a fair and just asylum process, including for those apprehended at our southern border, is a cornerstone of that leadership.

Rather than rolling back protections that ensure that asylum-seeking adults, families, and children are not returned to harm, the Obama Administration and Congress should take several steps to strengthen protection mechanisms and ensure access to justice for these vulnerable populations. Many of those currently apprehended at the U.S. border are ultimately subject to “expedited removal” laws and detained in punitive and prison-like facilities with inadequate and traumatizing conditions and that inhibit access to critical legal information and counsel. While in detention, they are subject to an initial screening interview, known as a Credible Fear Interview, and, if fear is established, placed into removal proceedings before an immigration judge. Many asylum seekers are detained for the duration of their proceedings despite eligibility for parole, bond, release on recognizance, or an alternative to detention program (ATD).

In 2014, in response to an influx of children and families fleeing violence and seeking protection at the southern border, the Immigration and Customs Enforcement (ICE) opened the Karnes and Dilley Family Residential Centers in Karnes City and Dilley, TX, respectively. Statistics show that nearly 90% of those in family detention passed credible fear interviews, indicating that the vast majority of detained families have protection concerns. Yet family detention – like detention generally – traumatizes asylum seekers and creates enormous obstacles to legal relief. Countless studies and reports have documented the devastating impact detention in a family detention facility has on the mental and physical health of the mothers and children detained there.²⁰ Family detention and immigration detention, in general, have also resulted in serious gaps in access to counsel and due

²⁰ See Lutheran Immigration and Refugee Service and Women’s Refugee Commission, “Locking Up Family Values Again,” October 2014; Letter from the American Academy of Pediatrics to DHS Secretary Jeh Johnson, July 24, 2015; Allen S. Keller, M.D. and Amanda K. Winchester, M.P.H., “Health Impact of Family Immigration Detention: A Case Study,” NYU Center for Health and Human Rights, October 2015, and see a Complaint to the DHS Office for Civil Rights and Civil Liberties (CRCL) and the Office of Inspector General (OIG) on behalf of the women by the American Immigration Council, American Immigration Lawyers Association, Catholic Legal Immigration Network, Inc., Immigrant Justice Corps, Refugee and Immigrant Center for Education and Legal Services, and the Women’s Refugee Commission.

process. One study documented that whether an individual had counsel in court was “the single most important factor affecting the outcome” of an asylum case.²¹ Family detention centers, and countless of the more than 200 immigration detention centers, are generally located in remote areas that are several hours away from the nearest cities, rendering it difficult to find low-cost or *pro bono* legal representation that are crucial to understanding the credible fear process, arguing for bond before ICE or an immigration judge, or preparing and presenting a full asylum case in an adversarial process. Two federal courts have already curtailed the Administration’s family detention policies, finding that the government cannot detain asylum-seekers for the purpose to deter other asylum-seekers from fleeing their countries, and that the Administration’s policies are in serious violation of the longstanding *Flores* Settlement Agreement that directs certain U.S. practices relating to the custody of migrant children.

The continued use of family detention is especially inappropriate given that, where needed, families could be released to sponsors or placed into far more cost-effective alternatives to detention. ICE recently launched a new family case management program through which families will receive access to social services, much-needed case management, and access to critical legal services. While this contract was unfortunately awarded to a for-profit private prison contractor, rather than to the non-profit service providers with direct experience in immigrant and refugee case management, it represents an important step forward towards holistic and comprehensive services for those immigrants who most need it. Alternatives to detention cost as little as just over \$5 per day compared to the \$343 for just a single space for one family member in a family detention facility. Yet, instead of a meaningful individualized custody assessment of whether a child or family member would pose a flight or public safety risk, and of a determination whether any ATD or other measures could mitigate those risks, many families and other asylum seekers are arbitrarily sent to detention facilities. Indeed, even alternatives to detention are used by ICE *in addition* to detention, not *in place of* or as a true alternative to detention.

Despite the extensive evidence of the harm inflicted by family detention and the persisting due process and rights violations of the mothers and children detained there, hundreds of families continue to be detained in costly and inhumane circumstances. We urge Congress and the Administration to take the following steps:

- Continue to urge for an end to family detention, and invest in Alternatives to Detention in place of detention. In particular, Congress should turn to community based-alternatives to detention, and ensure that ATDs are used instead of, not in addition to, immigration detention.
- Rather than placing families in expedited removal, families should be released to sponsors, on their own recognizance, bond, parole, or into an ATD program. Families should receive meaningful explanations of their rights and obligations in a language they understand prior to release. These steps help to increase access to counsel and the ability to navigate an asylum claim.
- Congress should continue to fund Legal Orientation Program (LOP) presentations and fund efforts to facilitate access to counsel for families and other vulnerable populations. Asylum or other legal relief is often impossible to obtain without the assistance of competent legal counsel to help navigate claims.

²¹ Disparities in Asylum Adjudication, by Jaya Ramji-Nogales, Andrew I. Schoenholtz and Philip G. Schrag, 60 STANFORD L. REV. 295 (2007).

We are also deeply concerned about the Administration's recent enforcement actions against families and children. On January 2, 2016, ICE began conducting residential immigration raids in Florida, Georgia, Illinois, Missouri, North Carolina, Texas, and Virginia and ICE has arrested 121 individuals during these raids to date, including 71 children and 50 adults, mostly mothers.²² Attorneys have filed 12 stays of removal— all of which have been granted — on behalf of 33 individuals who faced imminent deportation.²³ The stays were granted in part to allow families to raise ineffective assistance of counsel claims.

ICE used extremely aggressive tactics as well as false information in conducting home raids and conducted these raids has included intimidation, use of excessive force and potential legal violations.²⁴ Less than half of the families who were subjected to raids were represented by counsel²⁵ and most were subjected to expedited removal and expedited hearings. Nine of the twelve families who received the stays were arrested in the Atlanta area, where the immigration court has a substantially lower rate of approval of asylum cases compared to all courts nationwide.²⁶ Given that mothers with children who appear with counsel are 14 times more likely to win their cases than those without counsel,²⁷ many of these families were not given a fair chance to have a judge hear their claim for relief. We urge the Administration to suspend enforcement tactics that do not provide due process for families and protect them from return to persecution.

In conclusion, we hope that the Subcommittee will recognize the complex situation at our southern border and recognize that it is a domestic legal right to seek asylum when fleeing persecution. The Trafficking Victims Protection Reauthorization Act of 2008 is a vital tool to protect children, as are our asylum laws and processes. We hope that you will work to protect families and children fleeing violence and seeking safe haven in the United States.

²² National Immigration Law Center, Fact Sheet on Family Raids, January 14, 2016.

²³ National Immigration Law Center Fact Sheet on Family Raids citing "Three families pulled off El Salvador-bound plane amid deportation appeals," San Antonio Express News, January 7, 2016

²⁴ Id.

²⁵ "Ensuring Due Process Protections for Central American Refugees," by Philip Wolgin, Center for American Progress, February 2, 2016.

²⁶ Syracuse University TRAC, Report on Judge-by-Judge Asylum Decisions, FY 2009-2014.

<http://trac.syr.edu/immigration/reports/361/include/denialrates.html>

²⁷ Syracuse University TRAC, "Representation Makes Fourteen-Fold Difference in Outcome: Immigration Court Women with Children Cases," July 15, 2015.

**Statement of
Mary Meg McCarthy, Executive Director
Heartland Alliance's National Immigrant Justice Center**

**House 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?"**

February 4, 2016

Chairman Gowdy, Ranking Member Lofgren, and members of the Immigration and Border Security Subcommittee of the House Judiciary Committee:

Heartland Alliance's National Immigrant Justice Center (NIJC) appreciates the opportunity to submit testimony for the House Subcommittee on Immigration and Border Security hearing on refugees arriving at the southwest border.

NIJC is unique among immigrant advocacy groups in that our advocacy and our impact litigation are informed by our direct representation of approximately 10,000 immigrants annually, including unaccompanied immigrant children and asylum seekers. NIJC's Immigrant Children's Protection Project provides Know Your Rights presentations and legal screenings to unaccompanied immigrant children detained in Chicago-area shelters. In addition, NIJC represents unaccompanied children and detained and non-detained adult asylum seekers before the Chicago Immigration Court. Through NIJC's community outreach, we speak with Central American families whose children remain in peril in their countries of origin and are in need of protection. We see first-hand the barriers Central American men, women, and children experience as they pursue legal protections and are well aware of the reasons they have fled their home countries.

Based on our experience, it is clear that men, women, and children from the Northern Triangle countries of El Salvador, Guatemala, and Honduras have fled extreme, uncontrolled violence in their home countries and are in need of protection. We recommend that the government:

1. Provide a comprehensive humanitarian package of relief that complements our rigorous asylum system, including a generous refugee program, appointing counsel to children and vulnerable populations, and the designation of Temporary Protected Status (TPS), for those fleeing violence in the Northern Triangle countries.
2. Maintain protections provided under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA)¹ and other existing procedural protections for unaccompanied immigrant children.

¹ William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), P.L. 110- 457 (Dec. 23, 2008).

3. Ensure access to counsel for vulnerable populations including asylum seekers and unaccompanied immigrant children.

These recommendations are critical to maintaining the United States' proud reputation as a nation that provides refuge to those fleeing harm.

I. Provide those fleeing rampant violence in the Northern Triangle countries with a comprehensive humanitarian package of relief.

Those fleeing violence in the Northern Triangle merit expanded protections due to the deteriorating conditions there. In 2015, the death toll in the Northern Triangle countries was 17,500,² higher than in all but three zones of ongoing armed conflict: Iraq, Afghanistan, and Syria.³ This death toll was higher than four West African countries struggling with the Boko Haram insurgency⁴ and even higher than the death tolls in Somalia, Libya, and South Sudan.⁵ Notably, this rapidly escalating violence occurred in a geographic region the size of the state of Oregon and home to just under 30 million people. To put this endemic violence into perspective, Honduras alone had more homicides than the 28 states of the European Union combined in 2014.⁶

The United States is not the only country experiencing a dramatic increase in arrivals of asylum seekers from Central America due to this violence. Together, Mexico, Panama, Nicaragua, Costa Rica, and Belize reported a 1,185 percent increase in the number of asylum applications filed by individuals from El Salvador, Guatemala, and Honduras from 2008 to 2014.⁷ These numbers demonstrate that the current crisis is a regional problem caused by country conditions in the Northern Triangle.

The causes of the violence are complex and fueled by a lack of government accountability, seizure of state institutions by organized crime, impunity and widespread corruption, control of territory by

² *Central America's violent Northern Triangle registers 17,422 homicides in 2015*, THE TICO TIMES NEWS, Jan. 5, 2016, available at: <http://www.ticotimes.net/2016/01/05/central-americas-violent-northern-triangle-registers-17422-homicides-in-2015>.

³ Sayed Sharif Amiri, *Civilian Casualties up as Security Operations Drop Report*, TOLO NEWS, AUG. 4, 2015, available at: <http://www.tolonews.com/en/afghanistan/20743-civilian-casualties-up-as-security-operations-drop-report>; Shakeela Ibrahimkhal, *Civilian Casualties Increase in December Against Previous Month*, TOLO NEWS, Jan. 8, 2016, available at: <http://www.tolonews.com/en/afghanistan/23200-civilian-casualties-increase-in-december-against-previous-month-55,000-more-killed-in-syria-in-2015>, YAHOO NEWS, Dec. 31, 2015, <http://news.yahoo.com/more-55-000-killed-syria-2015-monitor-141247568.html>; UNITED NATIONS IRAQ, UNITED NATIONS, *Civilian Casualties*, Jan. 1, 2016, available at: http://www.uniraq.org/index.php?option=com_k2&view=itemlist&layout=category&task=category&id=159&Itemid=633&lang=en.

⁴ *Conflict Trends (No. 44) Real-Time Analysis of African Political Violence*, ARMED CONFLICT LOCATION & EVENT DATA PROJECT, Dec. 2015, available at: http://www.acleddata.com/wp-content/uploads/2015/12/ACLED_Conflict-Trends-Report-No.44-December-2015.pdf.

⁵ *Id.*

⁶ Kevin Casas Zamora, *Congressional Testimony: The Roots of Central America's Exodus*, INTER-AMERICAN DIALOGUE, Oct. 22, 2015, available at: <http://www.thedialogue.org/resources/congressional-testimony-the-roots-of-central-americas-exodus/>.

⁷ United Nations High Commissioner for Refugees (UNHCR), "Unaccompanied Minors: Humanitarian Situation at US Border," available at: <http://unherwashington.org/children>.

organized criminal groups, brutal militarized law enforcement practices, rampant inequality, and weak democratic governance mechanisms. Corruption is widespread in Central America and seeking police protection from criminal elements is not an option.⁸ In fact, the current national police chief in Honduras is leaving his country because his life has been threatened by both police and criminal gangs.⁹ From 2010 to 2013, 48,947 people were murdered in El Salvador, Guatemala, and Honduras. Those countries obtained convictions in only 2,295 of those homicide cases, meaning 95 percent of homicides went unsolved or unprosecuted.¹⁰

Unsurprisingly, this violence disproportionately impacts women and children. For the last six years, the Northern Triangle countries have ranked among the world's top four countries for rates of femicide,¹¹ while El Salvador and Guatemala have the highest homicide rates in the world among children.¹² In Honduras, a boy born today has a one-in-nine chance of being murdered.¹³ These factors, combined with the lack of an effective government response, have forced many people to flee for their lives.

Although NIJC appreciates the administration's efforts to increase refugee protections for nationals from Northern Triangle countries through the establishment of the Central American Minors Refugee/Parole (CAM) program last year¹⁴ and the announced expansion of refugee processing for others in the region,¹⁵ it is imperative that these programs be part of a comprehensive package to provide protections to those fleeing violence in Central America, including robust asylum protections and designating the Northern Triangle countries for TPS.

⁸ Charles Parkinson, "Why is Latin America So Corrupt?" *InSight Crime*, Jan. 8, 2014, available at: <http://www.insightcrime.org/news-analysis/why-is-latin-america-so-corrupt>.

⁹ "Por amenazas a muerte se va de Honduras Leandro Osorio, comisionado de la Policía," *Diario La Prensa*, Jan. 28, 2016, available at: <http://www.laprensa.hn/honduras/924042-410/por-amenazas-a-muerte-se-va-de-honduras-leandro-osorio-comisionado-de>

¹⁰ Suchit Chavez & Jessica Avalos, "The Northern Triangle: The Countries That Don't Cry for Their Dead," *InSight Crime – Organized Crime in the Americas*, April 24, 2014, available at: <http://www.insightcrime.org/news-analysis/the-northern-triangle-the-countries-that-dont-cry-for-their-dead>.

¹¹ Tom Jawetz, *Addressing the Flow of Central American Mothers and Children Seeking Protection*, CENTER FOR AMERICAN PROGRESS, Jan. 12, 2016, available at: <https://www.americanprogress.org/issues/immigration/news/2016/01/12/128645/addressing-the-flow-of-central-american-mothers-and-children-seeking-protection>.

¹² Tessa Wardlaw, *Hidden in Plain Sight: A statistical analysis of violence against children*, UNICEF, Sept. 2004, available at http://www.unicef.org/publications/index_74865.html; Ami Sedghi, *The world's most dangerous countries for young people: homicide rates for under 20-year-olds mapped*, THE GUARDIAN, Sept. 5, 2014, available at: <http://www.theguardian.com/news/datablog/ng-interactive/2014/sep/05/the-worlds-most-dangerous-countries-for-young-people-homicide-rates-for-under-20-year-olds-mapped>.

¹³ Frances Robles, "Fleeing Gangs, Children Head to U.S. Border," N.Y. TIMES, July 9, 2014, available at: <http://www.nytimes.com/2014/07/10/world/americas/fleeing-gangs-children-head-to-us-border.html? r=1>.

¹⁴ <https://www.uscis.gov/CAM>.

¹⁵ Julia Preston, *et al.*, "U.N. to Help U.S. Screen Central American Migrants," N.Y. TIMES, Jan. 12, 2016, available at: <http://www.nytimes.com/2016/01/13/us/politics/un-to-help-us-screen-central-american-migrants.html?smid=tw-share& r=1>.

A. Expedite CAM and refugee resettlement program application processing to accommodate people fleeing rampant violence in Central America's Northern Triangle.

In January 2016, the Obama administration announced that it would expand refugee screening in the Northern Triangle countries. The administration reported that the program would allow as many as 9,000 Northern Triangle nationals to come to the United States.¹⁶ Considering that more than 62,000 unaccompanied children and families arrived in the United States in fiscal year 2015,¹⁷ this number is insufficient to address the humanitarian crisis.

The new refugee resettlement program supplements the existing CAM program, which allows parents with legal status in the United States to sponsor their children for in-country refugee processing. Children must be nationals of one of the Northern Triangle countries and must reside in that country while their applications are processed. Children who are approved will be granted refugee status and allowed to join their parent(s) in the United States. While NIJC supports efforts to provide Northern Triangle nationals with safe passage to the United States, it is imperative to acknowledge the significant limitations of this program that prevent most children from being able to safely utilize the program to obtain protection. The CAM and refugee programs alone cannot address the refugee protection issues facing men, women, and children from the Northern Triangle countries.

Both the CAM and the expanded refugee resettlement program require individuals to apply for refugee status and wait for prolonged periods for their applications to be processed. Currently, the processing time for the CAM program is approximately one year, and processing times under the refugee resettlement program are also expected to be lengthy. This wait time is not only impractical for many, but also can be extremely dangerous. Refugees and asylum seekers are unable to remain in their home countries because of the immediate risk of persecution and torture they face there. Given the extreme violence that plagues the Northern Triangle, and the imminence of the harm that refugees and asylum seekers face when they are forced to flee their home countries, it is unrealistic to expect those in immediate danger of harm to remain in their home countries or in the region for many months during the refugee process. Many people will continue to arrive at the U.S. southern border to seek protection from the immediate threats to their lives.

One of those people is 15-year-old Oscar (pseudonym). Oscar's friend, Alex, was only 13 when a gang in Guatemala murdered him for refusing to join them. For two years, the same gang that killed Alex also threatened to kill Oscar if he did not join the gang. Initially, the gang tried to force Oscar to do things he did not want to do, like use drugs. Gradually, their efforts to force Oscar to join escalated, and the gang threatened to kill Oscar's family if he went to the police for help. Oscar finally fled after a friend told him that the gang had set a date and time to kill him. He came to the United States to seek refuge with his father, who has lived in the United States for nearly 10 years.

¹⁶ Id.

¹⁷ U.S. Customs and Border Protection, "Southwest Border Unaccompanied Alien Children Statistics FY 2016," accessed Feb. 1, 2016, available at: <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016>.

Children like Oscar cannot wait for months in imminent danger while the United States processes their refugee claims; choosing to endure a nine-to-12 month wait rather than flee immediately may often be a choice between life and death.

B. The U.S. government must dedicate sufficient resources, including appointing counsel to all children and vulnerable populations in proceedings, to uphold due process for asylum seekers and maintain a robust asylum system.

Although the United States has robust systems in place to address asylum seekers and comprehensively evaluate each application, these systems have struggled for years to function efficiently without adequate resources. Specifically, the U.S. government must maintain sufficient resources for immigration courts and the Asylum Program while ensuring access to counsel for detained and non-detained asylum seekers.

NIJC welcomes funding included in the FY16 omnibus appropriations bill¹⁸ that allocates funding to the Executive Office for Immigration Review (EOIR) to hire 55 new immigration judges. This infusion of resources will help address the unprecedented backlog in immigration courts. Currently, the average wait time to see an immigration judge is 660 days, but unfortunately, in cities with large immigrant populations like Chicago, the wait time is longer.¹⁹ These prolonged delays are particularly difficult for asylum seekers who are eager to complete their cases and seek reunification with spouses and children who remain in danger in their home countries. But these delays may also have a chilling effect on *pro bono* attorneys' ability to provide representation, because such commitments become too long-term and resource-intensive. While asylum cases await resolution, *pro bono* attorneys may change law firms and have to withdraw from their *pro bono* cases, witnesses are lost, filings must be repeatedly updated and supplemented due to the passage of time, and cases are transferred to new judges due to retirements and court transfers, even if they have already been partially completed. As a result, the more time that a case remains pending due to immigration court delays, the more difficult it is for the asylum seeker to maintain representation and for the immigration judge to efficiently adjudicate the case.

In addition to increasing the number of immigration judges, NIJC encourages the U.S. government to pursue other policy solutions to maintain a robust asylum system. For instance, EOIR should continue to invest in training for immigration judges, particularly for those working with child respondents. In addition, U.S. Citizenship and Immigration Services (USCIS) should allocate sufficient resources to the Asylum Program to ensure adequate staffing and regular training for those who conduct affirmative asylum, credible fear, and refugee interviews.

Finally, attorneys are particularly critical to helping those fleeing persecution navigate the U.S. asylum system, which is extremely complex and places a high evidentiary burden on asylum seekers which is difficult to meet without competent representation. An asylum seeker must gather country

¹⁸ Consolidated Appropriations Act, 2016, H.R. 2029, P.L. 114-113, 114th Cong, <https://www.congress.gov/114/bills/hr2029/BILLS-114hr2029enr.pdf>.

¹⁹ Transactional Records Access Clearinghouse, Syracuse University, "Backlog of Pending Cases in Immigration Courts as of December 2015," http://trac.syr.edu/phptools/immigration/court_backlog.

condition reports, primary documentary evidence, affidavits from witnesses in their home country, and medical and psychological evaluations. One landmark academic study showed that legal representation in immigration court is the most important factor affecting the outcome of an asylum application, with asylum grant rates nearly three times higher for those who have attorneys.²⁰ Without legal counsel, it is extremely difficult for asylum seekers to effectively understand and navigate these complex processes in the face of the threat of deportation – and is virtually impossible for children. NIJC client Olivia (pseudonym) may have deported without the assistance of legal counsel:

Olivia fled gender-based violence in Honduras to seek asylum in the United States. Both Olivia's uncle as well as her boyfriend physically and sexually assaulted her. After surviving two separate murder attempts by her uncle and boyfriend, she fled with her infant son, Daniel. After she presented herself to U.S. Border Patrol, she was detained at the Karnes Family Detention Center in Karnes City, Texas. Asylum officers found Olivia to have a credible fear of return. After three months in detention, Olivia and Daniel were released on bond and they moved to Chicago. The Department of Homeland Security (DHS) filed to move the family's court hearings to Chicago; however, Olivia did not receive notification of the venue change. When she moved to a new address in Chicago, she sent her change of address notification to the Texas court where she had previously appeared, unaware that her case had been moved. Consequently, Olivia never received notification of her court hearing at the Chicago Immigration Court and was ordered removed in absentia. Olivia did not learn about her deportation order until she met with NIJC, who successfully filed her motion to reopen. She is now pursuing asylum.

Without representation, Olivia could have been deported to a country where her life was threatened. Low-cost legal service providers and *pro bono* counsel cannot continue on its current trajectory without additional resources; they are overwhelmed by the demand for legal services and many asylum seekers will either need to proceed with the immigration process alone or turn to unscrupulous preparers and *notarios* in a desperate attempt to get assistance. With so much at stake, vulnerable populations must have access to government-funded counsel to ensure that no one at risk of persecution is returned to harm's way.

C. Designate the Northern Triangle countries for TPS

Using the clear statutory authority of section 244 of the Immigration and Nationality Act (INA),²¹ the DHS Secretary has currently designated 13 countries for TPS: El Salvador, Guinea, Haiti, Honduras, Liberia, Nepal, Nicaragua, Sierra Leone, Somalia, South Sudan, Sudan, Syria, and Yemen.²² Per the statutory requirements of INA § 244(b), these designations are premised on an

²⁰ Jaya Ramji-Nogales, *et. al.*, "Refugee Roulette: Disparities in Asylum Adjudication," *Stanford Law Review*, Vol. 60, Issue 2, p. 340, available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=983946.

²¹ 8 U.S.C. § 1254a (West 2016).

²² See U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEPARTMENT OF HOMELAND SECURITY, Temporary Protected Status (November 13, 2015), available at <http://www.uscis.gov/humanitarian/temporary-protected-status>. When Congress created TPS, it included a statutory designation for El Salvador. Since then, many other countries have received a TPS designation for limited periods of time, including Angola (2000-2003); Bosnia-Herzegovina (1992-2001); Burundi (1997-2009); Kosovo Province (1998-2000); Kuwait (1991-1992); Lebanon (1991-1993); Liberia (1991-2007); Montserrat (1997-2005); Rwanda (1995-1997); and Sierra Leone (1997- 2004). See LISA SEGHETTI, CONG. RESEARCH

ongoing armed conflict, environmental disaster, or extraordinary and temporary conditions that prevent nationals of these countries from returning safely. Current designations for El Salvador and Honduras are based on environmental disasters in those countries dating back to 2001 and 1998 respectively, and therefore require TPS beneficiaries from those countries to demonstrate presence and residence in the United States since that time. Those who have arrived in the United States more recently are ineligible for TPS under that designation.

TPS was created by Congress with the passage of the Immigration Act of 1990²³ to address gaps in U.S. immigration policy and regularize the process by which our government accommodated those gaps.²⁴ Congress understood that a stay of deportation and employment authorization are necessary for nationals who are already in the United States but who cannot be deported safely due to temporary conditions in their home countries.

INA § 244(b)(1)(C) provides that the Secretary may base a TPS designation on a finding that “there exist extraordinary and temporary conditions in the foreign state that prevent aliens who are nationals of the state from returning to the state in safety, unless the [Secretary] finds that permitting the aliens to remain temporarily in the United States is contrary to the national interest of the United States.”²⁵ Each of the Northern Triangle countries clearly meets these criteria given the devastating recent uptick in violence. Further, the administration’s expansion of refugee processing and creation of the CAM program area are explicit acknowledgements that country conditions in these countries are steadily worsening, that the outflows of mothers and children from these countries are driven by severe violence, and that safety is increasingly elusive for many. The January 2016 withdrawal of U.S. Peace Corps volunteers from El Salvador²⁶—the first time in over 40 years—in addition to the September 2012 withdrawal of volunteers from Honduras,²⁷ is further acknowledgment of the severity of the region’s escalating violence.

The risk of deportation to the Northern Triangle countries is tangible and profound. According to a comprehensive study conducted by social scientist Elizabeth Kennedy at San Diego State University, between January 2014 and September 2015, at least 83 nationals deported to El Salvador, Honduras, and Guatemala were reported to have been subsequently murdered, with 45 murders in El Salvador, 35 in Honduras, and three in Guatemala.²⁸

SERV., RS 20844, TEMPORARY PROTECTED STATUS: CURRENT IMMIGRATION POLICY AND ISSUES (2015) *available at* <https://www.fas.org/sfp/crs/homesecc/RS20844.pdf>.

²³ Immigration Act of 1990, Pub. L. 101–649, 104 Stat. 4978.

²⁴ Madeline Messick and Claire Bergeron, *Temporary Protected Status in the United States: A Grant of Humanitarian Relief that Is Less than Permanent*, MIGRATION POLICY INSTITUTE, July 2, 2014, *available at* <http://www.migrationpolicy.org/article/temporary-protected-status-united-states-grant-humanitarian-relief-less-permanent>.

²⁵ 8 U.S.C. § 1254a(b)(1)(C) (West 2016).

²⁶ Anastasia Moloney, *U.S. Peace Corps pulls out of El Salvador over violence, security*, Jan. 13, 2016, <http://www.reuters.com/article/us-el-salvador-peace-corps-violence-idUSKCN0UR2PM20160113>.

²⁷ *Honduras*, Peace Corps, Sept. 2012, <http://www.peacecorps.gov/volunteer/learn/wherepc/centralamerica/honduras/?shell=learn.wherepc.centralamerica&cntry=honduras>.

²⁸ *See* Relief Not Raids, *supra* note 20, at 6.

Designation of a country for TPS should be premised on whether country conditions meet the statutory requirements set by Congress and must not be impacted by unfounded fears of increased refugees arriving at our nation's border. TPS eligibility is strictly limited to individuals who are physically present in the United States prior to designation. There is no historical precedent or evidence of additional foreign nationals attempting to enter the United States as a consequence of a TPS designation.

II. Strengthen due process protections for unaccompanied children under the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008.²⁹

Although the CAM program is a welcome step toward providing protection to child asylum seekers, the program alone is not sufficient to address the magnitude of need of those fleeing rampant violence in the Northern Triangle. As discussed above, the pervasive reach of gangs and drug cartels and the lack of governmental protection in these countries make it impossible for people to safely wait there while the U.S. government processes their applications. Thus, many children—both those who qualify for the CAM program and those who do not—continue to flee to the United States. The United States must make sure that the CAM program is accompanied by complementary efforts to ensure access to legal protections for those who reach the United States.

One critical protection is the TVPRA, which unanimously passed Congress as a response to years of insufficient screenings of unaccompanied children at the border that resulted in the return of vulnerable children to situations of violence, abuse, and persecution.³⁰ The TVPRA provides critical protections and child-sensitive procedures for immigrant children and child refugees that should be bolstered, not eliminated. Specifically, the TVPRA requires that unaccompanied children from non-contiguous countries be placed in removal proceedings before an immigration court rather than subjected to a hurried screening and repatriation process akin to expedited removal. This due process protection is critical to ensure that children who have been or fear being trafficked, abused, tortured, and/or persecuted are not summarily removed to places where they face serious harm. Under the TVPRA, children have the opportunity to present their claims in immigration court. This affords children time to recover from their journeys and trauma, receive legal orientation, seek counsel, and gather evidence supporting their cases before a decision is made regarding their removal or eligibility for relief.

A. Expedited removal is inappropriate for children and survivors of violence.

NIJC's Immigrant Children's Protection Project sees first-hand the benefits of the TVPRA through our work in Chicago-area shelters for unaccompanied children where we provide Know Your Rights presentations and legal screenings. In our experience, young survivors of violence and trauma need time to recover from their long journeys, as well as to begin to feel safe and gain trust before they

²⁹ William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), P.L. 110- 457 (Dec. 23, 2008).

³⁰ Betsy Cavendish & Maru Cortazar, *Children at the Border: The Screening, Protection, and Repatriation of Unaccompanied Mexican Minors*, Appleseed, 2011, available at: <http://appleseednetwork.org/wp-content/uploads/2012/05/Children-At-The-Border1.pdf>.

can effectively share their stories. For instance, NIJC client Carlie (pseudonym) initially denied being sexually abused, despite having suffered severe abuse from a young age:

Carlie came to the United States with her sister Esperanza after experiencing severe sexual trauma in Honduras. The sisters were only 12 and 13 years old, respectively, when their uncle first raped and beat them. He threatened to kill them and their siblings if they told anyone. After Carlie and Esperanza told their grandmother what happened, she reported the crime to the police, but their uncle was never arrested or charged with any crime. The sisters' step-grandfather was angry at them for accusing his nephew of rape and he beat the girls. Carlie and Esperanza's mother wanted to bring the girls to join her in the United States, where she had been living since 2008, for their safety. NIJC represented the girls in their successful asylum cases. Initially, the younger sister, Carlie, was in complete denial about the sexual trauma she had experienced. Her attorney was aware of the abuse because her older sister, Esperanza, was able to recount it. Carlie could only discuss the abuse after her attorney gained her trust over time and with the help of a therapist. The girls continue to work with therapists to overcome the trauma they experienced in Honduras.

Expedited processing makes it extremely difficult for child victims of violence and trauma, and their family members, to effectively make claims for asylum or other protections under U.S. law. It is difficult for immigrant children who have suffered abuse in their home countries or during their journeys to the United States to overcome the mental and emotional impact of that harm and to discuss their fears with strangers. Children continue to be in great need of the asylum protections provided under U.S. law. It is of utmost importance that Congress continues to uphold and expand current standards to protect children's due process rights.

B. Ensure U.S. Customs and Border Protection (CBP) agents are well-trained in best practices to work with children.

Children in many countries do not trust law enforcement that often turns a blind eye to or are complicit in the violence that pervades their lives. Yet under the TVPRA, Mexican children are required to immediately reveal their protection claims to CBP agents— law enforcement officials who have apprehended and detained them—in order to even have a chance at seeing an immigration judge, and without first being able to speak to attorneys. This distinct and expedited processing of children from contiguous countries should be terminated altogether so that all unaccompanied children receive full and fair hearings when facing deportation.

In addition, CBP should not house children for any great length of time. The standard of transferring children to the custody of the Office of Refugee Resettlement (ORR) within 72 hours should be upheld with proper oversight. NIJC's mass complaint to the DHS Office of Civil Rights and Civil Liberties and Office of the Inspector General on behalf of 116 unaccompanied children who were abused and mistreated in CBP custody demonstrates that CBP is not the appropriate agency to house or screen children for relief.³¹ Approximately one in four children in the complaint

³¹ Complaint to DHS from NIJC *et al.*, regarding The Systematic Abuse of Unaccompanied Immigrant Children by U.S. Customs and Border Protection, Jun. 11, 2014, *available at*:

reported some form of physical abuse, including sexual assault, beatings, and the use of stress positions by CBP officials. More than half of the children reported various forms of verbal abuse, including racially and sexually charged comments and death threats. One 16-year-old girl reported that an immigration official verbally abused her and accused her of lying when she tried to explain the threats she faced in her home country. CBP does not have the specialized training needed to productively and compassionately interview children to learn what harm they have experienced and what they fear if deported. Children like Adrian (pseudonym) need professionals who have expertise working with children and survivors of violence to disclose past harm:

Seventeen-year-old Adrian was forced into sex trafficking by his aunt in Honduras. After Adrian's parents abandoned him, he lived with his grandma, aunt, and uncle. Beginning at age 12, his aunt started exploiting both him and his grandma for labor. In addition, she forced Adrian and his cousin to do sex work. She threatened them with starvation if they did not cooperate, and was particularly abusive to Adrian because he is gay. Adrian's grandma tried to protect him and his cousin from their aunt, but she was unaware of the sexual exploitation. After Adrian attempted suicide, his grandma sent him north. His coyote raped him multiple times during his journey. Initially, Adrian completely denied experiencing any past abuse and claimed that he had a good relationship with his family in Honduras and that his coyote treated him well during his journey. However, he showed signs of depression and struggled to answer questions. It took a long time for his NIJC attorney to build rapport with him and many sessions for him to fully disclose his past trauma. Adrian is eligible for asylum, Special Immigrant Juvenile Status (SIJS), and a T visa based on his past abuse and exploitation. He was released to a relative in Boston and is working with an attorney to apply for protection.

It is extremely difficult for all asylum seekers, but particularly for child asylum seekers, to understand how to request asylum at the border and articulate claims for protection. Children need attorneys to guide them through this process. Moreover, expedited processing in remote locations along the border makes it impossible for children to obtain legal counsel during this process.

III. Provide access to counsel for vulnerable populations including asylum seekers and unaccompanied immigrant children.

Under the current system, unaccompanied children and asylum seekers already face insurmountable challenges in pursuing legal protections in the United States. Without attorneys, it is virtually impossible for unaccompanied children to navigate the complicated U.S. immigration system. NIJC welcomed recent efforts by the Department of Justice³² and HHS³³ to fund legal representation for

<http://www.immigrantjustice.org/sites/immigrantjustice.org/files/FINAL%20DHS%20Complaint%20re%20CBP%20Abuse%20of%20UICs%202014%2006%2011.pdf>

³² Corporation for National and Community Service (CNCS) press release: "Justice Department and CNCS Announce New Partnership to Enhance Immigration Courts and Provide Critical Legal Assistance to Unaccompanied Minors," Jun. 6, 2014, available at: <http://www.nationalservice.gov/newsroom/press-releases/2014/justice-department-and-cnsc-announce-new-partnership-enhance>.

³³ Department of Health and Human Services, "Announcement of the Award of Two Single-Source Program Expansion Supplement Grants to Support Legal Services to Refugees Under the Unaccompanied Alien Children's Program," Fed. Register Vol. 79, Num. 200, Oct. 16, 2014, available at: <http://www.gpo.gov/fdsys/pkg/FR-2014-10-16/html/2014-24555.htm>.

some unaccompanied children, but without a right to counsel at government expense, many still struggle to find or afford attorneys and end up navigating the system alone.

Access to counsel is a critical factor affecting a child's ability to successfully articulate their need for legal protection. Non-detained respondents with representation are almost six times as likely to win their cases compared to those without representation.³⁴ Among family units, the chances of being allowed to stay in the United States increased more than 14-fold with representation.³⁵ Similarly, 73 percent of children with attorneys obtained relief from removal, while only 15 percent of children without attorneys were granted relief.³⁶ Legal counsel not only ensures that children receive a meaningful hearing, but makes immigration court proceedings more efficient. According to Dana Leigh Marks, president of the National Association of Immigration Judges, children are unable to assess what information a judge considers relevant to evaluate their cases, or might be afraid to disclose it.³⁷ Legal representation enables immigration judges to consider all relevant facts and ensure children are not deported back to dangerous or life-threatening situations. Children with representation are also more likely to appear for their court dates and obey court orders. Among children with attorneys, 95.4 percent did not receive *in absentia* orders.³⁸ Attorneys help ensure that children can navigate the system, thereby alleviating pressures on the already overburdened immigration courts.

Attorneys are particularly critical for navigating the U.S. asylum system, which is legally nuanced and requires considerable resources to support a successful application. An asylum seeker must gather country conditions reports, primary documentary evidence, affidavits from witnesses in their home country, and medical and psychological evaluations. The same holds true for those compiling documentation to support other protection-related applications, such as U visas for survivors of crime, T visas for survivors of trafficking, and SIJS petitions for certain children who have been abused, abandoned, or neglected. Government data and leading academic studies consistently show that detention and legal representation are significant factors in determining whether noncitizens are granted asylum or other forms of relief. Without legal counsel, it is virtually impossible for a child to effectively understand and navigate these complex processes in the face of the threat of deportation. NIJC clients Maria and Roxana (pseudonyms) were able to obtain relief in the United States with assistance from NIJC's *pro bono* attorneys:

³⁴ *Assessing Justice: The Availability and Adequacy of Counsel in Removal Proceedings* (p. 1), http://www.cardozolawreview.com/content/denovo/NYIRS_Report.pdf.

³⁵ Transactional Records Access Clearinghouse, *Representation Makes Fourteen-Fold Difference in Outcome: Immigration Court "Women with Children" Cases*, Syracuse University, Jul. 2015, available at: <http://trac.syr.edu/immigration/reports/396>.

³⁶ Transactional Records Access Clearinghouse, *Representation for Unaccompanied Children in Immigration Court*, Syracuse University, Nov. 25, 2014, available at: <http://trac.syr.edu/immigration/reports/371>.

³⁷ Laura Meckler & Ana Campoy, "Children Fair Better in U.S. Immigration Courts if They Have an Attorney," WALL STREET JOURNAL, July 16, 2014, available at: <http://online.wsj.com/articles/children-fare-better-in-u-s-immigrant-courts-if-they-have-an-attorney-1405531581>.

³⁸ Mark Noferi, "Taking Attendance: New Data Finds Majority of Children Appear in Immigration Court," IMMIGRATION IMPACT, Jul. 18, 2014, available at: <http://immigrationimpact.com/2014/07/18/taking-attendance-new-data-finds-majority-of-children-appear-in-immigration-court/#sthash.9IvrHJ9W.dpuf>.

Maria and Roxana are 11- and 14-year old sisters from El Salvador. When they were very young, their parents came to the United States hoping to provide a better life for them and left them in the care of their grandfather. Unbeknownst to the parents, the grandfather neglected and abused the girls until they eventually ran away to live on the streets. With the help of another family member, Maria and Roxana fled to the United States. DHS apprehended them at the border, placed them in removal proceedings, and then transferred them into the custody of the HHS Office of Refugee Resettlement until they could be released to their parents in Indiana. Through NIJC, Jessica and Roxana were able to obtain pro bono attorneys to help them understand the immigration process and to identify any potential relief. At their hearing in the Chicago Immigration Court, the immigration judge decided to administratively close Jessica and Roxana's cases, so they can remain with their parents and begin to heal from the abuse they have suffered.

Without representation, these young girls would have been unable to navigate the immigration court system and would have been at risk of deportation to a country where they faced abuse and neglect.

IV. Recommendations and Conclusion

As a nation committed to human rights, we must ensure that asylum seekers are treated humanely and receive robust access to legal protections. To maintain our great legacy as a beacon of hope for those fleeing harm, the U.S. government and Congress must:

- 1. Provide a comprehensive humanitarian package of relief for those fleeing violence in the Northern Triangle countries by:**
 - A. Expediting processing of applications submitted under the CAM program** to ensure that children fleeing immediate danger are able to receive protection in a timely manner. The U.S. government should examine best practices from the U.S. Refugee Program to efficiently and expeditiously process refugees. For those children who must remain in their home countries for long periods while their applications are processed, emergency shelters should be established in the region to ensure children have safe places to stay.
 - B. Appointing counsel to all children and vulnerable populations in proceedings.** Access to counsel is critical to help children and vulnerable populations navigate the complex immigration system and increases the efficiency of an already overburdened immigration court system.
 - C. Designating El Salvador, Guatemala, and Honduras for TPS.** Current conditions in the Northern Triangle countries merit TPS protections. TPS designation will ensure that people are not deported back to dangerous situations.
- 2. Maintain due process protections provided to unaccompanied children under the TVPRA.** Children cannot be expected to clearly articulate their need for legal protection at the border. They must have ample time to recover from their journeys and work with attorneys who can assess their eligibility for legal protections.
- 3. Ensure that all unaccompanied children receive due process,** which is critical to ensuring that children are not deported back into harm's way. DHS should not delegate screening responsibilities for unaccompanied children to CBP. Screenings should continue to be conducted by asylum officers at U.S. Citizenship and Immigration Services.

Statement of
Scalabrinian International Migration Network (SIMN)
Subcommittee on Immigration and Border Security
House Judiciary Committee
on
Unaccompanied Minors and Families Fleeing Central America
February 4, 2016

The Scalabrinian International Migration Network (SIMN) is a network of over 270 facilities--shelters, schools, orphanages, and community centers--and eight educational institutes worldwide operated by the Congregation of the Missionaries of San Charles, Scalabrinians, a Catholic religious order consisting of over 700 priests and religious and thousands of lay people globally. Our congregation also operates in the United States, offering social and legal services to immigrants in Florida, Maryland, New York, Massachusetts, and Illinois.

The purpose of the network is to provide protection and support to migrants who have left their home countries because of violence, poverty, or other forms of forced migration, including refugees, victims of human trafficking, and asylum-seekers.

SIMN operates migrant shelters in Tapachula, Nuevo Laredo, and Tijuana, Mexico; Tecun Uman and Guatemala City, Guatemala; and San Salvador, El Salvador. Since the spring of 2014, we have served over 100,000 migrants in these shelters, mostly unaccompanied minors and young mothers with children fleeing violence in the northern triangle countries of Central America--Guatemala, Honduras, and El Salvador.

From our experience with these persons, it is clear that they are fleeing threats and violence in their communities, towns, and cities. In some cases they are attempting to reach family members and safety in the United States, while in others they are merely looking for a safe haven in order to protect themselves and their families. To be sure, there are mixed incentives for those we serve in our shelters--some seeking work, some seeking family, some seeking security, and some seeking a better future--but the common theme of their stories is the breakdown of the rule of law and the lack of opportunities in their home countries.

Moreover, these persons are particularly vulnerable, as they are subject to abuse by gang members, drug cartels, and human smugglers. From the stories we hear in our shelters and other facilities, they have experienced assaults, robberies, and sexual violence, not only from criminal elements but in some cases law enforcement. Our shelters provide them some protection for a while, but inevitably they are again exposed to these dangers, often with disastrous and inhumane results.

Pope Francis, who spoke to this body in September, 2015, is aware of the danger facing these children and families. In July 2014, he wrote the Holy See-Mexico colloquium on migration and development to state that the unaccompanied minors fleeing violence in their home countries should be “welcomed and protected.”

Overview of migratory flow

As has been documented, more than 120,000 unaccompanied minors and families--young mothers with children--have entered the United States since April, 2014. Over the past four months, the number of unaccompanied children and families arriving at the Southwest border has increased dramatically, having nearly tripled over the same time period in 2014.

This more recent flow, however, is indicative of a larger trend from the region which began as early as 2010, over five years ago, which is indicative of the breakdown in governance in parts of Central America. A recent study by the Center for Migration Studies of New York (CMS) (cmsny.org), the U.S.-based Scalabrinian education institute and think tank, revealed a 5 percent increase in the number of Central Americans without legal status in the United States between 2010 and 2014.

In the study, CMS found that undocumented immigrants from El Salvador increased by 3 percent; from Guatemala by 7 percent; and Honduras 11 percent. It is likely that outmigration from El Salvador increased in 2015, as well, given the increased murder rate of 91 per 100,000 persons over the past year due to increased gang violence.

These numbers are significant because of the *decrease* in the undocumented population from other Latin American and Caribbean nations, with a 22 percent decrease from South America and a 9 percent decrease from the Caribbean, and a 9 percent decrease from Mexico. Most significantly, Nicaragua, next door to the three northern triangle nations and one of the poorest nations in the region, experienced a 17 percent decrease over the same time period.

The CMS study is consistent with the fact that the migratory flow from these three nations over the past five years is driven by different factors than other countries in Latin America. Violence, persecution, and the breakdown of the rule of law, as well as the lack of opportunity, are among the push factors from the northern triangle nations. This indicates that receiving nations, including the United States and Mexico, should adapt their immigration policies accordingly.

U.S. and Mexican response to the migratory flow

The SIMN network has grown increasingly concerned with the deterrence policy employed by the United States and Mexico in response to this migratory flow. The use of family detention, the interdiction of these vulnerable populations by Mexican authorities, and the recent enforcement

actions against families in the United States are evidence of this strategy. The increase in arrivals at the southern border in the past four months suggests that the forces pushing children and families to undertake the dangerous journey north are stronger than any U.S. deterrence policy.

SIMN is strongly opposed to the detention of families in the United States and the use of enforcement actions against them, as they both have detrimental impacts on already traumatized mothers and their young children. Moreover, the absence of due process in the U.S. asylum system, exacerbated by the use of detention and the absence of legal representation for a majority of these families, suggests that families may have valid asylum claims that have not been thoroughly adjudicated. The addition of 66 new judicial teams in the Fiscal Year 2016 is a welcome development which would decrease waiting times in the adjudication of these cases. However, without legal representation, many families and unaccompanied children are unable to effectively navigate the complex legal system and will not have a fair opportunity to have their stories heard.

SIMN also supports the strengthening of the Mexican asylum system, so that unaccompanied minors and families have a real opportunity to receive protection in Mexico. Currently, those who express a credible fear of persecution have to wait for months in detention, and many choose to return to their countries before making another attempt to migrate. Instead of deploying an enforcement regime and deportations in southern Mexico (*Frontera Sur*), the Mexican government, at the encouragement of the U.S. government, should look to streamline its asylum adjudication process, so that would-be refugees do not choose to return to danger and again risk their well-being on another dangerous journey.

To be fair, SIMN welcomes the recent announcement by the U.S. government to expand refugee processing in the Central American region, in coordination with the United Nations. This initiative provides unaccompanied minors and families an alternative to trusting unscrupulous smugglers and taking a dangerous journey north. It also encourages nations of the region to accept some of these refugees, sharing the burden of the flow among nations. Finally, it acknowledges that these children and families are indeed in need of refugee protection and should not be treated as criminals.

Policy Recommendations

As service providers to persons fleeing violence in Central America, SIMN has unique knowledge of the situation on the ground in Mexico and Central America. From this perspective, we offer the following policy recommendations to ensure that children and families fleeing from Central America receive the appropriate protection:

The Administration should halt enforcement actions against vulnerable families fleeing violence in Central America. Although, consistent with Catholic teaching, we acknowledge the right of the U.S. government to enforce its laws, we oppose the deportation of vulnerable families because of 1) the lack of legal representation for these families and 2) their vulnerabilities if returned to their home countries. Only 47 percent of the 121 persons apprehended during the enforcement actions of the first weekend of January possessed legal representation. Further, a number among the group had their appeals waived for failing to meet a 1-year filing deadline before the Board of Immigration Appeals, suggesting that they were unrepresented. Finally, 12 of the group had their deportations stayed because of the absence of due process.

Moreover, country conditions in the northern triangle, with endemic gang violence, should give the Administration justification to remove these families from their priority enforcement program. As potential refugees who are at-risk, they should be seen as an exception to the PEP categories, so that the Administration's preferred priority of "felons not families" is consistent.

The Administration should designate and re-designate Temporary Protected Status (TPS) for El Salvador, Guatemala, and Honduras. Because of the violence in these countries--Honduras and El Salvador rank among nations with the highest murder rates--a designation of TPS for Guatemala and a re-designation for Honduras and El Salvador would ensure that this population is protected until the conditions in their countries improve.

Congress should appropriate funding for legal representation for unaccompanied minors. Unaccompanied minors should receive assistance in navigating the complex immigration court system, given their age and vulnerability. This would assist the bar in representing these children and permit them to better apply private resources to the representation of families. Without legal representation, children are three times more likely not to obtain immigration relief.

The Administration should end family detention and use alternative forms of detention, particularly community-based service alternatives operated by qualified NGOs. Instead of spending tens of millions of dollars on the detention of families, the Administration should create a nationwide program which places families in the community, assisted by social service providers experienced in child and family welfare. Such programs are cost-efficient and have been proven to ensure that participants appear at their asylum hearings. They also ensure that these families receive housing, access to legal representation, and other necessities. The program recently launched in five cities is a promising start, but should be expanded and have a service focus, not an enforcement one.

The Administration should expeditiously expand refugee resettlement in the region, work with local partners to identify persons at -risk, and use the best interests of the child standard for adjudicating the cases of unaccompanied minors.

As mentioned earlier in the testimony, SIMN strongly supports the expansion of refugee resettlement in the Central American region as an alternative solution to migration for families and unaccompanied minors seeking protection. SIMN also welcomes this initiative as it provides the Scalabrinian fathers and sisters in the region a place to refer unaccompanied minors and families who they encounter in their shelters and other facilities. In our shelters, SIMN provides information to migrants on the dangers of their journey, although many decide to continue despite these warnings. Providing them with an alternative to this dangerous journey would strengthen our ability to care for them and safeguard their well-being.

We strongly encourage the United Nations High Commissioner for Refugees (UNHCR) and the U.S. government to receive referrals from our shelters in the new expanded refugee resettlement program. SIMN seeks to work collaboratively with the U.S. government in identifying refugees and working as advocates on their behalf.

We also encourage UNHCR and the State Department to employ a best interests of the child standard to unaccompanied minors considered for resettlement in the program. This standard would ensure that children are placed with family and in a secure and healthy environment. Child welfare experts should be utilized in this process.

SIMN also encourages the continuation of the Central American Minors (CAM) program, which helps minors reunite with family members in the United States. The CAM program can reach another element of the population who may not be able to leave their countries and who may be able to receive humanitarian parole. Improvements in the program are needed, including more wide-ranging publication of the program, safe and secure areas for minors to relocate during the interview process, and an expansion of eligibility to other family members in the United States, such as uncles, siblings, and other family members who are thoroughly vetted.

A comprehensive re-integration program should be implemented for those who are returned to their countries.

For those who are returned, such as the 77 persons in families recently deported, a comprehensive reintegration program should be created in these countries to help ensure the safety of returnees. Such a model would include the placement of returnees in secure areas and the provision of follow-up services to help adults find employment and children to enroll in school. An effective program along these lines would help prevent those who are returned from desperately seeking the assistance of smugglers to try to migrate again, at risk of their well-being.

Congress should appropriate funds that address the causes of migration in the northern triangle nations.

SIMN applauds the appropriation of \$750 million for the nations of the northern triangle. The bulk of the funding should be applied to economic assistance in poor areas and the development of youth programs which give young people hope for their future. Programs which give youth training and skills to forge a future and job creation programs can help them remain in their home countries and make a living, giving them some hope.

Conclusion

SIMN works each day with these vulnerable children and families. We hear their stories and feel and understand their fear. It is in this spirit, and in the best interests of these families and children, that we testify today.

It is clear to our network and the Scalabrinian fathers and sisters that work in the shelters of Mexico and Central America that this crisis will not end soon. It will take time for these countries to become safe again for these families and children. Until such time, we ask for your thoughtful consideration of our recommendations. We look forward to working with the U.S. government and Congress in resolving this crisis as soon as possible.



Evangelical Lutheran Church in America

God's work. Our hands.

Statement for the Record - House of Representatives Committee on the Judiciary,
Subcommittee on Immigration and Border Security

“Another Surge of Illegal Immigrants along the Southwest Border: Is this the Obama Administration’s New Normal?”

Evangelical Lutheran Church in America
February 4, 2016

“How do we know that the love of God dwells in us? If we take upon ourselves the need of our neighbor”

- Martin Luther

The Evangelical Lutheran Church in America (ELCA), a church of more than 3.7 million members and 9,300 congregations nationwide, thanks the Subcommittee on Immigration and Border Security of the House of Representatives for the opportunity to submit this statement for the record. The ELCA accompanies Lutheran churches and other faith communities in El Salvador, Guatemala and Honduras, known together as the Northern Triangle, as they start new congregations, expand theological education and pursue justice and peace locally. Because of this work, the ELCA has strong ties to young people and families from the region that are facing a humanitarian crisis and, in many cases, are forced to flee their homes. This forced displacement of children and families from Central America is caused by complex and interrelated factors that include targeted violence against community members, an inability of governments to protect their citizens, lack of economic opportunities, and environmental degradation. **The only way to appropriately and effectively address migration of thousands from Central America is to focus on long-term solutions for bettering the conditions that cause people to flee, while also ensuring the immediate protection of children, families and other targeted men and women.**

Violence targeted at young people continues to be a critical factor in the internal and external displacement of children and families. The Northern Triangle is home to four of the most violent cities in the world. In 2015, violence in El Salvador reached levels not seen since its civil war, with murder rates increasing approximately 70% from the year before.¹ In addition, these three countries also have some of the highest rates of female homicides globally.²

As some of the most trusted institutions in communities throughout the region, churches understand the critical and immediate need for protection that this violence causes. Lutheran churches in the region regularly encounter cases where children and families have been threatened and

¹ Partlow, Joshua. Why El Salvador became the hemisphere’s murder capital. Washington Post. January 5, 2016. Accessed February 2, 2016

² Geneva Declaration on Arm Violence and Development. When the Victim is a Woman. Accessed February 2, 2016

given 24 hours to leave their homes. In the past year, these churches have reported an increase in entire families having to flee due to threats. Recently, a Sunday school teacher³ in Honduras reported that their class was reduced from 120 children to approximately 20 because so many families have fled violence, and those who remain fear what might happen to their children while they travel to church. These fears are echoed by teenage leaders in the Lutheran church in El Salvador, who avoid visiting their friends' houses because they must cross gang territory to get there, or they must pay a fee to the ruling gang to safely travel within their neighborhood.

Multiple organizations have quantified the crucial need to protect citizens of El Salvador, Honduras and Guatemala. The United Nations High Commissioner for Refugees (UNHCR) reported an increase of 1,185 percent in asylum applications from these three countries in the surrounding Central American region, including Mexico. In addition, UNHCR highlighted stories of women who fled gender-based violence and their critical need for protection in a recent study.⁴

In 2015, after approximately 70,000 unaccompanied children from the Northern Triangle arrived in the U.S., ELCA leadership traveled to the region and interviewed children, families, government officials, and faith leaders to understand the root causes that drive so many to flee.⁵ We witnessed that, even after media exposure of the plight of thousands of children and families from Central America skyrocketed, appropriate services to welcome and, most importantly, protect those fearing for the safety were non-existent in these countries. Conditions that forced children to flee their communities by the thousands have not been addressed and forced displacement continues.

The ELCA is working to honor our calling to love our neighbor and seek their protection by accompanying our partners in Central America who are leading programs that address the root causes of forced displacement and providing services during repatriation. While the U.S. government approved funding that focuses on the long-term change in the Northern Triangle in recently passed appropriations legislation, it is imperative that Congress ensures the immediate protection of children, families and other vulnerable migrants. Funding long-term programs that focus on alleviating violence, poverty, and lack of educational and economic opportunities, while addressing the protection needs of children and families, is the only responsible and effective way to address the forced displacement from Central America.

³ Names or identifying information have not been provided for security reasons.

⁴ United Nations High Commissioner for Refugees. [Women on the Run](#). October, 2015. Accessed February 2, 2016

⁵ Our findings are outlined in our report, [Our Communities in Crisis: A faithful look at the root causes of Central American forced displacement and the repatriation of children and families after the Summer of 2014](#).



Testimony for the Record of

Kristyn Peck, Associate Director of Children's Services
United States Conference of Catholic Bishops' Migration and Refugee Services
On Behalf of the U.S. Conference of Catholic Bishops Committee on Migration

For a Hearing of the

House Judiciary Subcommittee on Immigration and Border Security

Regarding

"Another Surge of Illegal Immigrants Along the Southwest Border: Is this the Obama Administration's New Normal?"

2141 Rayburn House Office Building

February 4, 2016

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I would like to thank Chairman Gowdy, and Ranking Member Lofgren, and all of the members of the House Judiciary Subcommittee on Immigration and Border Security for the opportunity to share our findings, reflections, and recommendations regarding this special population of vulnerable children and families who are very close to the heart of the church.

I am Kristyn Peck, Associate Director of Children's Services for Migration and Refugee Services of the U.S. Conference of Catholic Bishops (MRS/USCCB). I oversee the Catholic Church's response to the treatment and care of unaccompanied children in the United States.

I am testifying today on behalf of the U.S. Conference of Catholic Bishops Committee on Migration to discuss the "surge" of migrants at our southwest border; our perspective that this is a refugee flow; and our recommendations for strengthening a humanitarian protection response. Our perspective, Mr. Chairman, is based on our experience in Central America, as well as our experience providing services to Central American children and families who are living in the United States. And our recommendations are rooted in Catholic Teaching principles, best practices in humanitarian law, and our experience as the largest refugee resettlement agency in the world.

I note that the protection of migrant children is an especially important issue for the Catholic Church, as one of Jesus' first experiences as an infant was to flee for his life from King Herod with his family to Egypt. Indeed, Jesus Himself was a child refugee fleeing violence just as many of the children from Central America are forced to flee today.

In order to address this situation with the compassion and humanity that it deserves, the USCCB Committee on Migration recommends that the United States Government – Strengthen avenues to international protection for these children and families; Address the root causes that compel children to leave their countries and seek protection; and Address the surge as refugee crisis requiring coordination of all branches of the U.S. government.

I address each of these recommendations in detail in my testimony.

In my testimony today, Mr. Chairman, you will hear directly from Central American families and children-- those who I met during an assessment trip to Central America, and from those served through our programs who continue to arrive to the United States seeking safety and protection.

CATHOLIC SOCIAL TEACHING ON MIGRATION

I'd like to start with sharing principles of Catholic Social Teaching that guide our response to migrants and refugees. As you know, the Catholic Church is an immigrant, refugee church, with more than one-third of Catholics in the United States being of Hispanic origin and more than 58 ethnic groups from throughout the world. The Catholic Church has a long history of involvement in child protection and refugee and asylum protection, both in the advocacy arena and in welcoming and assimilating waves of immigrants, refugees, and asylum seekers who have helped build our nation. The Catholic Church's work in assisting unaccompanied migrant children and migrant families stems from the belief that every person is created in God's image. In the Old Testament, God calls upon his people to care for the alien because of their own alien experience: "So, you, too, must befriend the alien, for you were once aliens yourselves in the land of Egypt" (Deut. 10:17-19). In the New

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Testament, the image of the migrant is grounded in the life and teachings of Jesus Christ. In his own life and work, Jesus identified himself with newcomers and with other marginalized persons in a special way: “I was a stranger and you welcomed me.” (Mt. 25:35). Jesus himself was an itinerant preacher without a home of his own, and as noted above, he was a child migrant fleeing to Egypt to avoid violence, persecution, and death. (Mt. 2:15).

In modern times, popes over the last 100 years have developed the Church’s teaching on migration. Pope Pius XII reaffirmed the Church’s commitment to caring for pilgrims, aliens, exiles, and migrants of every kind, affirming that all peoples have the right to conditions worthy of human life and, if these conditions are not present, the right to migrate.¹ Pope John Paul II stated that there is a need to balance the rights of nations to control their borders with basic human rights, including the right to work: “Interdependence must be transformed into solidarity based upon the principle that the goods of creation are meant for all.”² In his pastoral statement, *Ecclesia in America*, John Paul II reaffirmed the rights of migrants and their families and the need for respecting human dignity, “even in cases of non-legal immigration.”³ Finally, Pope Francis, in his speech to the Joint Session of the United States Congress, referred to the flow of Central American migrants to the United States, “On this continent, too, thousands of persons are led to travel north in search of a better life for themselves and for their loved ones,” and implored us to “not be taken aback by their numbers, but rather view them as persons, seeing their faces and listening to their stories, trying to respond as best we can to their situation. To respond in a way which is always humane, just and fraternal.”⁴

In their joint pastoral letter, *Strangers No Longer: Together on the Journey of Hope*, A Pastoral Letter Concerning Migration, January 23, 2003 (*Strangers No Longer*), the U.S. and Mexican Catholic bishops further define Church teaching on migration, calling for nations to work toward a “globalization of solidarity.”⁵ In *Strangers No Longer*, the bishops stressed that vulnerable immigrant populations, including unaccompanied children and refugees, should be afforded protection. To this end, the bishops noted that unaccompanied children, due to their heightened vulnerability, require special consideration and care. *Strangers No Longer* also addresses the importance of families and notes that humanitarian considerations for families should also be a priority when considering migration issues.⁶

Mr. Chairman, the Catholic Church’s work in assisting unaccompanied migrant children stems from the belief that every person has a unique and sacred dignity. This dignity is not bestowed by governments or by laws or based upon their wealth or where they happen to be born. It is inherent within the human being. We seek to be consistent in acknowledging the implications of this, namely that from the time we come to be in our mother’s womb until the moment our life comes to an end we are deserving of

1 Pope Pius XII, *Exsul Familia* (On the Spiritual Care of Migrants), September, 1952.

2 Pope John Paul II, *Sollicitudo Rei Socialis*, (On Social Concern), December 30, 1987, No. 39.

3 Pope John Paul II, *Ecclesia in America* (The Church in America), January 22, 1999, no. 65.

4 Pope Francis, Visit to the Joint Session of the United States Congress, Address of the Holy Father, September 24, 2015, retrieved on January 22, 2016 from http://w2.vatican.va/content/francesco/en/speeches/2015/september/documents/papa-francesco_20150924_usa-us-congress.html

5 *Strangers No Longer, Together on the Journey of Hope*, Pastoral Statement Concerning Migration from the US and Mexican Catholic Bishops, ¶182 January 2003.

6 *Strangers No Longer Together on The Journey of Hope*, Pastoral Statement Concerning Migration from the US and Mexican Catholic Bishops, January 2003.

respect and care. This is true of the unborn child, the person with disabilities, the immigrant, the prisoner, and the sick. The more vulnerable and weak a person is the more they are deserving of our love. This we understand to be the mark of the Christian and of a healthy society.

For these reasons, while the Catholic Church recognizes governments' sovereign right to control and protect the border, we hold a strong and pervasive pastoral interest in the welfare of migrants, including unaccompanied children, and welcome newcomers from all lands. The current forced migration continuum of unaccompanied children and families traveling through Mexico and Central America and towards the U.S.-Mexico border, often at the hands of ruthless human smugglers and traffickers, frequently leads to severe traumatization and exploitation of children, violence, family separation, maltreatment and even death and must be closely examined. While briefly describing the need to address the root causes propelling children to migrate alone, the need to implement prevention and alternative to migration programs in the home country and in transit countries, I will conclude with recommendations for a comprehensive response to this humanitarian crisis.

THE CATHOLIC RESPONSE AND CARE FOR UNACCOMPANIED CHILDREN

Inspired by the principles of Catholic Social Teaching, the vision of MRS/USCCB is “creating a world where immigrants, refugees, migrants, and people on the move are treated with dignity, respect, welcome, and belonging.”⁷ USCCB has been a leader in the protection of and advocacy for refugees and immigrants and the institutional Catholic Church in the United States has played a critical role in the resettlement of refugees and the care of unaccompanied refugee and at-risk children. By virtue of our mission, organizational structure, and geographical reach, the U.S. Catholic Church early on has assumed a strong leadership role in the treatment and service of refugees and unaccompanied children. In the last several years, we have continued to urge a comprehensive protection approach to this regional, humanitarian crisis not only by the United States but also by El Salvador, Honduras, Guatemala, and Mexico.

Through its partnerships with more than 80 Catholic Charities across the country, MRS/USCCB is the largest refugee resettlement agency in the United States, resettling one million of the three million refugees who have come to our country since 1975.

Since 1994, USCCB has operated the Safe Passages program. This program serves children who arrive alone to the United States, who are apprehended by Department of Homeland Security (DHS) and placed in the custody and care of the Office of Refugee Resettlement (ORR), within the Department of Health and Human Services (HHS). Through cooperative agreements with HHS/ORR, and in collaboration with more than 225 community-based social service agencies, the program provides short-term and long-term foster care to unaccompanied children in HHS/ORR custody, home studies of sponsors prior to the release of children, and post-release services to children released from HHS/ORR custody to their families. Services received by children served in the Safe Passages foster care programs through our cooperative agreement with HHS/ORR include food, a safe placement with a foster family licensed by the state, clothing, medical and mental health screening and care, and education, provided by the foster care agencies on-site. In fiscal years 2011—2015 (October 1st, 2010– September 30, 2015), the USCCB/MRS Safe Passages program served 9,205 youth who arrived as unaccompanied children—6,351 through its Family Reunification Program and 1,846 through its foster care programs. USCCB/MRS's Safe

⁷ USCCB, Migration and Refugee Services, “About Us,” retrieved on January 24, 2016 from <http://www.usccb.org/about/migration-and-refugee-services/>

Passages also provided direct legal representation for 1,008 children released from HHS/ORR custody and Child Advocacy services for 190 of these children. We are also one of only two agencies authorized by the Department of State to place unaccompanied refugee minors in a specialized foster care program called the URM program.

The Catholic Legal Immigration Network, Inc. (CLINIC), a sister agency of USCCB, supports a rapidly growing network of church and community-based immigration legal service programs. CLINIC's network now consists of over 212 member organizations serving immigrants and their families, including asylum seekers and unaccompanied children, in over 300 offices. CLINIC member organizations across the United States provide legal services and representation to many of these at-risk children after their arrival. Some of the children qualify for asylum protection, some for visas as abused, abandoned, and neglected children, and others as victims of trafficking or of serious crimes.

Catholic Relief Services (CRS) is the official international humanitarian agency of the Catholic Bishops in the United States. CRS does outreach to over 85 million people in 101 countries on five continents, including extensive outreach in Central America and Mexico. CRS has worked extensively on prevention programs in the Northern Triangle, most notably El Salvador. Through its Youth Builders project, CRS (El Salvador) and its partners provide at-risk youth with peer support, vocational and entrepreneurial training, job-placement, life skills and leadership development, and community service opportunities. This project targets youth who are at risk of unemployment, of violence—as victims and as perpetrators—and of forced migration. CRS, in partnership with Caritas International, strengthens diocesan programs to work with at-risk youth through a network of community and government agencies. Through these projects, CRS has served more than 4,000 young people.⁸

In the last year, USCCB and the other eight refugee resettlement agencies in the United States have begun to work with the U.S. Department of State and the Department of Homeland Security to help make CAM⁹, an in-country resettlement processing program in El Salvador, Honduras, and Guatemala, a successful refugee and child-protection program. USCCB's work on this is being done in collaboration with Catholic Charities affiliates and CLINIC partners across the country. And in the last month, USCCB and the other resettlement agencies have begun providing feedback to the U.S. government on its plan to begin a refugee resettlement program for Central Americans from Guatemala, Honduras, and El Salvador.

A REFUGEE CRISIS: THE FLOW OF CENTRAL AMERICAN CHILDREN AND FAMILIES TO THE UNITED STATES

As I've demonstrated, Mr. Chairman, MRS/USCCB, CLINIC, and CRS have an extensive and comprehensive history of service to children and families from Central America, and have reported our observations, findings, and concerns about what appeared to be an emerging refugee crisis and what we now see as a refugee crisis for the past several years. We began to see a changing demographic and

⁸ Catholic Relief Services, CRS in Central America, South America & the Caribbean, retrieved on January 22, 2016 from <http://www.crs.org/our-work-overseas/where-we-work/central-america-south-america-caribbean>

⁹ U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS), "In-Country Refugee/Parole Processing for Minors in Honduras, El Salvador and Guatemala (Central American Minors – CAM)" retrieved on January 25, 2016 from <https://www.uscis.gov/CAM>

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narrative amongst the Unaccompanied Alien Children (UAC)¹⁰ served in our programs beginning in 2010, which we documented in a study of 98 UAC served through our foster care programs from Fiscal Year 2008—Fiscal Year 2011, of which the results were published in December 2012.¹¹ Among the findings include telling characteristics of a refugee flow—we saw more girls traveling alone than in years past (the number more than doubled from FY 2009 to FY 2010)¹²; more children reporting fleeing violence in their home country as motivating their migration (by FY 2010, more than 50 percent)¹³; and increasingly complex trauma histories (about 85 percent of children reported having some type of traumatic experience prior to entering HHS/ORR custody)¹⁴.

Coinciding with these findings, the United States reported an unprecedented increase in the number of UAC arriving to the United States. In Fiscal Year 2012 (October 1, 2011 – September 30, 2012), the number of UAC referrals to HHS/ORR, the federal agency charged with the custody and care of UAC until they are reunified with families, nearly doubled from previous years, with a total of 13,625. That number has continued to increase—“since FY2012, the program has received 24,668 UC referrals from DHS in FY2013, 57,496 referrals in FY 2014 and 33,726 referrals in FY2015.”¹⁵ These children come from all over the world but predominately from Guatemala, El Salvador, Honduras and Mexico (in FY 2015, (17%); Guatemala (45%); El Salvador (29%); Mexico (6%), and Other Countries (3%).¹⁶

In November 2013, a delegation of the USCCB/MRS, under the leadership of Bishop Mark Seitz of El Paso and of which I was a member, embarked on a fact-finding mission to southern Mexico, El Salvador, Guatemala, and Honduras to examine and understand the flight of unaccompanied children and youth from the region and to stand in solidarity with these children and their families. In January 2014, we issued our findings from the trip in a report entitled, USCCB: Mission to Central America: Flight of the

10 Homeland Security Act of 2002, Pub. L. 107-296 §462(g), 116 Stat. 2135, 2205 (2002). “A UAC ‘(A) has no lawful status in the US, (B) has not attained 18 years of age, (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.”

11 U.S. Conference of Catholic Bishops/Migration and Refugee Services, “The Changing Face of the Unaccompanied Alien Child: A Portrait of Foreign-Born Children in Federal Foster Care and How to Best Meet Their Needs”, December 2012, retrieved on January 24, 2016 from http://www.usccb.org/about/children-and-migration/unaccompanied-refugee-minor-program/upload/A-Portrait-of-Foreign-Born-Children-in-Federal-Foster-Care-and-How-to-Best-Meet-Their-Needs_USCCB-December-2012.pdf

12 U.S. Conference of Catholic Bishops/Migration and Refugee Services, “The Changing Face of the Unaccompanied Alien Child: A Portrait of Foreign-Born Children in Federal Foster Care and How to Best Meet Their Needs”, pg. (i), December 2012, retrieved on January 24, 2016 from http://www.usccb.org/about/children-and-migration/unaccompanied-refugee-minor-program/upload/A-Portrait-of-Foreign-Born-Children-in-Federal-Foster-Care-and-How-to-Best-Meet-Their-Needs_USCCB-December-2012.pdf

13 U.S. Conference of Catholic Bishops/Migration and Refugee Services, “The Changing Face of the Unaccompanied Alien Child: A Portrait of Foreign-Born Children in Federal Foster Care and How to Best Meet Their Needs”, pg. 7, December 2012, retrieved on January 24, 2016 from http://www.usccb.org/about/children-and-migration/unaccompanied-refugee-minor-program/upload/A-Portrait-of-Foreign-Born-Children-in-Federal-Foster-Care-and-How-to-Best-Meet-Their-Needs_USCCB-December-2012.pdf

14 U.S. Conference of Catholic Bishops/Migration and Refugee Services, “The Changing Face of the Unaccompanied Alien Child: A Portrait of Foreign-Born Children in Federal Foster Care and How to Best Meet Their Needs”, pg. 8, December 2012, retrieved on January 24, 2016 from http://www.usccb.org/about/children-and-migration/unaccompanied-refugee-minor-program/upload/A-Portrait-of-Foreign-Born-Children-in-Federal-Foster-Care-and-How-to-Best-Meet-Their-Needs_USCCB-December-2012.pdf

15 U.S. Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement, “Unaccompanied Children Fact Sheet,” retrieved on January 24, 2016 from https://www.acf.hhs.gov/sites/default/files/orr/orr_uc_updated_fact_sheet_1416.pdf

16 U.S. Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement, “Unaccompanied Children Fact Sheet,” retrieved on January 24, 2016 from https://www.acf.hhs.gov/sites/default/files/orr/orr_uc_updated_fact_sheet_1416.pdf

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Unaccompanied Immigrant Children to the United States (USCCB Central America Report 2014).¹⁷ Mr. Chairman, I ask that USCCB Central America Report 2014 be included in the hearing record.

While poverty and the desire to reunify with family to attain security are ongoing motivations to migrate, we found that that an overriding symbiotic trend has played a decisive and forceful role in recent years: violence in the home and at the community and state level. Coupled with a corresponding breakdown of the rule of law, the violence has threatened citizen security and created a culture of fear and hopelessness that has pushed children and families out of their communities and into forced transit situations.

Mr. Chairman, let me share with you an experience from the assessment trip that paints a clear picture of the hopelessness felt by parents who, despite all of their efforts to protect their children, feel as if they are unable to do so. The USCCB/MRS delegation met with grandmothers, mothers, and aunts of children who were returning from Mexico, where they had been apprehended by Mexican immigration authorities on their route to the United States at a center run by Salvadoran immigration authorities for returned migrants in November 2013. A staff psychologist provided an orientation on the dangers of journey and the women listened to statistics about the number of children raped, mugged, beaten and injured along the migration route from El Salvador to the United States. The room was heavy with their fear and their grief. When the psychologist left, the women, one by one, shared, with tears in their eyes, the stories motivating the flight of their children.

One mother of a 16 year-old-girl who had been repeatedly harassed by a neighborhood gang said, “I know it’s not the best solution, but what else can we do? We have no place to go.” She told us that when she tried to work from home, cutting hair so she could be with her daughter, the gangs demanded she pay “la renta”. Unable to make payments, she closed her business and began working in a nearby town, leaving her daughter vulnerable to harassment by the gangs while she was away from home. “It’s an intolerable situation,” she said. “I know the journey is dangerous, but it’s dangerous here.”

During the mission to Central America, we visited migrant children shelters and listened to children as young as six years old speak solemnly of trafficking and exploitation that was inflicted upon them along their migration journey. The corresponding report that came out of the mission acknowledged that a new paradigm regarding unaccompanied children is upon us; namely it is clear that unaccompanied children are facing new and increased dangers and insecurity in their home countries and are fleeing in response. As a result, this phenomenon requires a regional and holistic solution rooted in humanitarian protection and child welfare principles. Since our mission and report issuance, many of the humanitarian challenges facing this vulnerable population have persisted and increased.

These are children like Ana, a 16-year old girl from Honduras who came to the United States when she was 15-years old and for whom MRS/USCCB is providing family reunification services. Ana was abandoned by her father and suffered physical abuse by an uncle while she was living with her grandparents in Honduras. She was raped, became pregnant as a result, and soon after she fled the country seeking safety in the United States. During her journey, she was kidnapped by the Zetas in Mexico, during which time she was forced into prostitution and also forced to witness the decapitation

¹⁷ USCCB/MRS, “Mission to Central America: Flight of the Unaccompanied Immigrant Children to the United States”, January 2014, retrieved on January 24, 2016 from <http://www.usccb.org/about/migration-policy/upload/Mission-To-Central-America-FINAL-2.pdf>

of 10 children. She is currently living with her mother and working with an attorney to apply for immigration relief.

Mr. Chairman, the ongoing violence, leading to coercion and threats to the lives of citizens— particularly women and children—of Guatemala, Honduras, and El Salvador is the overwhelming factor propelling their migration. In fact, according to data from the UN Office on Drugs and Crime, Honduras ranks first, El Salvador fifth, and Guatemala sixth for rates of homicide globally.¹⁸ Extortion, family abuse and instability, kidnapping, threats, and coercive and forcible recruitment of children into criminal activity perpetrated by transnational criminal organizations and gangs have become part of everyday life in these countries. In addition to the violence and abuse at the community and national level, transnational criminal organizations, such as the Mexican-based Zeta cartel, which deals in the smuggling and trafficking of humans, drugs, and weapons, operate in these countries and along the migration journey with impunity, and have expanded their influence throughout Central America.

The omnipresence of the violence, and the inability of the countries of the Northern Triangle to protect its citizens, prompted the United Nations High Commissioner for Refugees (UNHCR) to conduct a study in 2014 of 404 unaccompanied children in the United States who were from Mexico, Guatemala, Honduras, and El Salvador. Of the 404 children interviewed, UNHCR found that 58 percent “were forcibly displaced because they suffered or faced harms that indicated a potential or actual need for international protection.”¹⁹ Many of these children would be eligible under U.S. immigration law as asylees or as Special Immigrant Juveniles who have been determined to be abused, abandoned, or neglected by a parent or legal guardian in their home country. Our immigration system also provides protection for those who have been recognized as meeting the federal definition of human trafficking. Although children traveling alone may be the more compelling population, it’s important to note that women are also particularly vulnerable. The UNHCR conducted a study in 2015 of 160 women from Guatemala, Honduras, and El Salvador who had been recognized by the U.S. government as refugees or as having a credible or reasonable fear of persecution or torture. “Sixty-four per cent of the women described being the targets of direct threats and attacks by members of criminal armed groups as at least one of the primary reasons for their flight. Women also described incidents in which gang members murdered or were responsible for the forced disappearance of a loved one (e.g. a child, partner, or other close relative).”²⁰ All of the women interviewed by UNHCR who reported that they made reports to law enforcement in their respective home countries indicated that there was no follow up.

I note that the increase in violence in Guatemala, Honduras and El Salvador forcing children and adults out of their homes is affecting the entire region, not just the United States. For example, since 2008 Mexico, Panama, Nicaragua, Costa Rica, and Belize—the countries surrounding the Northern Triangle

18 UN Office on Drugs and Crime (UNODC), “Global Study on Homicide 2013”, March 2014, accessed on January 25, 2016 at https://www.unodc.org/documents/gsh/pdfs/2014_GLOBAL_HOMICIDE_BOOK_web.pdf

19 The United Nations High Commissioner for Refugees (UNHCR), “Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection,” (Washington, DC: UNHCR, 2014), 6. 3

20 The United Nations High Commissioner for Refugees, “Women on the Run”, October 2015, pg. 4, retrieved on January 25, 2016 from <http://www.unhcr.org/5630f24c6.html>

countries—“have seen the number of asylum applications from citizens fleeing the NTCA grow to nearly 13 times what it was in 2008.”²¹

Mr. Chairman, in our 2014 trip report we detail the increased violence against children and families in Central America. USCCB/MRS believes that a robust protection regime for persons fleeing violence must be implemented in Central America, Mexico, and the United States. We applaud the announcement by Secretary Kerry about increased in-country processing in Central America, and the implicit recognition in that announcement and plan that there is a refugee crisis in Central America. However, in-country processing is only one component of the need for a multi-pronged, comprehensive approach.

Based on information from Catholic partners in sending countries, and the stories told to us by children we serve, we see the following as reasons for the increased number of children forced to flee their homes and country to the United States and elsewhere:

- ❖ Violence perpetrated by organized transnational gangs, loosely-affiliated criminal imitators of gangs, and drug cartels, has permeated all aspects of life in Central America and is one of the primary factors driving the migration of children from the region. USCCB found that in each country—particularly Honduras and El Salvador—organized gangs have established themselves as an alternative, if not primary, authority in parts of the countries, particularly in rural areas and towns and cities outside the capitals. Gangs and local criminal actors operating in Honduras, El Salvador, and Guatemala have consolidated their bases of power, expanded and upgraded their criminal enterprises and honed their recruitment and terror tactics. In many cases, the governments are unable to prevent gang violence and intimidation of the general public, especially youth. USCCB heard accounts of gang members taking over public bus lines, infiltrating schools and forcing children to either join their ranks or risk violent retribution to them or their families. Even in prisons, incarcerated gang members are able to order violence against members of the community. There also were reports that law enforcement have collaborated with the gangs or at least have been lax in enforcing laws and prosecuting crimes. For example, according to Casa Alianza, an NGO that works in Honduras, 93 percent of crimes perpetrated against youth in Honduras go unpunished.²² The mothers of these children are often faced with an unspeakable choice—either send their child away to find safety in another country, usually with a smuggler on a dangerous journey, or risk having their child and family killed. As one mother in El Salvador told Bishop Seitz on our assessment trip, “I would rather my child die on the journey north than on my front doorsteps.”
- ❖ Localized violence has severely exacerbated the lack of economic and educational opportunities for youth and has led to stress on the family unit, family breakdown, and even domestic abuse, which leaves children unprotected and extremely vulnerable. The escalation in violence, combined with the lack of jobs and quality education, has led to a breakdown in the family unit, as male heads of households—or sometimes both parents—have left the country, leaving children behind with relatives, often grandparents. Children who have parents working abroad are especially vulnerable to community violence and forced migration as they can become targets for gang extortion—the so-called “renta”—due to the perceived or actual remittances they may receive. Additionally, as children enter teenage years and are increasingly at risk for victimization or recruitment by gangs, it

21 United Nations High Commissioner for Refugees, “Women on the Run”, October 2015, pg. 2, retrieved on January 24, 2016 from <http://www.unhcr.org/5630f24c6.html>

22 Interview with Casa Alianza (Covenant House) Honduras, Tegucigalpa, Honduras, November 20, 2013.

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becomes increasingly difficult for their relatives, especially elderly grandparents, to protect them. Schools no longer function as social institutions that offer a respite from the violence and instead have become de facto gang recruitment grounds.²³ As a result of being targeted because of their family situation or perceived wealth, children flee, as a strategy to escape the gangs, to help support the family, and to reunify with their parents or other loved ones, many of whom have been separated for years.

One of many examples of a youth served by USCCB/MRS who fled gang violence is the story of Juan.²⁴ Juan, a 17-year-old from El Salvador, was served by the USCCB/MRS Child Advocate program in 2015. Juan reported that was intimidated and threatened by a MS-13 gang member starting when he was 15-years-old. Juan said there were repeated attempts by the gang member to recruit him, and that one night, he received a phone call requesting that he meet the gang at the river bank at midnight. Juan said he did not show up and that the gang members knew where he lived and loitered around his home.

Shortly after, Juan shared that when he was coming home from watching a game, he was intercepted by six gangsters who questioned him for not showing up to the appointment at the river bank. Juan reported he was told he was “in trouble” for not showing up to the meeting and he was going to be “eliminated” if seen outside. Juan stated he became extremely nervous and terrorized, he feared for his life and as a result he had no choice but to stay indoors to avoid being seen by the gang members. Juan reported that gangsters continued to gather around his house on a daily basis and that’s why he fled to the United States. Juan stated that after he migrated to the United States, gangsters continue to intimidate his family in El Salvador and keep asking his mother for his whereabouts. Juan stated that his friend from El Salvador was recently assassinated by MS-13 gang members in September after refusing to join them.

Make no mistake about it, Mr. Chairman. While some have portrayed the increased number of children and families from Central American who have sought to enter the United States as a migration event that is motivated purely by economic or family reunification forces, the fact is that the majority of these families and children are either refugees or have other compelling protection needs. Moreover, while some have erroneously tied the increased number of arrivals to the Administration’s Deferred Action for Childhood Arrivals (DACA) program, there is, in fact no relationship between the two. As I have demonstrated earlier, the increased number of Central American arrivals began before the announcement of DACA. And other countries in the Latin American region that do not have a DACA-like programs have experienced dramatic increases in the number of Central American children fleeing to them to seek protection within their borders.

RECOMMENDATIONS FOR A COMPREHENSIVE HUMANITARIAN PROTECTION RESPONSE

Mr. Chairman, we commend the President and Congress for exhibiting bipartisan support for this vulnerable population by increasing funding for reception and placement services for unaccompanied children from Central America, as the number of children arriving to the United States has risen and remained high since FY2012. The long-term solution to the crisis is to address the push factors in Central

²³ Citizen Security with a Human Face: Evidence and Proposals for Latin America, Summary Regional Human Development Report 2013-2014, UNDP, November 2013, at 8.

²⁴ Name of the child has been changed to protect his identity.

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America that drive minors north. These would include improvements in education, employment, and citizen protection, for sure, but also improvements in the social service and child protection systems. Meanwhile, we need to ensure those who are fleeing violence have meaningful access to protection.

Mr. Chairman, in my testimony today, I recommend that Congress:

Recommendation 1: Strengthen avenues to international protection

a) Conduct Best Interest Assessments and Best Interest Determinations

Identification of children in need of protection poses a challenge in countries such as Guatemala, Honduras, and El Salvador where child protection systems are lacking or under resourced. The result is that children who are in need of protection are not proactively identified, resulting in harm, sexual assault or rape, recruitment into criminal organizations, and in the worst cases, death. Children who are unable to access protection may take upon themselves pursuit of protective measures and migrate to the United States in what is often a perilous journey with uncertain consequences and results.

UNHCR has a key role to play in the identification and protection of displaced Central American children. “Finding durable solutions that end displacement is at the core of UNHCR’s mandate” [Field Handbook, p. 51].²⁵ The 2012 UNHCR Framework for the Protection of Children²⁶ offers a concrete strategy for refugee and other displaced children, including both accompanied and unaccompanied children. The UNHCR Framework utilizes the best interest of the child as a guiding principle in all actions involving children and includes in its recommendations mapping protection needs of children, implementing Best Interest Determinations (BIDs), and strengthening comprehensive child welfare systems as crucial strategies for ensuring the best interest of the child. “A ‘best interests determination’ (BID) describes the formal process with strict procedural safeguards designed to determine the child’s best interests for particularly important decisions affecting the child. It should facilitate adequate child participation without discrimination, involve decision-makers with relevant areas of expertise, and balance all relevant factors in order to assess the best option.”²⁷

Recognizing that the current child protection capacity in El Salvador, Guatemala, and Honduras is seriously lacking, MRS/USCCB recommends that the Department of State partner with UNHCR and Central American governments and international NGOs with expertise in the intersection of child welfare and migration, to identify children in need of immediate protection through Best Interest Assessments, ensure immediate needs are addressed through referrals to local governmental and nongovernmental service providers, identify long-term durable solutions through BIDs, and refer children who are in need of international protection to the in-country refugee processing program for referral for resettlement. Support for UNHCR referrals for resettlement can be found in its field handbook— “UNHCR may submit refugees for resettlement consideration based on a number of criteria, such as legal and physical protection needs or medical needs, and several criteria have been

25 UNHCR, “Field Handbook for the Implementation of UNHCR BID Guidelines,” (Geneva, Switzerland: UNHCR 2011), p. 51.

26 UNHCR, “A Framework for the Protection of Children,” (Geneva, Switzerland: UNHCR, 2012).

27 UNHCR, “BID Guidelines,” (Geneva, Switzerland: UNHCR 2008), p. 8.

established specifically for children, including “Children and Adolescents”, “Family Reunification”, and “Women (and Girls) at Risk”.²⁸

b) In-country processing

MRS/USCCB applauds Secretary Kerry’s announcement that the United States will expand the U.S. Refugee Admissions Program (USRAP) to, in collaboration with the UNHCR, identify persons from Guatemala, Honduras, and El Salvador who are in need of international protection as a refugee.²⁹

MRS/USCCB recommended the use of in-country processing in Central America in our report on our fact-finding mission to Central America and has advocated since that what is occurring in Central America is a refugee crisis requiring an international protection response. In-country processing is a standard protection mechanism nearly as old as the Refugee Act of 1980 and is an accepted practice within refugee and humanitarian law. The United States has conducted successful in-country processing programs in such nations as Vietnam, the former Soviet Union, and Cuba.

As one prong of a multi-pronged approach to protection, in-country processing, when fully implemented, has several goals consistent with our national interests. First, it provides an alternate avenue for children and families in peril to reach safety in the United States, instead of taking the dangerous journey north. This helps honor our humanitarian obligations, consistent with domestic and international law, and reduces the number of children and families fleeing and arriving at our southern border. Second, it weakens the smuggling networks that prey upon these children and families, taking away their market, and reduces the chances that migrants become victims of human trafficking.

Third, it helps manage the flow of Central American migrants as one part of a broader strategy to address this challenging issue.

Thoughtful attention to the context and special needs of these children and their families and judicious use of necessary resources will help to achieve the important goals of the program.

Considerations include:

- ❖ Continue the use of and improvement of the Central American Minors Program (CAM), the in-country processing program in El Salvador, Honduras, and Guatemala established by the Bureau of Population, Refugees, and Migration of the U.S. Department of State (PRM/USDOS) for the provisions of providing safe and efficient processing of unaccompanied children in Central America. MRS/USCCB notes some concerns with the CAM program that need addressing— notably, that some eligible children may choose not to apply for CAM because of the immediate risks they face that do not allow them to wait out the resettlement process. Other children may qualify but their parent is not aware of the program or faces barriers to apply. There are likely to be an even greater number of children and youth who need protection from violence and persecution who will not even qualify to apply – by virtue of the fact that either they do not have a parent in the United States or their parent in the United States does not have legal status as identified by the CAM program. These children should be considered for in-country processing through the newly announced refugee program.

²⁸ UNHCR, “Field Handbook for the Implementation of UNHCR BID Guidelines,” p. 57.

²⁹ U.S. Department of State, “Refugee Resettlement in the United States: Fact Sheet,” January 13, 2016, retrieved on January 25, 2016 from <http://www.state.gov/r/pa/prs/ps/2016/01/251176.htm>

- ❖ Assure access to in-country processing—through the new refugee program and CAM. This requires outreach and education in Guatemala, Honduras, and El Salvador to ensure that persons who may qualify for in-country processing are aware of the program, and in the United States to ensure that qualifying parents are aware of the application process for their children. The application process needs to be understandable and children and families need to have safe, physical access to the process. Particular care must be paid to facilitate access for Mayan persons who may not understand or speak Spanish, may be illiterate in their Mayan language, and may live in rural areas far from city centers.
- ❖ Ensure safety during the application and interview process—for the refugee in country processing program and CAM. This requires that the applicants be protected from their persecutors, and special consideration given due to the fact that their vulnerabilities may be heightened if the persecutors become aware of their being processed as refugees. It needs to be as streamlined as possible both for the sake of program accessibility but also so that refugees are in danger for as short a time as possible during the pendency of the process. As necessary for their safety, staff needs to have the capability of evacuating children and other vulnerable groups from imminent danger. Regional cooperation is needed, as well as partnerships with the UNHCR, NGOs, and civil society institutions to ensure safe spaces, emergency transit mechanisms, and adequate service response to immediate protection needs.

c) Ensure Access to Asylum

The U.S. Government and UNHCR have recognized that we have a serious refugee crisis in Central America. The seriousness of the crisis and the dire needs of the refugees require a multi-pronged approach with multiple avenues to protection. One such avenue is the right of a person to flee their country spontaneously to seek asylum, as enshrined in international law and U.S. domestic law. MRS/USCCB would condemn any efforts by the U.S. government to restrict access to asylum or make asylum standards more stringent, deny or limit access to due process, deport children and families before ensuring they had a fair and reasonable opportunity to petition for asylum with support of an attorney, or encourage and support increased interdictions of Central American families and children arriving in Mexico before they have had meaningful access to asylum proceedings.

The Administration, as a part of their response to the humanitarian crisis of unaccompanied children arriving at our nation’s borders in 2014, noted their plans to work with Mexican and Central American governments “to improve the ability of Mexico and Guatemala to interdict migrants.”³⁰ Following this announcement, numbers of children and families arriving to the U.S. borders began decreasing, and reports of interception, detention, and summary deportation from neighboring Central American countries and Mexico and from other transit countries began increasing. In fact, in June 2015, the Washington Office on Latin America (WOLA) reported that interdictions and detention of Central Americans by Mexico between October 2014—April 2015 (92,889) had surpassed interdictions by U.S. Customs and Border Protection (CBP) during the same timeframe

³⁰ The White House, “U.S. Response to Central American Migrants at Southwest Border,” August 2014, retrieved on January 25, 2016 from <http://iipdigital.usembassy.gov/st/english/texttrans/2014/08/20140802304773.html?CP.rss=true#ixzz3yHcSIXTc>

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(70,448).³¹ It is important to note that Mexico has a dismal human rights record³², so it is unlikely the government is guaranteeing the rights of these foreign children.

The United States must exercise its leadership, diplomacy, and moral authority to ensure that child asylum seekers are identified, anywhere they may be in the region, screened appropriately, granted access to fair and efficient asylum procedures and other internationally acceptable child protection procedures, and that they are not returned to harm from the same countries which they are fleeing. The United States, in particular, has a responsibility to ensure that its own policies and aid to Mexico, Central American countries, and other countries in the region do not contribute to the problem of interception and therefore indirectly involve the United States in refoulement. There must be more transparency with regard to U.S. involvement in interception practices.

d) Protection for victims of human trafficking

MRS/USCCB has advocated for years for implementation of a PRM/DOS pilot in Mexico, pursuant to Section 104 of the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 08), which allows for the expeditious processing of human trafficking victims to the United States. Sec. 104 of the TVPRA 08 amends Sec. 107 (a) of the TVPA 2000³³ to require the “Secretary of State and the Administrator of the United States Agency for international development” to “establish and carry out initiatives in foreign countries” “in cooperation and coordination with relevant organizations, such as the United Nations High Commissioner for Refugees, the International Organization for Migration, and private nongovernmental organizations...for--(i) increased protections for refugees and internally displaced persons, including outreach and education efforts to prevent such refugees and internally displaced persons from being exploited by traffickers; and (ii) performance of best interest determinations for unaccompanied and separated children who come to the attention of the United Nations High Commissioner for Refugees, its partner organizations, or any organization that contracts with the Department of State in order to identify child trafficking victims and to assist their safe integration, reintegration, and resettlement.”³⁴

Currently, there is no systemic way to identify children who have been trafficked or are at risk of being trafficked, and without a BID, the fate of children who were trafficked or at risk of being trafficked consists of repatriation to their country of origin, often sending them back into the hands of the traffickers.

Recommendation 2: Address Root Causes

Mr. Chairman, I have suggested solutions for increasing the protection of Central Americans who meet the refugee definition, who are seeking asylum, and who are victims of trafficking. However, ultimately, our goal is to eradicate the root causes of migration in Central America compelling

31 Washington Office on Latin America, “Mexico Now Detains More Central American Migrants than the United States,” June 2015, retrieved on January 25, 2016 from http://www.wola.org/news/mexico_now_detains_more_central_american_migrants_than_the_united_states

32 U.S. Department of State, “Mexico 2014 Human Rights Report,” retrieved on January 25, 2016 from <http://www.state.gov/documents/organization/236914.pdf>

33 106th Congress, “Victims of Trafficking and Violence Protection Act of 2000”, October 2000, Sec. 107, retrieved on January 25, 2016 from <http://www.state.gov/documents/organization/10492.pdf>

34 110th Congress, “William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008,” January 2008, Sec. 104, retrieved on January 25, 2016 from <http://www.state.gov/j/tip/laws/113178.htm>

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people to flee, such as violence from non-state actors in countries of origin and a lack of citizen security and adequate child protection mechanisms, and to invest in seeking and supporting innovative home country solutions that enable children and families to remain and develop safely and with opportunity in their home countries.

a.) Repatriation and Reintegration Programs

The United States should invest in repatriation and re-integration in sending countries for children returning from the United States and Mexico to provide follow-up services to help them readjust to life in their home country. A program operated by Kids in Need of Defense (KIND) in Guatemala is showing promising results and should be expanded and duplicated throughout the region.³⁵

b.) Prevention Programs

The United States should invest in prevention programs in sending countries. Other than programs provided by Catholic Relief Services and other NGOs, there are little to no programs in source countries to encourage youth to remain and not take the journey north. Such a program would include skill-based training and employment services. Catholic Relief Services operates Youth Builders, a program previously mentioned in my testimony which has helped youth remain at home and live productive lives.³⁶

c.) Anti-violence efforts

Anti-violence efforts should include stakeholders from government, civil society, private sector, churches and international donors in order to effectively leverage limited resources and should include job and educational opportunities and training programs. Anti-violence prevention measures should be tackled at regional and local community levels in addition to national levels. Including key local stakeholders and engaging regional governmental bodies and actors is a vital part of prevention efforts. Additionally, prevention efforts must include systematic training and educational programs in order to fully offer meaningful opportunities for gang members in society once they leave the gang.

Over the long-term, all governments of the region, including the United States, must invest resources into examining and effectively addressing root causes of migration in Central America and Mexico. This would address the lack of citizen security which is propelling individuals, especially women and children, to flee. The United States and its regional partners must avoid simplistic enforcement-only approaches.

Recommendation 3: Address the surge of Central Americans as a Refugee Crisis requiring cooperation from all branches of the U.S. government

MRS/USCCB urges continued cooperation and collaboration between all relevant U.S. agencies to address this regional, humanitarian challenge-- the Department of Health and Human Services' ORR and its parent entity, the Administration for Children and Families domestic child welfare division; from DOS involve PRM, Western Hemispheric Affairs, and the Agency for International

³⁵ Kids in Need of Defense (KIND), "Guatemalan Child Return and Reintegration Project Fact Sheet", April 2015, retrieved on January 25, 2016 from <https://supportkind.org/wp-content/uploads/2015/11/GCRRP-Factsheet-English.pdf>

³⁶ Catholic Relief Services, "Building up Youth and Communities in El Salvador," retrieved on January 25, 2016 from <http://www.crs.org/stories/building-up-youth-and-communities-in-el-salvador>

Development; from Department of Justice involve the Executive Office for Immigration Review; and from Department of Homeland Security involve Citizenship and Immigration Services, Immigration and Customs Enforcement, and Customs and Border Protection. The inter-agency work on the issue should incorporate clear leadership responsibilities and effective collaboration mechanisms to ensure the optimum results both in the United States and throughout the region.

a.) End the practice of detaining asylum-seekers and vulnerable populations, such as women and children, seeking protection

MRS/USCCB advocates for humane, community-based solutions for responding to persons seeking asylum in our country, and asserts that “the U.S. immigrant detention system is neither humane nor, in its current form, necessary.”³⁷

b.) Ensure the best interest of the child principle is the cornerstone of decision-making affecting children’s lives

MRS/USCCB urges the U.S. government to faithfully adhere to the “best interest of the child” standard in all decision-making. This is the internationally recognized child-welfare standard used in the U.S. child welfare system that refers to a process of determining services, care arrangements, caregivers, and placements best suited to meet a child’s short-term and long-term needs and ensure safety, permanency, and well-being. When applied in the United States or to U.S. funded programs, special importance is given to family reunification and family integrity, health, safety, protection of the child, and timely placement.

This requires that all procedures, protocols, and mechanisms developed are child-friendly and consistent with due process for children. It requires that they be trauma-informed, and administered by child welfare professionals; that children are screened and assessed for their immediate humanitarian protection needs and their long-term international protection needs; that during the pursuit of long-term solutions for the children they are placed in the least-restrictive settings (i.e. community-based); that all children are connected with social and legal services to address their immediate needs.

This requires that long-term and durable solutions are pursued that are in the children’s best interests. It requires that enforcement will afford protections, such as provided by the TVPRA, asylum proceedings will have child appropriate services, child oriented dockets, and access to legal services consistent with due process; that when resettlement is the best alternative the processing may be conducted in a child-friendly manner and that the safety and well-being of the child will be assured during the processing and placement of the children; and that where repatriation is the best alternative available that safe repatriation and reintegration be conducted in collaboration and coordination with the children’s home governments, NGOs, and other implementing partners.

As it is in the best interest of the child to be placed in the least restrictive setting, HHS/ORR should continue to expand placement options to include small community-based care arrangements with

37U.S. Conference of Catholic Bishops and The Center for Migration Studies, “Unlocking Human Dignity: A Plan to Transform the U.S. Immigration Detention System,” 2015, p. 29, retrieved on January 25, 2016 from <http://www.usccb.org/about/migration-and-refugee-services/upload/unlocking-human-dignity.pdf>

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basic to therapeutic programming. The Flores Settlement Agreement establishes minimum standards of care for children in the custody of ORR and requires that UAC be placed in the least restrictive setting that meets their needs. Save the Children notes in a study: "...recent years have seen an increasing emphasis on the development of community-based approaches... to ensure that children who lose, or become separated from their own families, can have the benefits of normal family life within the community." Placing children in the least restrictive setting that can meet their needs is the policy and practice of the child welfare system in the United States. While many of the children in ORR custody are served in basic shelters, this placement setting may not be the most appropriate for some UAC, many of whom have complex trauma needs, and would be better served in foster care placements.

The best interest of the child should be applied in legal proceedings involving UACs, including creating child-appropriate asylum procedures and unaccompanied child immigration court dockets. Currently, decisions about the welfare of UAC are made separately from the existing U.S. child welfare infrastructure, meaning that court decisions on the welfare of UAC are based on their eligibility for immigration relief alone rather than involving a comprehensive assessment of the best interest of the child.

Whenever possible, policies and procedures should be implemented that help the child progress through the system in a way that takes into account his/her vulnerabilities and age, such as the establishment of immigration court dockets for unaccompanied children and the creation of child-appropriate asylum procedures. Concentrating all UAC cases in a child-focused immigration docket with appropriately-trained arbiters and advocates will streamline UAC cases while also ensuring a less-threatening model for children.

c.) Ensure access to due process

Congress should resource the immigration court system by providing more immigration judges and attorneys to both adjudicate cases and to represent them in their hearings. This would ensure that unaccompanied children and families receive due process in a much shorter time frame without undermining their rights. Some would be sent back to their home countries, while others would be able to begin to integrate into their local communities.

Funding also should be increased for the Department of Justice's Legal Orientation Program for Custodians (LOPC) which was developed to "inform the children's custodians of their responsibilities in ensuring the child's appearance at all immigration proceedings, as well as protecting the child from mistreatment, exploitation, and trafficking," as provided under the Trafficking Victims Protection Reauthorization Act of 2008.

Finally, Mr. Chairman, it is vital that children receive legal representation in order to navigate the complex justice system. Statistics show that as many as 60-70 percent of these children with lawyers obtain immigration relief, while only 30 percent do if unrepresented. It also would ensure that the court system is more efficient, as children would know when to appear and be cognizant of their rights and responsibilities.

d.) Ensure comprehensive services for unaccompanied children following their release from HHS/ORR custody

Post-release services for children should be expanded. Currently, Mr. Chairman, we estimate that 10 percent of children released from HHS/ORR custody into the care of their families receive post-release services. These services include apprising them of their rights and ensuring they attend their hearings, but also that children are protected in the family and community setting. These services also include preparing children to attend schools and working with schools to help prepare them to accept the children.

Congress should mandate and fund family reunification and legal orientation programs and legal representation for all youth to help children integrate into their communities, reunify with their families, and pursue immigration relief. Often, increased funding to the Office of Refugee Resettlement (ORR), which is responsible for the custody and care of UAC, is directed at improving conditions in the temporary shelters in which unaccompanied children reside while waiting for release to their families.

There exists little funding for services once children are released, increasing the likelihood for family breakdown, the inability of children to enroll in school and access community resources, and the likelihood that the child will not show up to their immigration hearings. Funding should be directed at increasing the number of home studies provided to sponsors prior to the child's release from custody to assess any potential risks of the placement, including the protective capacity of the sponsor to ensure the safe reunification of the child. Post-release services should be required for all children to assist the family with navigating the complex educational, social service, and legal systems. With intensive and short-term case management services and monitoring by child welfare professionals, it is more likely that children will not abscond, appear at their immigration proceedings, enroll in school, and integrate into their communities—mitigating risk for future entry into the public child welfare system. In addition, when provided by community-based agencies, post-release services help build the capacity of the communities to respond as agencies establish relationships with and educate systems and service providers that will come in contact with unaccompanied children.

CONCLUSION

The situation of migration from Central America is a complex one, with no easy answers. It is clear, however, that more must be done to address the root causes of this flight and to protect children and youth in the process. Clearly this problem is not going away; in fact, it is getting more urgent in terms of the dire humanitarian consequences.

Anyone who hears the heartbreaking stories of these families and children would be moved, since they are victims fleeing violence and terror, not perpetrators. USCCB found that these children long not only for security, but also for a sense of belonging—to a family, a community, and a country. They are often unable to find this belonging in their home country and leave their homes as a last resort.

In conclusion, I ask you to consider the vulnerability of these children and families and open your minds and hearts to their plight while seeking meaningful and long-term regional solutions. I ask you to

Written Testimony Kristyn Peck, USCCB/MRS, House Judiciary Subcommittee on Immigration and Border Security, "Another Surge of Illegal Immigrants Along the Southwest Border," 2/4/16

respond to their needs, to not to turn them away or ostracize them, since Americans at our best are a compassionate people.

Mr. Chairman, I again thank you for this opportunity to speak with you about these children of God and ask that you let me, our offices at the U.S. Conference of Catholic Bishops, and the entire Catholic Church charitable network work with you to pursue just and humane solutions. How we respond to children and families seeking protection is a test of our moral character. America and the American people are generous and welcoming. We should view them not as a burden, but as our brothers and sisters fleeing violence in their home communities who are in need of support and protection, consistent with domestic and international law.

January 25, 2016

President Barack Obama
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear President Obama:

The undersigned 275 civil rights, labor rights, faith-based, immigrant, human rights, humanitarian, and legal service organizations respectfully request that the Secretary of the U.S. Department of Homeland Security (DHS), in consultation with the Secretary of State, designate El Salvador, Guatemala, and Honduras (an area known as the “Northern Triangle”) for Temporary Protected Status (TPS). These three countries warrant TPS designation in light of the dramatically escalating violence that has precipitated a humanitarian crisis of refugees fleeing the Northern Triangle countries.

I. TPS is Grounded in Well-Established, 25-Year-Old Statutory Authority

Using clear statutory authority under section 244 of the Immigration and Nationality Act (INA),¹ the DHS Secretary has currently designated 13 countries for TPS: El Salvador, Guinea, Haiti, Honduras, Liberia, Nepal, Nicaragua, Sierra Leone, Somalia, South Sudan, Sudan, Syria, and Yemen.² Per the statutory requirements of INA section 244(b), these designations are premised on an ongoing armed conflict, environmental disaster, or extraordinary and temporary conditions that prevent nationals of these countries from returning safely. Current designations for El Salvador and Honduras are based on environmental disasters in those countries dating back to 2001 and 1998 respectively, and therefore require TPS beneficiaries from those countries to demonstrate presence and residence in the United States since that time. More recent arrivals are ineligible for TPS.

TPS was created by Congress with the passage of the Immigration Act of 1990³ to address gaps in U.S. immigration policy and regularize the process by which our government accommodated those gaps.⁴ Congress understood that a stay of deportation and employment authorization

¹ 8 U.S.C. § 1254a (West 2016).

² See U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEPARTMENT OF HOMELAND SECURITY, Temporary Protected Status (November 13, 2015), available at <http://www.uscis.gov/humanitarian/temporary-protected-status>. When Congress created TPS, it included a statutory designation for El Salvador. Since then, many other countries have received a TPS designation for limited periods of time, including Angola (2000-2003); Bosnia-Herzegovina (1992-2001); Burundi (1997-2009); Kosovo Province (1998-2000); Kuwait (1991-1992); Lebanon (1991-1993); Liberia (1991-2007); Montserrat (1997-2005); Rwanda (1995-1997); and Sierra Leone (1997- 2004). See LISA SEGHELLI, CONG. RESEARCH SERV., RS 20844, TEMPORARY PROTECTED STATUS: CURRENT IMMIGRATION POLICY AND ISSUES (2015) available at <https://www.fas.org/sgp/crs/homsec/RS20844.pdf>.

³ Immigration Act of 1990, Pub. L. 101-649, 104 Stat. 4978.

⁴ Madeline Messick and Claire Bergeron, *Temporary Protected Status in the United States: A Grant of Humanitarian Relief that Is Less than Permanent*, MIGRATION POLICY INSTITUTE, July 2, 2014, available at

are necessary for nationals who are already in the United States but who cannot be deported safely due to temporary conditions in their home countries.

INA section 244(b)(1)(C) provides that the Secretary may base a TPS designation on a finding that “there exist extraordinary and temporary conditions in the foreign state that prevent aliens who are nationals of the state from returning to the state in safety, unless the [Secretary] finds that permitting the aliens to remain temporarily in the United States is contrary to the national interest of the United States.”⁵ Each of the Northern Triangle countries clearly meets this criteria given the devastating recent uptick in violence.

II. Country Conditions in the Northern Triangle Merit TPS Designations

In 2015, the death toll in the Northern Triangle of Central America was 17,500,⁶ higher than in all but three zones of ongoing armed conflict: Iraq, Afghanistan, and Syria.⁷ This death toll was higher than four West African countries struggling with the Boko Haram insurgency⁸ and even higher than the death tolls in Somalia, Libya, and South Sudan.⁹ Notably, this rapidly escalating violence occurred in a geographic region the size of the state of Oregon and home to just under 30 million people. To put this endemic violence into perspective, Honduras alone had more homicides than the 28 states of the European Union combined in 2014.¹⁰

The causes of the violence are complex and fueled by lack of government accountability, capture of state institutions by organized crime, impunity and widespread corruption, control of territory by organized criminal groups, brutal militarized law enforcement practices, rampant inequality, and weak democratic governance mechanisms. Unsurprisingly, this violence disproportionately impacts women and children. For the last six years, the Northern Triangle

<http://www.migrationpolicy.org/article/temporary-protected-status-united-states-grant-humanitarian-relief-less-permanent>.

⁵ 8 U.S.C. § 1254a(b)(1)(C) (West 2016).

⁶ *Central America’s violent Northern Triangle registers 17,422 homicides in 2015*, THE TICO TIMES NEWS, Jan. 5, 2016, <http://www.ticotimes.net/2016/01/05/central-americas-violent-northern-triangle-registers-17422-homicides-in-2015>.

⁷ Sayed Sharif Amiri, *Civilian Casualties up as Security Operations Drop Report*, TOLO NEWS, AUG. 4, 2015, <http://www.tolonews.com/en/afghanistan/20743-civilian-casualties-up-as-security-operations-drop-report>; Shakeela Ibrahimkhil, *Civilian Casualties Increase in December Against Previous Month*, TOLO NEWS, Jan. 8, 2016, <http://www.tolonews.com/en/afghanistan/23200-civilian-casualties-increase-in-december-against-previous-month-;55,000-more-killed-in-syria-in-2015>, YAHOO NEWS, Dec. 31, 2005, <http://news.yahoo.com/more-55-000-killed-syria-2015-monitor-141247568.html>; UNITED NATIONS IRAQ, UNITED NATIONS, *Civilian Casualties*, Jan. 1, 2016, http://www.uniraq.org/index.php?option=com_k2&view=itemlist&layout=category&task=category&id=159&Itemid=633&lang=en.

⁸ *Conflict Trends (No. 44) Real-Time Analysis of African Political Violence*, ARMED CONFLICT LOCATION & EVENT DATA PROJECT Dec. 2015, http://www.acledata.com/wp-content/uploads/2015/12/ACLED_Conflict-Trends-Report-No.44-December-2015_pdf.

⁹ *Id.*

¹⁰ Kevin Casas Zamora, *Congressional Testimony: The Roots of Central America’s Exodus*,” INTER-AMERICAN DIALOGUE, Oct. 22, 2015, <http://www.thedialogue.org/resources/congressional-testimony-the-roots-of-central-americas-exodus/>.

countries have ranked within the world's top four countries for rates of femicide,¹¹ while El Salvador and Guatemala have the highest homicide rates in the world among children.¹² The extreme violence is not limited to these groups, but pervades all corners of society and threatens many who return to these countries.

El Salvador

El Salvador, a nation of 6.4 million people, is racked by drug-fueled violence, with entire city neighborhoods controlled by powerful gangs known as maras. El Salvador recently overtook Honduras as the murder capital of the world. Officials recorded 6,657 people murdered in El Salvador in 2015, a 70 percent increase from 2014.¹³ The homicide rate of 104 people per 100,000 people is the highest for any country in nearly 20 years.¹⁴ El Salvador's murder rate surged in 2015 due to increasing battles between security forces and the country's two most powerful gangs—the Barrio 18 criminal group and their rivals, the Mara Salvatrucha (MS-13). In August 2015 alone there were 907 murders representing the highest monthly toll since the 1980-1992 civil war.¹⁵ An estimated 75,000 civilians died in El Salvador's 12-year civil war, an average of 6,250 per year of the conflict¹⁶—a figure below the number of homicides in 2015.

Guatemala

Guatemalans face epidemic levels of violence and a government that is unable and unwilling to protect them. The criminal insurgency by transnational criminal organizations and gangs against the state reflects a serious and pervasive armed conflict within Guatemala.¹⁷ Consequently, levels of violence have soared, making Guatemala's homicide rate the fifth highest in the

¹¹ Tom Jawetz, *Addressing the Flow of Central American Mothers and Children Seeking Protection*, CENTER FOR AMERICAN PROGRESS, Jan. 12, 2016,

<https://www.americanprogress.org/issues/immigration/news/2016/01/12/128645/addressing-the-flow-of-central-american-mothers-and-children-seeking-protection/>.

¹² Tessa Wardlaw, *Hidden in Plain Sight: A statistical analysis of violence against children*, UNICEF, Sept. 2004, available at http://www.unicef.org/publications/index_74865.html; Ami Sedghi, *The world's most dangerous countries for young people: homicide rates for under 20-year-olds mapped*, THE GUARDIAN, Sept. 5, 2014,

<http://www.theguardian.com/news/datablog/ng-interactive/2014/sep/05/the-worlds-most-dangerous-countries-for-young-people-homicide-rates-for-under-20-year-olds-mapped>.

¹³ Alan Gomez, *El Salvador: World's new murder capital*, USA TODAY, Jan. 8, 2016,

<http://www.usatoday.com/story/news/world/2016/01/07/el-salvador-homicide-rate-honduras-guatemala-illegal-immigration-to-united-states/78358042/>.

¹⁴ *Id.*

¹⁵ Anastasia Moloney, *U.S. Peace Corps pulls out of El Salvador over violence, security*, Thomas Reuters Foundation News, Jan. 13, 2016,

<http://news.trust.org//item/20160113193341-r2q1z/?source=fiOtherNews3>.

¹⁶ Mike Allison, *El Salvador's brutal civil war: What we still don't know*, ALJAZEERA, March 1, 2012,

<http://www.aljazeera.com/indepth/opinion/2012/02/2012228123122975116.html>.

¹⁷ Maureen Taft-Morales, *Guatemala: Political, Security, and SocioEconomic Conditions and U.S. Relations*, Congressional Research Service, Aug. 7, 2014, <https://www.fas.org/sgp/crs/row/R42580.pdf>; U.S. Dept. of State, Bureau of Diplomatic Security, *Guatemala 2015 Crime and Safety Report*, June 20, 2015,

<https://www.osac.gov/pages/ContentReportPDF.aspx?cid=17785>.

world.¹⁸ In 2012, Small Arms Survey ranked Guatemala third in the killings of women worldwide, even rivaling the rates of the country's 36-year civil war.¹⁹

Moreover, cumulative environmental disasters have plagued Guatemala including earthquakes, volcanoes, hurricanes, tropical storms, floods, drought, and landslides. Guatemala has declared a state of public calamity on various occasions and received limited international humanitarian assistance. In 2005, Hurricane Stan caused the death of more than 1,500 people, impacted 500,000 people, and led to \$989 million in damages. In 2010, the Pacaya Volcano erupted, scattering volcanic ash and debris across Guatemala City, bringing economic life in the capital of 1.5 million residents to a standstill. Two days later, Tropical Storm Agatha hit, killing 174, injuring 154, affecting close to 400,000 Guatemalans, and causing nearly \$1 billion in damage.²⁰ Agatha also led to the evacuation of 112,000 and displacement of 20,000 Guatemalans.²¹ A recent landslide in October 2015 caused additional devastation and the deaths of hundreds.²² The cumulative loss of infrastructure, harvests—including thousands of hectares of agricultural land—and homes caused extraordinary loss of life and livelihood, with women, children, and indigenous communities at particular risk.²³

Honduras:

With a homicide rate of 57 per 100,000 people, Honduras suffers 10 times more homicides than the world average and four times the number of homicides than the average country in the Americas.²⁴ Criminal gangs often target children and young adults for recruitment and to commit crimes.²⁵ Disturbingly, for young adult males between the ages of 20 and 34, the murder rate in Honduras exceeds 300 per 100,000.²⁶ Gangs also regularly target girls and

¹⁸ UNITED NATIONS OFFICE ON DRUGS AND CRIME, UNITED NATIONS, Global Study on Homicide 2013: Trends, Contexts, Data, April 2014, <http://www.unodc.org/gsh/>.

¹⁹ David Carey, M.G. Torres, *PRECURSORS TO FEMICIDE: Guatemalan Women in a Vortex of Violence*, LATIN AMERICAN RESEARCH REVIEW 45 (3): 142–164 (showing rates of homicide targeting women and girls in Guatemala rival the rates of female casualties during the Guatemalan Civil War and discussing that homicides targeting women often is accompanied by sexual violence).

²⁰ Jose Magana-Salgado, *Relief Not Raids: Temporary Protected Status for El Salvador, Guatemala, and Honduras*, IMMIGRANT LEGAL RESOURCE CENTER, Jan. 2016, available at <http://www.ilrc.org/resources/relief-not-raids-temporary-protected-status-for-el-salvador-guatemala-honduras> [hereinafter “Relief Not Raids.”].

²¹ *Id.*

²² Marilia Brocchetto & Nelson Quinones, *Guatemala landslide death toll rises to 271*, CNN, Oct. 10, 2015, <http://www.cnn.com/2015/10/10/americas/guatemala-landslide-deaths/>.

²³ *Id.*

²⁴ Joshua Partlow, *Why El Salvador became the hemisphere's murder capital*, THE WASHINGTON POST, Jan. 5, 2016, <https://www.washingtonpost.com/news/worldviews/wp/2016/01/05/why-el-salvador-became-the-hemispheres-murder-capital/>.

²⁵ *Guidance Note On Refugee Claims Relating To Victims Of Organized Gangs*, UNHCR, March 2010, available at http://www.uscrrifugees.org/2010Website/5_Resources/5_4_For_Lawyers/5_4_1%20Asylum%20Research/5_4_1_2_Gang_Related_Asylum_Resources/5_4_1_2_4_Reports/UNHCR_Guidance_Note_on_Refugee_Claims.pdf.

²⁶ UNITED NATIONS OFFICE ON DRUGS AND CRIME, UNITED NATIONS, Global Study on Homicide 2013: Trends, Contexts, Data, April 2014, <http://www.unodc.org/gsh/>.

women for forced recruitment, sexual harassment, and exploitation.²⁷ After her visit to Honduras in July 2014, the United Nations Special Rapporteur on Violence against Women noted that violent deaths among women had increased by 263 percent between 2005 and 2013 and that Honduras criminal justice system had a 95 percent rate of impunity for femicide and sexual violence crimes.²⁸

There are substantiated reports of Honduran police forming death squads and committing extrajudicial executions in both San Pedro Sula and Tegucigalpa.²⁹ The militarization of police in Honduras began in 2013 with often-masked Military Police (PMOP) deployed into some of the more violent sectors of the large cities. These police are at the top of the civilian national police structure (FUSINA), a force mistrusted both by those inside and outside the government because of the high rates of corruption and complicity with organized crime. Nonetheless, the PMOP are an extra-constitutional body³⁰ and have been implicated in a growing list of abuses, made even harder to address because of a lack of civilian accountability and anonymity. Recently, child advocacy organization Casa Alianza documented that in the last two months, the PMOP were involved in at least six extrajudicial executions of children and youth.³¹ Abuses attributed to the PMOP and FUSINA include beatings, harassment of civil rights activists, forced disappearances, sexual assaults, and murders of poor or disadvantaged Hondurans.³² A February 2014 report by *El Heraldo*, the leading newspaper, found that over 200 national police were implicated in killings for hire, drug theft, and corruption.³³

III. TPS is a Critical Component of a Package of Humanitarian Protection

We welcome the announced expansion of refugee processing abroad for nationals from the Northern Triangle countries who are fleeing persecution and the ability for them to apply for

²⁷ *Forced Displacement and Protection Needs Produced by New Forms of Violence and Criminality in Central America*, CIDEHUM, UNHCR, May 2012, http://www.unhcrwashington.org/sites/default/files/UAC_2_CIDEHUM_Forced%20Displacement%20and%20Protection%20Needs_May%202012_English.pdf.

²⁸ Rashida Manjoo, *Special Rapporteur on violence against women finalizes country mission to Honduras and calls for urgent action to address the culture of impunity for crimes against women and girls*, OHCHR, July 7, 2014, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14833&LangID=E#sthash.aEX2teov.dpuf>

²⁹ See Jeremy Relf, *Dispatch from Honduras: What it's like to live in the Murder Capital of the World*, BUSINESS INSIDER, Oct. 30, 2014, <http://www.businessinsider.com/murder-capital-san-pedro-sula-2014-10>; HUMAN RIGHTS WATCH, *World Report 2014: Honduras*, Jan. 2014, <https://www.hrw.org/world-report/2014/country-chapters/honduras>.

³⁰ Thelma Mejia, *Military Given Full Powers to Fight Crime in Honduras*, Sept. 4, 2013, <http://www.ipsnews.net/2013/09/military-given-full-powers-to-fight-crime-in-honduras/>.

³¹ *Honduran Soldiers Have Killed at Least Six Civilians*, GLOBAL POST, Jan. 5, 2016, <http://www.globalpost.com/article/6714965/2016/01/05/honduras-soldiers-have-killed-least-6-civilians>.

³² *Status of Violence Against Women in Honduras*, AMERICAS PROGRAM, July 2014, <http://www.cipamericas.org/archives/12582>.

³³ Suchit Chavez and Jessica Avalos, *The Northern Triangle: The Countries That Don't Cry for Their Dead*, INSIGHT CRIME, April 23, 2014, available at <http://www.insightcrime.org/news-analysis/the-northern-triangle-the-countries-that-dont-cry-for-their-dead>.

refugee status in a safe, third country in the region.³⁴ This development is a sorely needed expansion of the Central American Minor (CAM) In-Country Refugee Processing Program, through which certain children from El Salvador, Guatemala, and Honduras are permitted to apply for refugee status from within their home countries.³⁵ It is incumbent on your Administration, however, that refugee processing represent part of a comprehensive package of protection from harm for those fleeing violence in Central America.

Moreover, these programs are an explicit acknowledgement that country conditions in these countries are steadily worsening, the outflows of mothers and children are driven by severe violence, and safety for many is increasingly elusive. The January 2016 withdrawal of U.S. Peace Corps volunteers from El Salvador³⁶—the first time in over 40 years—in addition to the September 2012 withdrawal of volunteers from Honduras,³⁷ is further evidence that no one is immune to the region’s escalating violence.

The risk of deportation to the Northern Triangle countries is tangible and profound. According to a comprehensive study conducted by social scientist Elizabeth Kennedy at San Diego State University, between January 2014 and September 2015, at least 83 nationals deported to El Salvador, Honduras, and Guatemala were reported to have been subsequently murdered, with 45 murders in El Salvador, 35 in Honduras, and three in Guatemala.³⁸

Designation of a country for TPS should be premised on whether country conditions meet the statutory requirements set by Congress and must not be impacted by unfounded fears of increased refugees arriving at our nation’s border. TPS eligibility is strictly limited to individuals who are physically present in the United States prior to designation. Moreover, outflows from these countries are primarily driven by push factors of extreme violence and persecution, not domestic immigration policy. There is no historical precedent or evidence of additional foreign nationals attempting to enter the United States as a consequence of a TPS designation. Certainly, your Administration has not shied away from taking bold action to exercise its discretionary authority to establish Deferred Action for Childhood Arrivals despite critics’ unfounded and speculative allegations that such exercise would drive others to migrate here.³⁹

³⁴ U.S. DEPARTMENT OF STATE, Refugee Resettlement in the United States, Jan. 13, 2016, <http://www.state.gov/r/pa/prs/ps/2016/01/251176.htm>; Julia Preston, *U.N. to Help U.S. Screen Central American Migrants*, N.Y. TIMES, Jan. 12, 2016, <http://www.nytimes.com/2016/01/13/us/politics/un-to-help-us-screen-central-american-migrants.html>.

³⁵ U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEPARTMENT OF HOMELAND SECURITY, In-Country Refugee/Parole Processing for Minors in Honduras, El Salvador and Guatemala (Central American Minors – CAM), June 1, 2015, <https://www.uscis.gov/CAM>.

³⁶ Anastasia Moloney, *U.S. Peace Corps pulls out of El Salvador over violence, security*, Jan. 13, 2016, <http://www.reuters.com/article/us-el-salvador-peace-corps-violence-idUSKCN0UR2PM20160113>.

³⁷ *Honduras*, Peace Corps, Sept. 2012, <http://www.peacecorps.gov/volunteer/learn/wherepc/centralamerica/honduras/?shell=learn.wherepc.centralamerica&cntry=honduras>.

³⁸ See Relief Not Raids, *supra* note 20, at 6.

³⁹ Roque Planas, *This Is How We Know DACA Didn't Cause The Border Crisis*, HUFFINGTON POST, Aug. 1, 2014, http://www.huffingtonpost.com/2014/08/01/daca-border-crisis_n_5639383.html (“Conservatives say the policy,

Moreover, even a federal court has taken a dim view of the argument that the Administration's policies allowing undocumented immigrants to remain in the country contribute to future migration.⁴⁰

The asylum system plays a key role in protecting many of those who flee persecution in their home countries. However, despite the high rates of homicide, femicide, and other forms of violence, the overall success rate for Central American asylum seekers in U.S. immigration courts is very low.⁴¹ While due process issues and lack of counsel play a role, the standards for securing asylum are very narrow, require very high levels of corroboration, and many of the reasons that Central American asylum seekers need protection, such as fear of persecution due to opposition to gangs, involve a complicated and evolving area of asylum law.

Given the urgent nature of this request and the risk placed on the lives of those who are deported, we request your timely consideration and prompt reply. If you need additional information or have questions related to this request, please contact Royce Murray, National Immigrant Justice Center, at rmurray@heartlandalliance.org or 312-718-5021.

Sincerely,

Access Living/Cambiando Vidas
Advocacy for Justice and Peace Committee of the Sisters of St. Francis of Philadelphia
African American Ministers In Action
African Services Committee
Alianza Americas
America's Voice Education Fund

which newly arrived undocumented immigrants don't qualify for, has acted as a magnet, pulling young migrants from the violence-plagued and poverty-stricken countries of El Salvador, Honduras and Guatemala. But there's virtually no evidence to support this increasingly popular conservative talking point.").

⁴⁰ *Arpaio v. Obama*, 797 F.3d 11, 21 (D.C. Cir. 2015) ("Arpaio's claim that DACA caused the increase in Central American border crossings in 2014, Pillard wrote, "suffers from the logical fallacy post hoc ergo propter hoc (after this, therefore because of this). Just as we do not infer that the rooster's crow triggers the sunrise, we cannot infer based on chronology alone that DACA triggered the migrations that occurred two years later.").

⁴¹ During the fourth quarter of FY 2015, U.S. Citizenship and Immigration Services (USCIS) granted 45-46% of the affirmative asylum cases they adjudicated across all nationalities. USCIS does not provide grant rates by nationality publicly. See *Asylum Division Quarterly Stakeholder Meeting*, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security, (Dec. 18, 2015), <https://www.uscis.gov/outreach/asylum-division-quarterly-stakeholder-meeting-1>. In FY 2014 (the most recent data available), the Executive Office for Immigration Review (EOIR) granted asylum to 11.8% of the respondents from El Salvador who cases were granted or denied that year; 12.8% of the respondents from Guatemala who cases were granted or denied that year; and 14.9% of the respondents from Honduras who cases were granted or denied that year. This does not include those cases that were abandoned, withdrawn, or categorized as "other" completion by EOIR for FY 2014. Executive Office for Immigration Review, U.S. Department of Justice, *Asylum Statistics FY 2010-2014*, (March 2015), available at <http://www.justice.gov/sites/default/files/eoir/pages/attachments/2015/03/16/fy2010-fy2014-asylum-statistics-by-nationality.pdf>.

American Civil Liberties Union
American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)
American Friends Service Committee (AFSC)
American Gateways
American Immigration Council
American Immigration Lawyers Association
American-Arab Anti-Discrimination Committee (ADC)
Americans for Immigrant Justice
Arkansas United Community Coalition
Asamblea de Derechos Civiles de Minnesota
ASI, Inc. - Asociacion de Servicios Para el Inmigrante
Asian Americans Advancing Justice-AAJC
Asian Americans Advancing Justice-Los Angeles
Asian Pacific American Labor Alliance (APALA)
Asian Pacific Institute on Gender-Based Violence
Asian Pacific Islander Legal Outreach
ASISTA Immigration Assistance
Association of Latino/as Motivating Action (ALMA)
Atlas:DIY
Bay Area Latin America Solidarity Coalition
Berkshire Immigrant Center
Bernardo Kohler Center
Bethany Christian Services
Brooklyn Defender Services
California Immigrant Youth Justice Alliance (CIYJA)
Capital Area Immigrants' Rights (CAIR) Coalition
CARECENSF
CASA
Casa de Esperanza
Casa Latina
Catholic Charities of Baltimore
Catholic Legal Immigration Network, Inc. (CLINIC)
Catholic Migration Services
Center for Community Change
Center for Constitutional Rights
Center for Employment Training
Center for Gender & Refugee Studies
Center for Human Rights & Constitutional Law
Central American Legal Assistance
Central American Resource Center-Los Angeles
Centro Romero
Chicago Law and Education Foundation
Church of the Brethren
Church World Service

CISPES Bay Area
Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA)
Coloradans For Immigrant Rights, a project of the AFSC Colorado
Colorado Immigrant Rights Coalition
Colorado People's Alliance
Columban Center for Advocacy and Outreach
Community Legal Services and Counseling Center
Conference of Major Superiors of Men
Congress of Day Laborers, NOWCRJ
Conversations With Friends (MN)
Council on American-Islamic Relations
DC-MD Justice for Our Neighbors
Detention Watch Network
Dolores Street Community Services
Dream Team LA
Educators for Fair Consideration
Enlace
Ethiopian Community Development Council, Inc.
Evangelical Lutheran Church in America
Fair Immigration Reform Movement (FIRM)
Farmworker Association of Florida
Farmworker Justice
Fe y Justicia Worker Center
Filipino Advocates for Justice
First Focus
Florida Council of Churches
Florida Immigrant Coalition (FLIC)
Forks Human Rights Group
Franciscan Action Network
Franciscans for Justice
Freedom Network USA
Friends Committee on National Legislation
Friends of Broward Detainees
Friends of Miami-Dade Detainees
Futures Without Violence
Gamaliel
Georgia Detention Watch
Grassroots Leadership
Greater Reading Immigration Project (GRIP)
Guatemala Human Rights Commission/USA
Heartland Alliance
HIAS
HIAS Pennsylvania
Holy Spirit Missionary Sisters - USA, JPIC

Hondurans Against AIDS
Hope CommUnity Center
Human Rights First
Human Rights Initiative of North Texas
Human Rights Observation/Honduras
Idaho Community Action Network
IDEAS at UCLA
Ignatian Solidarity Network
Illinois Coalition for Immigrant and Refugee Rights
Immigrant & Civil Rights Initiative, United Methodist Women
Immigrant Defense Project
Immigrant Law Center of Minnesota
Immigrant Legal Advocacy Project
Immigrant Legal Resource Center
Immigration Center for Women and Children
Immigration Counseling Service (ICS)
Immigration Equality
Immigration Justice Clinic of John Jay Legal Services, Inc. at Pace University School of Law
Immigration Resource Center of San Gabriel Valley
International Institute of Buffalo
International Institute of Connecticut, Inc.
International Institute of New England
International Institute of the Bay Area
International Organization for Adolescents
International Services Center of Cleveland
Invisible to Invincible: Asian Pacific Islander Pride of Chicago (i2i)
Irish International Immigrant Center
Jesuit Conference, National Advocacy Office
Jesuit Refugee Service/USA
Jewish Family & Community Services East Bay
Just Foreign Policy
Justice for Our Neighbors Southeastern Michigan
Justice for Our Neighbors West Michigan
Kentucky Coalition for Immigrant and Refugee Rights
Kids in Need of Defense
Kino Border Initiative
Kitsap Immigrant Assistance Center
Korean American Resource and Cultural Center
Korean Resource Center
La Union del Pueblo Entero
LaCasa, Inc.
Las Americas Immigrant Advocacy Center
Latin America Solidarity Committee
Latin America Working Group (LAWG)

Latino Commission on AIDS
Latino Policy Forum
Leadership Conference of Women Religious
League of United Latin American Citizens
Legal Services for Children
Logan Square Neighborhood Association
Long Island Wins
Lowcountry Immigration Coalition
Lutheran Immigration and Refugee Service
Maryknoll Office for Global Concerns
Massachusetts Immigrant and Refugee Advocacy Coalition
Massachusetts Law Reform Institute
Mennonite Central Committee U.S. Washington Office
MetroWest Peace Action
Mexican American Legal Defense & Educational Fund (MALDEF)
Mi Familia Vota
Michigan United
Midwest Jesuits Office for Social and International Ministries
Mijente
Mil Mujeres
Mississippi Immigrant Rights Alliance
Missouri Immigrant and Refugee Advocates
Monseñor Romero Foundation
Mundo Maya Foundation
My Sisters' Place
National Center for Transgender Equality
National Coalition Against Domestic Violence
National Compadres Network
National Council of Jewish Women
National Council of La Raza
National Employment Law Project
National Immigrant Justice Center
National Immigration Forum
National Immigration Law Center
National Immigration Project/National Lawyers Guild
National Justice for Our Neighbors
National Korean American Service and Education Consortium
National Latin@ Network: Casa de Esperanza
National Latina Institute for Reproductive Health
National LGBTQ Task Force
National Network for Immigrant and Refugee Rights
National Veterans for Peace
NETWORK, A National Catholic Social Justice Lobby
New Mexico Immigrant Law Center

New York Justice For Our Neighbors
Nicaragua Center for Community Action (NICCA)
Northern Illinois Justice for Our Neighbors
Northwest Immigrant Rights Project
OneAmerica
Oregon Interfaith Movement for Immigrant Justice
Oxfam America
P.A.S.O. - West Suburban Action Project
Pangea Legal Services
Pax Christi New Jersey
Pennsylvania Immigration Resource Center
PFLAG National
PICO National Network
Polaris Project
Portland Cental America Solidarity committee
Presbyterian Church (U.S.A.)
Project IRENE
Proyecto Azteca
Public Counsel
Puentes: Advocacy, Counseling & Education
Red Mexicana De Lideres y Organizaciones Migrantes
Reform Immigration FOR America
Reform Immigration for Texas Alliance
Reformed Church of Highland Park
Refugee and Immigrant Center for Education and Legal Services (RAICES)
Refugees International
Rocky Mountain Immigrant Advocacy Network
Safe Passage Project Corporation
Salvadoran American Leadership & Educational Fund (SALEF)
Salvadoran American National Network
Salvadorenos Unidos de Oregon
San Diego Immigrant Rights Consortium
Scalabrini International Migration Network - SIMN
School of the Americas Watch - San Francisco
SEIU 32BJ
Service Employees International Union (SEIU)
Services, Immigrant Rights, and Education Network (SIREN)
SHARE FOUNDATION
Sin Fronteras, Inc.
Sin Huellas Arts Collective
Sisters and Brothers of Immigrants
Sisters of Mercy of the Americas, Institute Justice Team
Sisters of Saint Francis Justice, Peace and Integrity of Creation Commission
Sisters of St. Francis of the Neumann Communities

Skagit Immigrant Rights Council
South Carolina Appleseed Legal Justice Center
South Florida Interfaith Worker Justice
South Texas Human Rights Center
Southeast Asia Resource Action Center (SEARAC)
Southeast Immigrant Rights Network
Southern Poverty Law Center
Southwest Key Programs
Southwest Organizing Project
SustainUS
Tahirih Justice Center
Task Force on the Americas
Texas Organizing Project
The Advocates for Human Rights
The Central American Resource Center (CARECEN), DC
The Guatemalan-Maya Center
The Immigrant Youth Coalition
The Office of Social Justice of the Christian Reformed Church in North America
The United Methodist Church - General Board of Church and Society
Transgender Law Center
U.S. Committee for Refugees and Immigrants
UC Davis School of Law Immigration Law Clinic
UFW Foundation
Unidos a Progresar Community Project
Unitarian Universalist Service Committee
United African Organization
United Church of Christ, Justice and Witness Ministries
United Families
United Services for Counseling
United We Dream
University of San Francisco Immigration and Deportation Defense Clinic
UnLocal, Inc.
VIDA Legal Assistance, Inc.
Virginia Coalition for Immigrant Rights
Voces de la Frontera
Voto Latino
Voz Hispana Cambio Comunitario Oregon
W. Haywood Burns Institute
Washington Office on Latin America
Washington State Coalition Against Domestic Violence
We Belong Together
WILPF Portland (Oregon)
Witness for Peace
Women's Refugee Commission

Worker Justice Center of New York, Inc.

Workers Defense Project

World Relief DuPage/Aurora

YAYA-NFWM (Youth and Young Adult network of the National Farm Worker Ministry)

Young Center for Immigrant Children's Rights

Cc: Mr. Jeh Johnson, Secretary of Homeland Security

Mr. John Kerry, Secretary of State

Ms. Susan Rice, National Security Advisor

Ms. Cecilia Muñoz, Domestic Policy Advisor