STATEMENT OF THE AMERICAN IMMIGRATION COUNCIL

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

HEARING ON "INTERIOR IMMIGRATION ENFORCEMENT LEGISLATION"

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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 research and analysis in recent years regarding immigration enforcement, asylum, and protection of unaccompanied immigrant children.

As explained below, and as addressed in the reports attached, U.S. immigration enforcement is at all-time highs. We have spent billions of dollars deporting millions of people who have committed only immigration violations, and focused on quantity, not quality of deportations, while separating families. We have responded to an influx of Central American asylum seekers with family detention camps and proposals to roll back protections, rather than ensuring the protection of these vulnerable populations. Most importantly, we have failed to enact legislation, and failed to recognize that enforcement *with* reform is the only effective way to repair a broken immigration system.

I. Enforcement and the SAFE Act

The United States has been pursuing an "enforcement first" approach to immigration control for more than two-and-a-half decades—and it has yet to work.[1] The U.S. currently spends more on immigration enforcement—$18 billion per year—than all other federal law enforcement combined.[2] Since the last major legalization program for unauthorized immigrants in 1986, the

[1] American Immigration Council, "The Fallacy of 'Enforcement First'," May 2013, at http://www.immigrationpolicy.org/just-facts/fallacy-enforcement-first.
[2] Consolidated Appropriations Act, 2014, P.L. 113-76, 128 Stat. 5, 248-52 (Jan. 17, 2014), at http://www.gpo.gov/fdsys/pkg/PLAW-113publ76/pdf/PLAW-113publ76.pdf; Doris Meissner, Donald M. Kerwin, Muzaffar Chishti, and Claire Bergeron, *Immigration Enforcement in the United States: The Rise of a Formidable Machinery*, MIGRATION POLICY INSTITUTE (2013), www.migrationpolicy.org/pubs/enforcementpillars.pdf.

federal government has spent over $200 billion on immigration enforcement.[3] Yet during that time, the unauthorized population has tripled in size to 11 million. This is a testament that enforcement measures alone pale in the face of a strong economy where the demand for foreign workers outstrips the available visas. Meanwhile, punitive laws separate families unnecessarily despite the natural desire of immigrants to be reunited with their families.

In the American Immigration Council's August 2013 report, *Cracking the SAFE Act*, the Council states that the SAFE Act "represents an attrition-through-enforcement approach to unauthorized immigration that has not proven effective and which runs contrary to many of the objectives of immigration reform."[4] (Attachment A) The report details the provisions of the SAFE Act that would make unlawful presence in the United States a criminal act punishable with jail time, would greatly expand detention of immigrants, would authorize states and local governments to create their own immigration enforcement laws, and would impose harsher penalties and restrictions for immigration violations, among other enforcement-related provisions.

The report concludes that the "evidence does not support an indiscriminate increase in penalties, detention, and deportation that removes the ability of immigration authorities to make common-sense, fact-based decisions on individual cases."[5] Moreover, "the economic and social harm caused by state and local immigration laws argues against a policy that encourages the proliferation of such laws."[6]

Other American Immigration Council publications also examine the phenomenon of increased immigration enforcement without concomitant positive effects on U.S. society:

- "The Growth of the U.S. Deportation Machine" (March 2014),[7] which explains, among other things, how the Obama Administration has come to remove more immigrants than any other U.S. Administration;[8] (Attachment B)

- "Misplaced Priorities: Most Immigrants Deported by ICE in 2013 Were a Threat to No One" (March 2014), which demonstrates that most individuals apprehended by ICE committed minor, non-violent crimes or have no criminal histories at all;[9] (Attachment C) and

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[3] Marc R. Rosenblum, Migration Policy Institute, Testimony to House Judiciary Committee, *Examining the Adequacy and Enforcement of Our Nation's Immigration Laws* (Feb. 3, 2015), p. 18, at http://judiciary.house.gov/?a=Files.Serve&File_id=31971212-6FDB-4FE6-ABBB-406B7C673B21.

[4] American Immigration Council, "Cracking The SAFE Act: Understanding the Impact and Context of H.R. 2278, the 'Strengthen and Fortify Enforcement Act'," August 2013, at http://immigrationpolicy.org/just-facts/cracking-safe-act.

[5] Ibid. at 7.

[6] Ibid.

[7] American Immigration Council, "The Growth of the U.S. Deportation Machine," March 2014, at http://www.immigrationpolicy.org/just-facts/growth-us-deportation-machine.

[8] Mark Noferi, American Immigration Council, "New Report Explains How U.S. Reached Record-Breaking Removals," Immigration Impact, Oct. 17, 2014, at http://immigrationimpact.com/2014/10/17/new-report-explains-how-u-s-reached-record-breaking-removals/.

[9] American Immigration Council, "Misplaced Priorities: Most Immigrants Deported by ICE in 2013 Were a Threat to No One," March 2014, at http://www.immigrationpolicy.org/just-facts/misplaced-priorities-most-immigrants-deported-ice-2013-were-threat-no-one.

- "Removal Without Recourse: The Growth of Summary Deportations from the United States" (April 2014), which expresses further concern that the vast majority of those removed do not have the right to appear before a judge or apply for status in the United States.[10] (Attachment D)

II. Protections for Asylum Seekers

The American Immigration Council expresses concern regarding the rolling back of asylum protections for vulnerable individuals, at a time when asylum seekers already face obstacles to bringing claims, including the increased detention of children and mothers fleeing persecution in their home countries. How we respond to those fleeing violence and persecution will signal to the world whether our commitment to due process and the protection of refugees is real or illusory, and it could have a profound effect on how other countries around the world respond to our call to deal fairly and humanely to refugee crises in places like Syria and the Sudan.[11]

Under U.S. and international law, the United States cannot return or expel people to places where their lives or freedoms could be in jeopardy. The American Immigration Council's fact sheet *Asylum in the United States* sets out this legal background.[12] (Attachment E)

The Council's 2014 report, *Mexican and Central American Asylum and Credible Fear Claims: Background and Context*, details the rising numbers of "credible fear" claims made by those apprehended near the southern border, as Central American violence has risen.[13] (Attachment F) The report addresses concerns regarding abuse of the system, but concludes that "the credible fear and asylum process poses obstacles for applicants that far surpass the supposed abuses claimed by its detractors."[14] "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."[15]

Evidence has emerged in recent months that these obstacles to applying for asylum continue. For example, Human Rights Watch issued a report detailing the failure of Customs and Border Protection (CBP) officers to properly screen individuals who fear persecution.[16] Subsequently, several NGOs submitted a complaint to DHS' Office of Civil Rights and Civil Liberties

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[10] American Immigration Council, "Removal Without Recourse: The Growth of Summary Deportations from the United States," April 2014, at http://www.immigrationpolicy.org/just-facts/removal-without-recourse-growth-summary-deportations-united-states.

[11] American Immigration Council, *America Must Uphold Its Obligations to Protect Children and Families Fleeing Persecution* (June 30, 2014), at http://www.americanimmigrationcouncil.org/newsroom/release/america-must-uphold-its-obligations-protect-children-and-families-fleeing-persecuti.

[12] American Immigration Council, "Asylum in the United States," August 2014, at http://immigrationpolicy.org/just-facts/asylum-united-states.

[13] American Immigration Council, "Mexican and Central American Asylum and Credible Fear Claims: Background and Context," May 2014, at http://immigrationpolicy.org/special-reports/mexican-and-central-american-asylum-and-credible-fear-claims-background-and-context.

[14] Ibid.

[15] Ibid.

[16] Beth Werlin, American Immigration Council, *Report Discloses Deportation of Central American Asylum Seekers* (Oct. 21, 2014), at http://immigrationimpact.com/2014/10/21/report-discloses-deportation-of-central-american-asylum-seekers/#sthash.EzC59IC0.dpuf.

regarding these screening failures.[17] Given these failures, the American Immigration supports the strengthening, rather than rolling back, of asylum procedures with robust oversight.

Moreover, the American Immigration Council continues to express deep concern regarding family detention of asylum seekers. The U.S. has responded to the influx of Central Americans fleeing violence by establishing family detention camps for vulnerable mothers and children.[18] The Council remains committed to ensuring that families and individuals have access to the critical legal assistance they need, and to aggressively advocating and litigating to end the detention of children and mothers.

III. Unaccompanied Immigrant Children

The American Immigration Council's 2014 report, *Children in Danger: A Guide to the Humanitarian Challenge at the Border*, describes the reasons for and responses to the influx of unaccompanied Central American children to the United States.[19] (Attachment G) The report concludes that "[r]ecent U.S. immigration enforcement policy does not appear to be a primary cause of the migration" of children,[20] and that research "indicates that violence is the primary cause, even among those who also cite poverty or family reunification as reasons for their departure."[21]

Accordingly, it is "inaccurate" to say that "we face little more than an upsurge in unauthorized immigration which can be handled by kicking the deportation machine up a notch."[22] Putting children on the fast track to deportation back to the countries they fled is not an effective (or ethical) way to handle a humanitarian crisis.[23] Thus, the Council supports strengthening, rather than rolling back, procedures protecting unaccompanied children.

Our response must be built on the recognition that although some of these children can and should be safely returned, many deserve and have the right to the protections that our laws afford to those who are fleeing violence and persecution.[24] Moreover, all children should be provided

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[17] Emily Creighton, American Immigration Council, *Civil Rights Complaint Documents Government's Failure to Properly Screen Asylum Seekers*, Immigration Impact (Nov. 14, 2014), at http://immigrationimpact.com/2014/11/14/civil-rights-complaint-documents-governments-failure-properly-screen-asylum-seekers/#sthash.uWxpttuf.dpuf.

[18] Wendy Feliz, American Immigration Council, *New York Times Exposes 'Shame of America's Family Detention Camps'*, (Feb. 9, 2015), at http://immigrationimpact.com/2015/02/09/new-york-times-exposes-shame-americas-family-detention-camps/#sthash.t9vxqeLt.dpuf.

[19] American Immigration Council, *Children in Danger: A Guide to the Humanitarian Challenge at the Border* (July 2014), at http://www.immigrationpolicy.org/special-reports/children-danger-guide-humanitarian-challenge-border.

[20] Ibid.

[21] Elizabeth Kennedy, "No Childhood Here: Why Central American Children are Fleeing their Homes," American Immigration Council, July 2014, at http://www.immigrationpolicy.org/sites/default/files/docs/no_childhood_here_why_central_american_children_are_fleeing_their_homes_final.pdf.

[22] Walter Ewing, American Immigration Council, *Refugee Children Don't Need More Immigration Enforcement* (July 22, 2014), at http://immigrationimpact.com/2014/07/22/refugee-children-dont-need-more-immigration-enforcement/#sthash.fhSSMTuq.dpuf.

[23] Ibid.

[24] American Immigration Council, *America Must Uphold Its Obligations to Protect Children and Families Fleeing Persecution* (June 30, 2014), at http://www.americanimmigrationcouncil.org/newsroom/release/america-must-uphold-its-obligations-protect-children-and-families-fleeing-persecuti.

counsel, at government expense if necessary, to help navigate complicated immigration proceedings. No child should be deported without legal representation.[25]

The American Immigration Council is also concerned that children on new "priority dockets" are too often rushed through immigration court with insufficient safeguards to ensure that they receive proper notice of their hearings and that they have a real opportunity to learn whether they may be eligible to remain in the United States.[26]

* * *

Undeniably, America's immigration system remains in urgent need of reform. However, enforcement-only provisions and rolling back due process protections for those seeking protection in the United States is not the type of reform we need. Ultimately, immigration reform that includes a pathway to legal status for unauthorized immigrants already living in the country, coupled with the creation of flexible avenues for future immigration, will enhance enforcement and help bring unauthorized immigration under control.

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[25] Beth Werlin, American Immigration Council, *Why We Are Suing the Government on Behalf of All Children Facing Deportation*, Immigration Impact (July 9, 2014), at http://immigrationimpact.com/2014/07/09/why-we-are-suing-the-government-on-behalf-of-all-children-facing-deportation/#sthash.wbnHjQEp.dpuf.

[26] Kristin McLeod-Ball, American Immigration Council, *Unrepresented Children Still Being Fast-Tracked Through Immigration Hearings*, Immigration Impact (Feb. 6, 2015), at http://immigrationimpact.com/2015/02/06/unrepresented-children-still-fast-tracked-immigration-hearings/#sthash.KmGcfIWi.dpuf.

ATTACHMENT A

IMMIGRATION POLICY CENTER
AMERICAN IMMIGRATION COUNCIL

August 2013

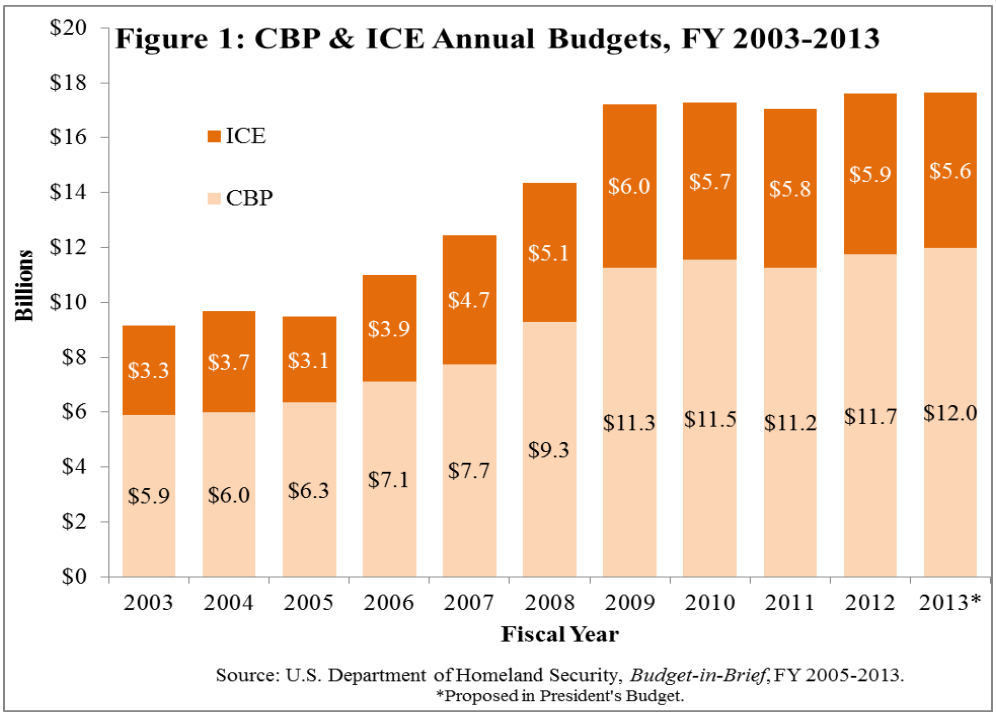
CRACKING THE SAFE ACT:
Understanding the Impact and Context of H.R. 2278, the "Strengthen and Fortify Enforcement Act"

On June 6, 2013, the House Judiciary Committee considered H.R. 2278, the "Strengthen and Fortify Enforcement Act," commonly known as the SAFE Act. This wide-ranging immigration enforcement bill would make unlawful presence in the United States a criminal act punishable with jail time, greatly expand detention of immigrants, authorize states and local governments to create their own immigration enforcement laws, and impose harsher penalties and restrictions for immigration violations, among other enforcement-related provisions. The bill, introduced by Judiciary Chairman Bob Goodlatte (R-VA) and Immigration Subcommittee Chairman Trey Gowdy (R-SC), was the subject of a contentious committee mark up, ending in its passage out of committee on a straight party line vote of 20 to 15. The SAFE Act is one of several bills that the House leadership might offer as part of its "step-by-step" approach to immigration reform, in which various House bills addressing different aspects of the immigration system may be voted on separately.

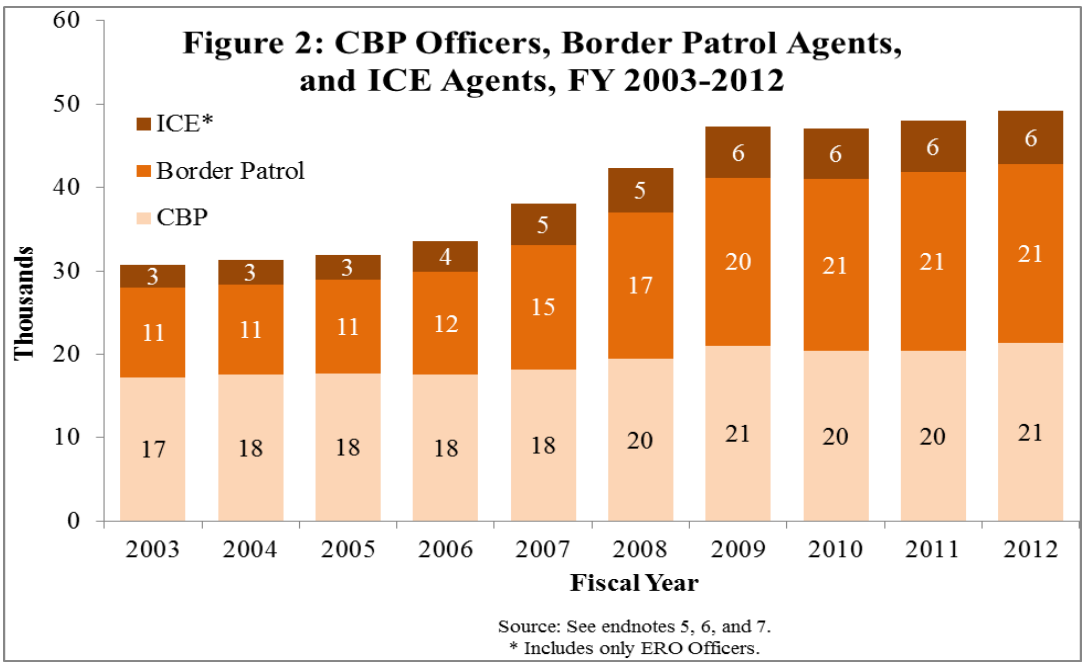
However, the SAFE Act represents an attrition-through-enforcement approach to unauthorized immigration that has not proven effective and which runs contrary to many of the objectives of immigration reform. It returns to a philosophy which holds that punitive enforcement measures alone can address the many flaws in our immigration system. But the United States has essentially been pursuing an enforcement-only approach for decades which has divided communities and proven to be extremely expensive,[1] all without actually achieving its goals.[2] It is important to keep in mind that, since 1986, the federal government has spent $187 billion on immigration enforcement, yet the unauthorized population has tripled in size to 11 million during that time.[3] The House Judiciary's endorsement of an outdated philosophy that touts more enforcement, more detention, more penalties, and a more complicated, expensive, and decentralized immigration enforcement system flies in the face of the House leadership's repeated pledge to fix that very system.

Spending on immigration enforcement is at an all-time high.

Contrary to the impression created by supporters of the SAFE Act, federal spending on border and immigration enforcement has been growing for years and is now at an all-time high. Since the creation of the Department of Homeland Security (DHS) in 2003, the budget of U.S. Customs and Border Protection (CBP)—the parent agency of the Border Patrol within DHS—has increased from $5.9 billion to $12 billion per year. On top of that, spending on U.S. Immigration and Customs Enforcement (ICE), the interior-enforcement counterpart to CBP within DHS, has grown from $3.3 billion since its inception to $5.6 billion today {Figure 1}.[4]



This growth in enforcement spending has been accompanied by a rise in the number of enforcement personnel. In fact, the number of border and interior enforcement personnel now stands at more than 49,000. The number of Border Patrol agents doubled from 10,717 in FY 2003 to 21,394 in FY 2012.[5] The number of CBP officers staffing ports of entry (POEs) grew from 17,279 in FY 2003 to 21,423 in FY 2012.[6] And the number of ICE agents devoted to Enforcement and Removal Operations increased from 2,710 in FY 2003 to 6,338 in FY 2012 {Figure 2}.[7]



What are the origins of the SAFE Act?

The SAFE Act is a direct descendant of H.R. 4437, the Border Protection, Antiterrorism, and Illegal Immigration Control Act. This bill was passed by the House in 2005 and is commonly known as the Sensenbrenner bill, named for the former Chair of the House Immigration Subcommittee. When the Sensenbrenner bill passed the House it led to mass public demonstrations because it criminalized unauthorized immigrants, expanded detention, and created additional harsh immigration penalties.[8] The SAFE Act revives these provisions, but goes further. Significant provisions of the SAFE Act attempt to overturn last year's ruling by the Supreme Court in *Arizona v. U.S.* that limited states' ability to enact their own immigration laws because immigration is the domain of federal law.[9] Since that decision, a series of other cases interpreting this ruling have struck down state immigration laws on a range of issues, such as forbidding landlords from renting to unauthorized immigrants and precluding the enforcement of contracts with them. The SAFE Act would essentially resurrect all these laws and encourage the passage of more because it changes federal law to comport with SB 1070 and similar local attrition-through-enforcement bills.

How would the SAFE Act affect the enforcement of immigration laws?

The breadth of the provisions in the SAFE Act, allowing for unlimited state and local enforcement of federal immigration law as well as an expansion of state and local immigration laws, amounts to an abandonment of federal control of immigration enforcement and creates a patchwork of potentially conflicting, burdensome, inefficient, and divisive laws. In fact, some provisions of the SAFE Act explicitly require the federal government to renew federal-state enforcement models that the Department of Homeland Security (DHS) has rejected as inefficient and prone to discrimination and racial profiling—essentially opening the door to abuses of the system such as those that have been uncovered during Sheriff Joe Arpaio's tenure in Maricopa County.[10] The negative social and economic consequences of state immigration enforcement laws have been well-documented and have proven highly divisive, so much so that the Supreme Court, in its opinion in *Arizona v. U.S.*, urged Congress to face its responsibilities and pass a coordinated and unified federal enforcement scheme.[11] Instead, the SAFE Act would have the federal government cede ground to the states, encouraging the creation of a patchwork of hundreds of immigration laws at state and local levels. The resulting proliferation of state and local immigration laws similar to Arizona's, enforced by untrained local authorities, would create a complicated, expensive,[12] and conflicting patchwork of regulation, harming the ability of local law enforcement to prioritize the prosecution of violent crimes and causing economic harm and legal uncertainty for local businesses. Arizona and Georgia serve as case studies in how a state which chooses to implement its own punitive immigration law can rapidly incur hundreds of millions of dollars in economic losses as a result.[13]

The SAFE Act would also transform the act of being in the country unlawfully into a criminal offense, shifting the enforcement of immigration law from a civil framework in which deportation is the ultimate penalty to a criminal one in which a possible prison term (followed by deportation) is the norm. Expanded criminalization at the federal level, expanded state and local enforcement, and a massive increase in federal detention are all contemplated by the SAFE Act,

at a time when public sentiment supports legalizing rather than deporting or criminalizing the unauthorized population. This massive increase of criminalization, detention, and deportation of immigrants would also be extraordinarily expensive and divert law enforcement priorities and resources from fighting violent and serious crime.[14] DHS already spends $2 billion a year on immigration detention alone, or $5.05 million per day.[15] Ironically, the SAFE Act, if enacted, would further expand the kind of punitive measures that have been shown to undermine local economies and a functional immigration system.[16]

What are the consequences of expanded state and local enforcement of immigration laws?

Under current law and policy, federal, state, and local governments have numerous cooperative relationships that exist to facilitate enforcement of immigration laws. Many of these programs have come under fire, most notably the 287(g) program, for undermining public safety,[17] shifting local emphasis from community policing to immigration enforcement, and creating an atmosphere that encourages racial profiling.[18] While the federal government has rejected many of these charges in programs such as Secure Communities, it has significantly revised the 287(g) program, terminating the contracts of notorious violators like Maricopa County, revising the terms of the agreements entered into with localities, and restructuring the program. Under the SAFE Act, these reforms would be eliminated, and the decision as to whether to enforce immigration laws would be controlled by state and local jurisdictions.

Law enforcement and community groups have been frequent critics of unregulated state and local enforcement of federal immigration laws, pointing out that such programs are costly, [19] reduce levels of trust between the public and law enforcement, turn police officers into immigration agents, and—in the wrong hands—are vehicles for discrimination and racial profiling.[20] Given this critique, expansion of 287(g)-type programs and the elimination of much federal oversight would heighten rather than improve the significant public safety concerns associated with state and local enforcement of immigration laws—especially because the SAFE Act requires the detention of all persons arrested on immigration violations at the state and local level.[21] For these reasons, state immigration laws have become increasingly unpopular[22] and local law enforcement officials are declining to serve federal immigration enforcement purposes.[23] States are recognizing that punitive local immigration enforcement hurts local businesses and economies and causes the loss of jobs and tax revenue, in addition to dividing the local community and decreasing public trust in law enforcement.[24]

What are the Key Provisions of the SAFE Act?

The SAFE Act redefines the federal enforcement landscape, moving immigrant prosecution from the civil to the criminal arena. The bill would create a system that promotes state and local enforcement of immigration laws and imposes expanded detention of unauthorized immigrants, harsher civil and criminal penalties for a range of immigration violations, expanded police authority for Immigration and Customs Enforcement (ICE) agents, and rigid limits on the authority of immigration agencies, prosecutors, and immigration judges to set immigration enforcement priorities. The following summary includes some of the most notable proposed changes to existing law, but is not exhaustive.[25]

- **Proliferation of State and Local Immigration Laws**: Among the most controversial of the SAFE Act provisions are those which give state and local jurisdictions power to create and enforce immigration law. The Act would give them nearly unfettered authority to enforce federal immigration laws, excluding only the power to issue an immigration charging document and to actually remove unauthorized immigrants. In addition to enforcing federal laws, states and localities would be empowered to create their own immigration laws which penalize the same conduct as the federal law.[26] This would allow state laws dealing with everything from the carrying of identity documents to working without authorization to residing unlawfully in the state. In practice, these kinds of laws, like Arizona's SB 1070, are frequently struck down by the courts as conflicting with the federal government's exclusive jurisdiction over immigration, as in the Supreme Court's decision in *Arizona v. United States*.[27] Moreover, in places where they have been put into effect, they have sometimes encouraged untrained local sheriffs and police to engage in racial profiling and other unlawful actions.[28] Though the federal government would be required to create training materials for local law enforcement, local law enforcement would not actually be required take the training.[29] The federal government might also be required to enter into controversial agreements known as 287(g) agreements, under which state and local police are deputized to act as federal immigration agents.[30] It would be difficult for the immigration agency to refuse or terminate an agreement, absent compelling circumstances or being subject to court review.[31] State and local officers would be granted immunity for actions undertaken in the course of enforcing immigration laws.[32]

- **Increased Detention**: Among other changes to immigration detention, the SAFE Act would require federal authorities to take an unauthorized immigrant into custody within 48 hours of a state or local arrest, regardless of the individual circumstances.[33] It would preclude the use of secure and less costly alternatives to detention, such as ankle bracelets or the release on bond of individuals who represent no flight risk or danger to the community, and would permit state and local jurisdictions to detain unauthorized immigrants for 14 days after completion of a sentence so that they may be taken into custody by DHS.[34] The SAFE Act would also permit the unlimited detention of immigrants who have been ordered removed, but who cannot be repatriated[35]—a practice found unconstitutional by the Supreme Court in *Zadvydas v. Davis*.[36] Detention might also be required for immigrants who have been charged, but not convicted, of any crime.[37] Increases in spending on detention would be authorized, including a requirement that the government spend sufficient sums to provide detention facilities for all unauthorized persons arrested by state and local jurisdictions.[38] Such a large increase in immigration detention would be extremely expensive, as it currently costs $159 per day per detainee, or $5.05 million a day for all immigration detainees,[39] many of whom have no criminal records or only committed traffic violations. States and localities would be required to cooperate and share information with federal immigration authorities, and those who fail to do so would be denied certain federal funding for community policing or other law enforcement or DHS grants.[40]

- **Increased Penalties for Immigration Violations**. The SAFE Act would broaden the range of behaviors that are subject to immigration penalties and reduce the standard of

evidence necessary to find someone inadmissible, removable, or ineligible for a benefit.[41] In some cases, changes to the law would allow removal based on suspicion of criminal behavior rather than convictions. For example, a mere reasonable belief that someone may be or have been a member of a gang that was involved in crime would constitute grounds for removal.[42] The use of expedited removal (deportation without access to court) would be expanded to include immigrants with most any type of criminal conviction that affects immigration status, irrespective of whether they were encountered at a port of entry or at the border.[43]

- **Expanded Definition of "Aggravated Felony."** H.R. 2278 would expand the definition of "aggravated felony," an immigration term of art and the most serious offense in immigration law. If an offense is considered an "aggravated felony" (which may not necessarily be aggravated or a felony), it leads to automatic deportation and permanent banishment with no consideration of individual circumstances.[44] Under the bill, the definition of aggravated felony would include expanded definitions of passport, visa, or immigration fraud; certain acts related to harboring of unauthorized immigrants; acts related to improper entry and reentry; and would include two convictions for driving while intoxicated, regardless of whether the convictions occurred long ago or were misdemeanor offenses.[45] Someone detained based on one drunk driving arrest would also be subject to mandatory detention.[46] This expanded list of aggravated felonies would make crimes as different as two DUI convictions, one conviction for shoplifting, or a conviction for premeditated murder all punishable by the maximum penalty under immigration law, further limiting the ability of authorities to focus resources on serious criminal offenders.

- **Criminal Prosecution of Unlawful Presence:** Under current law, illegal entry is a crime, but one that generally only applies if an individual is apprehended at the time of an illegal border crossing. Unlawful presence, by itself, is a civil—not a criminal—violation, and not punishable with jail time. The SAFE Act would change that, making every unauthorized immigrant into a criminal subject at any time to arrest, fines, and/or 6 months of jail time.[47] This could include legal visa holders who overstay their visas by one day, such as a foreign executive whose flight home is delayed, or visa holders who violate the terms of their visas for technical reasons, such as student visa holders who fail to take full course loads. Subsequent offenders would be felons subject to fines and 2 years in prison.[48]

- **Increase in Heavily Armed ICE Agents**: The SAFE Act would authorize 8,260 new positions within ICE, primarily for detention enforcement and deportation officers.[49] It would expand arrest authority, provide body armor to all ICE agents and deportation officers, and make handguns, M-4 rifles and Tasers standard issue weapons.[50] It also would create a new ICE Advisory Council designed to advise Congress on the impact of DHS policies on ICE officers.[51]

- **Reduced DHS Ability to Set Law Enforcement Priorities**: The SAFE Act would prohibit implementation of ICE memos setting agency policy on prosecutorial discretion.[52] These memos are the mechanism by which DHS sets national law

enforcement priorities, including a focus on immigrants who have committed serious crimes over those who have no criminal records and those with compelling circumstances, such as close relatives serving in the military.

- **Deportation of DREAMers**: The SAFE Act would also eliminate DHS discretion to temporarily prevent the removal of DREAMers—unauthorized immigrants who were brought to the U.S. as children and meet certain educational and age requirements.[53] Even those who have already been processed and granted temporary relief under the Deferred Action for Childhood Arrivals (DACA) program announced a year ago would become subject to deportation. The deportation of these law-abiding and educated young immigrants who are integrated into U.S. society could cost the economy hundreds of billions of dollars[54] and damage the social fabric, in addition to being politically unpopular.[55]

Does the SAFE Act belong in a coordinated immigration reform package?

Regardless of whether immigration reform is addressed through a comprehensive package, such as S.744, or a series of related bills, the ultimate result must reflect a coherent vision of immigration policy. Despite differences of opinion over what that policy might look like, the evidence supports expanded legal immigration, legalization of the unauthorized population, and the smart use of enforcement measures. The evidence does not support an indiscriminate increase in penalties, detention, and deportation that removes the ability of immigration authorities to make common-sense, fact-based decisions on individual cases. Furthermore, the economic and social harm caused by state and local immigration laws argues against a policy that encourages the proliferation of such laws.

The creation of a sensible, coherent, forward-looking immigration system is incompatible with measures that eliminate the ability to make sensible individualized decisions on immigration cases, expand expensive and arbitrary mandatory detention and deportation, create a burdensome patchwork of potentially conflicting and unconstitutional state and local immigration laws, and criminalize the entire unauthorized population. In other words, when the House leadership considers what immigration bills to put forward as part of its "step-by-step" solution, the SAFE Act should not be on the list. Because it represents outdated principles that are ineffective and inherently in conflict with prevailing and accepted principles of immigration reform, the SAFE Act would undermine and contradict any achievements the House might make to fix our severely dysfunctional immigration system.

Endnotes

[1] Immigration Policy Center, *Checklist for Estimating the Costs of SB 1070-Style Legislation* (Washington DC: American Immigration Council, November 8, 2011); Immigration Policy Center, *Fiscally Irresponsible: Immigration Enforcement without Reform Wastes Taxpayer Dollars* (Washington, DC: American Immigration Council, October 19, 2011).

[2] Immigration Policy Center, *The Fallacy of Enforcement First* (Washington, DC: American Immigration Council, May 9, 2013); Immigration Policy Center, *A Decade of Rising Immigration Enforcement* (Washington, DC: American Immigration Council, January 8, 2013); Immigration Policy Center, *The 287(g) Program: A Flawed and Obsolete Method of Immigration Enforcement* (Washington, DC: American Immigration Council, November 29, 2012).

[3] Immigration Policy Center, *The Fallacy of Enforcement First* (Washington, DC: American Immigration Council, May 9, 2013).
[4] U.S. Department of Homeland Security, *Budget-in-Brief*, FY 2005-2013.
[5] U.S. Border Patrol, "Border Patrol Agent Staffing by Fiscal Year," February 2013.
[6] U.S. Customs and Border Protection, Communications Management Office, November 2012.
[7] U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations, May 28, 2013.
[8] Georgia Logothetis, "Massive March in Chicago to Protest H.R. 4437," Daily Kos, March 10, 2006.
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ATTACHMENT B

IMMIGRATION POLICY CENTER
AMERICAN IMMIGRATION COUNCIL

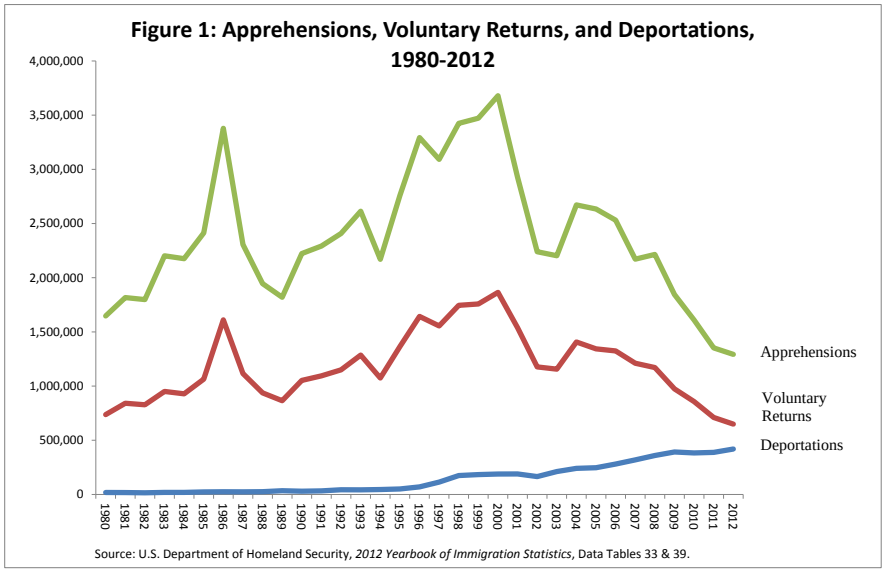
March 2014

THE GROWTH OF THE U.S. DEPORTATION MACHINE:
More Immigrants are being "Removed" from the United States than Ever Before

Despite some highly public claims to the contrary, there has been no waning of immigration enforcement in the United States. In fact, the U.S. deportation machine has grown larger in recent years, indiscriminately consuming criminals and non-criminals alike, be they unauthorized immigrants or long-time legal permanent residents (LPRs). Deportations under the Obama administration alone are now approaching the two-million mark. But the deportation frenzy began long before this milestone. The federal government has, for nearly two decades, been pursuing an enforcement-first approach to immigration control that favors mandatory detention and deportation over the traditional discretion of a judge to consider the unique circumstances of every case. The end result has been a relentless campaign of imprisonment and expulsion aimed at noncitizens—a campaign authorized by Congress and implemented by the executive branch. While this campaign precedes the Obama administration by many years, it has grown immensely during his tenure in the White House. In part, this is the result of laws which have put the expansion of deportations on automatic. But the continued growth of deportations also reflects the policy choices of the Obama administration. Rather than putting the brakes on this non-stop drive to deport more and more people, the administration chose to add fuel to the fire.[1]

IRCA and the New Era of Deportations

The U.S. system of deportation (and immigration detention) has been growing for decades under both Republican and Democratic administrations and congresses.[2] The impetus for this growth was a small section of the Immigration Reform and Control Act of 1986 (IRCA) known as the MacKay amendment, which encouraged the initiation of deportation proceedings against any immigrant convicted of a deportable offense.[3] Since that time, a stream of punitive legislation has eaten away at the traditional discretion of judges to grant relief from deportation in particular cases.[4] The end result is that the number of "removals" (deportations) has trended upward since the mid-1990s. Meanwhile, the number of apprehensions has fluctuated widely, primarily in response to changing economic conditions in the United States and Mexico, and nose-dived when the recession of late 2007 hit. The number of "voluntary returns" has tracked apprehensions closely. However, since 2005, voluntary return has been made available to fewer and fewer apprehended immigrants as deportation (with criminal consequences for re-entry into the country) becomes the preferred option of U.S. immigration authorities (Figure 1).[5]



Most unauthorized immigrants (and deportees) have long been men. However, faced with intensified immigration enforcement, men who in the past might have returned to their home countries after a few years of work in the United States are settling permanently and bringing their wives and children with them.[6] At the same time, immigration enforcement has expanded along the full length of the southern border and into the interior of the country, beyond the border crossing points traditionally dominated by men. As a result, more and more women (and mothers) are being apprehended and deported.[7]

Be they men or women, though, most of the immigrants being deported are not dangerous criminals. According to U.S. Immigration and Customs Enforcement (ICE) statistics, four-fifths of all deportations conducted by the agency in Fiscal Year (FY) 2013 did *not* fit ICE's own definition of what constitutes a "Level 1" priority.[8]

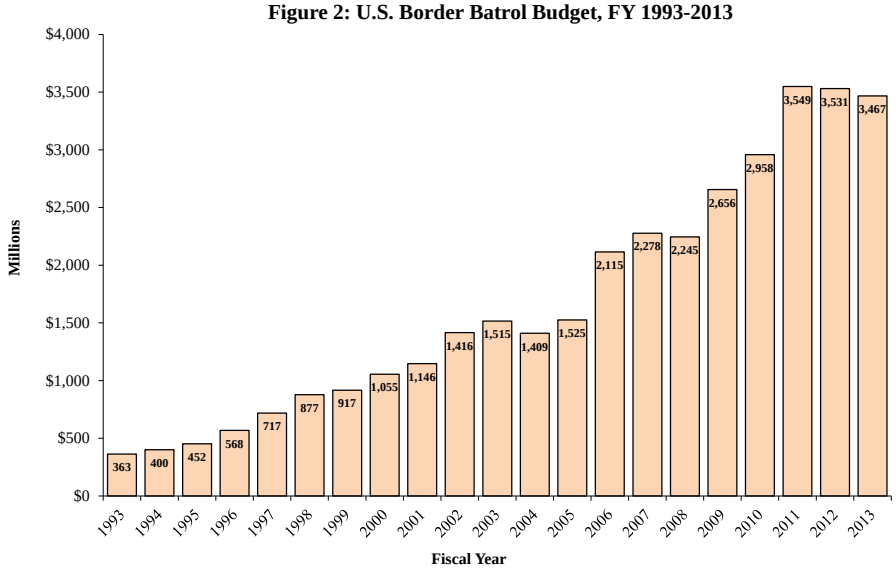
The 1996 Laws

The most extreme cases of punishing post-IRCA immigration laws came in 1996 with the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) and Antiterrorism and Effective Death Penalty Act (AEDPA). These two pieces of legislation transformed immigration law in two ways. First, the laws mandated the detention and deportation of noncitizens (legal permanent residents and unauthorized immigrants alike) who had been convicted of an "aggravated felony." Second, the laws expanded the list of offenses which qualify as "aggravated felonies" for immigration purposes (including tax evasion, failure to appear in court, and receipt of stolen property[9]). Moreover, the laws also applied this new standard retroactively to offenses committed years before the laws were enacted.[10] In other words, a growing number of immigrants have been detained and deported for non-violent criminal offenses since 1996 as U.S. immigration policy criminalizes an ever-broadening swath of the immigrant population.[11]

An Enforcement Spending Spree

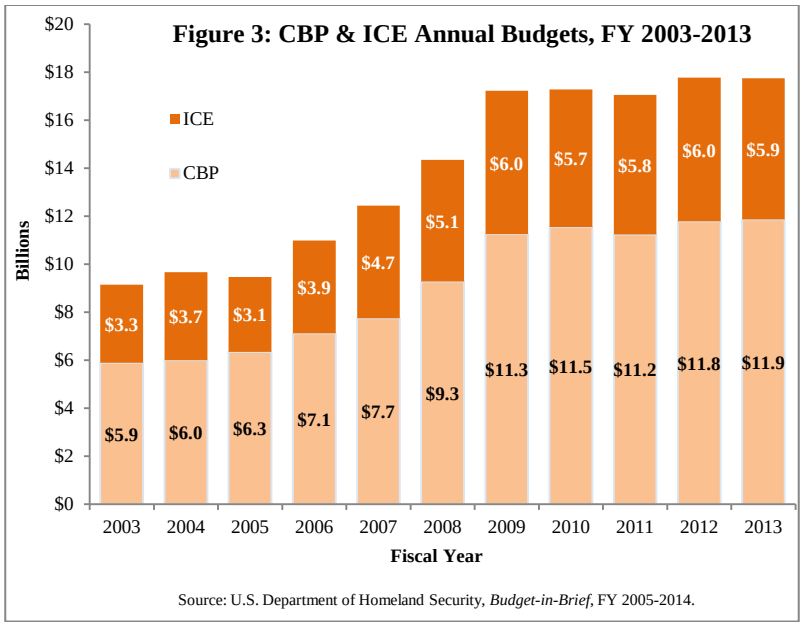
Thanks to the proliferation of punitive laws and policies, immigration enforcement is a booming business. Since the federal government adopted a strategy of concentrated border enforcement known as "prevention through deterrence" in the early 1990s, the annual budget of the Border Patrol has increased ten-fold, from $363 million in FY 1993 to $3.5 billion in FY 2013 (Figure 2).[12]

Figure 2: U.S. Border Batrol Budget, FY 1993-2013

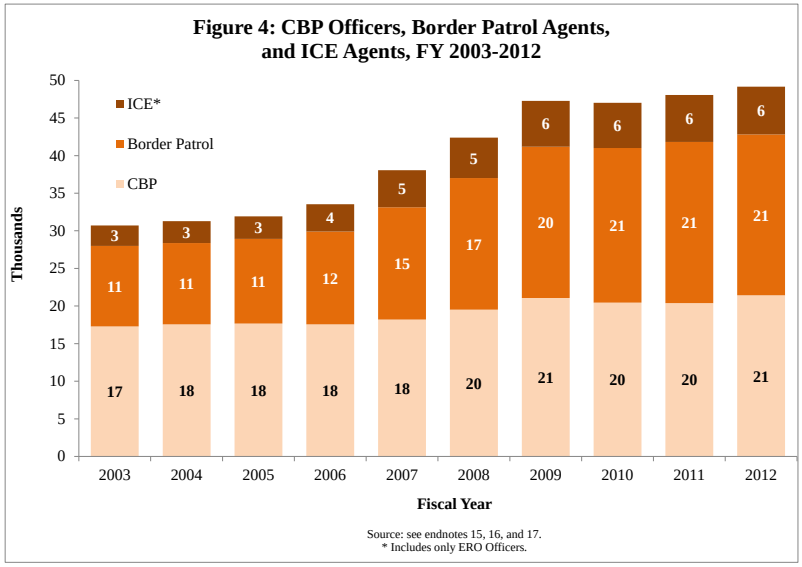


Source: U.S. Border Patrol, "U.S. Border Patrol Fiscal Year Budget Statistics," January 27, 2014.

Moreover, since the creation of the Department of Homeland Security (DHS) in 2003, the annual budget of Customs and Border Protections (CBP)—which includes the Border Patrol—doubled from $5.9 billion to $11.9 billion in FY 2013. Spending on Immigration and Customs Enforcement (ICE)—the interior-enforcement counterpart to CBP within DHS—grew 73 percent, from $3.3 billion since its inception to $5.9 billion in FY 2013 (Figure 3).[13] The budget of Enforcement and Removal Operations (ERO) in particular has increased from $1.2 billion in FY 2005 to $2.9 billion in FY 2012.[14]



As budgets have grown, so has staffing. The number of Border Patrol agents deployed between ports of entry roughly doubled from 10,717 in FY 2003 to 21,394 in FY 2012.[15] At the same time, the number of CBP officers working at ports of entry grew from 17,279 to 21,423.[16] And the number of ICE agents devoted to Enforcement and Removal Operations more than doubled from 2,710 to 6,338 (Figure 4).[17] All told, the number of border and interior-enforcement personnel now stands at roughly 49,000.



The Melding of Border and Interior Enforcement

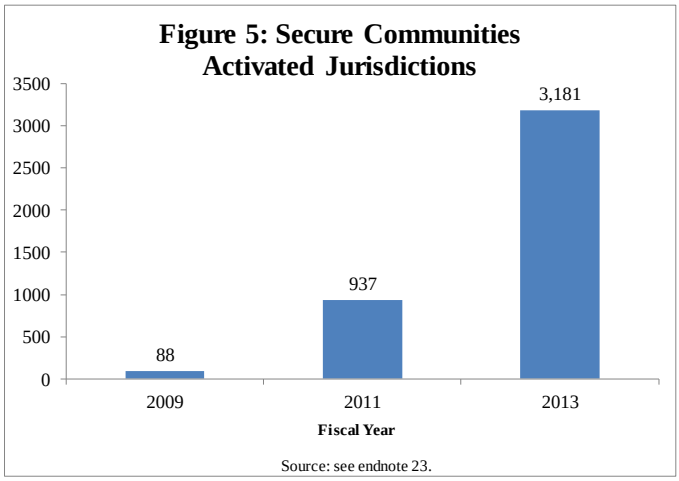
All of this spending on immigration enforcement has fueled programs like the Criminal Alien Program (CAP), Secure Communities, and 287(g), which reach into every corner of the country and thereby blur the line between interior enforcement and border enforcement.[18]

Criminal Alien Program (CAP)

CAP encompasses a number of different systems designed to identify, detain, and begin removal proceedings against deportable immigrants within federal, state, and local prisons and jails.[19] CAP is currently active in all state and federal prisons, as well as more than 300 local jails throughout the country. It is one of several "jail status check" programs intended to screen individuals in federal, state, or local prisons and jails for removability. While other such jail status check programs (like Secure Communities) have garnered much more attention, CAP is the oldest and largest such interface between the criminal justice system and federal immigration authorities.[20] CAP was created between 2005 and 2007 through the fusion of two other programs that were launched in 1988: the Institutional Removal Program (IRP) and the Alien Criminal Apprehension Program (ACAP).[21]

Secure Communities

Secure Communities, which was created in 2008, is an information-sharing program between DHS and the Department of Justice. The program uses biometric data to screen for deportable immigrants as people are being booked into jails.[22] Under Secure Communities, an arrestee's fingerprints are run not only against criminal databases, but immigration databases as well. If there is an immigration "hit," ICE can issue a "detainer" requesting that the jail hold the person in question until ICE can pick him up. Not surprisingly, given the new classes of "criminals" created by IIRAIRA, most of the immigrants being scooped up by Secure Communities are non-violent, are not serious criminals, and are not a threat to anyone. Moreover, as the program metastasized throughout every part of the country, more and more people were thrown into immigration detention prior to deportation.[23] The expansion of Secure Communities has been dramatic, to say the least—in part because participating jurisdictions cannot opt out of the program. In fact, the number of "activated jurisdictions" encompassed by the program grew from only 88 in FY 2009 to 937 in FY 2011 to *all* 3,181 in the country as of FY 2013 (Figure 5).[24] According to the Government Accountability Office (GAO), "from October 2008 through March 2012, Secure Communities led to the removal of about 183,000 aliens."[25]



287(g)

Under Section 287(g) of the Immigration and Nationality Act, DHS may deputize selected state and local law-enforcement officers to perform the functions of federal immigration agents. Like employees of ICE, these "287(g) officers" have access to federal immigration databases, may interrogate and arrest noncitizens believed to have violated federal immigration laws, and may lodge "detainers" against alleged noncitizens held in state or local custody. The program has attracted a wide range of critics since the first 287(g) agreement was signed more than ten years ago. Among other concerns, opponents say the program lacks proper federal oversight, diverts resources from the investigation of local crimes, and results in profiling of Latino residents—as was documented in the case of the 287(g) agreement with Sheriff Joe Arpaio of Maricopa County, Arizona. In its budget justification for FY 2013, DHS sought $17 million *less* in funding for the 287(g) program, and said that in light of the expansion of Secure Communities, "it will no longer be necessary to maintain the more costly and less effective 287(g) program."[26]

The "Consequence Delivery System"

Meanwhile, along the U.S.-Mexico border, CBP began in 2005 to roll out its punitive "Consequence Delivery System" aimed at immigrants caught crossing the border without authorization. As described by Border Patrol Chief Michael J. Fisher, Consequence Delivery "uses a combination of criminal and administrative consequences developed by the Border Patrol, and implemented with the assistance of ICE, targeting specific classifications of offenders, effectively breaking the smuggling cycle along the border of the United States."[27] In practice, this means that fewer apprehended Mexicans are given the option of "voluntary return" to Mexico. Rather, the Border Patrol now opts for three types of "high consequence" outcomes: formal removal (deportation), immigration-related criminal charges, and remote repatriation (that is, sending immigrants to remote locations far from the smugglers who helped them cross the border).[28] In other words, unauthorized Mexican immigrants are no longer allowed to just go home. They may face criminal prosecution and prison time if they return to the United States. They also are being sentenced in group "trials" that accord apprehended immigrants few legal rights—a process known as Operation Streamline.[29] According to the Congressional Research

Service (CRS), 208,939 unauthorized immigrants were prosecuted through Operation Streamline from its initiation in December 2005 through the end of FY 2012.[30]

Roots in the United States

Many of the immigrants now being deported are long-term legal permanent residents of the United States who have run afoul of the 1996 laws. Yet even many of the unauthorized immigrants being deported have strong ties to the United States, such as U.S.-citizen family members (especially U.S.-born children), not to mention jobs and homes in the United States. Families containing a member who is an unauthorized immigrant live in constant fear of separation. And the burden of deportation is shouldered disproportionately by children.[31] According to estimates from the Pew Hispanic Center, there are 4 million U.S.-born children in the United States with at least one parent who is an unauthorized immigrant, plus 1.1 million children who are themselves unauthorized immigrants and have unauthorized-immigrant parents.[32] Moreover, DHS estimates that nearly three-fifths of unauthorized immigrants have lived in the United States for more than a decade.[33] In other words, most of these people are not single young men, recently arrived, who have no connection to U.S. society. These are men, women, and children who are already part of U.S. society.

by Walter A. Ewing

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ATTACHMENT C

IMMIGRATION POLICY CENTER
AMERICAN IMMIGRATION COUNCIL

March 2014

MISPLACED PRIORITIES:
Most Immigrants Deported by ICE in 2013 Were a Threat to No One

No one can say with certainty when the Obama administration will reach the grim milestone of having deported two million people since the President took office in 2008. Regardless of the exact date this symbolic threshold is reached, however, it is important to keep in mind a much more important fact: most of the people being deported are not dangerous criminals. Despite claims by U.S. Immigration and Customs Enforcement (ICE) that it prioritizes the apprehension of terrorists, violent criminals, and gang members,[1] the agency's own deportation statistics do not bear this out. Rather, most of the individuals being swept up by ICE and dropped into the U.S. deportation machine committed relatively minor, non-violent crimes or have no criminal histories at all. Ironically, many of the immigrants being deported would likely have been able to remain in the country had the immigration reform legislation favored by the administration become law.

ICE's skewed priorities are apparent from the agency's most recent deportation statistics, which cover Fiscal Year (FY) 2013.[2] However, it takes a little digging to discern exactly what those statistics mean. The ICE report containing these numbers is filled with ominous yet cryptic references to "convicted criminals" who are "Level 1," "Level 2," or "Level 3" in terms of their priority. But when those terms are dissected and analyzed, it quickly becomes apparent that most of these "criminal aliens" are not exactly the "worst of the worst."

The agency defines three "priorities for the apprehension, detention, and removal of aliens":

- *Priority 1* – "Aliens who pose a danger to national security or a risk to public safety."
- *Priority 2* – "Recent illegal entrants."
- *Priority 3* – "Aliens who are fugitives or otherwise obstruct immigration controls."[3]

Priority 1 includes certain immigrants without criminal convictions whom ICE believes threaten national security or public safety. In addition, priority 1 encompasses three "levels" of criminal convictions, many of which are not violent or threatening":

- "Level 1" – convicted of an "aggravated felony," or two or more felonies.
- "Level 2" – convicted of a felony, or three or more misdemeanors.
- "Level 3" – convicted of no more than two misdemeanors.

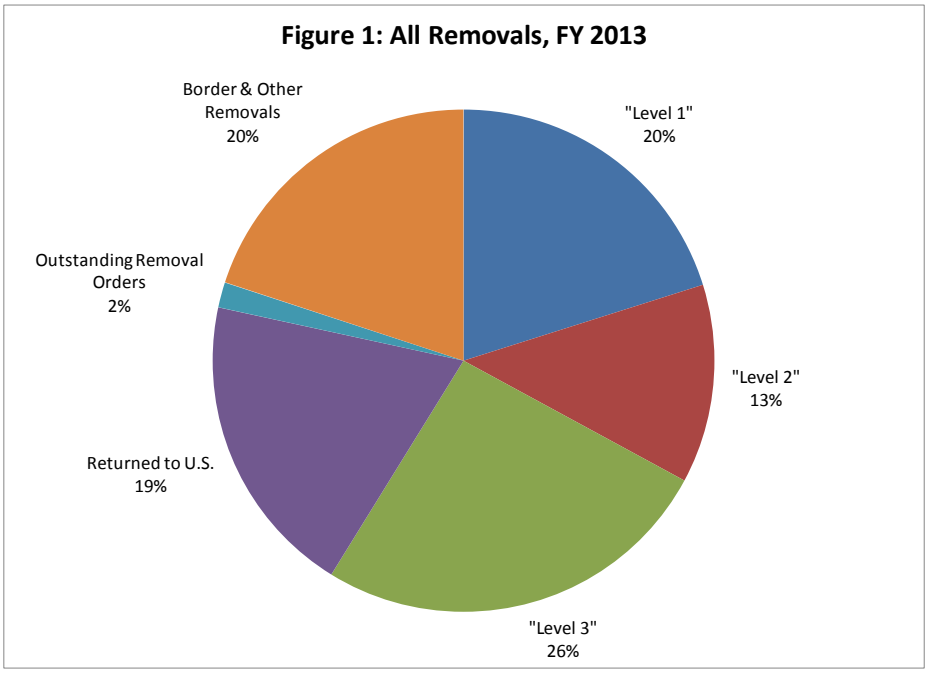
A felony is a crime punishable by more than one year in prison. Felonies encompass crimes ranging from murder and arson to robbery and burglary. A misdemeanor is a crime punishable by more than five days but not more than one year in prison. Misdemeanors include disturbing the peace, some drunk driving offenses, and some traffic violations. The term "aggravated felony," which certainly sounds dangerous, was invented by Congress solely for immigration purposes and need not refer to an offense that is "aggravated" or a "felony." As initially enacted

in 1988, the term referred only to murder, federal drug trafficking, and illicit trafficking of certain firearms and destructive devices. Congress has since expanded the definition of "aggravated felony" on numerous occasions and it now covers more than 30 types of offenses, including theft, filing a false tax return, and failing to appear in court.[4]

All of which serves to illustrate the point that even the highest-priority immigrants on ICE's list are not necessarily violent or dangerous. But even if we overlook this fact for the sake of argument, last year's deportation statistics make clear that even "Level 1" deportees make up a minority of the immigrants whom ICE removed from the country. This does not represent an effective crime-fighting policy or an effective immigration policy. It is a misallocation of enforcement resources that is being used to create a humanitarian catastrophe as people who are a threat to no one are torn from their families, their communities, and their jobs.

Four-fifths of all deportations did not fall within ICE's definition of a "Level 1" priority.

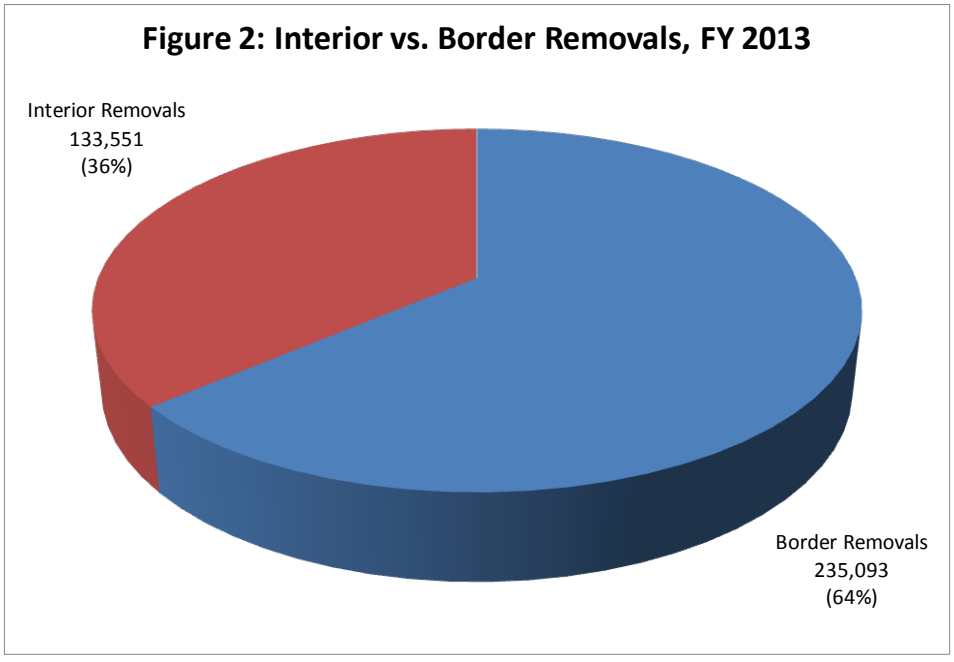
- In FY 2013, ICE carried out 368,644 "removals" of immigrants from the United States.[5]
- One-in-five of these deportees qualified as "Level 1" as defined by ICE: immigrants convicted of an "aggravated felony" or at least two felonies (Figure 1).[6]
- One-in-eight deportees fit the definition of "Level 2" (immigrants convicted of a felony or three misdemeanors), while just over one-quarter were "Level 3" (convicted of no more than two misdemeanors) (Figure 1).[7]
- Just under one-in-five of those deported had been previously removed from the United States. Another one-in-five were removed for some other, non-criminal immigration violation. And two percent were immigrants with outstanding removal orders (Figure 1).[8]



Most removals involved immigrants apprehended near the border.

- ICE states that roughly one-third of deportees in FY 2013 were apprehended in the interior of the country, while nearly two-thirds were apprehended in the proximity of the border (Figure 2).[9]

- However, the ICE distinction between "border removals" and "interior removals" is not as clear-cut as it sounds.
  - ICE states that its border removal statistics refer to "recent illegal entrants," defined as individuals "apprehended while attempting to illicitly enter the United States."[10]
  - However, the border removal statistics appear to include all removals of individuals taken into custody by Customs and Border Protection (CBP) officers. CBP does not exclusively arrest individuals in the process of crossing the border. CBP's Border Patrol agents also conduct roving patrols "near" the border, as well as operate checkpoints on roads which lead away from the border.[11]
  - Furthermore, ICE has suggested that the term "recent border crossers" includes, among others, those who entered the United States within the last three years.[12]
  - As a result, "border removals" may include immigrants who live and work in communities quite some distance from the border itself, rather than individuals attempting to enter the United States.



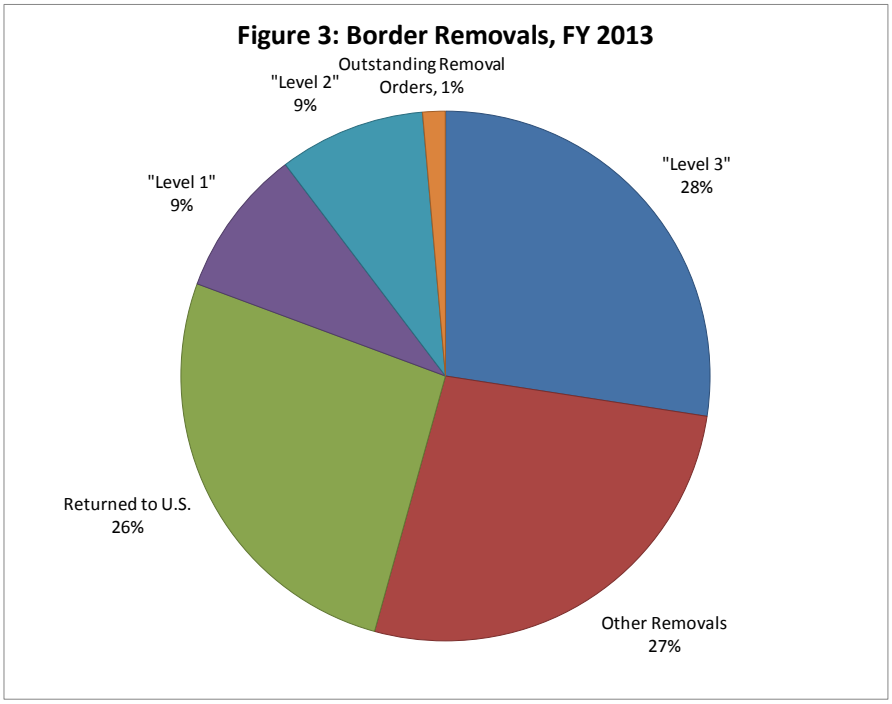
Fewer than one-in-ten deportees apprehended near the border fell within ICE's definition of a "Level 1" priority.

- Only 9 percent of "border deportees" qualified as "Level 1" as defined by ICE: immigrants convicted of an "aggravated felony" or at least two felonies (Figure 3).[13]

- Fewer than one-in-ten border deportees fit the definition of "Level 2" (immigrants convicted of a felony or three misdemeanors), while more than one-quarter were "Level 3" (convicted of no more than two misdemeanors) (Figure 3).[14]

- More than one-quarter of border deportees had returned to the United States after being removed. And more than one-quarter were removed for some other, non-criminal immigration violation. One percent were immigrants with outstanding removal orders {Figure 3}.[15]

- Being apprehended near the border and formally "removed" is not the same as voluntary return. An immigrant subject to "removal" may face criminal prosecution and prison time if he or she returns to the United States.

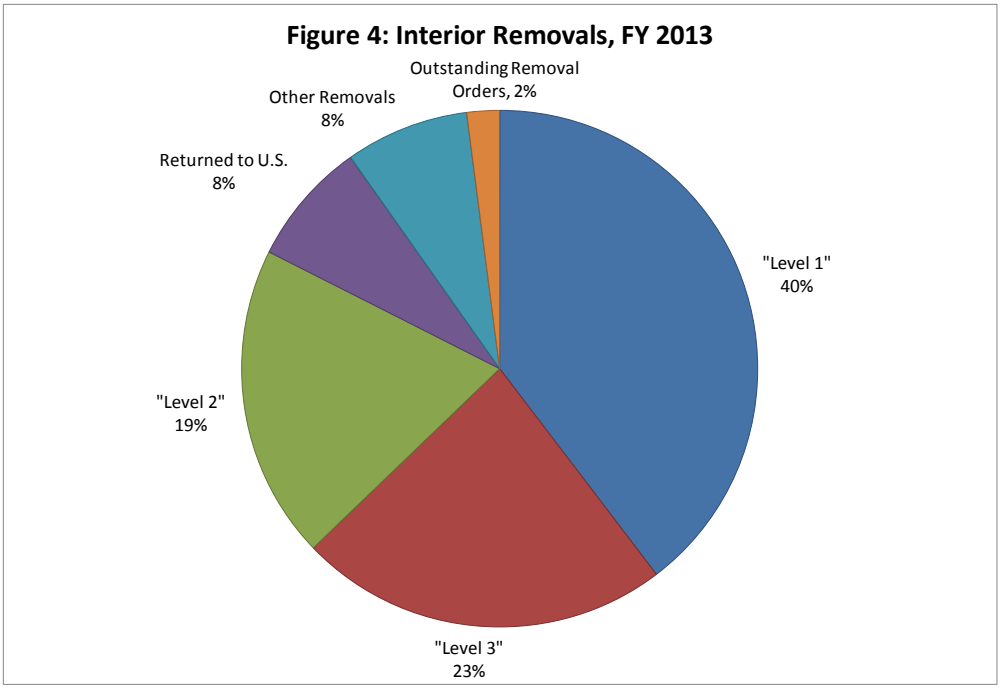


Three-fifths of deportees apprehended in the interior of the country didn't fall within ICE's definition of a "Level 1" priority.

- Two-in-five "interior deportees" qualified as "Level 1" as defined by ICE: immigrants convicted of an "aggravated felony" or at least two felonies (Figure 4).[16]

- Fewer than one-in-five interior deportees fit the definition of "Level 2" (immigrants convicted of a felony or three misdemeanors), while just under one-quarter were "Level 3" (convicted of no more than two misdemeanors) (Figure 4).[17]

- Eight percent of interior deportees had returned to the United States after being removed. Another eight percent were removed for some other, non-criminal immigration violation. And two percent were immigrants with outstanding removal orders (Figure 4).[18]



Only Scratching the Surface

As ICE's own statistics make clear, the agency is involved primarily in the apprehension and deportation of people who have committed immigration violations and minor crimes—not terrorist operatives or violent criminals. But recognizing this is only the first step in understanding the way ICE functions. The next step is to examine *how* ICE carries out deportations. For instance, in FY 2013, 101,000 (or 27 percent) of the people whom ICE deported were summarily removed from the country via an "order of expedited removal," and 159,624 (43 percent) were removed through a "reinstated final order of removal,"[19] neither of which generally affords the deportee a hearing in court. In other words, seven out of every ten deportees in FY 2013 never had the opportunity to plead their cases before an immigration judge. Not only is ICE deporting people who aren't a threat, but it's deporting many of them in ways that don't respect the full range of legal rights which form the basis of the U.S. criminal justice system.

Endnotes

[1] Memorandum for All ICE Employees from Director John Morton on "Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens," March 2, 2011, pp. 1-2.
[2] U.S. Immigration and Customs Enforcement, *ERO Annual Report: FY 2013 ICE Immigration Removals*, December 2013.
[3] Memorandum for All ICE Employees from Director John Morton on "Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens," March 2, 2011.
[4] Immigration Policy Center, *Aggravated Felonies: An Overview* (Washington, DC: American Immigration Council, March 2012).
[5] U.S. Immigration and Customs Enforcement, *ERO Annual Report: FY 2013 ICE Immigration Removals*, December 2013, p. 1.
[6] Ibid., pp. 2-3.
[7] Ibid.

[8] Ibid.
[9] Ibid., p. 1.
[10] Ibid., p. 2.
[11] U.S. Customs and Border Protection, Performance and Accountability Report: Fiscal Year 2012, p. 17.
[12] U.S. Department of Homeland Security, *Guidance to ICE Attorneys Reviewing the CBP, USCIS, and ICE Cases Before the Executive Office for Immigration Review*, November 2011, p.1; "Written testimony of ICE Enforcement and Removal Operations Executive Associate Director Thomas Homan for a House Committee on Oversight and Government Reform, Subcommittee on National Security hearing titled *Border Security Oversight: Identifying and Responding to Current Threats*," June 27, 2013.
[13] U.S. Immigration and Customs Enforcement, *ERO Annual Report: FY 2013 ICE Immigration Removals*, December 2013, p. 3.
[14] Ibid.
[15] Ibid.
[16] Ibid., p. 2.
[17] Ibid.
[18] Ibid.
[19] Ibid., p. 4.

ATTACHMENT D

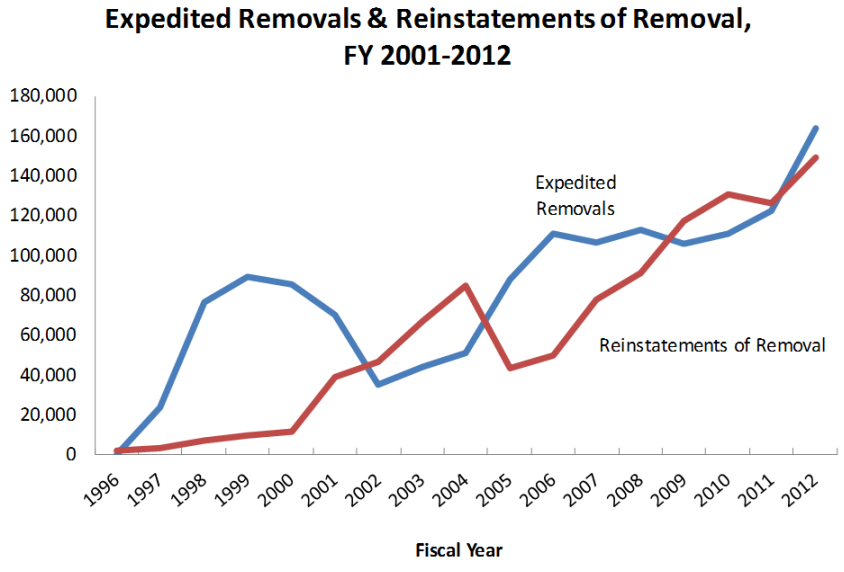
IMMIGRATION POLICY CENTER
AMERICAN IMMIGRATION COUNCIL

May 2014

REMOVAL WITHOUT RECOURSE: THE GROWTH OF SUMMARY DEPORTATIONS FROM THE UNITED STATES

The deportation process has been transformed drastically over the last two decades. Today, two-thirds of individuals deported are subject to what are known as "summary removal procedures," which deprive them of both the right to appear before a judge and the right to apply for status in the United States. In 1996, as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Congress established streamlined deportation procedures that allow the government to deport (or "remove") certain noncitizens from the United States without a hearing before an immigration judge. Two of these procedures, "expedited removal" and "reinstatement of removal," allow immigration officers to serve as both prosecutor and judge—often investigating, charging, and making a decision all within the course of one day. These rapid deportation decisions often fail to take into account many critical factors, including whether the individual is eligible to apply for lawful status in the United States, whether he or she has long-standing ties here, or whether he or she has U.S.-citizen family members.

In recent years, summary procedures have eclipsed traditional immigration court proceedings, accounting for the dramatic increase in removals overall. As the chart below demonstrates, since 1996, the number of deportations executed under summary removal procedures—including expedited removal, reinstatement of removal, and stipulated removal (all described below)—has dramatically increased.



Source: U.S. Department of Homeland Security, *Immigration Enforcement Actions: 2010* and *2012*;
U.S. Immigration and Naturalization Service, *2000 Statistical Yearbook*, chp. 6.

In Fiscal Year (FY) 2013, more than 70 percent of all people Immigration and Customs Enforcement (ICE) deported were subject to summary removal procedures.[1]

Expedited Removal (INA § 235(b))

In FY 2013, ICE deported about 101,000 people through the expedited removal process.[2] Expedited removal is a summary process for formally deporting certain noncitizens who do not have proper entry documents and who are seeking entry to the United States at a port of entry (POE), such as a border crossing or an airport, or who are found within 100 miles of the border. Specifically, it applies only if the immigration officer determines that an individual:

- committed fraud or misrepresented a material fact for purposes of seeking entry to the United States;
- falsely claimed U.S. citizenship; or
- is not in possession of a valid visa or other required documentation.

When expedited removal was first enacted, immigration officers applied it only to people who were seeking entry to the United States and not to those who were already in the United States. However, in 2004, the Department of Homeland Security (DHS) drastically expanded the scope of expedited removal by deciding that noncitizens encountered within 100 air miles of the southwest border who have not been present in the United States for the 14 days immediately prior to the date of encounter can be subject to expedited removal.[3] In 2006, DHS announced that it would implement this policy along all of the U.S. borders.[4]

A person subject to expedited removal is immediately ordered removed without any further hearing, review, or opportunity to apply to stay in the United States unless the person expresses a fear of persecution, in which case he or she is afforded a "credible fear interview" to determine whether he or she may apply for asylum.[5] The process is so truncated that frequently a person with an expedited removal order has no idea why he or she was deported. Individuals subject to expedited removal generally are not informed of their right to counsel. Likewise, they are not provided a sufficient opportunity to contact counsel to help them challenge the charges against them or present evidence that is not with them at the time of apprehension.

As a result, expedited removal can lead to erroneous deportations of individuals who are not deportable or who would be eligible to apply for lawful status in the United States or to seek prosecutorial discretion if processed through normal immigration court procedures. In addition, individuals who may have resided in the United States for decades, and left only for a brief period of time, may be deported pursuant to expedited removal despite having significant ties to the United States.[6] Those subject to expedited removal are automatically barred from returning to the United States for five years. In cases where an expedited removal order is based on a false claim of U.S. citizenship, an individual is permanently barred from re-entering the country.

Reinstatement of Removal (INA § 241(a)(5))

In FY 2013, 159,634 individuals were deported based on a reinstatement of removal order,[7] a 270 percent increase from 2005.[8] Reinstatement of removal applies to noncitizens who return

illegally to the United States after having previously been deported. Essentially, DHS "reinstates" the original removal order without considering the individual's current situation, reasons for returning to the United States, or the presence of flaws in the original removal proceedings. They even may apply it to someone whose initial deportation order was entered in absentia.[9] A person whose order is reinstated is barred from applying to remain in the United States or from seeking to correct any errors that may have occurred in the original deportation. The primary exception to this rule is that an individual who expresses a fear of return during the reinstatement process must be referred to an asylum officer for screening for eligibility for withholding of removal or protection under the Convention Against Torture.[10]

Unlike expedited removal, immigration officers may use the reinstatement process anywhere throughout the United States—not just at a POE or within 100 miles of the border. Most persons subject to reinstatement are arrested and kept in custody throughout the process without an opportunity to seek a bond. The process is designed to allow DHS to remove individuals immediately; the entire process (including the removal) may occur within 24 hours. Typically, the DHS officer conducts a short interrogation to determine whether the individual has a prior removal order, actually is the person identified in the prior order, and has unlawfully reentered. At the conclusion of the interrogation, the person is afforded an opportunity to make a statement and, thereafter, the officer typically issues the final order. The process usually happens too quickly for an individual to consult with a lawyer to assist in challenging the reinstatement.

Stipulated Removal (INA § 240(d))

Stipulated removal orders are different from expedited removal orders and reinstated removal orders in that the person is formally charged and placed in immigration court proceedings before an immigration judge. However, like these other summary removal procedures, the person usually does not appear in an immigration court; rather, the noncitizen agrees (or "stipulates") to deportation and gives up his or her right to a hearing. The immigration judge may enter the order of removal without seeing the person and asking him or her whether the stipulation was entered into knowingly and voluntarily. The use of stipulated removal expanded from zero in 2000 to over 30,000 in 2008.[11]

Of the more than 160,000 noncitizens who agreed to stipulated removal orders between 2004 and 2010, the vast majority were in immigration detention—often far from family and home—and unrepresented by counsel.[12] The correlation between detention and stipulated removals is particularly troubling given that individuals in detention have little access to lawyers or even basic information about their legal options and because the conditions of confinement are inherently coercive.[13] Until they go before an immigration judge, they may not know whether they have claims to immigration relief,[14] and they may not appreciate the timeframes for making decisions in their cases. ICE agents who ask detainees to sign stipulated removal orders often leave the individuals confused about their options and feeling pressured to agree to give up their right to hearings.[15] As a result, many stipulated removals cannot be said to be voluntary, knowing, and intelligent, and the procedure raises serious due process concerns.

Conclusion

The deportation process has been transformed drastically over the last two decades. In the past, immigration court hearings were the standard procedure. These judicial proceedings ensure a basic level of due process, help safeguard against unlawful removals, and permit noncitizens to pursue legal status in the United States, if they are eligible. Today, two-thirds of individuals deported are subject to summary removal procedures which deprive them of both the right to appear before a judge and the right to apply for status in the United States. The deportation decisions are made quickly by immigration officers, and generally there is no opportunity to consult with counsel and there is no judicial oversight. Even immigrants who are put into the immigration court process may not make it to court if they stipulate to deportation before their first hearing. The stipulation may occur quickly and without the assistance of an attorney.

Too little attention has been paid to this dramatic shift away from fundamental principles of fairness and due process. One of the hallmarks of the U.S. justice system is the right to have a day in court before an impartial decision-maker, yet the vast majority of immigrants who are removed never see the inside of a courtroom. Understanding this transformation from immigration court process to streamlined procedures is an important step in unraveling the breadth and scope of U.S. deportation policies today.

Endnotes

[1] U.S. Immigration and Customs Enforcement, *FY 2013 ICE Immigration Removals*, December 2013, p. 4.

[2] Ibid.

[3] 69 Fed. Reg. 48877 (Aug. 11, 2004).

[4] DHS Press Release, *DHS Streamlines Removal Process Along Entire U.S. Border*, January 31, 2006).

[5] For an overview of the credible fear process and the challenges asylum seekers face in obtaining protection, see Sara Campos and Joan Friedland, *Mexican and Central American Asylum and Credible Fear Claims: Background and Context* (Washington, DC: American Immigration Council, May 2014).

[6] ICE emphasizes that length of presence in the United States and ties to the community, including family relationships, are important factors in considering whether to exercise prosecutorial discretion. See Memorandum from John Morton, Director, ICE, on "Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens," June 17, 2011.

[7] U.S. Immigration and Customs Enforcement, *FY 2013 ICE Immigration Removals*, December 2013, p. 4.

[8] In 2005, DHS deported 43,137 people with reinstatement orders. U.S. Department of Homeland Security, *Immigration Enforcement Actions: 2010*, June 2011, p. 4.

[9] *See Morales-Izquierdo v. Gonzales*, 486 F.3d 484, 488, 496 (9th Cir. 2007) (en banc).

[10] While individuals subject to reinstatement of removal may not be eligible for asylum, treaty obligations require that the U.S. protect immigrants who express a reasonable fear of persecution or torture. Individuals subject to reinstatement who express fear of return are referred for a reasonable fear screening to determine whether they may apply for withholding of removal and protection under the Convention Against Torture. 8 CFR 208.31; INA § 241(b)(3).

[11] Jayashri Srikantiah and Karen Tumlin, *Backgrounder: Stipulated Removal* (Stanford Immigrants' Rights Clinic and National Immigration Law Center, 2008).

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[14] Jennifer Lee Koh, Waiving Due Process (Goodbye): Stipulated Orders Of Removal And The Crisis In Immigration Adjudication, 91 N.C. L. REV. 475, 489 (2013).

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ATTACHMENT E

AMERICAN IMMIGRATION COUNCIL

COMMUNITY EDUCATION CENTER · IMMIGRATION POLICY CENTER · INTERNATIONAL EXCHANGE CENTER · LEGAL ACTION CENTER

August 2014

ASYLUM IN THE UNITED STATES

What is asylum?

Asylum is a protection granted to foreign nationals already in the United States or at the border who meet the international definition of a "refugee." A refugee is defined as a person who has been persecuted or has a well-founded fear of being persecuted "on account of race, religion, nationality, membership in a particular social group, or political opinion." This definition derives from the United Nations 1951 Convention and 1967 Protocols ("Convention and Protocols")—international agreements to which the United States is a signatory. Congress incorporated this definition into U.S. immigration law in the Refugee Act of 1980. Also, the Convention and Protocols and U.S. law protect the asylum-seeker from "non-refoulement." In other words, under international law, a country cannot return or expel people to places where their lives or freedoms could be in jeopardy. Asylum status is granted by asylum officers or immigration judges. In FY 2012, 29,484 individuals were granted asylum.

There are two asylum processes in the United States: the *affirmative* process and the *defensive* process.

- An affirmative asylum application occurs when an asylum-seeker files an application for asylum with U.S. Citizenship and Immigration Services (USCIS). If the asylum officer does not grant the asylum application, then the applicant is put into removal proceedings and can renew the request for asylum there.
- A defensive asylum application occurs when one who has already encountered the government, and is in removal proceedings, applies for asylum to an immigration judge. In other words, asylum is applied for "as a defense against removal from the U.S."[1]

What does an asylum-seeker have to show to be granted asylum?

- An asylum seeker has the burden to show either persecution or a "well-founded fear" of persecution "on account of race, religion, nationality, membership in a particular social group, or political opinion."[2] Asylum seekers often provide substantial evidence. However, asylum can be granted solely on the asylum seeker's testimony.[3]

What happens when an asylum seeker's case goes to court?

- Asylum seekers and other foreign nationals in immigration proceedings do not have the right to have an attorney provided for them.[4]

- In FY 2012, asylum applicants "made up more than a quarter (29.4%) of all cases closed under the prosecutorial discretion initiative…These closures are not included in the 11,939 individuals who won their asylum cases" in the same year.[5]

What is credible fear?

- Credible fear is a screening process, not a status. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 created a streamlined removal process called "expedited removal," which authorizes the Department of Homeland Security (DHS) to perform rapid deportations of noncitizens found within 100 miles of a border without proper papers. In order to ensure that the United States does not violate international and domestic laws by returning individuals to countries where their life or liberty may be at risk, the credible fear screening process was created.
- Persons who express fear of returning to their home country or who ask to apply for asylum are afforded a "credible fear interview," conducted by a USCIS officer. Credible fear is a lower standard than the "well-founded fear" ultimately necessary for asylum. If USCIS finds that the person has a credible fear, USCIS is saying that the individual *might* qualify for asylum status.
- In Fiscal Year (FY) 2013, USCIS found 30,393 individuals to have credible fear.[6] These individuals will be afforded an opportunity to apply for asylum defensively and establish that they meet the refugee definition.
- Individuals not found to have credible fear are generally removed.
- Also, a different streamlined removal process called "reinstatement of removal" applies to those who re-enter the U.S. after a prior deportation order. Those in reinstatement of removal are provided a "reasonable fear" interview, similar to the "credible fear" interview above.

Upon entering the United States, an asylum-seeker must generally apply for asylum status within one year.

- Under revisions to the asylum laws enacted in 1996, every asylum applicant, with a few exceptions, must demonstrate "by clear and convincing evidence that the [asylum] application has been filed within 1 year after the date of…arrival in the United States."[7]
- According to the National Immigrant Justice Center (NIJC), one in five asylum applicants are denied asylum because they missed this deadline.[8]
- In a 2010 study of more than 3,472 asylum cases decided by the Board of Immigration Appeals, the NIJC found that "in approximately 46 percent of cases where the filing deadline is an issue, it is the only reason cited…as justifying the denial of asylum."[9]

Many asylum seekers are detained while their cases are determined.

- According to a 2012 DHS report to Congress, U.S. Immigration and Customs Enforcement (ICE) detained 15,769 asylum applicants in FY 2010.[10]

- During this time, the average length of detention for affirmative asylum applicants was 65 days.[11]
- Because "there are no statutory limits to the amount of time a non-citizen may be held in immigration detention," the length of time in detention may vary. Some asylum applicants may be "kept in immigration detention for several months or even years."[12]
- Approximately 3 percent of the detained asylum applicants in FY 2010 were under 18 years old.[13]
- Detention is mandatory pending credible fear and reasonable fear interviews.

- A 2013 report by The Center for Victims of Torture found that "in less than three years – from October 2010 to February 2013 – the United States detained approximately 6,000 survivors of torture as they were seeking asylum protection."[14]
  - The report asserts that "the indefinite nature of immigration detention" contributes "to severe, chronic emotional distress" in asylum seekers who are survivors of torture.[15]

Who is granted asylum?

- In FY 2012, 29,484 individuals were granted asylum: 17,506 affirmatively and 11,978 defensively {Figure 1}.[16]

Figure 1: Individuals Granted Asylum Affirmatively or Defensively, FY 2000-2012

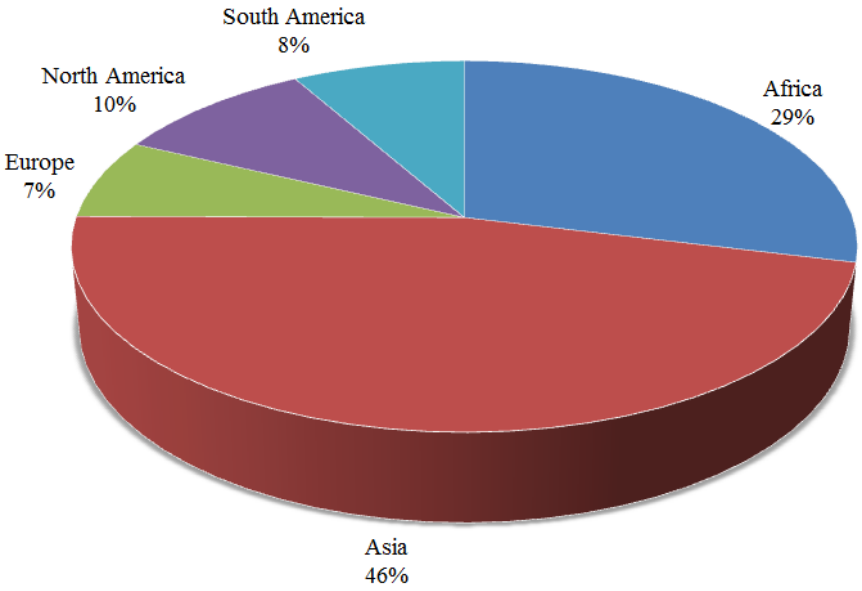
Source: *DHS, Yearbook of Immigration Statistics*: 2012, Table 16.

- Of the 17,506 individuals granted asylum affirmatively:
  - Slightly less than half (49 percent) were women.
  - 18 percent (3,098) were under the age of 19.

- 47 percent (8,165) were married or widowed.[17]

- Among those individuals granted asylum affirmatively, nearly half (46 percent) were from Asia and more than a quarter (29 percent) from Africa {Figure 2}.[18]

Figure 2: Individuals Granted Asylum Affirmatively, by Region, FY 2012



Source: DHS, *Yearbook of Immigration Statistics: 2012*, Table 17.

- The majority of all individuals granted asylum came from the People's Republic of China (approximately 34.5 percent, or 10,151 people).[19]
- Other significant countries of origin in 2012 included Egypt, Venezuela, and Ethiopia.[20]
- Only about 7.6 percent of all individuals granted asylum in 2012 came from Mexico or South America. [21]

- Of those granted asylum affirmatively, 8,609 were female and 8,897 were male. Among these were 2,554 children.[22]
- About two-thirds of individuals granted asylum in 2012 lived in California, Florida, or New York.[23]

What happens when someone is granted asylum?

- If someone is granted asylum they are eligible to work immediately,[24] and to apply for a Social Security card, a green card, and immigration benefits for their spouse and any unmarried children under 21.[25]

Endnotes

[1] USCIS, "Obtaining Asylum in the United States," March 10, 2011.
[2] 8 U.S.C. § 1158(b)(1), § 1101(a)(42)(A).
[3] 8 U.S.C. § 1158(b)(1)(B).
[4] Lutheran Immigration and Refugee Service, "Asylum and Asylum Seekers," accessed July 29, 2014.
[5] TRAC Immigration, "FY 2012 A Record Year for Asylum Cases," January 15, 2012.
[6] USCIS Asylum Division, "Credible Fear Workload Report Summary FY 2013 Total Caseload," "Credible Fear Workload Report Summary, FY 2013 Inland Caseload," and "Credible Fear Workload Report Summary, FY 2013 Port of Entry (POE) Caseload."
[7] INA §208(a)(2)(B).
[8] National Immigrant Justice Center, "Repeal the One-Year Asylum Deadline."
[9] National Immigrant Justice Center, *The One-Year Asylum Deadline and the BIA: No Protection, No Process: An Analysis of Board of Immigration Appeals Decisions 2005-2008*, October 2010.
[10] DHS, *Detained Asylum Seekers: Fiscal Year 2009 and 2010 Report to Congress*, August 20, 2012.
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[15] Ibid.
[16] DHS, *Yearbook of Immigration Statistics: 2012*, "Table 16: Individuals Granted Asylum Affirmatively or Defensively: Fiscal Years 1990 to 2012."
[17] DHS, *Yearbook of Immigration Statistics: 2012*, "Table 18: Individuals Granted Asylum Affirmatively by Relationship to Principal Applicant and Sex, Age and Marital Status: Fiscal Year 2012."
[18] DHS, *Yearbook of Immigration Statistics: 2012*, "Table 17: Individuals Granted Asylum Affirmatively by Region and Country of Nationality: Fiscal Years 2003 to 2012" and "Table 19: Individuals Granted Asylum Defensively by Region and Country of Nationality: Fiscal Years 2003 to 2012."
[19] Ibid.
[20] Ibid.
[21] Ibid.
[22] DHS, *Yearbook of Immigration Statistics: 2012*, "Table 18: Individuals Granted Asylum Affirmatively by Relationship to Principal Applicant and Sex, Age, and Marital Status: Fiscal Year 2012."
[23] DHS, *Annual Flow Report*, "Refugees and Asylees: 2012," April 2013.
[24] USCIS, "Asylum," January 22, 2013.
[25] USCIS, "Types of Asylum Decisions," March 15, 2011.

ATTACHMENT F

MEXICAN AND CENTRAL AMERICAN ASYLUM AND CREDIBLE FEAR CLAIMS

Background and Context

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

AMERICAN IMMIGRATION COUNCIL

Special Report | May 2014

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

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ABOUT THE AMERICAN IMMIGRATION COUNCIL

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3 Recent Attacks on Asylum Seekers Using the Credible Fear Process

5 Navigating the Asylum Process

8 Country Conditions Drive Refugees from Mexico and Central America to the U.S.

9 State of Credible Fear and Asylum Process Today

14 Conclusion

15 Endnotes

INTRODUCTION AND SUMMARY

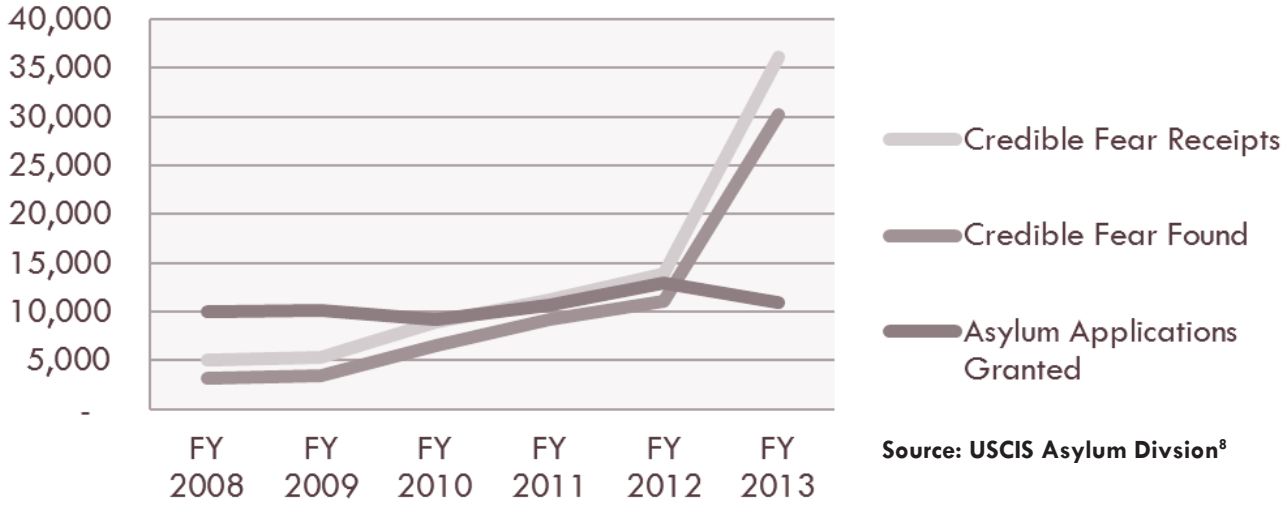
Carlos Gutierrez, a successful businessman in Chihuahua, Mexico, and the married father of two, refused to comply with a criminal cartel's monthly demands of $10,000. In retribution for his refusal and as an example to other businessmen, his feet were cut off and he was left for dead. According to his 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 closed[3] as a matter of prosecutorial discretion.[4] The immigration judge's order leaves Mr. Gutierrez in a precarious situation—a legal limbo with no permanent right to remain in the country and with no decision on his asylum claim unless removal proceedings are reopened.

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

Recently, the credible fear process has become the target of political attacks. Detractors argue that it is too easy to obtain favorable credible fear determinations and avoid deportation. They point to rising credible fear claims as evidence that people are abusing the system. According to the Acting Chief of the U.S. Citizenship and Immigration Services (USCIS) Asylum Division, there were an "unprecedented number of credible fear referrals" during Fiscal Year (FY) 2012.[6] In draft Congressional testimony in mid-2013, USCIS Associate Director Joseph Langlois noted that two-thirds of such claims came from Salvadorans, Hondurans, and

Credible Fear & Asylum FY 2008 - FY 2013



Source: USCIS Asylum Divsion[8]

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.

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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]

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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.

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 2014[72] 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]

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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.

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 journalists[75] and human rights activists[76] have been granted asylum, as have family members of law enforcement and union activists[77] 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]

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The federal courts of appeal are not in agreement regarding the required showing for recent Central American and Mexican asylum cases[83], 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.

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(q).

[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 Supper 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."

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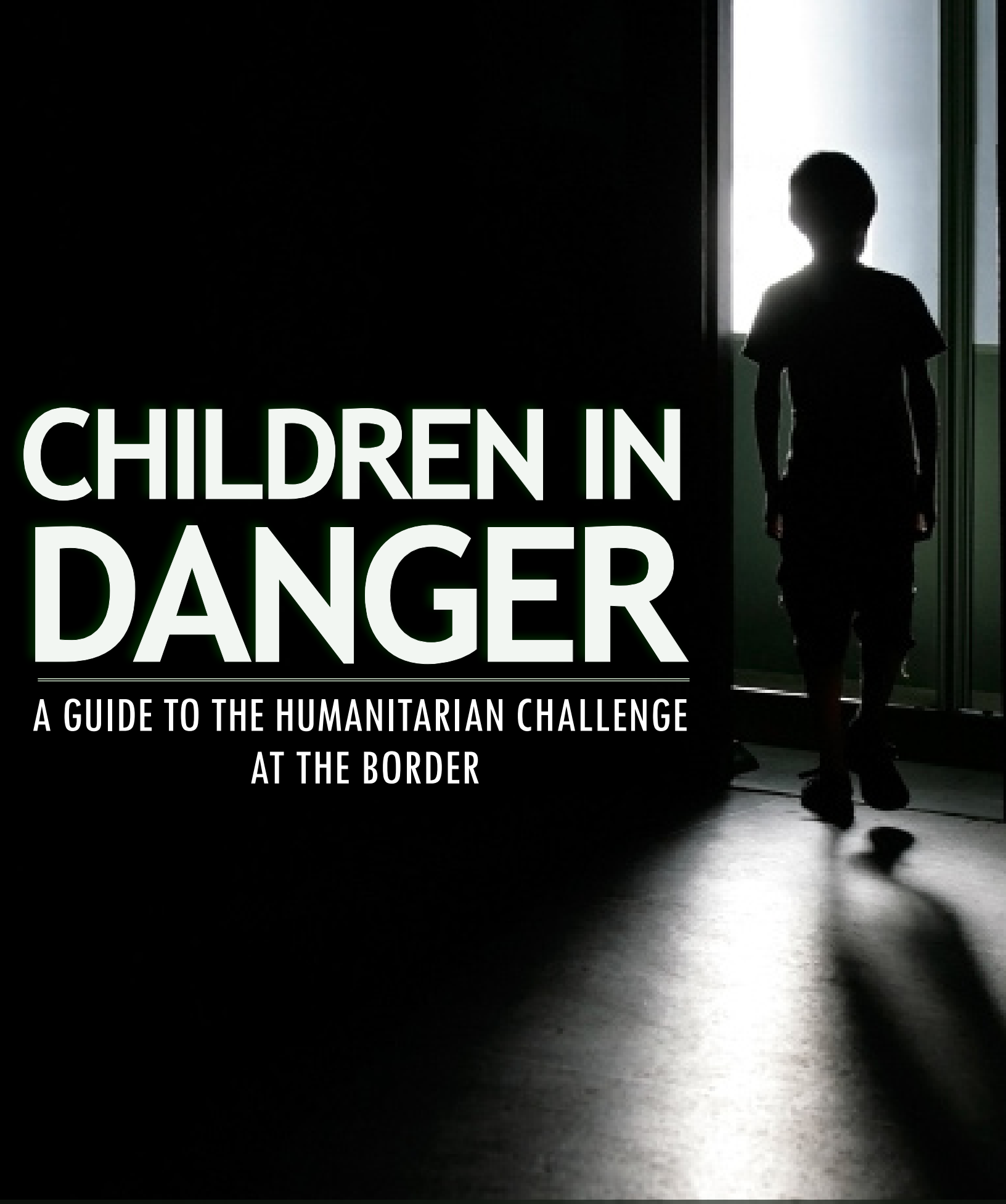
ATTACHMENT G



CHILDREN IN DANGER

A GUIDE TO THE HUMANITARIAN CHALLENGE AT THE BORDER

AMERICAN IMMIGRATION COUNCIL

Special Report | July 2014

CHILDREN IN DANGER: A GUIDE TO THE HUMANITARIAN CHALLENGE AT THE BORDER

ABOUT THE AMERICAN IMMIGRATION COUNCIL

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

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

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INTRODUCTION

The American Immigration Council has prepared this guide in order to provide policymakers, the media, and the public with basic information surrounding the current humanitarian challenge the U.S. is facing as thousands of young migrants show up at our southern border. This guide seeks to explain the basics. Who are the unaccompanied children and why are they coming? What basic protections are they entitled to by law? What happens to unaccompanied children once they are in U.S. custody? What has the government done so far? What additional responses have been proposed to address this issue?

The children's reasons for coming to the United States, their care, our obligations to them as a nation, and the implications for foreign and domestic policies are critical pieces we must understand as we move toward solutions. Acknowledging the complexity of the situation, President Obama declared an "urgent humanitarian situation" along the southwest border requiring a coordinated federal effort by a range of federal agencies. The government's subsequent response has ignited a vigorous debate between advocates for refugees and unaccompanied minors and the government. We hope that this guide helps those engaging in the debate to understand the key concepts and America's laws and obligations related to unaccompanied children.

BACKGROUND

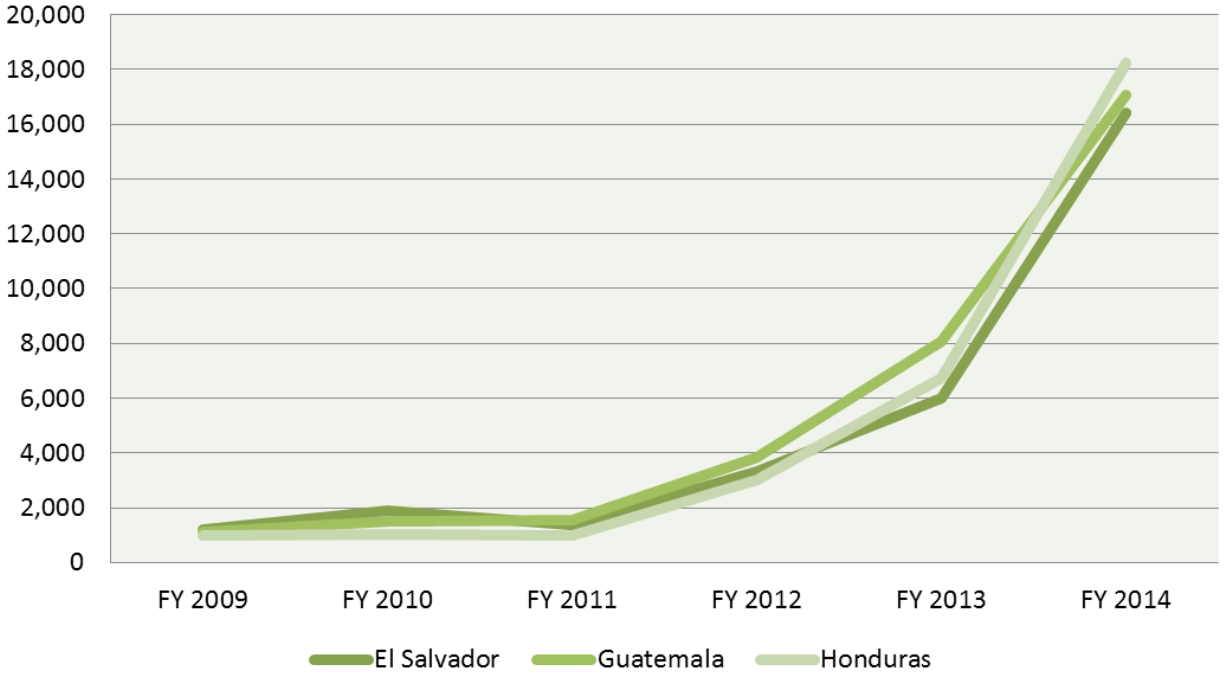
Who are the unaccompanied children?

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 must receive certain protections under U.S. law.

Where are these children coming from?

The vast majority of unaccompanied children come from Mexico, Guatemala, Honduras, and El Salvador, although unaccompanied children may arrive from any country. The recent increase in arrivals is due to the migration of children from Guatemala, Honduras, and El Salvador—a region of Central America known as the "Northern Triangle." According to U.S. Customs and Border Protection (CBP), 68,541 unaccompanied children were apprehended at the southwest border between October 1, 2013, and September 30, 2014. 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]

Figure 1: Unaccompanied Migrant Children Encountered;



FY 2009-2014*

Source: CBP.

Why are these children and families leaving their home countries?

Researchers consistently cite increased Northern Triangle violence as the primary recent motivation for migration, while identifying multiple causes including poverty and family reunification.[3] 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. In comparison, the war-torn country of the Democratic Republic of the Congo, from which nearly half a million refugees have fled,[4] has a homicide rate of 28.3 per 100,000 people. Furthermore, in a recent report Tom Wong 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."[5]

While there can be multiple reasons that a child leaves his or her country, children from the Northern Triangle consistently cite gang or cartel violence as a prime motivation for migrating. Research conducted in El Salvador on child migrants who were returned from Mexico found that 61 percent listed crime, gang threats, and insecurity as a reason for leaving.[6] The report, *Children on the Run*, by the United Nation's High Commissioner for Refugees (UNHCR) found that 48 percent of the 404 children UNHCR interviewed "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."[7] Furthermore, the youth are frequently the target of the violence. Recruitment for the gangs begins in adolescence—or younger—and there are incidents of youth being beaten

by police who suspected them of gang membership.[8]

Are they coming because of President Obama's enforcement policy?

Recent U.S. immigration enforcement policy does not appear to be a primary cause of the migration, although the reasons behind so many unaccompanied children making their way to the United States are not simple. For instance, the rise in violence and corresponding increase in unaccompanied child arrivals precedes both the Deferred Action for Childhood Arrivals (DACA) program and Senate passage of S.744—positive developments that are sometimes cited as pull factors by Obama administration critics. In their 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." As previously discussed, countries in the Northern Triangle of Central America face soaring murder rates and escalating gang violence. Research conducted by Elizabeth Kennedy, a Fulbright scholar in El Salvador, indicates that violence is the primary cause, even among those who also cite poverty or family reunification as reasons for their departure.[9] This influx is not limited to the United States, as growing numbers of adults and children from those countries are also seeking refuge in Mexico, Panama, Nicaragua, Costa Rica, and Belize.[10] Conditions in El Salvador, Honduras, and Guatemala have reached a tipping point, and more people are reaching the conclusion that they can no longer stay safely in their homes.

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. The flow of undocumented immigrants into the United States is tied more to economic factors than to increased enforcement.[11] In this case, fear of violence is motivating the influx.[12] In addition, CBP's resources along the southwest border are already significant. There were 18,611 Border Patrol agents stationed along the southwest border as of Fiscal Year (FY) 2013.[13] The annual Border Patrol budget now stands at $3.5 billion.[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] Treating the current situation as simply another wave of illegal immigration misses the broader policy and humanitarian concerns that are driving it. In fact, many children are turning themselves over to Border Patrol agents upon arrival and are not seeking to evade apprehension.

What do people mean when they talk about "international protection obligations?"

The United States has entered into numerous treaties with other countries to ensure the protection and safe passage of refugees.[16] Among the most important are the 1952 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]

Under our laws, anyone in the United States may seek asylum with limited exceptions, or protection from torture with no exceptions.

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 limited exceptions, or protection from torture with no exceptions. It can be difficult, and often complicated, to determine whether an individual has a valid claim for asylum or protection from torture. For children, ensuring that they are safe, have an understanding of their situation and their rights, and have adequate representation when they tell their story to a judge are all important components of ensuring that the U.S. meets its protection obligations.

Do Central American children qualify for international protection obligations?

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 merited 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 also qualify for particular U.S. forms of humanitarian relief, based on laws that recognize children as victims of trafficking and crime, or as 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 ORR 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—one that is not easily completed in a short period of time.

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

The 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, and subsequently referred to as the TVPRA.

Under provisions added in 2008, the TVPRA requires that all unaccompanied alien children be screened as potential victims of human trafficking.[20] 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 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 are reported, summarily returned pursuant to negotiated repatriation agreements.[21] The TVPRA in 2008 also ensured that unaccompanied alien children are exempt from certain limitations on asylum (i.e. a one-year filing deadline, and the standard safe third country limitation).[22] 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 "protect them from mistreatment, exploitation, and trafficking."[23]

Under provisions added in 2008, the TVPRA requires that all unaccompanied alien children be screened as potential victims of human trafficking.

What types of relief do unaccompanied children potentially qualify for?

The most common types of 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 enter the child welfare system due to abuse, neglect, or abandonment 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: T visas are 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.

Are they refugees?

The vast majority of these children currently lack papers permitting them to reside lawfully in the United States and thus are part of the broader flow of undocumented immigration. However, many may be in need of international protection, requiring a careful and balanced analysis of their claims. UNHCR and many U.S.-based groups that monitor U.S. refugee and asylum practices have cautioned that concerns over illegal immigration should not trump the United States' international obligations to protect those fleeing persecution or other harm.[24] Because establishing an asylum claim may take time and frequently requires counsel, these groups (including the American Immigration Council) have warned that accelerated processing could cause adjudicators to overlook legitimate claims for asylum.

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 based on natural disasters, there is currently no category that would include the unaccompanied children arriving today. 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.

PROCEDURES AND POLICIES

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

Adults, families, and unaccompanied children are treated differently under U.S. law.

Adults, when apprehended, are traditionally placed in removal proceedings before an immigration court.[25] However, in FY 2012, 75 percent of adults removed by the U.S. were removed through summary, out-of-court removal proceedings by a DHS officer rather than appearing before an immigration judge.[26] This commonly occurs through expedited removal, when an adult noncitizen encounters immigration authorities at or within 100 miles of a U.S. border with insufficient or fraudulent documents.[27] This also commonly occurs through "reinstatement of removal," when an adult noncitizen unlawfully reenters after a prior removal order.[28] Most adults apprehended at or near the border will be placed into expedited removal or reinstatement of removal.

Families (adults traveling with children) can also be processed under these provisions. Unaccompanied children, however, receive greater protections under U.S. law.

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

The majority of unaccompanied children encountered at the border are apprehended, processed, and initially detained by CBP, which is a part of the Department of Homeland Security (DHS).[29] Unlike adults or families, though, unaccompanied children cannot be placed into expedited removal proceedings under the TVPRA of 2008, signed by President Bush.[30]

The TVPRA of 2008 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.[31] The TVPRA also directed the development of procedures to ensure that if unaccompanied children are deported, they are safely repatriated.

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) within 72 hours, as described below.

Children from contiguous countries—Mexico or Canada—must be screened by CBP officers to determine if each child 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." Although voluntary return does not carry the same consequences as deportation, CBP is not required to first turn over Mexican or Canadian children to HHS, unlike children from other countries. Return occurs pursuant to agreements with Mexico and Canada to manage the repatriation process, negotiated by the U.S. Department of State.[32]

NGOs have expressed concern that CBP is the "wrong agency" to screen children for signs of trauma, abuse, or persecution.

Non-governmental organizations (NGOs) have expressed concern that CBP is the "wrong agency" to screen children for signs of trauma, abuse, or persecution.[33] 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."[34] 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.[35]

Do the 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."[36] 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."[37] A vast network of pro bono legal service providers has responded to the call, and these providers represent many children nationwide, but they simply are unable to meet the need.

As a result, each year, thousands of 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.

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. As background, adults who are processed by CBP (if encountered at or near the border) are held in short-term CBP custody and then transferred to Immigration and Customs Enforcement (ICE) custody. As a DHS report found, despite the civil nature of immigration laws, "the facilities that ICE uses to detain [adults] were built, and operate, as [criminal] jails and prisons," with "only a few exceptions."[38]

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

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.[39] ORR's Unaccompanied Alien Children Program, 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."[40] 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.[41]

Under international law, children "should in principle not be detained at all," according to the United Nations High Commissioner for Refugees.

Under international law, children "should in principle not be detained at all," according to UNHCR."[42] Detention, if used, should only be a "measure of last resort" for the "shortest appropriate period of time," with an overall "ethic of care."[42] Detention has "well-documented" negative effects on children's mental and physical development,[43] including severe harm such as anxiety, depression, or long-term cognitive damage, especially when it is indefinite in nature.[45]

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.

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.[46] Recently, ORR decided to resume requiring fingerprint checks for sponsors, due to concerns about fraud, abuse and children's safety.[47] Previously, in 2013, ORR had decided to stop fingerprinting certain sponsors to speed up the process, because of a lack of resources.[48]

ORR is also required to ensure that individuals taking custody of the children are able to provide for their well-being.[49] A court settlement in the case *Flores v. Reno* outlines the following preferences for sponsors: [50] (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. The sponsor must agree to ensure that the child attends immigration court.

Why is the Government opening family detention Facilities?

The increase in families 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.[51]

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.[52]

ICE responded by opening the T. Don Hutto Residential Center in Texas, with over 500 beds for families. The Women's Refugee Commission, however, explained that it was a "former criminal facility that still looks and feels like a prison."[53] For example, although DHS claimed Hutto was specially equipped to meet the needs of families, reports emerged that children as young as 8 months old wore prison uniforms, lived in locked prison cells with open-air toilets, were subject to highly restricted movement, and were threatened with alarming disciplinary tactics, including threats of separation from their parents if they cried too much or played too loudly. Medical treatment was inadequate and children as young as 1 year old lost weight.[54]

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.[55] 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."[56] The recent announcement that ICE will open additional family detention centers, with the first facility in Artesia, New Mexico, marks the first expansion of family detention since Hutto's closing.[57]

Parents reported that guards frequently threatened children with separation from parents for misbehavior, with children losing respect for parents because of parents' lack of control.

Family detention is rarely in the "best interests of the child," as opposed to community-based alternatives.[58] Families and children require specialized educational, medical, and legal support. But although governments can control families in detention, critics have argued that detaining families in jail-like settings profoundly impacts the emotional and physical well-being of children and breaks down family relationships. Parents reported that guards frequently threatened children with separation from parents for misbehavior, with children losing respect for parents because of parents' lack of control.[59] Additionally, parents reported being forced to meet

lawyers and discuss details of abuse in front of their children.[60] Conversely, countries like Belgium have open reception facilities for migrant families seeking asylum, where they can come and go at will with certain restrictions.[61] Caseworkers are assigned, and officials report high rates of attending proceedings.[62]

Can Alternatives to Detention Be Used?

Yes. ICE operates alternatives to detention (ATD) for adult detainees—one program with case management, supervision, and electronic monitoring, and another program with electronic monitoring only.[63] U.S. government data shows that alternatives to detention are 96 percent effective in ensuring appearance in immigration court. Alternatives, as well as being more humane, are also less expensive than detention—$17/day and less, as opposed to $159/day.[64] Bipartisan support has emerged for alternatives to immigration detention,[65] as it has emerged for alternatives to criminal incarceration.[66]

There appears to be no legal barrier to using alternatives to detention for families who would otherwise be in family detention. It is unclear whether supervision techniques such as electronic tracking bracelets will be used on children.[67]

U.S. GOVERNMENT RESPONSE, AND OTHER PROPOSED RESPONSES

What has the government done thus far?

On June 2, 2014, President Obama issued a memorandum terming the influx of children along the border "an urgent humanitarian situation" under the Homeland Security Act, requiring coordination of federal government agencies. President Obama then directed the Secretary of Homeland Security to establish a Unified Coordination Group, which includes DHS and its components together with the Departments of Health and Human Services, Defense, Justice, and State, and the General Services Administration. In turn, Secretary of Homeland Security Jeh Johnson designated Federal Emergency Management Agency (FEMA) Administrator Fugate to coordinate the U.S. government-wide response.

A White House fact sheet stated that the government is "taking steps to improve enforcement and partnering with our Central American counterparts in three key areas: combating gang violence and strengthening citizen security, spurring economic development, and improving capacity to receive and reintegrate returned families and children." Secretary Johnson, in his testimony before the House Committee on Homeland Security, laid out DHS' plan to address the situation. It includes adding capacity to process and house the children, increasing Spanish-speaking staff, increasing transportation assets, coordinating with faith-based and voluntary organizations, and initiating a public affairs campaign in Spanish in Central America about the dangers of the journey to the United States.

Since the increase in arrivals of unaccompanied children, HHS requested and received approval from the Department of Defense for the use of Lackland Air Force base in San Antonio and a Naval

Base in Ventura County in California. These facilities hold 1,290 and 600 children, respectively. Facilities at Fort Sill, Oklahoma, also were housing roughly 1,000 children as of June 25 and had capacity to hold up to 1,200.[68] Secretary Johnson also announced plans to create new family detention centers, starting with a large temporary facility in Artesia, New Mexico.[69]

On June 30, 2014, the President sent a letter to Congress outlining additional administration steps and requests for congressional action. The President stated he was "taking aggressive steps to surge resources to our southwest border." The Justice Department and DHS will be deploying additional immigration judges, ICE attorneys, and asylum officers to the border. The administration's stated goal is that "cases are processed fairly and as quickly as possible, ensuring the protection of asylum seekers and refugees while enabling the prompt removal of individuals who do not qualify for asylum or other forms of relief from removal."

"Part of this surge will include" family detention (in the letter's words, "detention of adults traveling with children"), and DHS will be "working to secure additional space that satisfies applicable legal and humanitarian standards." Reports indicate the government will seek to send families held in the new immigration detention centers back to their home countries within 10 to 15 days.[70] The letter also stated that "expanded use of the Alternatives to Detention program" would be used "to avoid a more significant humanitarian situation."

On July 8, the Obama administration asked Congress for $3.7 billion to address the situation. Congress must approve the funding, which would, according to news reports, speed up removal proceedings to decide if unaccompanied children can stay in the U.S. or if they will be sent back to Central America.[71] In a letter to House Speaker John Boehner, the White House laid out how the sum would be split between multiple government agencies to apprehend, care for, and remove unaccompanied minors who are in the U.S.[72] According to the White House, the $3.7 billion would consist of:

- **$1.8 billion to the Department of Health and Human Services** for additional capacity to care for unaccompanied children transferred from Homeland Security custody and the necessary medical response to the arrival of these children.

- **$1.1 billion to Immigration and Customs Enforcement** that would cover $879 million for the detention, prosecution, and removal of apprehended undocumented families; $116 million for transportation costs associated with the surge in apprehensions of unaccompanied children; and $109 million for expanded domestic and international investigative and enforcement efforts.

- **$433 million to Customs and Border Protection**, including $364 million for operational costs associated with apprehending unaccompanied children and families; $29 million for expansion of the Border Enforcement Security Task Force program; and $39 million to increase air surveillance capabilities to detect illegal activity in the Rio Grande Valley region.

- **$300 million to the Department of State** to cover $295 million for repatriation of migrants to Central America and to help governments in the region better control their borders and address the root causes of the migration. And $5 million would support State Department media campaigns in Mexico, Guatemala, El Salvador, and Honduras to tell potential migrants not to make the dangerous journey.

- **$64 million to the Department of Justice Administrative Review and Appeals,** including $45.4 million for additional immigration judge teams to increase case processing, $2.5 million for expansion of legal orientation program, $15 million for direct legal representation services to children in immigration proceedings, and $1.1 million for additional legal activities.[73]

What additional responses have been proposed to address this Issue?

NGOs, advocacy groups, and legislators have proposed short-term solutions to the current influx, longer-term systematic U.S. reforms to more holistically protect children and families reaching the U.S., and longer-term reforms in sending countries to address root causes and reduce the influx of children and families to the U.S.

Short-Term Solutions

Short-term proposals have focused on adding resources to process children and families' claims so that children can be transferred in a timely manner from CBP facilities not designed for them,[74] and children and families will receive a "timely, but not rushed" hearing.[75] These proposals include additional immigration judges and U.S. Citizenship and Immigration Services (USCIS) asylum officers, to avoid reallocation and increased backlogs elsewhere;[76] additional use of community-based shelters and alternatives to detention, to avoid additional human and financial costs;[77] and additional post-release caseworker services, to protect children, assist families, and ensure attendance at proceedings.[78]

Longer-Term U.S. Systemic Reforms

Additionally, before the recent influx, NGOs and legislators had proposed longer-term reforms to more holistically protect children and families fleeing violence who reach the U.S. These reforms include:

- ***Incorporating a "best interests of child" standard into all decision-making, not just custody decisions.***[79] S. 744, which the Senate passed in 2013, would require the Border Patrol, in the case of repatriation decisions, to give "due consideration" to the best interests of a child, "family unity," and "humanitarian concerns."[80] Amendment 1340, ultimately not included, would have made the best interests of a child the "primary consideration" in all federal decisions involving unaccompanied immigrant children.[81] Organizations also recommended adopting more child-specific procedures.[82]

- ***Child welfare screening to replace or augment Border Patrol screening.*** NGOs have uniformly questioned Border Patrol agents' adequacy to screen children for trafficking and persecution, as Border Patrol now does for Mexican and Canadian children, and prevent their return to their persecutors or abusers.[83] Reform proposals have ranged from improved training for CBP officers (included in S. 744),[84] to pairing CBP screeners with child welfare experts (also in S. 744)[85] or NGOs,[86] to replacing CBP screeners with USCIS asylum officers.[87]

- ***Due process protections and resources.*** NGOs have advocated for a system that provides procedural protections, resources, and time to appropriately protect children and families from violence, under international and U.S. laws, without unduly delaying decision making.[88] Proposals include appointed counsel,[89] legal orientation programs,[90]

and additional resources to backlogged immigration courts (all included in S. 744).[91]

- ***Detention reforms***. NGOs have proposed that children be detained as little as possible,[92] released to families or other sponsors whenever appropriate,[93] and if detained, supervised in a community-based setting[94] because of detention's severe impact on children.[95] Along these lines, organizations and legislators have recommended improving detention conditions,[96] and expanding alternatives to detention (as S. 744 does),[97] by reallocating detention funding to those cheaper alternatives.[98]

Reforms in Sending Countries

Lastly, organizations have proposed reforms in sending countries to improve conditions and ultimately reduce the influx of refugees to the United States. These reforms include:

- ***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.[99]

- ***Screening of refugees in sending countries***. NGOs have also proposed pilots for implementing robust screening for persecution in sending countries before children reach the U.S., as the U.S. implemented in the former Soviet Union and Haiti.[100] Mechanisms for this exist under current law (Section 104 of the 2008 TVPRA).[101]

ENDNOTES

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[4] UNHCR, "2014 UNHCR country operations profile – Afghanistan," 2014.

[5] Tom Wong, "Statistical Analysis Shows that Violence, Not U.S. Immigration Policies, Is Behind the Surge of Unaccompanied Children Crossing the Border," 2014.

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[7] UNHCR, *Children on the Run*, March 12, 2014.

[8] Kennedy, 2014.

[9] Kennedy, 2014.

[10] Leslie E. Velez, UNHCR, Testimony to U.S. House Judiciary Committee, June 25, 2014, p. 5.

[11] American Immigration Council, *Tackling the Toughest Questions on Immigration Reform: Short Answers to the Most Common Questions*, July 29, 2013.

[12] Molly Hennessy-Fiske, "On the Texas border, patrol chief sees younger faces," *LA Times*, June 27, 2014.

[13] U.S. Border Patrol, "U.S. Border Patrol Fiscal Year Staffing Statistics," January 27, 2014.

[14] U.S. Border Patrol, "U.S. Border Patrol Fiscal Year Budget Statistics," January 27, 2014.

[15] Marc R. Rosenblum, *Border Security: Immigration Enforcement Between Ports of Entry* (Washington, DC: Congressional Research Service, May 3, 2013), pp. 17-18.

[16] UNHCR, The 1951 Refugee Convention.

[17] United Nations, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1985.

[18] UNHCR, *Children on the Run*, March 12, 2014, p. 6.

[19] Vera Institute of Justice, The Flow of Unaccompanied Minors Through the Immigration System (2010), at 24-25.

[20] Pub. L. 110-457, 122 Stat. 5044 (Dec. 23, 2008), at http://www.gpo.gov/fdsys/pkg/PLAW-110publ457/pdf/PLAW-110publ457.pdf. *See also* Polaris Project, "Current Federal Laws," http://www.polarisproject.org/what-we-do/policy-advocacy/national-policy/current-federal-laws

[21] 8 U.S.C. § 1232. *See also* Deborah Lee, Manoj Govindaiah, Angela Morrison & David Thronson, "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," AILA Infonet Doc. No. 09021830, available at http://www.ilrc.org/files/235_tvpra_practice_advisory.infonet.pdf

[22] Deborah Lee, Manoj Govindaiah, Angela Morrison & David Thronson, "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," AILA Infonet Doc. No. 09021830, available at http://www.ilrc.org/files/235_tvpra_practice_advisory.infonet.pdf.

[23] Pub. L. 110-457, 122 Stat. 5079, sec. 235(c)(5) (8 U.S.C. § 1232(c)(5)).

[24] UNHCR recommended in short that "[t]he extreme vulnerability of a child takes precedence over the status of an 'illegal alien'." UNHCR Detention Guidelines, ¶52 (2012), http://www.unhcr.org/505b10ee9.html .

[25] 8 U.S.C. § 1229a.

[26] Marc R. Rosenblum and Doris Meissner, *The Deportation Dilemma: Reconciling Tough and Humane Enforcement* (Washington, DC: Migration Policy Institute, April 2014), http://www.migrationpolicy.org/research/deportation-dilemma-reconciling-tough-humane-enforcement.

[27] 8 U.S.C. § 1225(b)(1)(A)(i) (expedited removal provisions); § 1182(a)(6)(C) (fraud and misrepresentation provisions); § 1182(a)(7)(A)(i)(I) (insufficient documents provisions).

[28] 8 U.S.C. § 1231(a)(5); 8 C.F.R. § 1241.8.

[29] Congressional Research Service, *Unaccompanied Alien Children: An Overview* (June 13, 2014), http://fas.org/sgp/crs/homesec/R43599.pdf.

[30] P.L. 110-457.

[31] CRS at 4.

[32] CRS at p. 4.

[33] Appleseed, Letter to Congressional Research Service, May 23, 2014, at p. 2; Appleseed, *Children at the Border: The Screening, Protection and Repatriation of Unaccompanied Mexican Minors*, 2011, at http://appleseednetwork.org/wp-content/uploads/2012/05/Children-At-The-Border1.pdf; Women's Refugee Commission, *Halfway Home: Unaccompanied Children in Immigration Custody* (Feb. 2009).

[34] Appleseed, Letter, p. 4.

[35] Appleseed, Letter, p. 4.

[36] 8 USC § 1362.

[37] 8 USC §1232(c)(5).

[38] Dr. Dora Schriro, Department of Homeland Security, Immigration and Customs Enforcement, Immigration Detention Overview and Recommendations, p. 2, October 6, 2009, http://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf.

[39] 8 USC § 1232(b)(3).

[40] 8 USC § 1232(c)(2).

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unaccompanied_childrens_services_fact_sheet.pdf.

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[43] UNHCR Detention Guidelines, ¶ 52.

[44] UNHCR Detention Guidelines, ¶ 52.

[45] Alice Farmer, The impact of immigration detention on children, Forced Migration Review, 2013, http://www.fmreview.org/detention/farmer.

[46] U.S. Department of Human Services, Administration for Children and Families, Office of Refugee Resettlement, Unaccompanied Alien Children Program, *Fact Sheet*, https://www.acf.hhs.gov/sites/default/files/orr/unaccompanied_childrens_services_fact_sheet.pdf.

[47] Associated Press, *Feds launch bilingual hotline for parents of migrant children*, June 20, 2014, at http://www.foxnews.com/us/2014/06/20/feds-launch-bilingual-hotline-for-parents-migrant-children/.

[48] Molly Hennessy-Fiske, *More youths crossing U.S.-Mexico border alone*, L.A. Times (Feb. 21, 2014), at http://articles.latimes.com/2014/feb/21/nation/la-na-texas-young-migrants-20140222.

[49] 8 USC § 1232(c)(3).

[50] Congressional Research Service, *Unaccompanied Alien Children: An Overview* (June 13, 2014), p. 10, http://fas.org/sgp/crs/homesec/R43599.pdf.

[51] Women's Refugee Commission and Lutheran Immigration and Refugee Service, Locking Up Family Values: The Detention of Immigrant Families, p. 2, 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.

[52] WRC and LIRS at 6.

[53] WRC and LIRS at 2.

[54] Grassroots Leadership, Letter to DHS Secretary Jeh Johnson (July 2, 2014), http://grassrootsleadership.org/sign-against-return-family-detention.

[55] Margaret Talbot, *The Lost Children*, The New Yorker (March 3, 2008), *at* http://www.newyorker.com/reporting/2008/03/03/080303fa_fact_talbot?currentPage=all.

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

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[58] Katharina Obser, Human Rights First, *Children and Families Seeking Protection Deserve Better than Detention and Summary Deportation*, July 2, 2014, http://www.humanrightsfirst.org/blog/children-and-families-seeking-protection-deserve-better-detention-and-summary-deportation.

[59] Women's Refugee Commission, *Halfway Home: Unaccompanied Children in Immigration Custody*, pp. 28-31, Feb. 2009.

[60] Talbot, *The Lost Children*.

[61] Liesbeth Schockaert, Alternatives to detention: open family units in Belgium, Forced Migration Review, 2013, http://www.fmreview.org/detention/schockaert#sthash.illACtkM.dpuf.

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[63] Doris Meissner et. al., Migration Policy Institute, *The Rise of a Formidable Machinery*, p. 130, (2013), http://www.migrationpolicy.org/research/immigration-enforcement-united-states-rise-formidable-machinery.

[64] National Immigration Forum, The Math of Immigration Detention, August 2013, http://www.immigrationforum.org/images/uploads/mathofimmigrationdetention.pdf.

[65] Council on Foreign Relations, Jeb Bush and Thomas F. McLarty III, Chairs, *Independent Task Force Report No. 63, U.S. Immigration Policy*, p. 106-107 (July 2009), http://www.cfr.org/immigration/us-immigration-policy/p20030?breadcrumb=/bios/2472/edward_alden?page=2; Elisa Massimino and Grover Norquist on Immigration Detention, Human Rights First, May 2, 2013, *at* https://www.youtube.com/watch?v=rOGc7PWdhWg.

[66] See Richard Viguerie, A Conservative Case for Prison Reform, N.Y. Times, June 9, 2013, http://www.nytimes.com/2013/06/10/opinion/a-conservative-case-for-prison-reform.html?_r=0; Right on Crime, *at* http://www.rightoncrime.com/.

[67] The White House, Office of the Press Secretary, *Press Briefing by Principal Deputy Press Secretary Josh Earnest* (June 20, 2014) (Q: "[A]re you going to be putting ankle bracelets on [these] kids? A: "I'd refer you to DHS for that…"), at http://www.whitehouse.gov/the-press-office/2014/06/20/press-briefing-principal-deputy-press-secretary-josh-earnest-62014.

[68] Chris Casteel, "Oklahoma Rep. Jim Bridenstine wants "unfettered access" to Fort Sill facility holding minors," *The Oklahoman*, July 7, 2014.

[69] http://washington.cbslocal.com/2014/06/27/officials-nm-detention-center-will-be-focused-on-deporting-illegal-immigrants-within-15-days/.

[70] CBSDC/AP, "Officials: NM Detention Center Will Be Focused on Deporting Illegal Immigrants Within 15 Days," June 27, 2014; Juan Carlos LLorca, *Feds: Immigrant center to expedite deportations*, June 26, 2014.

[71] Elise Foley, "Obama Requests $3.7 Billion To Deal With Border Crisis," *The Huffington Post*, July 8, 2014.

[72] The White House, "Letter to the Speaker of the House of Representatives," July 8, 2014.

[73] The White House, "Fact Sheet: Emergency Supplemental Request to Address the Increase in Child and Adult Migration from Central America in the Rio Grande Valley Areas of the Southwest Border," July 8, 2014.

[74] James Silkenat, President, American Bar Association, *Statement, House Judiciary Committee*, June 25, 2014, p. 2, http://www.americanbar.org/content/dam/aba/uncategorized/GAO/2014june25_unaccompaniedalienminors_t.authcheckdam.pdf; Women's Refugee Commission, *Halfway Home: Unaccompanied Children in Immigration Custody* (Feb. 2009), p. 2;

[75] 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.

[76] 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. Although additional resources would speed up cases, organizations also note that a child or adult should have time to recover from dangerous and abusive travels, receive a legal orientation program, obtain legal counsel, and assist in preparing their case, before facing government officials and removal. *Id.*

[77] Lutheran Immigration and Refugee Service (LIRS), Testimony, House Judiciary Committee, June 25, 2014, p. 2; 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.

[78] United States Conference of Catholic Bishops (USCCB), *Testimony of Most Reverend Mark Seitz, Bishop of the Diocese of El Paso, Texas, House Judiciary Committee*, p. 10-11, June 25, 2014 (recommending an increase in post-release funding for caseworkers, community-based reception services, and health care and medical care services), [hereinafter USCCB HJC Testimony], http://judiciary.house.gov/_cache/files/c8aea408-278a-4f3a-9fac-c790681f2611/bishop-mark-seitz-uac-hearing-testimony.pdf; Lutheran Immigration and Refugee Service (LIRS), Testimony, House Judiciary Committee, June 25, 2014, p. 2. 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. USCCB HJC Testimony, p. 11.

[79] The "best interests of 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, p. 12, [hereinafter USCCB HJC Testimony], http://judiciary.house.gov/_cache/files/c8aea408-278a-4f3a-9fac-c790681f2611/bishop-mark-seitz-uac-hearing-testimony.pdf.

[80] S. 744, *An act to provide for comprehensive immigration reform and for other purposes*, 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, House Judiciary Committee, June 25, 2014, p. 3 [hereinafter ABA HJC Statement], http://www.americanbar.org/content/dam/aba/uncategorized/GAO/2014june25_unaccompaniedalienminors_t.authcheckdam.pdf.

[81] S. 744, 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-childrens-safety-in-immigration-legislation/.

[82] 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 at 11-12; National Immigrant Justice Center (NIJC), *Statement, House Judiciary Committee, June 25, 2014*, at 8, http://www.immigrantjustice.org/sites/immigrantjustice.org/files/NIJC%20statement%20for%20House%20Judiciary%20Hearing%20on%20Unaccompanied%20Children%206-25-14.pdf. S. 744 would also institute a multi-year program to ensure "safe and sustainable repatriation." S. 744, Sec. 3612 (j), http://www.lawandsoftware.com/bseoima/bseoima-senate-3612.html.

[83] Appleseed Foundation, Children atthe Border: The Screening, Protection and Repatriation of Unaccompanied Mexican Minors, 2011, at http://appleseednetwork.org/wp-content/uploads/2012/05/Children-At-The-Border1.pdf. As one organization put it, children "do not divulge their complex histories of abuse and neglect during a first meeting with strangers," let alone "armed strangers in uniform." Center for Refugee and Gender Studies, *Calling on President Obama to Protect Child Migrants*, June 30, 2014 (relaying story of child who only divulged details of rape to her attorney), http://cgrs.uchastings.edu/our-work/june-2014-policy-statement-children.

Border Patrol representatives have also publicly expressed frustration with assuming a child welfare role. CBP union head Brandon Judd stated, "Forty percent of our agents have been pulled from the field to babysit, clean cells, change diapers…. That's not our job." David Nakamura, Border agents decry 'Diaper Changing, Burrito Wrapping' with influx of children, *Washington Post* (June 20, 2014), at 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.

[84] S. 744, 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: Unaccompanied Children in Immigration Custody* (Feb. 2009), p. 2; American Immigration Lawyers Association (AILA), Testimony, House Judiciary Committee, June 25, 2014, p. 6, http://www.aila.org/content/default.aspx?docid=49015.

[85] S. 744, Sec. 3612(d), (e), "Child Trafficking Victims Prevention Act" (requiring HHS to hire child welfare professionals to be placed in seven largest Border Patrol offices, screen children, and provide assessments), at http://www.lawandsoftware.com/bseoima/bseoima-senate-3612.html; USCCB, HJC Testimony, p. 10.

[86] Lutheran Immigration and Refugee Service (LIRS), Testimony, House Judiciary Committee, June 25, 2014, p. 2.

[87] Appleseed Foundation, *Children at the Border: The Screening, Protection and Repatriation of Unaccompanied Mexican Minors*, 2011, at http://appleseednetwork.org/wp-content/uploads/2012/05/Children-At-The-Border1.pdf.

[88] 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, p. 10.

[89] S. 744, Sec. 3502 (providing counsel to unaccompanied children, the mentally disabled, and particularly vulnerable), http://www.lawandsoftware.com/bseoima/bseoima-senate-3502.html. H.R. 15, the House comprehensive reform bill, is similar. H.R. 15, Sec. 3502, https://beta.congress.gov/bill/113th-congress/house-bill/15/. H.R. 4936, the Vulnerable Immigrants Voice Act, introduced by Rep. Hakeem Jeffries (D-NY) and others, would provide counsel to unaccompanied children and the mentally disabled. https://beta.congress.gov/bill/113th-congress/house-bill/4936; Richard Simon, "Lawmakers seek legal aid for youths caught crossing Southwest border," *Los Angeles Times*, June 23, 2014. Those bills would not, however, 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, at 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, p. 12; American Immigration Lawyers Association (AILA), Statement, House Judiciary Committee, June 25, 2014, p. 6; NIJC HJC Statement, pp. 5-7; ABA HJC Statement, p. 3.

Particularly, children fleeing abuse and violence are often not

capable of articulating a fear of return by themselves, let alone arguing legal claims. USCCB HJC Testimony at p. 11. Organizations have also reported that counsel assists in ensuring children attend court proceedings. Safe Passage Project, Testimony, House Judiciary Committee, June 25, 2014, at p. 2 ("Out of the approximately three hundred children screened by Safe Passage, only two young people failed to appear for immigration court hearings after we were able to match them with pro bono counsel."), http://www.safepassageproject.org/safe-passage-testimony-to-congress-on-child-migrants/.

The Administration has proposed $2 million for a "justice AmeriCorps" program of *pro bono* lawyers. Organizations have called it a "step in the right direction," but "not adequate to meet overwhelming need." NIJC HJC Statement at 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.") The Senate's Commerce, Justice and Science Appropriations bill, if passed, would also provide $5.8 million for a pilot program for lawyers for unaccompanied children. Senate Appropriations Committee, FY15 Minibus Text: CJS, THUD & Agriculture, Amt. 3244 to H.R. 4660, p. 24, http://www.appropriations.senate.gov/news/fy15-minibus-text-cjs-thud-agriculture.

[90] Organizations have also recommended increasing Legal Orientation Program funding, to provide know-your-rights presentations to all detainees nationwide. AILA HJC Testimony, at 6; 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 and H.R. 15 would provide this. S. 744, Sec. 3503, http://www.lawandsoftware.com/bseoima/bseoima-senate-3503.html; H.R. 15, Sec. 3503.

[91] Organizations have recommended additional resources to backlogged immigration courts, even before the recent children's crisis. Currently, an immigration case has been pending for 578 days on average (over a year and a half), and in Los Angeles, 799 days (over two years). Transactional Records Access Clearinghouse (TRAC), http://trac.syr.edu/phptools/immigration/court_backlog/. S. 744 and H.R. 15 would add 75 immigration judges in each of the 2014-2016 fiscal years, nearly doubling immigration court capacity. Sec. 3501(a). The Senate 2015 CJS Appropriations bill under consideration contains an extra $17 million to hire 35 new immigration judges. S. Amt. 3244 to H.R. 4660, p. 24, http://www.appropriations.senate.gov/news/fy15-minibus-text-cjs-thud-agriculture; S. Rep. 113–181, p. 63. The House's CJS Appropriations bill, which passed, does not. H.R. 4660, pp. 22-23, http://beta.congress.gov/113/bills/hr4660/BILLS-113hr4660rh.pdf. Neither S. 744 nor H.R. 15, nor current Appropriations bills, include extra funding for USCIS asylum officers.

[92] UNHCR Detention Guidelines, "Guideline 9.2, Children," ¶¶ 51-57, 2012; WRC, *Halfway Home*;

[93] USCCB HJC Testimony, p. 11.

[94] More broadly, organizations have recommended appropriate HHS facilities for children—smaller, community-based facilities with services, rather than larger, detention-like facilities. LIRS HJC Statement at 1; USCCB HJC Testimony at 13; WRC, *Halfway Home*.

[95] UNHCR Detention Guidelines, ¶ 52.

[96] Groups have particularly criticized conditions in Border Patrol's short-term detention facilities. Silkenat, ABA Statement at 2; AILA HJC Statement, at 5; WRC, *Halfway Home*, at 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 Border Patrol officials from 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), http://thomas.loc.gov/cgi-bin/query/z?c113:H.R.3130; Amendment 1260 to S. 744, introduced by Sen. Barbara Boxer (D-CA), 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), would establish an ombudsman over border-related concerns. https://beta.congress.gov/bill/113th-congress/house-bill/4303/.

[97] S. 744, Sec. 3715 (establishing "secure alternatives programs that incorporate case management services," with "nongovernmental community based organizations"); 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; LIRS HJC Statement, at 2.

Currently, the House DHS appropriations bill recommends $94.5 million for alternatives to detention (compared to $2.01 billion for detention overall). H.R. 4903, http://www.gpo.gov/fdsys/pkg/CCAL-113hcal/html/CCAL-113hcal-pt2.htm; *see also* H. Rept. 113-481, p. 58. The Senate DHS Appropriations bill recommends $94 million for alternatives to detention (compared to $1.87 billion for detention overall). S. 2534, at https://beta.congress.gov/bill/113th-congress/senate-bill/2534/text; *See also* Senate Appropriations Committee, Committee Approves FY15 Homeland Bill (June 26, 2014), at http://www.appropriations.senate.gov/news/committee-approves-fy15-homeland-bill.

[98] Detention Watch Network, Advocates Denounce @BarackObama for Seeking $2 Billion to Detain & Deport Women & Children on the Border, July 1, 2014, at http://detentionwatchnetwork.wordpress.com/2014/07/01/advocates-denounce-barackobama-for-seeking-2-billion-to-detain-deport-women-and-children-on-the-border/; Council on Foreign Relations, Jeb Bush and Thomas F. McLarty III, Chairs, "Independent Task Force Report No. 63, U.S. Immigration Policy," p. 106-107 (July 2009).

[99] USCCB, HJC Testimony, pp. 13-15.

[100] USCCB, HJC Testimony, pp. 12, 14.

[101] 22 U.S.C. § 7105(a). It requires 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."

CWS statement to the U.S. House of Representatives Judiciary Committee, regarding its hearing "Interior Immigration Enforcement Legislation," Wednesday, February 11, 2015

Church World Service, a humanitarian organization comprised of 37 member communions, strongly opposes proposed legislation that would harm families and communities across this nation. CWS strives to fulfill the Biblical call to love thy neighbor and welcome the immigrant by assisting displaced and marginalized persons around the world. and by seeking policies that protect individuals fleeing persecution, promote family unity, and affirm the dignity and value of all individuals. As the committee considers the "Protection of Children Act" (HR 5143), "Asylum and Border Protection Act" (HR 5137), and the "Strengthen and Fortify Enforcement Act" - commonly known as the "SAFE Act" (HR 2278), CWS expresses strong opposition to these bills, as they would narrow protections for vulnerable migrants in need of safety – namely children and victims of trafficking, and criminalize immigrants and individuals who assist them, including faith communities. This legislation would drastically restrict access to protection for asylum seekers and return children back into the hands of traffickers and others who seek to exploit them. CWS encourages members of the committee to reject these bills and any similar legislation that would remove or reduce vital protections such as the *Trafficking Victims Protection Reauthorization Act* (TVPRA), passed unanimously by Congress and signed into law by President Bush in 2008.

CWS is strongly opposed to H.R. 5143, deceivingly named the "Protection of Children Act" introduced by Representative John Carter (R-TX-31). This bill would roll back the TVPRA by allowing unaccompanied children to be deported after a cursory screening with a border patrol agent, which would result in children being returned back into the hands of traffickers and others who seek to exploit them. Border Patrol agents lack the resources and training on child welfare, trauma, abuse, and sexual assault to conduct the appropriate screenings to interview children. It is not appropriate for border patrol officers to interview children who have been victimized by military and police who are working in collusion with gangs in the Northern Triangle and thus will fear officials in uniform. Instead, children should be interviewed by child welfare specialists, as is the case currently. This bill would also mandate that children go to trial within 7 days of their initial screening, which would make it nearly impossible for children to find a pro-bono attorney and develop trust with them enough to share their traumatic story, and for the attorney to develop an adequate case for the child. Providing additional resources to immigration courts to evaluate whether children are victims of trafficking or persecution, rather than rolling back protections, would create a more timely and fair system without creating unnecessary hurdles that could result in summarily sending children back to be killed or exploited.

The bill would also require the Office of Refugee Resettlement to report to the Department of Homeland Security (DHS) the immigration status of family members providing care for unaccompanied children, which would put some families in the impossible situation of leaving their children with strangers or placing themselves at the risk of deportation. Children would have to remain in detention throughout a lengthy asylum application process. Detention is unsafe and unfit for the unique needs of children, and is unnecessary. Data from Syracuse University shows that 79.5% of children released to a relative are showing up for court - and even more - 95.1% are showing up when they have a lawyer. Likewise, this legislation would make any affiliation with a gang or gang member, including forced recruitment or support, result in a bar to their entrance into the United States. This policy is particularly detrimental to children fleeing violence in the Northern Triangle region who are at risk of forced recruitment.

In addition to the Protection of Children Act, CWS is also strongly opposed to H.R. 5137, The Asylum Reform and Border Protection Act, introduced by Rep. Jason Chaffetz (R-UT 3) and Chairman Bob Goodlatte (R-VA 6). This bill contains the same harmful provisions as the Protection of Children Act, and would also restrict access to asylum, increase the use of immigration detention, deny humanitarian parole to those denied refugee status, and restrict the definitions of parole, special immigrant juvenile status and unaccompanied children to deny access to many vulnerable individuals with meritorious claims who would suffer detention or unsafe deportation.

CWS is deeply opposed to the SAFE Act, H.R. 2278, which calls for policies that would take our nation backwards by encouraging racial profiling, jeopardizing community safety, criminalizing compassion, and denying protection to vulnerable persons fleeing persecution. The bill would nationalize Arizona's S.B. 1070, which mandates that police stop and ask the immigration status of anyone they suspect to be undocumented. Such policies have led to racial profiling, stigmatized immigrant communities, redirected limited police resources, and placed all community members at risk, as many individuals do not report crimes they witness or fall victim to, fearing the deportation of themselves or a loved one. When the trust is broken between communities and police, criminals continue to go undetected. As evident from Arizona's legal problems with S.B. 1070, the indictment of Sheriff Joe Arpaio, and proven failure of the now-defunct Secure Communities program, these policies are ineffective and have led to consequences of racial profiling and reduction of community trust.

CWS is also concerned about the provision that would criminalize faith communities who provide needed assistance regardless of an individual's immigration status, as well as volunteers, community members, friends and even family members who “transport, move, harbor or shield” a refugee, asylum seeker or anyone whose immigration status has lapsed. We are called by our faith to treat the immigrant as the citizen among us, and the SAFE Act would interfere with carrying out our mission to welcome the stranger. H.R. 2278 would also broaden the problematic “material support” bars that have already unjustly denied protection to Burmese pro-democracy freedom fighters, parents forced to pay ransoms for their children's freedom, and women forced to cook and clean for their captors, incorrectly labeling them as supporters of terrorism. It would also require the Department of Homeland Security to add additional detention beds, increase mandatory detention and allow for indefinite detention, which would negatively impact vulnerable populations, including asylum seekers.

These three pieces of legislation would reduce the safety of immigrant families who are already part of the fabric of communities across the United States. They would separate families and undermine the current U.S. asylum system, the naturalization process, and the protection of unaccompanied children fleeing violence. The bills would prevent unaccompanied minors and asylum seekers from being properly screened and would result in their return to dangerous and life-threatening situations, in violation of both U.S. and international law. Rather than improving our broken immigration system, these three bills would take our nation backward and would put lives at risk. CWS urges all members of the committee and the House of Representatives at large to reject these negative proposals and to instead affirm support for the protection of persecuted individuals. CWS is committed to working with all members of both the House and Senate to support policies that unite families; strengthen migrant and refugee communities by treating all persons with dignity and respect; and respect the role that faith communities play in welcoming newcomers and assisting those in need. CWS believes in welcoming and loving the immigrants among us and urges the House Judiciary Committee to uphold these values in federal policy.

Statement submitted to the Committee on the Judiciary of the U.S. House of Representatives

Hearing: Interior Immigration Enforcement Legislation

February 11, 2015

Throughout our history, America has been defined by our generosity toward those who seek a safe haven from oppression. An asylum system that is fair, effective and humane honors both our country's history and reflects the deeply-held American and Jewish tradition of offering a chance at a new beginning to those who seek safety and freedom. Once given that opportunity, refugees and asylees become active and productive members of American communities. The **Strengthen and Fortify Enforcement (SAFE) Act**, the **Asylum Reform and Border Protection Act**, and the **Protection of Children Act** are in direct conflict with these traditions. The SAFE Act would make seeking asylum in the United States more difficult by expanding terrorism definitions and detention policies that are already too broad. The Protection of Children Act and the Asylum Reform and Border Protection Act would undermine laws designed to identify and prevent human trafficking as well as send children fleeing widespread gang violence back to countries where they face very real risks of physical and sexual violence.

SAFE Act

The SAFE Act unwisely delegates the enforcement of our national immigration laws to state and local law enforcement agencies despite demonstrated instances of profiling and subsequent weakening of community safety. Enforcement of immigration laws by local law enforcement increases distrust of the police by immigrant populations, which may negatively impact their willingness to seek assistance from the police. Enforcement of immigration law will also divert police attention and resources, making the community as a whole less safe.

Additionally, the SAFE Act would negatively impact individuals fleeing persecution, including refugees, asylum seekers, and stateless people, by worsening expansive laws targeting terrorism that negatively impact law abiding asylees and refugees.

In 2001, Congress enacted legislation that significantly broadened the definition of "terrorist activity" and "terrorist group." The law currently defines terrorist activity to include any amount and all types of support to terrorists even if the support is coerced. "Terrorist group" is so broadly defined that even resistance movements against brutal regimes are considered terrorist groups – even in cases where the resistance is supported by the U.S. These provisions are known as the "TRIG" or "material support provisions." The TRIG provisions are so broad that activities that have no real life connection to terrorism are considered terrorist activities. Under current law, the survivors of the Warsaw Ghetto uprising or Iraqis that fought alongside Coalition forces against Saddam Hussein would be considered terrorists. The impact of these laws has already been felt by refugees with legitimate claims for asylum. Paying ransom to recover a kidnapped child or being forced to cook and clean by rebels that murdered family members have been considered terrorist activities.

Refugees that are found to have provided material support under the TRIG provisions are barred from entering the U.S. Additionally, refugees already living in the U.S. can be barred from obtaining green cards and being reunited with families. Congressional action changed the TRIG provisions to allow the President to create exemptions, however implementation of exemptions has been slow and thousands of refugees have been left in limbo.

Instead of addressing the flaws with the current system, the SAFE Act proposes to expand the current law. The SAFE Act proposes to use TRIG provisions as a bar to a finding of good moral character and naturalization, which will prevent law-abiding refugees that have lived in the United States for years from naturalization. Until the flaws in the system are addressed provisions like this will compound harm to refugees and asylum seekers.

Furthermore, if passed, the SAFE Act would increase the unnecessary detention of immigrants—including refugees and asylum seekers—by eliminating the current prohibitions on indefinite detention. Many individuals in immigration detention in the U.S. are victims of persecution and torture in their home countries as are many families fleeing violence. The SAFE Act would do nothing to lessen the trauma experienced by survivors and in fact would cause more harm.

Protection of Children Act and the Asylum Reform and Border Protection Act

Fiscal year 2014 saw a spike in the number of unaccompanied children crossing the Southern border—over 68,000 unaccompanied children were apprehended by U.S. officials. The majority of these children came from the "Northern Triangle" of Central America, the countries of El Salvador, Guatemala, and Honduras. The violence in these countries has steadily increased as result of transnational gang activity. Honduras, for example, has the highest murder rate per capita in the world. Gangs forcibly recruit children and those that refuse are tortured and killed. The governments of El Salvador, Guatemala, and Honduras are unable to ensure citizen safety.

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) ensures protection to unaccompanied children arriving to the U.S. from a noncontiguous country. The unaccompanied children provisions of the TVPRA were passed in recognition that screening at the border by Customs and Border Protection (CBP) was not a sufficient way to protect children from

trafficking and exploitation. The TVPRA 2008 dictates that children from a noncontiguous country are placed in the care of Department of Health and Human Services (HHS) and are screened and prepared for removal proceedings. Children in the care of HHS receive medical and mental health treatment as well as access to education programs. Children are to be provided with legal counsel to the greatest extent possible. HHS also facilitates the placement of children with family members already living in the U.S. while the child's case is considered during removal proceedings.

It is important to note that asylum claims are increasing all over the region. Mexico, Panama, Nicaragua, Costa Rica, and Belize have shown a 435 percent increase in the number of asylum applications they have received from individuals in the Northern Triangle countries. It is push factors—rather than pull factors such as the perception that the U.S. is lax in enforcement of immigration laws—that are causing people to flee the Northern Triangle region.

The Protection of Children Act and the Asylum Reform and Border Protection Act both seek to increase the speed by which children are returned to their home countries. To accomplish this goal, **Section 2 of the Protection of Children Act** and **Section 2 of the Asylum Reform and Border Protection Act** eliminate the distinction between children from contiguous countries versus noncontiguous. The result would be that all children would be screened by CBP for trafficking and for fear of returning home, greatly increasing the responsibilities of CBP officers and decreasing their ability to actively patrol the border. This would require children to be interviewed almost immediately after arrival by CPB officers who may not receive the type of training necessary to effectively interview traumatized children. Children could be returned home within a few days without having had a meaningful opportunity to communicate the factors that would potentially allow them to stay in the country.

Section 10 of The Asylum Reform and Border Protection Act would redefine what an unaccompanied child is, the effect of which will be increased authority for DHS to keep children in detention. This would undermine already established policies that recognize children should be treated differently from adults and should be held in the least restrictive setting possible. Detention of children causes unnecessary stress and trauma and must be avoided.

Additionally**, Section 9 of the Asylum Reform and Border Protection Act** and **Section 311 of the SAFE Act** create new grounds for admissibility and deportation. Under the proposed language anyone that the government "knows or has reason to believe" is or was a criminal gang member or participated in activities of a criminal gang knowing or having reason to know that such activities would promote, further, aid or support the illegal activity of the gang would be inadmissible. Asylum, temporary protected status and special immigrant juvenile visas would be unavailable to anyone suspected of being a current member or former member of a criminal gang.

Like the TRIG provisions, the language creating new grounds for inadmissibility for gang members is overly broad and does not take into account actions that were the result of coercion or duress. The language does not require a criminal conviction and applies equally to those who are currently members of a gang or those who have left a gang. As a result, the new inadmissibility grounds will require

exemptions and waivers to ensure that otherwise eligible refugees and asylees are not denied status, a "solution" that has been completely unworkable for the TRIG provisions.

The effect of this language would be felt immediately by those fleeing the Northern Triangle region, where forced conscription by gangs is a primary push factor. By virtue of being from the region, it could be "reasonably believed" that a person was a criminal gang member or participated in gang activity regardless of whether there was a criminal conviction. Additionally, victims of sex trafficking could be negatively impacted if they were forced to engage in commercial sex for the benefit of the gang. Security and safety is a vital part of any immigration policy. However, new legislation that includes overly broad inadmissibility grounds that fail to take into consideration the legal obligations of the U.S. to protect asylees and refugees should not be enacted.

The Protection of Children Act and the Asylum Reform and Border Protection Act would roll back the protections guaranteed to children and return the law to its pre-TVPRA state, which has been recognized as insufficient to protect children. While the spike in unaccompanied children from Central America and the use of smugglers to get them here is concerning, amending laws designed to protect all children from human trafficking and exploitation is a short sighted and ineffective overreaction. Smugglers will not change their behavior if children are denied assistance and protection, and children coming into the U.S. need protection. Now is the time to examine the factors that are causing them to flee, not to reduce assistance and return them as quickly as possible to the violence and poverty that compelled them to leave in the first place. Passage of these bills would be incompatible with the American tradition of assistance to those seeking asylum.

In order to ensure that asylum seekers, particularly children, are not returned to persecution, HIAS recommends that Congress:

- Avoid the mistakes of the past, where overbroad definitions have led to the absurd result of persecuted individuals being denied protection based on conduct that has nothing to do with actual harmful behavior. "Anti-gang" efforts should not be modeled on the "anti-terrorism" legislation that has caused so much unnecessary hardship for so many bona fide refugees.
- Ensure that systems and funding are in place to ensure that migrants—particularly children—have competent legal representation and are not left alone to represent themselves in court.
- Allocate funds to the immigration courts to process cases quickly and should fund programs to help ensure the safe return and integration of children who are sent back to their home countries.
- Fund training for U.S. Border Patrol and other government officials to deal appropriately with children, including adequate screening to determine if they would be persecuted if returned to their home countries and advised of the right to seek asylum. All migrants—particularly children—who have asylum claims must be able to make them, and procedures for kids in the immigration system must be fair and humane.
- Encourage the use of alternatives to family detention, which is costly and inhumane. There is no reason the United States cannot control its borders while at the same time respecting the right of the persecuted to seek asylum and making the moral decision not to jail mothers and children who seek safety and a better life.
- Create a contingency fund for the Office of Refugee Resettlement (ORR) so that future unanticipated needs such as the increase in child migrants at the Southern border last summer

are not paid for by the refugees from Iraq, Syria, Sudan, Ukraine, and elsewhere who have been generously offered protection by the U.S.

As a global humanitarian leader, the United States must act in a thoughtful and calculated manner thoroughly consistent with international refugee law and American principles of due process. HIAS looks forward to working with Congress to meet these goals and to improve our country's broken immigration system in a way that keeps families together, provides proper care for children who are alone, and ensures that individuals who seek safety at our border are not returned to persecution.

Immigration Subcommittee of House Judiciary Committee
Statement in Support of Just Immigration Legislation
February 11, 2015

As people of faith and women religious we take seriously the gospel call to welcome the stranger and care for those in need. We are committed to the precepts of Catholic Social Teaching that remind us that the dignity of the person is at the core of our moral vision of society; that how we organize our society affects human dignity directly; and that any system that is deliberately cruel or inhumane must be changed. The Leadership Conference of Women Religious (LCWR) is determined to effect the change necessary to end the suffering caused by our unjust immigration system.

Catholic sisters began coming to these shores more than two hundred years ago as immigrants to serve immigrant populations. To this day we continue to minister to these aspiring citizens in our schools, hospitals, and social service agencies. We see the devastating effects of our broken immigration system every day. We share the pain of parents separated from their children and the hope of those who have risked everything to care for their families.

That is why we have continually called for compassionate, common sense immigration reform. It is why we stand with our immigrant sisters and brothers and continue to demand that the needless and dangerous detentions and deportations stop.

We are particularly concerned about the legislation which is the subject of this hearing. We urge you to reject proposals that would criminalize immigrants, militarize our borders, threaten our families, or remove critical protections for children and other individuals seeking safety and refuge.

LCWR is strongly opposed to H.R. 2278, the *Strengthen and Fortify Enforcement (SAFE Act).* We find the SAFE Act objectionable on many levels. The bill's single-minded focus on immigration enforcement will increase dangerous deportations and unconstitutional detentions and encourage racial profiling and discrimination without fixing any of the real problems of our broken immigration system.

We are particularly concerned about provisions of the act that would effectively criminalize the ministry of our members. We take seriously our religious call to provide for the spiritual and humanitarian needs of all persons regardless of immigration status. The provisions of the SAFE Act run directly counter to the gospel values of generosity, hospitality, and welcome. We cannot continence a law that would prohibit acts of kindness and mercy.

8808 Cameron Street | Silver Spring, MD 20910 | 301-588-4955 | Fax: 301-578-4575 | www.lcwr.org

We join other people of faith in opposing legislation that would eliminate critical anti-trafficking protections for children and individuals seeking protection from persecution, especially the misnamed *Protection of Children Act* (H.R. 5143) and *The Asylum Reform and Border Protection Act*s (H.R. 5137). These bills would roll back the bipartisan *Trafficking Victims Protection Reauthorization Act* (TVPRA) signed into law by President Bush and could result in children being forced back into the hands of traffickers, gangs, and others who seek to exploit them.

These changes would deny children a meaningful opportunity to have their story heard, apply for asylum, or be properly screened by child welfare personnel, and would give Border Patrol agents the sole discretion of deciding whether a child far from home, unaccompanied by his or her parents or guardians, should be swiftly deported to a potentially life-threatening situation.

The proposed legislation would severely reduce protections for asylum seekers, including children, and deny special immigrant juvenile status to children who have been abused, neglected, or abandon. It would require Health and Human Services to share information with the Department of Homeland Security about the whereabouts of children's parents and family members for enforcement purposes, which would put some families in the impossible situation of leaving their children with strangers or placing themselves at the risk of deportation.

LCWR, and its members across the country, will continue to press for legislation that protects the dignity and human rights of all people; creates an achievable path to citizenship; fixes the immigration visa system and reunites families; protects the rights of all workers; promotes the full integration of newcomers; respects the special needs of the most vulnerable; and addresses the violence, persecution, and poverty that force migrants from their homes.

We promise you our prayers and hope that you will work with your colleagues to enact legislation that honors the values of our country, respects the dignity of our immigrant sisters and brothers, emphasizes compassion, and acknowledges God's love for all people.

Statement for Hearing
on
"Interior Immigration Enforcement Legislation"

House Judiciary Committee
Subcommittee on Immigration and Border Security

February 11, 2015

By Lutheran Immigration and Refugee Service, Kids in Need of Defense
and the Women's Refugee Commission

Lutheran Immigration and Refugee Service (LIRS)[1], Women's Refugee Commission (WRC)[2], and Kids in Need of Defense (KIND)[3] 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 as such we are deeply concerned with these bills that would unduly inflict harm upon families and unaccompanied children fleeing violence by expanding immigration detention, limiting access to due process, and reducing the effectiveness and accessibility of our asylum and trafficking protection systems. **We believe there are simple ways to improve the efficiency of our immigration system that do not curb important protections or due process.** We urge you to protect these vulnerable migrants instead of stripping away their protections. We look forward to working with Congress on legislation that will improve our immigration system while protecting migrant children and families.

The Asylum Reform and Border Protection Act (H.R. 5137)

Our organizations oppose the Asylum Reform and Border Protection Act as it would rollback critical protections for children under the Trafficking Victims Protection Reauthorization Act (TVPRA), expand the inappropriate use of immigration detention for children, limit access to both due process and the asylum process, and create unsafe conditions for repatriation and custody of children.

[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] Kids in Need of Defense (KIND) serves as a leading organization for the protection of unaccompanied children who enter the US immigration system alone and strives to ensure that no such child appears in immigration court without representation. We achieve fundamental fairness through high-quality legal representation and by advancing the child's best interests, safety, and well-being.

Our organizations' work with migrant children traveling alone has shown that children crossing the border are often fleeing dangerous and life threatening circumstances in order to seek refuge in the United States.[4] As evidenced by the increase in children migrating since 2011, the situation in Central America is dire and only getting worse. These children are escaping gang violence, sexual and gender-based violence, forced recruitment, domestic violence, abandonment, and are often victims of trafficking. Children fleeing for their lives will not be deterred by punitive legislation designed to persuade them not to come to the U.S. by eroding important human rights protections.

This Act eliminates protections vouchsafed by the TVPRA in a number of ways. The bill limits the definition of an unaccompanied child, effectively restricting eligibility for trafficking and asylum protections to a very few. The bill also erodes due process for children as it allows Customs and Border Protection (CBP) to place children traveling alone in expedited removal proceedings. The accelerated nature of these proceedings means that they will have no chance of legal representation when there are experienced attorneys across the U.S. who are willing and able to represent children in these cases. This means unaccompanied children, no matter their age - even babies and toddlers, would somehow be forced to make a case on their own while in a CBP holding cell. This thoroughly undermines any due process protections for children and erodes the purpose of the TVPRA—to ensure children are not returned to danger.

With regard to the asylum process, this Act creates a more complicated and adversarial process to obtain protection. The Act creates a higher standard for proving a threshold fear of persecution, applies the one-year asylum bar to children, applies Safe Third Country requirements to children, and forces children to present their case in a trial before an Immigration Judge and ICE attorney instead of through an interview with an asylum officer, further burdening our overly-taxed immigration courts. These changes to the system are not necessary to avoid abuse of our asylum system and expose children to dangerous removals, even to third countries that the child does not reside in or have any ties to. The current system contains numerous fraud prevention and detection mechanisms including fraud detection training for asylum adjudicators, enhanced background biographical and biometric checks with federal agencies, additional fraud detection and investigation capacities, and stepped up referral of cases for criminal prosecution.

We are particularly concerned with the sections of this bill that authorize detention for the duration of the child's asylum or trafficking proceeding. In addition to adding a layer of trauma to an already vulnerable population, it is difficult even for adult immigrants to obtain a lawyer while detained or to navigate the legal process from detention. It would be impossible for a child to navigate this system on his or her own without support from counsel. Our child welfare system has also long recognized the adverse impact of institutionalizing children.

Not only would this Act extensively limit access to asylum and trafficking protections, it would virtually eliminate access to U visas for unaccompanied child victims of crimes in the United States

[4] *Forced From Home: The Lost Boys and Girls of Central America*, Women's Refugee Commission 2012

and for Special Immigrant Juvenile Status, a two decades-old form of humanitarian protection for abused, abandoned, and neglected children. For example:

- **An eleven-year old girl named Jocelyn** was being sexually abused by her stepfather and her mother refused to protect her favoring her relationship with her husband over protection of her daughter. Through a family member, Jocelyn was able to locate her father in the U.S. and fled for protection. If, this Act were law, CBP would be the gatekeeper of determining whether Jocelyn suffered sexual abuse and without allowing access to Special Immigrant Juvenile Status, Jocelyn would have been automatically returned to her abuser.

- A **fourteen-year old girl named Lucia** was lured into the U.S. with false promises of working on a farm in the southern U.S. and after she was brought across the border, she was held in a house and raped repeatedly by unknown men. The house was raided and she was sent to an Office of Refugee Resettlement therapeutic home for girls where she was able to talk about the rapes and care for the child that she conceived as a result of the rapes. If this Act were law, CBP would have sole authority to determine whether Lucia was a victim of a crime or trafficking in the U.S., and without access to trauma support and pre-natal care, Lucia would have been automatically returned to her traffickers who would continue to operate with impunity in the U.S.

Finally, this Act provides for an extended period of time for the transfer and custody of children out of CBP custody. Thus, a child traveling alone would spend an increased amount of time in CBP custody, which has been found completely inappropriate for both adults and children. If this Act passes, we would once again experience the troubling situation of children in CBP custody that we witnessed during the summer of 2014 when thousands of children spent weeks in overcrowded cement holding cells near the border with insufficient food, supplies, and health services.[5] In addition to longer periods in CBP custody, the Office of Refugee Resettlement would no longer be required to review a child's situation and safeguard against placement in an overly rigid facility.

The Protection of Children Act (H.R. 5143)

Our organizations also oppose the Protection of Children Act that includes many punitive provisions similar to the Asylum Reform and Border Protection Act. This bill will do nothing to increase protections for children as the title suggests; it instead makes children more vulnerable to traffickers, criminals, and the profound negative effects of prolonged detention. The Protection of Children Act limits protections for children, places them in restrictive and inappropriate settings, and puts an almost impossible burden on children to establish a claim for relief from removal. The bill would also severely restrict the family reunification process and severely limit vulnerable children's access to the protection they need through our asylum system.

[5] *The Guardian*, "US Border Patrol struggles to shelter thousands of unaccompanied children", June 18, 2014. Available at: http://www.theguardian.com/world/2014/jun/18/us-border-patrol-children-detained-texas-arizona.

Under this Act, when children are encountered by CBP, they would be required to demonstrate that they are a victim of trafficking or have a fear of return to their home country. If the child, regardless of their age, is unable to do so, the bill would require DHS to return them to their home country. This would likely result in a high percentage of children who are traveling alone being returned to dangerous situations where they are being trafficked, persecuted, tortured, or killed. Children of a young age would automatically be removed because they may not be able to voice to DHS their concerns of trafficking and fear of return.

For example,

- **A young girl named Maria** was kidnapped by a local gang and raped daily. 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. If this Act were law, CBP would be required to determine whether Maria was a trafficking victim and had a fear of return, and she would have been automatically returned.
- **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 witnessed the torture and beheading of another toddler in their community by gangs as a punishment. Because the language in the TVPRA regarding ensuring that a child is able to make an independent decision would be eliminated by this Act, and Jesus is of such a tender age, he would automatically be returned to his country.

This bill would also provide for extended CBP custody for children instead of transfer to a more appropriate facility within ORR. CBP short term holding facilities are not designed to serve as detention facilities, and are especially inappropriate for children. It is unreasonable to ask CBP officials and agents to spend their time caring for children in their custody instead of focusing their limited resources on law enforcement activities.

Under this Act, if a child in CBP custody has successfully made a claim of trafficking or fear of return, he or she would only have 14 days to make a case for relief before going before an Immigration Judge. These accelerated removal proceedings would make it even more difficult for a child to find an attorney or advocate who can help them articulate their claim for relief. This would be exacerbated by the provision watering down the child's right to counsel by only requiring HHS ensure access to counsel and prohibiting the government from supporting attorneys representing these children and transferring initial jurisdiction for children's asylum claims back to the courts. This not only has adverse consequences for the children, but it will prove disastrous to the immigration court system. The system is already backlogged and if judges are required to adjudicate more cases of unrepresented children, it will only further clog an overwhelmed system.[6] Without the proper support, legal representation, and access to information, relief would be nearly impossible to obtain, even with a strong trafficking or asylum claim.

[6] http://trac.syr.edu/phptools/immigration/court_backlog/apprep_backlog.php

Even if a child successfully navigates these significant hurdles by himself or herself and is transferred to ORR custody to await family reunification, this bill severely restricts their ability to be reunited with their family. Before a child is placed with their family, ORR would have to provide the family member's immigration status to DHS, who would then be forced to investigate and initiate removal proceedings against the family member if he or she lacked legal status. This punishes families seeking protection for their children and risks a parent's deportation while his or her child is going through the immigration court process. This could also incur further costs for the government as the child would remain in ORR custody or federally funded foster care if the family is too afraid to come forward for reunification. This provision would tear families apart even as they are trying to reunify under legal means. We strongly feel that family unity should be upheld wherever possible. Families are the building blocks of strong communities and as such parents should be allowed to provide care and protection to their children.

Finally, changing the eligibility standard for abused children to gain protection through Special Immigrant Juvenile status would put many child victims back in harm's way. Many children currently eligible for this form of immigration relief have been saved from being sent back to an abusive parent in their home country by gaining protection through this visa. For children who suffered abuse at the hands of a parent in their home country, they can now live with a parent who will protect them and keep them safe, something we all want for all children. If the eligibility is changed, hundreds of children could be sent back to dangerous situations, forced to live on the streets or in abusive homes.

The Strengthen and Fortify Enforcement (SAFE) Act (H.R. 2278)

Our organizations oppose the SAFE Act that would expand the use of immigration detention, encourage state and local law enforcement officials' participation in immigration enforcement, and decrease access to justice, protections, and critical immigration safeguards for vulnerable migrants. This bill would also make it a crime punishable by prison time for individuals or houses of worship to provide humanitarian aid and assistance to persons lacking immigration status.

Through our organizations' work with asylum seekers, torture survivors, unaccompanied children and migrant families, we have witnessed firsthand the detrimental effects immigration enforcement measures, such as immigration detention, have on individuals, families, and communities. In Fiscal Year 2013, Immigration and Customs Enforcement (ICE) detained 441,000 persons and in Fiscal Year 2014, it removed 315,943 individuals from the United States. The number of impacted individuals is even greater when expanded to include the communities and families left behind.

The SAFE Act mandates even greater use of immigration detention and explicitly allows indefinite detention of migrants — including asylum seekers and victims of torture. This is the wrong approach. In a country that honors due process, and during a time of reduced federal spending, our overreliance on detention as an immigration enforcement approach should be replaced with a broad continuum of

alternatives to detention with an emphasis on community-based alternatives that provide a holistic and fiscally-responsible approach to ensuring compliance with appearance at immigration proceedings.

Similarly, the SAFE Act would allow state and local law enforcement officials to act as immigration agents. For example, the bill expands the 287(g) program, a flawed enforcement approach that weakens relationships between migrant communities and local law enforcement. In December 2012, ICE announced that 287(g) would only be continued in jurisdictions operating the program out of their jails, terminating those programs operating amidst communities, also known as the "task force" model. Unfortunately, the SAFE Act would reverse this decision, further eroding trust between migrants and local law enforcement and decreasing safety for entire communities.

Other provisions of the SAFE Act would limit immigration options for certain migrants, including formerly incarcerated individuals who have paid their debt to society and are rebuilding their lives. Provisions that expand mandatory detention and allow for indefinite detention do not serve justice, and run counter to the fundamental American value of liberty and justice for all.

Our organizations urge the United States government to fulfill its obligation to provide protection to individuals fleeing persecution in their homelands or who are victims of trafficking. This obligation is found in international treaties the United States has ratified, such as the United Nations Refugee Convention and the Convention against Torture, as well as in domestic immigration law. Our asylum system provides refuge to men, women, and children who have endured unimaginable persecution in their countries of origin on account of their race, religion, political opinion, membership in a particular social group, or nationality. In addition to legal obligations, our asylum system reflects our nation's long and proud history of protecting and welcoming victims of persecution and torture. Rather than stripping protections and due process, we appeal to Congress to enact legislation that keeps families together, protects children, migrants, refugees and other vulnerable persons, and upholds the American value of justice for all.

The U.S. Congress has a unique and important role in the response to the increased number of children seeking protection in the United States. Specifically, Congress should be providing robust oversight to the agencies charged with the care and custody of unaccompanied children to make sure these children are housed in safe and appropriate facilities and conditions while they are in federal custody. The Prison Rape Elimination Act requires reporting on specific information about child detainees, as well as minimal levels of care and safety. Congress should be making sure that these requirements are met. In addition, Congress should be appropriating funds to, and monitoring the Justice Department to guarantee all immigration claims are fairly and timely adjudicated and these children are provided with pro bono or government funded counsel if they cannot afford counsel. Finally, Congress should ensure that children are safely and quickly released to their families while awaiting their immigration process.

The bills that are the subject of today's hearing are not the solution to these needs. We must remain steadfast in our commitment to protecting vulnerable migrants and remember unaccompanied children are *children* first and foremost.

For more information:

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Statement of NETWORK, A National Catholic Social Justice Lobby Before the House Judiciary Committee

"HEARING: INTERIOR IMMIGRATION ENFORCEMENT LEGISLATION"

February 11, 2015

Sister Simone Campbell, NETWORK Executive Director, today calls on Members of Congress to reject efforts that weaken or end protections for immigrants made possible through recent executive orders on immigration. NETWORK also opposes legislation that would further militarize our southern border, roll back anti-trafficking protections, and threaten rights enshrined in our Constitution. This is critically important right now as Congress considers legislation and amendments to the Department of Homeland Security (DHS) appropriations bill.

Pope Francis reminds us, in his letter *Joy of the Gospel*, that "realities are more important than ideas." The reality is that our current immigration system is broken and doesn't work for the common good. This is a reality acknowledged by a chorus of political leaders across party lines and around the country. There have been numerous attempts to fix this system, most recently with the passage of a comprehensive immigration reform bill in the U.S. Senate two years ago. Although reform efforts failed in the House of Representatives, the grim reality produced by a broken system remains.

Businesses – from high tech companies to farms – have clamored for policies that provide opportunities for talented immigrants to fill critical jobs. Government agencies have struggled to find ways to most efficiently utilize limited resources to keep the U.S. safe in an era of tight budgets. Most importantly, immigrant children live in fear that their mothers or fathers could be deported back to a country they have not called home for many years.

The president's executive actions on immigration are stopgap measures responding to the reality produced by Congressional inaction. The U.S. cannot have a 100% deportation policy; it would neither be morally acceptable nor fiscally prudent. While we know that Congress must still take up the task of reforming our broken immigration system, we ask you to support maintaining the protections provided by the president's actions. These policies affect families living in every state of this Union who contribute to our communities every day and who live in fear of deportation.

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As you consider upcoming legislation and amendments to the Department of Homeland Security (DHS) appropriations bill, we urge you to reject legislation that would end or weaken the Deferred Action for Childhood Arrivals (DACA) and Deferred Action for the Parents of Americans (DAPA) programs and other provisions made possible through recent executive orders on immigration. We have seen the benefits of DACA to young recipients and their families and we know that the expansion of DACA and the implementation of DAPA will add to those blessings.

We are very concerned about H.R. 399, the Secure Our Borders First Act of 2015 introduced by Representative Michael Mc Caul (R-10-TX), which would further militarize our southern border, endanger local communities, and threaten rights enshrined in the Constitution. The bill's "operational control" goals are unrealistic and ignore the fact that many individuals have legitimate claims to asylum. Any border bill must address the need for Border Patrol accountability, with short term custody standards and a viable complaint process for victims of abuse. We urge members to reject H.R. 399 and work together to help revitalize border communities, not militarize them.

NETWORK strongly opposes H.R. 2278, the Strengthen and Fortify Enforcement (SAFE Act) introduced last year, and will work to defeat any legislation that would criminalize immigrants and the individuals who provide them aid; expand immigrant detention; encourage state and local law enforcement officials to collaborate with immigration enforcement efforts; or decrease protections and immigration relief for certain migrant groups.

Finally, we join other people of faith in opposing legislation that would roll back critical anti-trafficking protections for children and individuals seeking protection from persecution, including the misnamed Protection of Children Act (H.R.5143) and The Asylum Reform and Border Protection Act (H.R.5137) introduced in the last Congress. These bills would roll back the bipartisan Trafficking Victims Protection Reauthorization Act signed into law by President Bush and would result in children being forced back into the hands of traffickers, gangs, and others who seek to exploit them.

Pope Francis cautions that "migrants and refugees are not pawns on the chessboard of humanity" and he asks political leaders to create a new system, one that "calls for international cooperation and a spirit of profound solidarity and compassion." This is a holy call to embrace hope over fear. Congress should recognize the God-given humanity of each individual and uphold our sacred call to welcome the stranger in our midst. Action that further militarizes our borders, criminalizes assistance to immigrant communities or weakens legal protection of refugees is not just.

We pray that elected officials actively oppose any effort to weaken the protection provided to families by the president's executive orders. The people benefiting from protection are the same people in our churches, in our neighborhoods and in our workplaces. We further ask that Congress finish the task of crafting and passing reform aimed at keeping families together and providing a pathway to citizenship for our undocumented brothers and sisters.

Statement for the Record of Eleanor Acer

Director, Refugee Protection

Human Rights First

Hearing before the House Judiciary Subcommittee on Immigration and Border Security

"Interior Immigration Enforcement Legislation"

February 11, 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, 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. For the reasons outlined below, Human Rights First strongly opposes the "Asylum Reform and Border Protection Act" (HR 5137), as well as the "Protection of Children Act" (HR 5143) and the "Strengthen and Fortify Enforcement Act" - commonly known as the "SAFE Act" (HR 2278).

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. The U.S. asylum system has protected thousands of refugees from being returned 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.

A Strong System is Staffed Adequately to be Timely, Fair, and Effective

A strong asylum and immigration system that adjudicates cases in a fair and timely manner and includes effective tools for fighting abuse is essential both for ensuring the integrity of the U.S. immigration process as well as protecting refugees from return to places of persecution. However, in order to effectively secure the integrity of the system, the agencies responsible for asylum adjudication – the Department of Justice's Executive Office of Immigration Review (EOIR) and the Department of Homeland Security's United States Citizenship and Immigration Services (USCIS) – must be properly staffed and resourced to adjudicate cases in a fair and timely manner, and to eliminate backlogs that can leave the system vulnerable to abuse.

According to the most recent data, about 430,000 immigration removal cases have now been pending for an average of 585 days in the U.S. immigration courts. While immigration enforcement and related funding have increased significantly in recent years, funding and staffing for the immigration courts has lagged well behind. Over the years, resources for immigration enforcement, including Customs and Border Protection (CBP) and Immigration and

Customs Enforcement (ICE) have quadrupled – rising from $4.5 billion in 2002 to $18 billon in FY 2013. This funding imbalance needs to be righted as outlined in our recommendations below.

Not only can delays increase the vulnerability of our immigration system to abuse and prevent refugees from having their cases adjudicated in a timely manner, but they often leave refugee families stranded in difficult and dangerous situations abroad. For example:

- **Wife and Children of Christian Missionary Stranded, Hiding from Boko Haram**. "Joshua" is a Christian missionary and social outreach worker from Nigeria, married and the father of young children. He was targeted by Boko Haram militants because of his religious activities and his assistance in providing information about Boko Haram crimes to the police. Boko Haram militants are believed to have shot Joshua's brother along with another guest at Joshua's home in Joshua's absence. Boko Haram militants later kidnapped Joshua himself. Released by security forces who stopped his captors' vehicle, but unable to find protection in Nigeria, Joshua fled to the United States after a period in hiding. At his first hearing in immigration court, in late 2013, Joshua was scheduled for a hearing on the merits of his case in 2016. Joshua's wife and children are currently in hiding. Joshua, who already blames himself for the death of his brother, fears for their safety but cannot petition to reunite with them until his asylum case is heard.
- **Family of Syrian torture survivor, stranded and threatened in Syria**. "Hisham"* was detained and tortured repeatedly by both governmental and non-governmental armed forces in Syria, each of which wrongly believed him to be supporting the other side. All factions also abused him very severely for challenging what they were doing. His hands were permanently damaged by the torture. Hisham finally fled Syria. Since arriving in the United States, his sole priority has been to secure the protection of asylum so that he can get his wife and adolescent son out of Syria. He applied for asylum without the assistance of counsel and was referred to an immigration court that is severely backlogged. When he first appeared in court without counsel, his case was adjourned for nearly a year. Meanwhile, there have been threats against his family back home, and his son, who has been unable to attend school for months because of these threats, will be called up for military service in a little over a year, and his Syrian passport will expire, meaning that the boy must be gotten out of Syria before then. If Hisham cannot get his case heard in immigration court in time to petition for his family, all his efforts to gain protection will be meaningless to him.
- **Separation from Family Prolonged for Tibetan Persecuted for Religious Activity.** S.T. is Tibetan and a lay monk in a sect of Buddhism. He was beaten and imprisoned for over two years by the Chinese government for performing religious ceremonies at which he praised the Dalai Lama and some attendees expressed a desire for a free Tibet. He fled to the United States and applied for asylum. His case has been pending before the immigration court since 2009. During this time, S.T. has been living here alone, with no legal status and no friends or family. His family is still in Tibet, and he is afraid to contact them for fear of jeopardizing their safety. He wants to contact them once he has asylum so that he can try to arrange for a safe exit for them to join him in the United States, but they have now been separated for years, S.T. has been completely cut off from those he cares about, and at this point the family does not even know if he is dead or alive.

*The names of these asylum seekers have been changed for security reasons.

The Proposals in H.R. 5137 Would Send Legitimate Refugees and Children Back to Danger

The provisions included in H.R. 5137, the Asylum Reform and Border Protection Act of 2014, would severely undermine access to asylum and protection in the United States. The bill 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. The bill is inconsistent with American ideals and would erode the United States' legacy as a global leader in protecting refugees and victims of trafficking.

The bill seeks to make it harder for those fleeing persecution and torture to file for asylum in the United States, a process already fraught with obstacles. The bill appears to eliminate the statutory basis for release on parole for detained asylum seekers, including children, which would leave asylum seekers in jails and facilities with conditions similar to jails despite the existence of more cost-effective and humane alternative measures that result in compliance and appearance at hearings. The bill would also eviscerate the limited procedural protections available to unaccompanied children in the immigration system. It would overturn provisions that protect children from return to traffickers and would subject them to expedited removal proceedings entirely unsuited to their age, making it difficult for them to access the asylum and immigration process.

Among many changes to law, the bill would:

- **Raise the expedited removal screening standard for those seeking this country's protection at the border to an unduly high standard.** 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 that it is more likely than not that his or her statements are true. This standard is inappropriate for what is intended to be a screening, and the conditions under which these interviews are conducted – in immigration detention facilities and jails, sometimes over the phone, with traumatized applicants speaking to government officials they sometimes cannot see, communicating through interpreters of variable quality, at times with young children present in the same room – would lead to the deportation of many asylum seekers with legitimate claims to protection.
- **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.

- **Overturn provisions in the Trafficking Victims Protection Reauthorization Act (TVPRA) that protect children from return to traffickers or persecution by putting all unaccompanied children into expedited removal proceedings.** The bipartisan U.S. Commission on International Religious Freedom has documented substantial flaws in the implementation of expedited removal and other studies have detailed deficiencies in the screenings of children at the border, all of which leave vulnerable individuals – adults and children – at risk of return to persecution and harm.
- **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 a month rather than being transferred to the more appropriate care of the Department 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 subjects the most vulnerable of the vulnerable to an already arbitrary bar from 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. Studies have confirmed that representation encourages appearance for court and saves the government money. Children – including babies and toddlers - the mentally disabled, and other vulnerable people cannot represent themselves in our complex immigration system.
- **Allow asylum applicants, including 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.**

A Note on Expedited Removal

As outlined above, the bill seeks to further heighten the credible fear screening standard – which is used to determine whether an asylum seeker who has been put into expedited removal will be allowed to apply for asylum. (It is not the standard for asylum itself, but simply a screening process to weed out cases that should not even be allowed to submit an application for asylum.)

However, even under the current statutory screening standard, we regularly learn of reports of legitimate asylum seekers who are denied "credible fear" – and the chance to even file an application for asylum - even though they should meet the standard and may be eligible for asylum. In some cases, interviews are sometimes rushed, essential information is not identified due to lack of follow up questions, and/or other mistakes are made that block genuine asylum seekers from even applying for asylum and having a real chance to submit evidence and have their case fully considered. The bipartisan U.S. Commission on International Religious Freedom has documented the prison-like conditions used to detain asylum seekers during this process, and

found that safeguards put in the system to protect asylum seekers from mistaken deportation under expedited removal were often not implemented. Here are just a few examples of the mistakes that occur under the current credible fear screening process.

- **LGBT Human Rights Activist Nearly Deported Under Expedited Removal**: "Toni" is a gay man with a female gender identity from El Salvador who suffered severe physical and mental harm at the hands of the Salvadoran government and others. Toni worked to improve the plight of the LGBT community in El Salvador through work with a human rights organization. During the course of that work, police beat Toni. Eventually, Toni was forced to flee El Salvador due to threats against his life. After seeking protection at the U.S. southern border in 2014, Toni was put into immigration detention. Toni was nearly deported back to danger under expedited removal without even being allowed to apply for asylum. The Asylum Office initially denied Toni's credible fear interview, without examining any of the country conditions evidence documenting the extreme violence perpetrated against the LGBT community in El Salvador. An immigration court failed to vacate this decision despite letters from LGBT human rights organizations explaining the risks Toni would face if returned. After the intervention of pro bono counsel and a reconsideration request, Toni was finally allowed to apply for asylum.
- **Woman Persecuted Due to Ethnicity Deported Under Expedited Removal.** A Guatemalan woman and indigenous language speaker detained at the Karnes family detention center in Texas was deported under expedited removal based on a credible fear interview conducted in Spanish, a language in which she was not fluent. It was clear to a Human Rights First staff attorney who met with her that she did not have the vocabulary to express her thoughts. For example, the notes from her credible fear worksheet showed that the asylum officer understood an event to have happened ten times, while in fact she was referring to the number of perpetrators. The Human Rights First attorney who met with her was unable to complete a full interview due to the language difficulties, but based on the information communicated, there appeared to be sufficient basis to pass the credible fear screening, as the woman was persecuted on account of her indigenous ethnicity. This woman was deported from the United States under expedited removal before she could secure legal counsel.

The System Already has Many Strong Measures for Identifying, Prosecuting Fraud

Some have pointed to the increase in the numbers of individuals from three Central American countries who requested U.S. protection as evidence of "fraud" in the system. However, multiple studies and media reports have documented the devastating escalation of violence and persecution in the three Central American countries – El Salvador, Guatemala, and Honduras. A study conducted by the U.N. Refugee Agency concluded that about 60% of children it interviewed from these countries had potential claims to asylum or other international protection.

Certainly, if individuals or groups are defrauding the asylum system, it hurts everyone, and steps should be taken to counter those abuses and punish the perpetrators. U.S. authorities have a range of effective tools to address abuses. As outlined in Appendix A to this statement, U.S. agencies conduct multiple identity and background checks, have personnel in multiple agencies charged

with detecting and investigating fraud, and have the ability to refer for prosecution individuals who perpetrate and orchestrate fraud. Many of these tools have been enhanced over the years, and the prosecution of criminal charges is critical for sending a message that efforts to defraud the immigration systems will not be tolerated.

The use of these tools, tailored to identifying and addressing abuse, are the answer – rather than sweeping proposals – like those included in H.R. 5137 – that would cause the United States to turn away, and send back to danger, legitimate refugees with credible asylum claims. The bottom line is that U.S. immigration authorities have the legal and policy mechanisms necessary to detect and address abuse, including referring for prosecution individuals who attempt to orchestrate fraud on the system. While additional staffing and resources are needed for the asylum, credible fear, and immigration court removal systems, additional changes to laws – to make it even more difficult for refugees to access the asylum system – are inconsistent with our values and make the system more inefficient by leading to mistaken decisions to deport legitimate refugees.

Strengthen Rather than Weaken Protections

As we seek to strengthen the system, we should address the many ways in which our current asylum system fails to provide protection in a manner consistent with this country's commitments and legal obligations to protect refugees fleeing persecution. Over the years, so many barriers and hurdles have been added to the asylum system through multiple rounds of legislation that refugees who seek the protection of the United States often find themselves denied asylum, delayed in receiving protection, or lingering for months in jails and jail-like immigration detention facilities. In addition to supporting a fair and timely decision-making process for those seeking this country's protection, Congress should eliminate unjust barriers that deny or delay U.S. protection to refugees and implement the recommendations of the U.S. Commission on International Religious Freedom relating to expedited removal and detention.

Changes in law that would further prolong detention for many asylum seekers or risk turning refugees back to persecution are not necessary, and are inconsistent with this country's commitments and values. America should stand firm as a beacon of hope that will not turn its back on those seeking protection from persecution.

As the Council on Foreign Relations Independent Task Force on Immigration Policy, co-chaired by former Florida Gov. Jeb Bush and former Clinton White House chief of staff Thomas "Mack" McLarty, pointed out: "The treatment of refugees and asylum seekers is [a] dimension of immigration policy that reflects important American values." That task force's report also stressed the example that the United States sets for the world: the U.S. commitment to protect refugees from persecution is "enshrined in international treaties and domestic U.S. laws that set the standard for the rest of the world; when American standards erode, refugee face greater risks everywhere."

Recommendations

Congress should not pass proposals, like those included in H.R. 5137, 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, 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. Human Rights First released a detailed Blueprint of its recommendations in June 2014, and a subsequent set of recommendations focused on families seeking asylum.

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:

- **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 300 additional immigration judge teams – significantly more than the administration's fiscal 2016 request for 55 additional immigration judge teams. 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 Wall Street Journal and other media have recently reported on immigration court delays, which have led non-priority non-border cases to be calendared for their hearings in late November 2019 – nearly five years from now. 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. The USCIS asylum office should also have sufficient resources to conduct prompt and effective credible fear and reasonable fear interviews, and to conduct its interviews in person. These interviews are integral components of the enforcement tools of expedited removal and reinstatement of removal, and should be funded commensurately with the funding provided to CBP to conduct these summary removal processes.
- **Utilize Multiple Existing Anti-Fraud Tools**. ICE and USCIS should continue and increase where needed their use of the many available tools for combatting fraud and abuse in the immigration and asylum systems. As detailed in Appendix A, these include training, enhanced background biographical and biometric checks, fraud detection and investigation

capacities, and referral of cases for criminal prosecution. If additional resources are needed, the Administration should request and Congress should appropriate funding to ensure that DHS and DOJ have the resources required to adequately combat fraud. Prosecutors should also prioritize prosecutions of individuals who orchestrate schemes that defraud the immigration and asylum systems. Prosecuting the perpetrators of fraudulent schemes will reduce fraud and abuse and enhance the integrity of the asylum and immigration systems, as well as protect the immigrants who are often victims of these schemes. The American Bar Association, the New York Immigrant Representation Study Group, and others have recommended strict penalties for those who engage in unauthorized practice of law.

- **Implement U.S. Commission on International Religious Freedom (USCIRF) Recommendations on those fleeing religious and other forms of persecution and Request Updated USCIRF Study**. Department of Homeland Security and Immigration and Customs Enforcement should implement U.S. Commission on International Religious Freedom recommendations, including: using detention facilities that do not have jail-like conditions when asylum seekers are detained; maintaining, effectively implementing, and codifying the existing parole guidance into regulations; and expanding legal orientation presentations. Congress should request and support an updated USCIRF study on the conduct of expanded removal and its impact on asylum seekers.

- **End the Detention of Children and their Families, Effectively Implement Parole and Release Procedures**. Immigration and Customs Enforcement 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. ICE should end its submission of materials and arguments relying on the flawed reasoning of former Attorney General John Ashcroft in *Matter of D-J-*, and should instead base bond positions on true assessments of the circumstances of the individual in question. ICE 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.

- **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. Alternatives have been demonstrated to produce high appearance rates – with ICE's current contracted supervision program reporting a 97.4 percent appearance rate at final hearings and an 85 percent compliance rate with final orders where case management is utilized. As Alex Nowrasteh of the Cato Institute has pointed out, the family detention facility in Dilley, Texas

will cost the U.S. government about $300 a day per person to operate—amounting to roughly $260 million each year. By contrast, community-based support programs and other alternative measures, proven to uphold appearance for immigration hearings and deportation, are much more fiscally prudent, costing only 17 cents to $17 a person a day. The U.S. Conference of Catholic Bishops and Lutheran Immigration and Refugee Services have also piloted and are willing to run 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 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. Approximately 80 percent of detained individuals do not have representation in their immigration proceedings. 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.

APPENDIX A

Mechanisms in the System for Addressing Fraud

The U.S. asylum system and U.S. law contain many measures that are specifically aimed at, and closely tailored to, identifying fraud and protecting the integrity of the system. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) contained strict security provisions, including a requirement that identity checks be conducted against federal government databases and records for all individuals applying for asylum. Section 208 (d)(5)(a)(i) of the INA requires that "asylum cannot be granted until the identity of the applicant has been checked against all appropriate records or databases maintained by the Attorney General and by the Secretary of State … to determine any grounds on which the alien may be inadmissible to or deportable from the United States, or ineligible to apply for or be granted asylum." These checks can help identify fraudulent cases as well as any individual who might present a security risk. Anti-fraud and security check measures continue to be strengthened, as well new ones initiated, and many additional steps have been added since both 1996 as well as in the years since the study on fraud, based on a sample of cases from 2005, reported on in the *Washington Times* on February 6, 2014. Outlined below are just some of the mechanisms that are designed to protect the immigration and asylum systems from abuse.

In December 2013 written testimony, DHS stated that: "Before individuals are granted asylum, they must all establish identity and pass all requisite national security and law enforcement background security checks. Each asylum applicant is subject to extensive biometric and biographic security checks. Both law enforcement and intelligence community checks are required – including checks against the FBI, the Department of Defense, the Department of State, and other agency systems." Some of the key measures that the USCIS Asylum Division uses to prevent abuse of the asylum system include: [1]

Mandatory Biographical Checks (Checks Using the Applicant's Name, Date of Birth, and Aliases): These include checks in USCIS Central Index System; CBP TECS; ICE ENFORCE Alien Removal Module; FBI Name Checks; and DOS Consular Consolidated Database**.** Mandatory biographical checks are conducted in multiple databases, using the applicant's name, date of birth, and aliases.

- **USCIS Central Index System**: In conducting background screenings, asylum applicants are first checked against the USCIS Central Index System to determine if they have previously been issued an alien number.
- **TECS**: They are also screened against TECS, CBP's primary law enforcement and national security database, which contains enforcement, inspection, and intelligence records. TECS

[1]See Department of Homeland Security (DHS), Combined Testimony of DHS before the House Judiciary Homeland Security Committee for a hearing on "Asylum Abuse: Is it Overwhelming Our Borders" (December 12,2013) available at http://judiciary.house.gov/_cache/files/e9043d83-e429-4d21-9621-c681c6499251/combined-dhs-testimony.pdf; fact sheet from U.S. Citizenship and Immigration Services (USCIS) on file with Human Rights First; USCIS, Affirmative Asylum Procedures Manual (November 2013) *available at* http://www.uscis.gov/sites/default/files/files/nativedocuments/Asylum_Procedures_Manual_2013.pdf.

contains various types of information from a variety of Federal, state, local, and foreign sources, and the database contains records pertaining to known or suspected terrorists, wanted persons, and persons of interest for law enforcement and counterterrorism purposes.

- **EARM – ENFORCE Alien Removal Module**: This ICE database contains records of aliens in detention, exclusion, and removal processes.
- **FBI name check**: The FBI searches for the applicant's name(s) and date(s) of birth in their records.
- **CCD – Consular Consolidated Database**: Asylum office personnel access the Department of State's web-based CCD to obtain information about the identity, previous travel history, method of entry into the U.S. and/or background of an asylum applicant.

Mandatory Biometric Checks (Checks Using the Applicant's Fingerprints and Photograph): These checks include FBI fingerprint check, US-VISIT/IDENT, and DOD/ABIS vetting for certain applicants.

- **FBI Fingerprint Checks**: With respect to affirmative asylum applications, as described in DHS's testimony from December 2013: "A USCIS Application Support Center takes a complete set of fingerprints and biometrics (signature, photograph and index print) of asylum applicants between the ages of 12 years 9 months and 79 years. The FBI electronically searches the fingerprints within the Integrated Automated Fingerprint Identification System." Asylum officers and immigration judges are not authorized to grant asylum until the applicant's fingerprints have been run through the FBI database and the results are received and reviewed.
- **US-VISIT/IDENT**: US-VISIT/IDENT is a DHS system managed by the National Protection and Programs Directorate's (NPPD) Office of Biometric Identity Management (OBIM), and includes biometric information related to the travel history of foreign nationals and Watchlist information. It also contains visa application information owned by the Department of State. This system is used to confirm identity, determine previous interactions with government officials and detect imposters. The 10 fingerprints – referenced above in connection with the FBI fingerprint check - are also electronically submitted to the US-VISIT/IDENT database, where they are stored and matched to existing fingerprint records. This system is used to confirm identity and determine previous interactions with government officials. Through the US-VISIT SIT tool, asylum officers have the ability to verify that the person who went to the Application Support Center (ASC) for fingerprinting is the same person appearing at the asylum office for interview.
- **DOD Automated Biometric Identification System**: A biometric check against the Department of Defense (DOD) Automated Biometric Identification System (ABIS) is conducted for certain cases.
- **National Counterterrorism Center**: The Asylum Division also screens the biographic information of new asylum applicants against the National Counterterrorism Center's terrorism holdings.

For protection requests that enter the system through the credible fear process, the DHS testimony explains that USCIS Asylum Officers conduct a mandatory check of both TECS (described above) and US-VISIT/IDENT (referenced above) during the credible fear process. These checks help to confirm identity and inform lines of questioning. In addition, with respect to cases that enter the system through the credible fear process, asylum officers – at the credible fear stage - also ensure that the Federal Bureau of Investigation (FBI) name check and fingerprint checks have been initiated. DHS, in its December testimony, stated that "The USCIS asylum officer's determination as well as information on the individual's identity, including how he or she established it, results of the security checks, and any adverse information is recorded and placed in the alien's file upon completion of the credible fear process. This information is then provided to ICE." As a result, ICE will have this information with respect to individuals who pass the credible fear screening process and are put into immigration court removal proceedings and to consider in detention determinations.

Fraud Detection and National Security Teams

USCIS's Office of Fraud Detection and National Security aids in identifying fraudulent asylum claims by training asylum officers and providing technical support. Through this office, asylum officers may refer suspected fraudulent applications to ICE for criminal investigation and prosecution. These specially trained officers review asylum files to monitor the asylum caseload for fraud and they liaise with various law enforcement entities. These officers also help train asylum officers on detecting and addressing fraud**.** The FDNS officers also conduct in-depth vetting on cases with national security concerns. This includes liaising with local Joint Terrorism Task Forces regarding these cases. Asylum Offices also have on their staff trained document experts, Forensic Document Laboratory Certified Document Instructors (FDLCDIs), who have been trained by the Department of Homeland Security's Forensic Document Laboratory. FDLCDIs examine for fraud documents submitted to the Asylum Office by asylum applicants and train Asylum Office staff on how to recognize certain documents for irregularities and fraud indicators.

Asylum Officer Training and Mandatory Supervisory Review of all Asylum Decisions

Affirmative asylum interviews and credible fear interviews are conducted by specially trained USCIS asylum officers who are trained and dedicated full-time to the adjudication or screening of protection claims. They are, as DHS has explained in recent testimony, extensively trained in national security issues, the security and law enforcement background check process, eligibility criteria, country conditions, interview techniques, making proper credibility determinations, and fraud detection. During an asylum interview, "The asylum officer fully explores the applicant's persecution claim, considers country of origin information and other relevant evidence, assesses the applicant's credibility and completes required security and background checks. The asylum officer then determines whether the individual is eligible for asylum and drafts a decision." Supervisors review 100 percent of asylum officers' determinations prior to issuance of a final decision, and they also review 100 percent of credible fear determinations.

Government-Funded Interpreter Monitors

Current regulations require that asylum applicants provide interpreters at their own expense when they cannot proceed effectively in English at the asylum interview. The Asylum Division uses neutral, government-funded interpreters to monitor the interpretation of asylum interviews at all Asylum Offices, in order to ensure that interpreters brought by applicants are correctly interpreting interview questions and answers. Procedures for securing an interpreter monitor apply in all affirmative asylum cases where the applicant does not speak English.

When cases are referred from the USCIS Asylum office into the immigration courts, the information used by the asylum office to make a determination on the individual's claim, including the interview notes, biographic information, completed security checks and decisional documents, is placed into the individual's file and is available for use by ICE attorneys during immigration court removal proceedings.

Applicants Who Knowingly Make a Frivolous Application Permanently Barred

INA 208(d)(6) provides that "If the Attorney General determines that an alien has knowingly made a frivolous application for asylum, the alien shall be permanently ineligible for any benefits under the Act."

Asylum Applications Signed Under Penalty of Perjury

When the legacy Immigration and Naturalization Service (INS) overhauled the asylum system in 1995, it revised the asylum application form to require both the asylum applicant and the individual preparing the application to sign the application "under penalty of perjury" that the application and the evidence submitted with it are true and correct. In addition, the asylum applicant is put under oath at the Asylum Office interview, and must execute a record of that oath. The interpreter must also be placed under oath and execute a record of oath as well.

Fraudulent Filers, Preparers, and Attorneys Can Be Prosecuted

Individuals who seek to defraud the immigration and asylum system can be and have been prosecuted. Unscrupulous "notarios" and attorneys take advantage of immigrants by untruthfully telling them they are eligible for certain benefits and then preparing fraudulent applications – including asylum applications – for large fees. To facilitate prosecution of fraudulent filers, USCIS is a member of the Immigration and Customs Enforcement's (ICE) Document and Benefit Fraud Task Force, which coordinates with U.S. Attorney's Offices to identify and prosecute fraudulent immigration benefit claims. Charges have been brought against such preparers in many states, including California, New York, Texas, Florida, and Arizona. On June 9, 2011 the Federal Trade Commission with the Departments of Justice and Homeland Security announced a multi-agency, nationwide initiative to combat immigration services scams.

Identification and Response to Fraud and Abuse in the Immigration Court System

As noted above, asylum applicants can only be granted asylum if the identity of the applicant has been checked against all appropriate records or databases. EOIR also has a Fraud Program designed to assist court judges and staff with identifying fraudulent cases and systemic evidence

of schemes to defraud the system. In addition, ICE trial attorneys are charged with identifying potential fraud. In cases before the immigration court, where ICE trial attorneys may present evidence if the government suspects fraud, Immigration Judges have the authority to find a case fraudulent or frivolous, a finding that comes with severe consequences for the applicant.

In addition, as described by EOIR Director Juan Osuna in November 2013 testimony before the House Committee on Oversight & Government Reform Subcommittee on National Security: "EOIR has a robust and active program for identifying and referring claims of fraud encountered by immigration judges and the BIA. ….The complaints and requests for assistance the Fraud and Abuse Program receives each year are almost evenly divided between unauthorized practice of immigration law (UPIL) complaints and fraudulent claims perpetrated against the government." That testimony also stated that: "Because EOIR has no authority to conduct investigations or prosecute, UPIL complaints are referred to federal, state and local law enforcement, and bar associations for investigation and prosecution. EOIR also files complaints of UPIL fraud with the Federal Trade Commission's Consumer Sentinel Network (Sentinel) and collaborates with USCIS's Fraud Detection and National Security Directorate and other government agencies in combating fraudulent immigration activity. EOIR consistently is among the top-ranked government agencies in referring UPIL fraud to Sentinel." EOIR also regulates the professional conduct of immigration attorneys and representatives, EOIR's Disciplinary Counsel investigates complaints involving alleged misconduct associated and can initiate formal disciplinary proceedings. Since the program's inception in 2000, EOIR reports that it has disciplined more than 1,100 attorneys.

Wrongdoers and Security Threats Excluded from Protection

In addition, the Refugee Convention's "exclusion clauses" require host countries to exclude from the Convention's protections any person who has committed heinous acts or grave crimes that make him undeserving of international protection as a refugee, even if that individual has a well-founded fear of persecution. A separate provision of the Convention allows the return of a refugee who poses a danger to the security of the host country. The United States incorporated into its law the Refugee Convention's promise to provide protection to refugees, but also codified bars to asylum and withholding of removal intended to reflect the Convention's exceptions.

U.S. immigration laws prohibit granting asylum and any form of refugee protection to: people who engaged in or assisted in or incited the persecution of others; people who have been convicted of a particularly serious crime in the United States; people who have committed a serious non-political crime abroad; people who have engaged in terrorist activity; people who are representatives of foreign terrorist organizations; or people who otherwise pose a threat to the security of the United States.[2]

The recent exemptions to immigration law inadmissibility provisions issued by the Department of Homeland Security in February 2014 – pursuant to authority provided by Congress –

[2] INA § 208(b)(2) (8 U.S.C. § 1158(b)(2)) (bars to asylum); INA § 241(b)(3)(B) (8 U.S.C. § 1231(b)(3)(B)) (bars to withholding of removal).

specifically exclude a long list of individuals including anyone who poses a danger to the safety and security of the United States or has not passed all relevant security and background checks. These exemptions do not apply to situations involving groups that are actually listed or designated as "terrorist organizations" by the United States government. These inadmissibility provisions have ensnared refugees with no real connection to terrorism, such as a refugee from Burundi who had a rebel group rob him of four dollars and his lunch and an Iraqi former interpreter for the U.S. Marine Corps was informed that his past connection to a Kurdish group allied with the United States and opposed to Saddam Hussein made him inadmissible. These exemptions do not address the situation of individuals who had innocent interactions with designated or listed groups – like for instance, an Iraqi widow who had a member of a designated terrorist organization buy flowers in her flower shop (incidentally while the group was under U.S. military protection).[3]

The Importance of a Timely and Effective Process in Deterring Abuse

The integrity of any system is protected by its ability to operate fairly and in a timely manner. In the 1990s, the asylum system was under-resourced and under-staffed. Faced with a large number of asylum filings prompted by a wave of brutal civil wars and human rights abuses in Central America, the asylum system developed a substantial backlog. This multi-year backlog and lack of adequate staffing left the U.S. asylum system vulnerable to abuse. Some individuals sought to exploit the system. Some people were told by unscrupulous lawyers or others that they could sign a form and would then be allowed to remain in the United States for years with work authorization. This backlog had a devastating impact on the cases of many bona fide asylum seekers. Their lives were in limbo for years, and the delays in their asylum grants left many separated from their children and spouses for years.

The U.S. Immigration and Naturalization Service (INS) launched a major reform effort and took a number of steps to address these challenges. These steps included quicker adjudications, quicker referrals to deportation proceedings for those not granted asylum after an asylum interview, and increased staffing to ensure timely adjudication. The INS also terminated the automatic grant of work authorization to asylum applicants at the time they apply – a step that has left many legitimate asylum seekers without the means to support themselves while they await adjudication of their asylum requests.[4]

As a result of the asylum processing improvements that were put in place at the time, and continued for many years after, individuals who applied for asylum would generally have their asylum interviews within a month or two of filing. Individuals who applied for asylum saw their cases promptly put into removal proceedings if they were not found eligible for asylum by the asylum office. However, in recent years, due to inadequate funding and increased demand,

[3] For more background, *see* Human Rights First, *Refuge at Risk: The Syria Crisis and U.S. Leadership*, November 2013; Human Rights First, *Denial and Delay: The Impact of the U.S. Immigration Law's "Terrorism Bars" on Asylum Seekers and Refugees in the United States*, 2009.

[4]Human Rights Watch and the Seton Hall University School of Law's Center for Social Justice "At Least Let Them Work: The Denial of Work Authorization and Assistance for Asylum Seekers in the United States," November 2013.

backlogs and delays have been allowed to grow in both the asylum and immigration court systems.

At USCIS, the asylum division has redeployed its asylum officers to address the escalating number of credible fear interviews at the border. Backlogs in the asylum office have risen over the last two years and some asylum seekers are now waiting many months and sometimes longer for their interviews. While prompt conduct of credible fear interviews should be a top priority, USCIS needs the resources and staffing to conduct prompt in-person credible fear interviews as well as to conduct affirmative asylum interviews in a timely manner. Adequate staffing and resources are essential for maintaining the integrity of the asylum system.

The immigration court system, which is within the Department of Justice's Executive Office for Immigration Review (EOIR), has for a number of years been widely acknowledged to be overstretched, backlogged, and underfunded.[5] In recent years, resources for immigration enforcement have escalated or remained high, leading many more cases to be place into immigration court removal proceedings. At the same time, the resources for the immigration court system have lagged behind leaving the immigration courts under-staffed. Over 350,000 immigration removal cases, including those involving claims for asylum, have now been pending for an average of 570 days.[6]

The Administrative Conference of the United States (ACUS), based on its study of the immigration court system, concluded in June 2012 that the immigration court backlog and "the limited resources to deal with the caseload" present significant challenges. In 2010, the American Bar Association's Commission on Immigration, in its comprehensive report on the immigration courts, concluded that "the EOIR is underfunded and this resource deficiency has resulted in too few judges and insufficient support staff to competently handle the caseload of the immigration courts."

The delays and burden on the immigration courts can be exacerbated when cases that could or should be granted at the asylum office level are put into the immigration court system. As documented by a comprehensive statistical study on the asylum filing deadline, thousands of asylum cases have been placed into the immigration court system unnecessarily due to the asylum filing deadline.[7] Other categories of asylum cases could also be more efficiently resolved

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[5] American Bar Association, *Reforming the Immigration Detention System* (2010), pp. 2-16 available at http://www.americanbar.org/content/dam/aba/migrated/Immigration/PublicDocuments/aba_complete_full_report.authcheckdam.pdf; Administrative Conference of the United States (ACUS), "Immigration Removal Adjudication, Committee on Adjudication, Proposed Recommendation, June 14-15, 2012," available at http://www.acus.gov/wp-content/uploads/downloads/2012/05/Proposed-Immigration-Rem.-Adj.-Recommendation-for-Plenary-5-22-12.pdf

[6] Immigration Court Backlog Tool. Backlog as of December 2013. *Transactional Records Clearing House* available at http://trac.syr.edu/phptools/immigration/court_backlog/.

[7] Philip G. Schrag, Andrew I. Schoenholtz, Jaya Ramji-Nogales, and James P. Dombach. "Rejecting Refugees: Homeland Security's Administration of the One-year Filing Deadline." *William and Mary Law Review*. 52, No. 3 (2010); Human Rights First. *The Asylum Filing Deadline: Denying Protection to the Persecuted and Undermining Government Efficiency* (November 2010).

if they were referred initially to the USCIS asylum office.[8] The lack of legal counsel for asylum seekers and other immigrants, in part exacerbated through detention practices that inhibit access to counsel, also impacts the efficiency and fairness of the immigration court system. EOIR itself has explained that: "Non-represented cases are more difficult to conduct. They require far more effort on the part of the judge."[9]

Court backlogs and extended asylum processing times also have a grave impact on asylum seekers themselves. While they wait – sometimes two to three years - to have their claims heard, many remain separated from spouses and children who may be in significant danger in their home countries. Without access to work authorization for months or longer while awaiting their immigration court hearings, many asylum seekers are unable to support themselves and their families. Some become homeless or destitute. As the pro bono leaders at some of the nation's leading law firms wrote in June 2013, the backlog in the immigration courts is resulting in years-long delays and making it increasingly difficult to recruit pro bono counsel.[10]

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[8] Administrative Conference of the United States (ACUS), "Immigration Removal Adjudication, Committee on Adjudication, Proposed Recommendation, June 14-15, 2012," available at http://www.acus.gov/wp-content/uploads/downloads/2012/05/Proposed-Immigration-Rem.-Adj.-Recommendation-for-Plenary-5-22-12.pdf

[9] Charles H. Kuck, *Legal Assistance for Asylum Seekers in Expedited Removal: A Survey of Alternative Practices* (Dec. 2004), available at http://www.uscirf.gov/images/stories/pdf/asylum_seekers/legalAssist.pdf.

[10] Association of Pro Bono Counsel, June 4. 2013, available at http://www.endthedeadline.org/uploads/pdfs/APBCo-Letter.pdf.

NATIONAL IMMIGRANT JUSTICE CENTER
A HEARTLAND ALLIANCE PROGRAM

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

House Subcommittee on Immigration and Border Security
Hearing on "Interior Immigration Enforcement Legislation"

February 11, 2015

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 legislative proposals related to immigration enforcement and the screening process for unaccompanied immigrant children arriving at the U.S. border. While we agree with the subcommittee that improvements in our enforcement and protection regimes are needed, our interest is in ensuring that any changes are grounded in due process protections and respect for the immigrant journey that are integral to American values.

NIJC is a non-governmental organization (NGO) dedicated to safeguarding the due process rights of noncitizens. We are unique among immigrant advocacy groups in that our advocacy and impact litigation are informed by the direct representation we provide to approximately 10,000 clients annually. Through our offices in Chicago, Indiana, and Washington D.C., and in collaboration with our network of 1,500 *pro bono* attorneys, NIJC provides legal counsel to immigrants, refugees, unaccompanied children, and survivors of human trafficking. Our understanding of the immigration enforcement system specifically is grounded in our work with noncitizens detained in Illinois and other facilities around the country, through Know Your Rights presentations for detainees, and as the only Legal Orientation Program (LOP) provider at detention facilities in the Midwest. Likewise, our testimony on unaccompanied children is informed by our work providing legal screenings and Know Your Rights presentations to children detained in Illinois and representing these children in their legal proceedings before the Chicago Immigration Court.

While this legislative hearing seeks to review three different bills introduced during the 113th Congress, H.R. 2278, "Strengthen and Fortify Enforcement Act" ("SAFE Act") introduced by House Immigration Subcommittee Chairman Trey Gowdy; H.R. 5137, "Asylum Reform and Border Protection Act" introduced by House Homeland Security Committee Chairman Jason Chaffetz; and H.R. 5143, "Protection of Children Act of 2014" introduced by House Homeland Security Subcommittee on Appropriations Chairman John Carter, NIJC's testimony seeks to provide an alternate view of the challenges posed by the U.S. immigration system. We challenge the notion that immigration enforcement efforts have been inadequate; there is strong data to suggest otherwise and we have witnessed firsthand the devastating impact enforcement has had on immigrant families and survivors of violence. Likewise, protection and trafficking screenings for unaccompanied immigrant children arriving at our border were intentionally designed to ensure that we protect the most

vulnerable populations and should not be viewed as loopholes being exploited. We urge the subcommittee to revisit its approach to addressing the challenges posed by our broken immigration system and not sacrifice immigrant children and families in the name of border security or political expediency. With that in mind, this testimony concludes by making four recommendations for more appropriate and needed changes to the enforcement and protection regimes:

1. Separate immigration enforcement from state and local law enforcement
2. Use detention as a last resort and increase use of ATDs
3. Ensure that all unaccompanied children receive due process
4. Provide counsel to all children and vulnerable populations in proceedings

I. The Current Level of Immigration Enforcement is Unprecedented in American History

Today, the United States spends more on immigration enforcement than all other federal law enforcement agencies combined, resulting in record numbers of individuals detained and deported by the Obama administration. Immigration enforcement spending is at an all-time high of $18 billion, eclipsing total spending for all other federal law enforcement agencies combined, including the Federal Bureau of Investigation (FBI); Drug Enforcement Administration; Secret Service; U.S. Marshals Service;, and Bureau of Alcohol, Tobacco, Firearms, and Explosives.[1] As a result of excessive enforcement funding and the under-funding of the Executive Office for Immigration Review (EOIR), the immigration courts have record backlogs[2] and immigrants and asylum seekers face court delays as long as five years — until 2020 — for the opportunity to present their cases to a judge.[3] Legislation such as the SAFE Act[4] is not the answer to fixing our broken immigration system. The bill, which would further increase unnecessary immigration arrests, is mean-spirited, wasteful of taxpayer dollars, and would undermine local policing efforts. Rather, the best way to address concerns about having a large undocumented population is to integrate enforcement reforms as part of a comprehensive package that respects immigrant communities and enables undocumented populations to legalize their status, earn citizenship, and fully participate in society without fear.

A. The SAFE Act makes virtually every police officer an immigration official and every undocumented person a criminal, fostering racial profiling and undermining local policing efforts

The SAFE Act essentially deputizes every state and local law enforcement officer to enforce immigration law. This is extremely problematic, as immigration law is complex and local police are not sufficiently trained to determine whether individuals are lawfully present in the United States or may be removed. The responsibility to enforce immigration law falls on the Department of

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[1] Doris Meissner, Don Kerwin *et al.*, *Immigration Enforcement in the United States: The Rise of a Formidable Machinery*, Migration Policy Institute, Jan. 2013, p.9.
[2] Daniel Costa, "Overloaded Immigration Courts," Economic Policy Institute, Jul. 24, 2014, http://www.epi.org/publication/immigration-court-caseload-skyrocketing.
[3] Seth Robbins, "Immigrants Waiting Years For Judges to Hear Cases," *Associated Press*, Feb. 2015, http://www.houstonchronicle.com/news/houston-texas/houston/article/Immigrants-waiting-years-for-judges-to-hear-cases-6055715.php
[4] H.R. 2278, Bill to amend the Immigration and Nationality Act to Improve Immigration Law Enforcement within the Interior of the United States, and For Other Purposes, 113th Congress, 1st Session, http://www.gpo.gov/fdsys/pkg/BILLS-113hr2278ih/pdf/BILLS-113hr2278ih.pdf.

Homeland Security (DHS) and cannot be alleviated by a pocket guide, as section 109(a)(2) of this bill proposes. In addition, the bill would place the principal Supreme Court holdings in *Arizona v. United States*[5] in serious doubt and reignite — even encourage — new rounds of state-level immigration laws. The bill provides broad authority to local actors to "investigate, identify, apprehend, arrest, detain, or transfer to federal custody" men, women, and children based solely on "suspected" alienage or immigration violations. In many parts of this country, we have seen this type of policing in action and it generates pervasive racial profiling. An Arizona judge recently ruled against these police practices in *Cortes v. Lakosky,*[6] a lawsuit against Pinal County Sheriff Paul Babeu, two sheriff's deputies, and Pinal County on behalf of an Arizona woman who spent five days in Border Patrol custody following a traffic stop. The lawsuit argued that the sheriff violated the woman's Fourth Amendment right to be free from unreasonable searches and seizures by subjecting her to prolonged detention solely based on a suspicion that she was an undocumented immigrant. In fact, Ms. Cortes is a survivor of domestic violence who is authorized to live and work in the United States with a U visa.

The SAFE Act seeks to institutionalize Fourth Amendment violations by permitting local law enforcement to hold individuals on immigration detainers for 14 days or longer without any judicial determination of probable cause.[7] This shocking provision violates decades of established constitutional jurisprudence.[8] Moreover, the SAFE Act seeks to compel local law enforcement to act as immigration officers in blatant violation of the 10th Amendment to the U.S. Constitution.[9]

Any legislation that encourages state and local law enforcement to engage in immigration enforcement destroys trust between local police and the immigrant communities they serve. When police engage in immigration enforcement, Latinos — regardless of their legal status — are less trusting of law enforcement and are significantly less likely to report crimes or cooperate in police investigations. A study by the University of Illinois at Chicago found that 70 percent of undocumented immigrants are less likely to contact police if they are victims of a crime; 44 percent of Latinos surveyed generally are less likely to report crimes to the police out of fear that they or others they know will be subject to questions about their immigration status.[10] This is particularly problematic for immigrant victims of domestic abuse and human trafficking, who may choose to endure additional harm rather than risk alerting police to their or another's immigration status.[11] Frequently, undocumented individuals in abusive relationships hesitate to contact the police out of fear that they will be put into removal proceedings and separated from their children — a fear that abusers often rely upon and use against them.

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[5] *Arizona v. United States*, 132 S. Ct. 2492, 183 L. Ed. 2d 351 (2012).

[6] *Cortes v. Lakosky,* No. 14-02132 (9th Cir., filed 09/25/2014).

[7] SAFE Act, Sec. 113(b).

[8] *See Gerstein v. Pugh*, 420 U.S. 103 (1975); *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991).

[9] *Printz v. United States*, 521 U.S. 898 (1997); Galarza v. Szalczyk, 745 F.3d 634 (3d Cir. 2014)(holding that immigration detainer cannot be mandatory on local law enforcement without violating the Tenth Amendment); *Moreno v. Napolitano*, 2014 WL 4911938 (N.D. Ill. Sept. 30, 2014)(denying class certification on Tenth Amendment claim because immigration detainer can only be interpreted as voluntary based on constitutional avoidance principles).

[10] Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement*, University of Illinois at Chicago, May 2013, http://immigrantjustice.org/sites/immigrantjustice.org/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF.

[11] Factsheet: "The "SAFE" Act Would Make Immigrant Survivors of Domestic Violence Less Safe," http://immigrantjustice.org/sites/immigrantjustice.org/files/REVISED%20DV%20Opposition%20to%20SAFE%20Act%20-%2011122013.pdf.

NIJC client Juanita (pseudonym) is an undocumented mother of three U.S. citizen children. The father of her children, a U.S. citizen, has always been abusive. She called the police one night after he beat her while she was pregnant with their second child. When the police arrived, she told them that she didn't want him to be arrested; she was scared because he had legal status and she didn't. Juanita feared being deported and separated from her children. She is working with NIJC to obtain a U visa, which provides temporary immigration status for victims of crimes who cooperate with police. Juanita lives in a rural area where she struggles financially and fears she could not support her children on her own. Once approved, her visa will provide her with protection from removal and employment authorization, which may empower her to finally escape her abusive relationship without fear of legal reprisals and poverty.

Finally, the SAFE Act seeks to criminalize not only the entire undocumented population of 11 million people, but also those with whom they come into contact. Section 315 of the SAFE Act creates unprecedented criminal penalties for being unlawfully present in the United States, makes immigration status violations, such as unlawful entry, a continuing violation beyond the time of committing the offense, and increases criminal penalties for immigration status violations. Section 314 of the bill also extends the harboring and transporting statute at section 274 of the Immigration and Nationality Act (INA) to criminalize those who transport, provide housing, or help individuals to reside in the United States who they know lack immigration status. These provisions are so broadly defined that good Samaritans and staff at domestic violence shelters and soup kitchens risk being subject to criminal penalties. This bill strikes at the heart of who we are as Americans and as communities of faith who welcome the stranger, help others in need, and treat people fairly and humanely. Moreover, the SAFE Act forces law enforcement to divert scarce resources away from their public safety mission, compromise community trust, and instead enforce federal immigration laws and punish those who help immigrants. For these reasons, law enforcement leaders including the Major Cities Chiefs Association have opposed legislation similar to the SAFE Act.[12]

B. The SAFE Act severely hinders DHS's ability to place eligible noncitizens in alternatives to detention, wasting taxpayer dollars, and ignoring law enforcement best practices

Among NIJC's primary concerns about the SAFE Act is that section 107 of the bill requires DHS to take every person referred by local law enforcement into custody and calls for an enormous expansion of immigration detention facilities. This eliminates all DHS discretion to concentrate its resources on priority cases, such as those who pose a national security or serious public safety risk, and allows local jurisdictions to be the driver of federal immigration enforcement. It also wastes taxpayers' dollars to detain every single person in removal proceedings, without consideration of whether the individual poses a public safety concern or a flight risk. If not, those individuals should not be detained or, in the alternative can be placed into a cost-effective alternative to detention (ATD) program. The purpose of immigration detention is to ensure that people appear at their immigration court proceedings. Criminal justice systems across the country routinely and increasingly recognize that confinement in the pretrial context is costly to taxpayers and unnecessary to mitigating flight risk and the danger to our communities. Many states — including Texas,

[12] Major Cities Chiefs Association, "Police Chiefs from Nation's Major Cities Object to Legislative Proposals Requiring Local Police to Enforce Federal Immigration Law, 2013, http://www.immigrantjustice.org/sites/immigrantjustice.org/files/Major%20City%20Chiefs%20SAFE%20Act%20press%20release%202013.pdf.

Georgia, and South Carolina — have passed laws that shift low-level offenders out of prison and into cost-effective and secure alternative programs.

Our immigration detention system should follow suit and conform to established best practices. Immigration detention costs taxpayers nearly $2 billion annually; approximately $5.5 million every day.[13] On average, detention costs approximately $161 per person per day.[14] In the context of children detained with their mothers, those costs are as high as nearly $300 per person per day, totaling approximately $108,000 per person annually.[15] However, U.S. Immigration and Customs Enforcement (ICE) has much cheaper, more humane options at its disposal. Release on recognizance or bond carry little to no cost. In addition, ATDs, including release to community-based programs, case management services, or more intensive supervision and monitoring cost as little as 70 cents to $17 per day.[16] If ICE only detained individuals convicted of serious crimes and used ATDs for the remainder of the population that would otherwise be detained, the agency could reduce annual detention spending by 80 percent.[17] Moreover, ATDs have a strong record of effectiveness: more than 99 percent of ATD participants in the full-service component[18] attended their scheduled court hearings from fiscal years 2011 through 2013.[19]

ATDs have been endorsed as smart, cost-saving measures by a variety of organizations, including the Council on Foreign Relations' Independent Task Force on U.S. Immigration Policy, the Heritage Foundation, the Pretrial Justice Institute, the Texas Public Policy Foundation (which houses Right on Crime), the International Association of Chiefs of Police, and the National Conference of Chief Justices.[20] Moreover, American communities and U.S. taxpayers suffer when we needlessly tear families apart by detaining caretakers and breadwinners. When a parent or spouse is separated from their family, it often comes at a loss to the local economy and can result in U.S. citizen family members relying on public benefits or children entering the state foster care system. For instance, when ICE is unable to find family members in the United States to care for a U.S. citizen child, the child is placed in foster care at emotional and governmental expense ($26,000 per year per child).[21] Currently, there are 5,000 children in foster care as a result of immigration-related issues.[22] We must revise immigration enforcement and detention practices to prevent these unnecessary costs to taxpayers and communities.

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[13] Mario Moreno, "Detention Costs Still Don't Add Up to Good Policy," National Immigration Forum, Sept. 24, 2014, http://immigrationforum.org/blog/detention-costs-still-dont-add-up-to-good-policy.
[14] *Id.*
[15] Senate Emergency Supplemental Appropriations for FY 2014, 113th Congress, July 2014, http://www.appropriations.senate.gov/sites/default/files/DRAFT2014%20Bill.PDF.
[16] National Immigration Forum, *The Math of Immigration Detention*, Aug. 22, 2013, http://immigrationforum.org/blog/themathofimmigrationdetention.
[17] *Id.*
[18] The full-service component is run by an ICE contractor who maintains in-person contract with individuals either by telephonic reporting or Global Positioning System (GPS) equipment.
[19] U.S. Government Accountability Office, *Alternatives to Detention: Improved Data Collection and Analysis Needed to Better Assess Program Effectiveness*, Nov. 2014, http://www.gao.gov/assets/670/666911.pdf, p. 30.
[20] Human Rights First, Factsheet: "Immigration Detention: How Can the Government Cut Costs?" April 2013, http://www.humanrightsfirst.org/wp-content/uploads/Immigration_Detention_FactSheet_March2013.pdf.
[21] Joanna Dreby, "How Today's Immigration Enforcement Policies Impact Children, Families, and Communities." *Center for American Progress*, Aug. 2012, http://www.americanprogress.org/wp-content/uploads/2012/08/DrebyImmigrationFamiliesFINAL.pdf
[22] Emily Butera, "ICE's Parental Interests Directive: Helping Families Caught Between the Immigration and Child Welfare Systems," Women's Refugee Commission, 26 Aug. 2013, http://womensrefugeecommission.org/blog/1713-new-ice-directive-helps-families-caught-between-the-immigration-and-child-welfare-systems

II. Protection screenings must be robust for all immigrant children

The remaining two bills under consideration at this hearing shift attention away from the interior and focus instead on the border. The Asylum Reform and Border Protection Act subjects children to fast-track removal proceedings and denies them meaningful opportunities to recover from their long, traumatic journeys so they can share their stories with immigration officers and explain their need for protection. The bill limits the definition of who qualifies as an unaccompanied child (currently defined, in pertinent part, as those without a parent or legal guardian available to provide care), excluding those who have a relative, such as a sibling, aunt, uncle, grandparent, or cousin more than 18 years of age, available to provide care. The bill places all unaccompanied children in expedited removal and limits access to asylum by removing exceptions currently provided to minors, such as the one-year filing deadline bar. The bill also authorizes DHS to keep unaccompanied children in its custody far longer, by allowing DHS seven days (instead of 48 hours) to notify the Department of Health and Human Services (HHS) that a child has been apprehended and by permitting DHS to hold a child for 30 days (instead of up to 72 hours) prior to transferring the child to HHS custody. NIJC strongly objects to this provision given our June 2014 complaint to the DHS Office of Civil Rights and Civil Liberties (OCRCL) and Office of the Inspector General (OIG) on behalf of 116 unaccompanied children who were abused and mistreated in CBP custody.[23] Finally, it seeks to eliminate government-provided counsel for any noncitizens in removal proceedings, including children and those with mental disabilities. The only provision of this bill that NIJC can endorse is the authorization of at least 50 new immigration judges, as an increase in court resources would begin to address the growing backlog.

The Protection of Children Act is ironically named, as it seeks to undo many due process protections for children. Under the guise of procedural parity, the bill significantly weakens the screening process that unaccompanied children from non-contiguous countries currently undergo, instead requiring all children to submit to the curtailed process to which Mexican children are presently subject. In addition, it eliminates asylum officers' jurisdiction over asylum applications filed by unaccompanied minors, which currently provides children with an opportunity to articulate their fears of returning home in a less adversarial environment prior to seeing an immigration judge. This provision in particular marks a total reversal of congressional actions taken just seven years ago when, recognizing the unique needs of vulnerable children, Congress unanimously passed the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008[24] to give specially trained asylum officers initial jurisdiction over applications filed by unaccompanied children.

To be clear, these bills will hurt children. Vulnerable children who have fled unspeakable harm and who may have been traumatized during their journeys to the United States will face a much higher risk of deportation to further violence if our screening processes and protection tools are cut off at the knees. These bills are a misguided, anti-immigrant reaction to the influx of immigrant children who arrived at our borders last summer and erroneously suggest that their requests for safe haven were not bona fide. In fact, these children are fleeing well-documented violence in Central America.

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[23] 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, http://www.immigrantjustice.org/sites/immigrantjustice.org/files/FINAL%20DHS%20Complaint%20re%20CBP%20Abuse%20of%20UICs%202014%2006%2011.pdf.

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

Statistical analysis demonstrates that higher homicide rates in sending countries — not U.S. immigration policies — drove children to flee their home countries.[25] Congress should focus its attention on helping these children by ensuring that our screening mechanisms are robust, not hasty.

A. Destabilizing violence is on the rise in Central America

Over the past year, members of Congress have expressed concern over the number of asylum seekers fleeing Central American countries, suggesting that those applicants are only economic migrants who present fraudulent claims of persecution. The sad reality, however, is that there has been a well-documented increase in destabilizing violence and turmoil in the region in recent years.[26] The victims of this violence are often targeted for reasons — such as gender, family group membership, and status as witnesses — that give rise to viable asylum claims. According to a November 2013 report by the U.S. Conference of Catholic Bishops, "violence at the state and local levels and a corresponding breakdown of the rule of law have threatened citizen security and created a culture of fear and hopelessness."[27] For the past two years, San Pedro Sula in northwest Honduras has had the highest murder rate in the world, with a rate of 169 homicides for every 100,000 inhabitants, or 36 times as many deaths as the U.S. national average.[28] Given the country's relatively small population — roughly the size of Virginia — this rate of violent crime and the lack of an effective government response has forced many to flee for their lives. Moreover, children have been increasingly targeted for violence. In Honduras, a boy born today has a one-in-nine chance of being murdered.[29]

Honduras is not alone. Violence in Mexico, Guatemala, and El Salvador is equally pervasive. The expansion and increased influence of the Mexican-based drug cartel Los Zetas, has increased gang violence in the region; impunity is nearly universal.[30] More than 47,000 people were killed in drug violence in Mexico from 2006 to 2011.[31] Likewise, the U.S. State Department reported that Guatemala has one of the highest rates of violent crime in Central America, with nearly 100 murders

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[25] *See* Tom K. Wong, "Statistical Analysis Shows that Violence, Not U.S. Immigration Policies, is Behind the Surge of Unaccompanied Children Crossing the Border," 2014, http://ccis.ucsd.edu/wp-content/uploads/Wong-UACs1.pdf *and* Dave Bier, "New Numbers Show the Child Migrant Crisis Began Before DACA," Feb. 9, 2015, http://niskanencenter.org/blog/niskanen-center-study-new-numbers-show-the-child-migrant-crisis-began-before-daca.

[26] *See, e.g.,* "Guatemala 2013 Crime and Safety Report", U.S. State Department, Apr. 2013, http://www.iccnow.org/documents/Access_to_Justice_in_Mexico_-_English.pdf; "Transnational Crime in Mexico and Central America; Its Evolution and Role in Migration", Migration Policy Institute, Nov. 2012, http://www.migrationpolicy.org/pubs/RMSG-TransnationalCrime.pdf; "Forced from Home: The Lost Boys and Girls of Central America", Women's Refugee Commission, Oct. 2012, http://womensrefugeecommission.org/resources/migrant-rights-and-justice/844-forced-from-home-the-lost-boys-and-girls-of-central-america/file; "Invisible Victims: Migrant on the Move in Mexico", Amnesty International, 2010, http://www.amnesty.org/en/library/asset/AMR41/014/2010/en/8459f0ac-03ce-4302-8bd2-3305bdae9cde/amr410142010eng.pdf; "Persistent Insecurity: Abuses Against Central Americans in Mexico", Jesuit Refugee Services, November 2013, https://www.jrsusa.org/Assets/Publications/File/Persistent_Insecurity.pdf; "A Profile of the Modern Salvadoran Migrant", US Committee for Refugees and Immigrants, December 2013, http://www.uscrirefugees.org/2010Website/3_Our%20Work/Child_Migrants/FINAL_ENGLISH_VERSION.pdf

[27] U.S. Conference of Catholic Bishops, *Mission to Central America: The Flight of Unaccompanied Children to the United States*, Nov. 2013, http://www.usccb.org/about/migration-policy/upload/Mission-To-Central-America-FINAL-2.pdf.

[28] FBI, Crime in the United States by Metropolitan Statistical Area, 2012. http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/tables/6tabledatadecpdf; Romo, Rafael and Nick Thompson. "Inside San Pedro Sula, the 'Murder Capital' of the World." CNN. http://www.cnn.com/2013/03/27/world/americas/honduras-murder-capital/.

[29] Frances Robles, "Fleeing Gangs, Children Head to U.S. Border," *New York Times*, July 9, 2014, http://www.nytimes.com/2014/07/10/world/americas/fleeing-gangs-children-head-to-us-border.html?_r=1.

[30] Catherine Shoichet, "Mexican Forces Struggle to Rein in Armed Vigilantes Battling Drug Cartel," CNN, Jan. 17, 2014, http://www.cnn.com/2014/01/17/world/americas/mexico-michoacan-vigilante-groups.

[31] "47,000 People Killed in Drug Violence in Mexico," Jan. 11, 2012, Washington Times, http://www.washingtontimes.com/news/2012/jan/11/47000-people-killed-drug-violence-mexico/.

each week.[32] In El Salvador, an uneasy 2012 truce between rival gangs, Mara Salvatrucha and Barrio 18, is unraveling with murder rates in November 2013 climbing to 11 killings each day. [33] El Salvador and Guatemala have the highest child murder rates in the world.[34]

> *One of those children is Alex, a 13-year-old boy who was murdered for refusing to join a gang in Guatemala. A year after his murder, his friend Oscar (pseudonym) fled to the United States to escape gang violence. For the past two years, the same gang that killed Alex had been threatening 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. As time went on, their efforts to force Oscar to join escalated, but Oscar could not go to the police for help because the gang threatened to kill his family. Oscar decided to leave 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.*

In addition, children like Oscar are unable to go to the police in their home countries for protection. Corruption is widespread in Central America.[35] Over the past three years, 48,947 people were murdered in El Salvador, Guatemala, and Honduras. Countries achieved convictions in 2,295 of those homicide cases, representing an impunity rate of 95 percent for homicides.[36]

The United States is not the only country experiencing a dramatic increase in asylum seekers from Central America due to this violence. Together, Mexico, Panama, Nicaragua, Costa Rica, and Belize reported a 712 percent increase in the number of asylum applications filed by individuals from El Salvador, Guatemala, and Honduras from 2008 to 2013.[37] These numbers demonstrate that the current crisis is a regional problem caused by country conditions in the sending countries. The people fleeing these countries are running for their lives. Most often they have abandoned their homes to seek safety for reasons that may form the basis of an asylum claim. NIJC regularly provides consultations to men, women, and children from Central America who have resisted gang recruitment, refused or cannot afford to pay protection money, or sought law enforcement assistance and justice for gang violence only to be targeted with threats, violence, and death for their actions. While some of these individuals may not be able to prove that the harm they fled makes them eligible for asylum, this does not mean that their applications were fraudulent. Our legal system should extend the same refugee protections to this population that we provide to others who place their lives as risk by resisting violent and coercive dictatorships or guerilla groups.

B. The TVPRA protects children fleeing violence

NIJC is alarmed by legislative efforts to further expedite screenings and deportations of unaccompanied children escaping violence in Central America, particularly given the United States' proud legacy of protecting people who have been persecuted. The United States is a beacon of hope

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[32] Guatemala 2013 Crime and Safety Report, OSAC, U.S. Dept. of State: Bureau of Diplomatic Security, https://www.osac.gov/pages/ContentReportDetails.aspx?cid=13878.
[33] Will Grant, "Shaky Truce: Is El Salvador's Gang War Really on Hold?" BBC News, Jan. 22, 2014, http://www.bbc.co.uk/news/world-latin-america-25711892.
[34] UNICEF, *Hidden in Plain Sight: A statistical analysis of violence against children*, Sept. 2014, http://files.unicef.org/publications/files/Hidden_in_plain_sight_statistical_analysis_EN_3_Sept_2014.pdf, p. 36.
[35] Charles Parkinson, "Why is Latin America So Corrupt?" *InSight Crime*, Jan. 8, 2014, http://www.insightcrime.org/news-analysis/why-is-latin-america-so-corrupt.
[36] 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.
[37] United Nations High Commissioner for Refugees (UNHCR), http://unhcrwashington.org/children.

for people fleeing oppression and is a defender of human rights. The primary vehicles through which nation-states assumed legal duties toward refugees are the 1951 Convention Relating to the Status of Refugees (Refugee Convention) and the 1967 Protocol Relating to the Status of Refugees (Refugee Protocol). These treaties require nation-states to recognize as refugees those who are likely to face persecution in their home countries, to accord refugees certain legal rights, and to refrain from returning them to countries where their safety would be threatened.[38] The United States ratified the Refugee Protocol[39] and in 1980, the United States enacted the Refugee Act to ensure compliance.[40] Although these laws were critical to create a system that effectively addresses the needs of many asylum seekers, the system is still in need of improvement. For instance, asylum seekers currently experience hasty protection screenings at the border, extensive delays in affirmative adjudications, and unnecessary detention. Children receive additional safeguards through the TVPRA, which was initiated as a response to years of insufficient screenings of unaccompanied children at the border, resulting in the return of vulnerable children to situations of violence, abuse, and persecution from which they fled.[41] 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 receive full due process protections in an immigration court proceeding. This affords them time to recover from their journeys and past trauma, receive legal orientation, seek counsel, and gather evidence in support of their cases.

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 before they are able to effectively share their stories. For instance, NIJC client Carlie (pseudonym) initially denied being sexually abused:

> *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 convicted. The two sisters experienced further abuse from their step-grandfather who was angry at them for*

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[38] "No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." Convention Relating to the Status of Refugees [hereinafter "Refugee Convention"], art. 33-1, 189 UNTS 150.

[39] Although the United States did not sign the Convention, the Protocol includes by reference the rights and duties set forth in the Convention. Refugee Protocol art. 2 ("The States Parties to the present Protocol undertake to apply Articles 2 to 34 inclusive of the Convention to Refugees as hereinafter defined.") The Protocol expanded these rights and duties to all refugees, whereas the Convention only applied to those displaced by the Second World War and its aftermath. Hereinafter, this statement cites to specific articles of the Convention when discussing the Protocol.

[40] *INS v. Cardoza-Fonseca*, 480 U.S. 421, 433 (1987)(citing "the abundant evidence of an intent to conform the definition of "refugee" and our asylum law to the United Nation's Protocol to which the United States has been bound since 1968).

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

accusing his nephew of raping them, and would beat the sisters. After the rape, Carlie and Esperanza's mother decided to bring the girls to join her in the United States, where she had been living since 2008. NIJC represented the girls in their successful asylum cases. Initially, the youngest 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 was only able to discuss the abuse after her attorney was able to gain 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.

Without the safeguards provided under the TVPRA, U.S. Customs and Border Protection (CBP) most likely would have deported Carlie and Esperanza back to a country where they faced unspeakable trauma. It is clear that children continue to be in great need of asylum protections provided under U.S. law. It is of utmost importance that Congress continues to uphold current standards to protect children's due process rights.

C. The United States must retaining critical due process protections for children

Proposed legislation seeks to repeal due process protections for children from non-contiguous countries (e.g., Central America) and subject them to the expedited process currently in place for Mexican children (who receive reduced TVPRA protections). Under the TVPRA, Mexican children are required to immediately reveal their protection claims to the very people who have apprehended and detained them without access to attorneys. This procedure should not be applied to children from non-contiguous countries and, indeed, should be terminated altogether so that all unaccompanied children receive full and fair hearings when facing deportation. NIJC's mass complaint to the DHS OCRCL and OIG on behalf of 116 unaccompanied children abused and mistreated in CBP custody demonstrates that CBP is not the appropriate agency to screen children for relief.[42] Approximately one in four children in the complaint 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 or mindset needed to productively and compassionately interview children to learn what harm they have experienced and what they fear if deported.

Moreover, the current expedited screening procedures for Mexican children do not include a screening for eligibility for Special Immigrant Juvenile Status (SIJS), a form of protection for children who have been abused, abandoned, or neglected by one or both parents. If children are not provided with access to the immigration court system, they will not have the opportunity to seek the protection they need and merit under the law, and may be returned to abusive situations in their home countries.

NIJC client Cynthia (pseudonym) grew up in Guatemala with an abusive father who physically and verbally abused her throughout her childhood for any perceived disobedience, including wearing pants and getting the house wet after coming in from the rain. Her mother was unable to protect her because she too was subject to

[42] 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, http://www.immigrantjustice.org/sites/immigrantjustice.org/files/FINAL%20DHS%20Complaint%20re%20CBP%20Abuse%20of%20UICs%202014%2006%2011.pdf

> *abuse. Cynthia fled to the United States to escape her father's abuse and find safety and security. It is very difficult for Cynthia to discuss her father's abuse and it took numerous meetings with trained legal staff before she felt comfortable revealing this information. Had Cynthia been subjected to expedited screening by CBP officers at the border, she would not have been able to reveal this information. Even if she had notified CBP officers of her abusive childhood, she could still have been repatriated because the initial screening does not assess children's eligibility for SIJS protection.*

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. Like all asylum seekers, it is difficult for immigrant children who have suffered abuse in their home countries and during their journeys to the United States to overcome the mental and emotional impact of that harm and discuss their fears with strangers, particularly Border Patrol agents or CBP officers who have taken them into custody. Children in many countries are raised without any trust in law enforcement who at best turn a blind eye to and at worst are complicit in the violence that pervades their lives. It is also extremely difficult for all asylum seekers, but particularly child asylum seekers, to understand how to request asylum at the border and articulate claims for protection. Moreover, the accelerated nature of expedited processing in remote locations along the border makes it impossible for children to obtain legal counsel during this process.

D. Legal counsel for unaccompanied children is critical to ensure fair and efficient hearings

NIJC objects to any legislative proposals that seek to deny government-funded counsel to all children. Under the current system, unaccompanied children 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 Justice[43] and HHS[44] to fund legal representation for 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 *pro se*.

Access to counsel is a critical factor affecting a child's ability to successfully articulate her need for legal protections. In 2013, 78 percent of children with attorneys obtained relief from removal, while only 25 percent of children without attorneys were granted relief.[45] 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 case, or might be afraid to disclose it.[46] Legal representation enables immigration judges to consider all relevant facts and ensure children are not deported back to dangerous or life-threatening situations.

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[43] 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, http://www.nationalservice.gov/newsroom/press-releases/2014/justice-department-and-cncs-announce-new-partnership-enhance.

[44] 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, http://www.gpo.gov/fdsys/pkg/FR-2014-10-16/html/2014-24555.htm.

[45] Transactional Records Access Clearinghouse, *New Data on Unaccompanied Children in Immigration Court*, Syracuse University, Jul. 15, 2014, available at: http://trac.syr.edu/immigration/reports/359/.

[46] Laura Meckler & Ana Campoy, "Children Fair Better in U.S. Immigration Courts if They Have an Attorney," *Wall Street Journal*, July 16, 2014, http://online.wsj.com/articles/children-fare-better-in-u-s-immigrant-courts-if-they-have-an-attorney-1405531581.

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.[47] 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 condition 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 if a noncitizen is granted asylum or another form of relief. 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.[48] 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:

> *Maria and Roxana are 11- and 14-year old sisters from El Salvador. When they were very small, 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.

III. The immigration court system needs an infusion of resources to ensure its integrity

Although NIJC opposes most of the provisions in the Asylum Reform and Border Protection Act, we support the provision that authorizes an additional 50 or more immigration judge positions. Our immigration court system severely lacks the resources necessary for it to run efficiently, with immigration judges who are woefully overworked and understaffed. Judges who participated in a survey conducted by a group of psychiatrists were found to have higher levels of stress, trauma, and

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[47] Mark Noferi, "Taking Attendance: New Data Finds Majority of Children Appear in Immigration Court." *Immigration Impact*, Jul. 18, 2014, http://immigrationimpact.com/2014/07/18/taking-attendance-new-data-finds-majority-of-children-appear-in-immigration-court/#sthash.9IvrHJ9W.dpuf.

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

turnover than prison guards or physicians in busy hospitals. In his congressional testimony, Immigration Judge Lawrence Burman, who presides over three times as many cases a year as a federal judge, described the over-saturated system as "doing death-penalty cases in a traffic-court setting."[49]

Due to a hiring freeze, positions were reduced from 272 to 249 immigration judges. Proposals to increase hiring by 225 judges have stalled in the U.S. House of Representatives. Of the judges who remain, almost half will be eligible for retirement in 2014, adding even more stress to a system that already has far more cases than it can effectively manage.

This shortage of resources — combined with an increased caseload driven in large part by vigorous immigration enforcement efforts — has created an unprecedented backlog in immigration courts. The average wait time to see an immigration judge is now 583 days, but unfortunately, in cities with large immigrant populations like Chicago, the wait time often is longer.[50] While these cases await resolution, evidence grows stale, witnesses are lost, and country conditions shift. As a result, cases that were very strong at the outset appear less substantial by the time they go to trial, even when a strong threat of persecution remains.

> *NIJC began representing Stephen, a political dissident from West Africa, in 2007. He left behind his wife and infant son when he fled to the United States after his life was threatened by his government. After waiting three years for his individual court hearing, the immigration court continued Stephen's hearing to 2012 because the judge presiding over his case retired and his case was assigned to a different judge. In response to a motion to advance proceedings filed by Stephen's attorneys, his hearing was moved to December 2011 and transferred to a new judge; however, the new judge again continued his court date to 2012. A month before that hearing was to occur, the court again continued Stephen's case, this time until August 2013. NIJC managed to exchange dates with another asylum case to secure an April 2012 hearing date for Stephen, but the judge cancelled court on that date and Stephen was rescheduled for June 2012. On that date, the judge heard testimony, but was unable to complete the case and rescheduled it for September 2014. Stephen's attorneys filed another motion to advance and had a hearing in August 2013. On that date, he was granted asylum. Stephen's case was so protracted that by the end, it had been handled by five different pro bono attorneys and was before three different judges. It took six years for him to be granted asylum, during which time he was separated from his wife and child.*

Stephen was fortunate his counsel was able to advance his proceedings. An unrepresented asylum seeker would still be waiting for case resolution, enduring family separation, and hoping the years between when he gave his testimony and when the judge anticipated issuing a decision did not prejudice his case.

Despite the obstacles they face and dearth of resources, immigration judges strive to provide expert credibility assessments and discern the veracity of the asylum claims before them. An infusion of resources directed toward the courts would improve this system and enable the courts to deal with asylum cases in a timely and effective manner.

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[49] Eli Saslow, "In a Crowded Immigration Court, Seven Minutes to Decide a Family's Future." Washington Post. Feb. 2, 2014. http://www.washingtonpost.com/national/in-a-crowded-immigration-court-seven-minutes-to-decide-a-familys-future/2014/02/02/518c3e3e-8798-11e3-a5bd-844629433ba3_story.html.

[50] Transactional Records Access Clearinghouse, Syracuse University, "Backlog of Pending Cases in Immigration Courts as of December 2013," http://trac.syr.edu/phptools/immigration/court_backlog/apprep_backlog.php.

IV. Recommendations and Conclusion

As Americans, we are defined by our values, especially with respect to equality and fairness. The proposed legislation under discussion today shamelessly rejects these values. It will be impossible to create a functional immigration system as long as the government continues to arrest and detain record numbers of men and women who pose no threat to society, especially when it denies them an opportunity to live in this country with some sort of status. Further, as a nation committed to human rights, the United States must uphold its commitment to protecting the persecuted, including the youngest and most vulnerable. Any solution to the humanitarian crisis in Central America must be comprehensive and address the root causes of the violence there, acknowledge the natural desire for family members to reunite, and abide by our country's obligations to protect those fleeing persecution. We must ensure that our laws treat children like children and do not send them back into harm's way. NIJC suggests the following four recommendations to achieve these goals:

1. **Separate immigration enforcement from state and local law enforcement.** State and local law enforcement should not be tasked with federal immigration enforcement, which conflicts with their primary objective to uphold public safety.
2. **Use detention as a last resort and increase use of ATDs to mitigate risk and save taxpayer dollars.** ATDs are a less costly form of custody and are more humane than detention, particularly for survivors of violence. ATDs allow individuals to return to their communities where they have access to counsel and other critical services.
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.
4. **Provide counsel to all children and vulnerable populations in proceedings.** Access to counsel is critical to help children navigate the complex immigration system and increases the efficiency of an already overburdened immigration court system.

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FIRST FOCUS CAMPAIGN FOR CHILDREN
STATEMENT FOR THE RECORD

HOUSE JUDICIARY COMMITTEE HEARING:
"INTERIOR IMMIGRATION ENFORCEMENT LEGISLATION"

FEBRUARY 11, 2015

Chairman Goodlatte, Ranking Member Conyers, and Members of the House Judiciary Committee, we thank you for the opportunity to submit this statement on the record for this hearing to consider interior immigration enforcement issues.

The First Focus Campaign for Children is a bipartisan advocacy organization dedicated to making children and families a priority in federal policy and budget decisions. As an organization dedicated to promoting the safety and well-being of all children in the United States, we urge Congress to work towards finding comprehensive solutions to improve our immigration system that embraces the American values of family unity and putting children first. As an organization working to ensure the best policy solutions for children, we strongly oppose the proposed legislation that is under consideration in today's hearing.

We are deeply concerned with the "Asylum Reform and Border Protection Act" (H.R. 5137) as it would eliminate critical protections under the Trafficking Victims Protections Reauthorization Act (TVPRA), including procedures established to properly screen unaccompanied children and ensure their safety. CBP officers lack the training and resources to properly interview for children, putting children at risk of falling through the cracks and being unnecessarily sent back to immediate danger. Furthermore, children must have access to competent legal representation to navigate the complex immigration court system. This bill prohibits the government from providing counsel to children, which is detrimental to their due process rights of being heard before an immigration court. Children who have legal representation are far more likely to be awarded the relief applied for than unrepresented children.

We are also opposed to the so-called "Protection of Children of Act" (H.R. 5143) as we strongly believe that the bill would undermine the safety and well-being of extremely vulnerable children. It contains many similar provisions to H.R. 5137 and also limits the definition of an unaccompanied child and thereby their rights to certain types of relief, rolling back due process protections for children by pushing them into expedited removal proceedings, and forcing children to remain longer in inappropriate detention settings, including large overcrowded facilities that present serious threats to children's safety. Furthermore, children who are admitted must have competent legal representation to navigate the complex immigration court system. This bill prohibits the government from providing counsel to children, which is detrimental to their due process rights of being heard before an immigration court. Research shows that children who have legal representation are far more likely to be awarded the relief applied for than unrepresented children.

Finally, we oppose the "Strengthen and Fortify Enforcement (SAFE) Act" (H.R. 2278). This bill would expand the use of detention and promote state and local law enforcement participation in immigration enforcement efforts. The bill would increase the capacity of detention facilities to hold immigrants who can be held for non-violent reasons and without due process protections, putting families at risk of separation and other families at risk of being detained together under the expansion of the harmful practice of family detention. We also believe it is the wrong approach to expand programs like the flawed 287(g) program, as such programs create a climate of fear among immigrants that not only creates barriers between immigrant communities and law enforcement agencies, but also impacts the mental health and overall well-being of children in immigrant families.

Research, including a recent report by the UN High Commissioner for Refugees (UNHCR), consistently shows that the majority of the unaccompanied children fleeing to the U.S. from Central American in recent years are escaping extreme violence and instability in their home countries, spurred by drug traffickers and increased gang activity.[i] These are children who deserve the best services and protections our country can provide, not additional trauma and further threats to their health and safety. Rather than expand enforcement programs that have only proven to tear apart families and roll back protections for vulnerable child migrants, we urge Congress to work together to find solutions to fix our immigration system that will promote the best interests of children.

We thank you again for the opportunity to submit this statement for the record. Should there be any questions regarding this statement, please contact Wendy Cervantes, Vice President of Immigration and Child Rights, at wendyc@firstfocus.net.

[i] Julia Preston, *New U.S. Effort to Aid Unaccompanied Child Migrants,* New York Times, June 2, 2014 Available at: http://www.nytimes.com/2014/06/03/us/politics/new-us-effort-to-aid-unaccompanied-child-migrants.html?_r=1

COALITION FOR HUMANE IMMIGRANT RIGHTS OF LOS ANGELES

February 11, 2015

Chairman, Hon. Trey Gowdy
House Subcommittee on Immigration and Border Security
2138 Rayburn House Office Bldg
Washington, DC 20515

Ranking Member, Hon. Zoe Lofgren
B-351 Rayburn House Office Bldg
Washington, DC 20515

Re: CHIRLA statement to the House of Representatives Judiciary Committee, regarding its hearing "Interior Immigration Enforcement Legislation."

Dear Chairman Gowdy,

The Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA) is a state organization whose mission is to advance the human and civil rights of immigrants and refugees in Los Angeles. CHIRLA advocates on behalf of this community through policy & advocacy, organizing, education and community building. We have long recognized that our country operates under a broken immigration system that focuses on enforcement as a solution and keeps families apart. We have been encouraged by the introduction of comprehensive immigration bills introduced in the past congress, but are extremely dismayed to see that this congress only piece meal enforcement bills have surfaced as solutions. This is unacceptable and we strongly oppose these bills as they would only further cripple the system, narrow existing benefits and nationally criminalize those who are without status.

H.R. 5143 the Protection of Children Act
While the title of this bill seems harmless, the policy created within the language does quite the opposite of protect. This bill seeks to roll back protections put in place the TVPRA by allowing children to be deported after a very basic interview and encounter with any border patrol agent. This policy would send the children right back to the very violence, abuse and poverty they were trying to escape and also leaves them vulnerable smugglers and bad actors at the border.

Having worked with this population of children, we know that often times a child is unable to communicate their fears and tell their story when apprehended at the border. That sharing only comes as a result of many hours of counseling and the formation of trust between the child and an adult. In addition to the child being unable to properly communicate their reason for fleeing their home country, it is our opinion that border patrol agents are not sufficiently trained to interview and screen these

children, who often times given the circumstances of their home countries and journeys into the United States have come to fear those in uniform. Instead these children should be screened by trained therapists who are better able to treat the child.

In addition to the protections rollback at the border this bill seeks to cement the ongoing "rocket dockets," into U.S. policy around the UACs by requiring any minor who is able to enter the country and in the care of DHS and ORR (Office of Refugee Resettlement) go to trial within 7 days. This would not only inundate our already overwhelmed immigration courts and put other cases on the back burner, but it does not allow sufficient time for an attorney to be linked with the child and form a case that could realistically go to trial. Once a child is connected with an attorney, it often takes many months for the attorney to build a relationship with that child that they feel safe sharing their story. Additionally, the allotted 7 days would make building an asylum case impossible as it is not enough time to gather any needed evidence. This policy would essentially be denying these children true due process.

Beyond the deep concerns CHIRLA has with rolling back the TVPRA protections, H.R. 5143 would require that the ORR report to DHS on the immigration status of the family members who act as guardians for the unaccompanied minors. This would pose a significant problem as many of these parents and families have undocumented relatives living in their house or may be without status themselves. This puts the parent in a difficult situation of either caring for their child (after in many cases years of separation) and risking deportation or deportation of other family members or sending their child to be cared for with strangers or worse yet, a detention center.

H.R. 5137 the Asylum Reform and Border Patrol Act

In addition to containing similar harmful provisions as the Protection of Children Act, such as the expedited removal of unaccompanied minor children and giving border patrol agents the authority to decide whether a minor child should be able to stay or be deported, H.R. 5137 would also narrow the protections available under asylum. The bill as is would set an even higher standard of proof for asylum screenings. This is especially troublesome as the system is already difficult to navigate, especially for a child who may not even understand the process or what proof may be needed to make a case. It is unconscionable to expect a child, still recovering from a harrowing journey and held in jail-like facilities, to meet such a high standard.

H.R. 2278 the SAFE Act

H.R. 2278 seeks to mandate that local law enforce agencies would act as immigration enforcement bodies, eliminating our current discretion and essentially nationalizing the anti-immigrant S.B 1070 policy created in Arizona. In addition to this, the bill encourages racial profiling, erodes public trust in law enforcement and denies protections to vulnerable individuals fleeing persecution. The bill goes beyond demonizing and criminalizing immigrants and also criminalizes churches, community organizations and individuals who seek to help migrants. H.R. 2278 contains similar provisions from the CLEAR Act, introduced in 2003, which south to require state and local police to enforce federal civil immigration laws or risk losing Federal funding.

We have worked to ensure that we build trust among immigrants in our communities, demanding that police act as immigration agents distracts them from their core duties of providing order and

protection. It weakens community policing initiatives by undermining carefully established trust with community members, discourages crime victims and witnesses from reporting crimes. Adding immigration enforcement to the duties of local law enforcement is a strain on already limited resources. Lastly, immigration law is complex technical and changes often, immigration laws have been compare to tax laws due to its complexity, thus asking local law officers would be like asking them to stay abreast with all tax law and calculate individual's refunds as they enforce criminal laws. We are committed to ensure that the public is safe and are we utilizing all of the resources vehicles available to us to achieve that goal. H.R. 2278 overreaches by eradicating our discretion and improvements we have made to regain the trust among immigrant communities.

CHIRLA believes that we need to find a solution to our broken immigration system and that now is the time to have that discussion. We cannot however, accept that bad piecemeal enforcement policies are the only starting point for this discussion as they are not a solution to the larger issue of keeping families together.

Sincerely,

Angelica Salas,
Executive Director, Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA)

WRITTEN STATEMENT OF
THE AMERICAN CIVIL LIBERTIES UNION

For a Hearing on

"Interior Immigration Enforcement Legislation"

Submitted to the U.S. House of Representatives Committee on the Judiciary
Subcommittee on Immigration and Border Security

February 11, 2015

ACLU Washington Legislative Office
Michael W. Macleod-Ball, Acting Director
Joanne Lin, Legislative Counsel
Chris Rickerd, Legislative Counsel

I. Introduction

For nearly 100 years, the American Civil Liberties Union (ACLU) has been our nation's guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and the laws of the United States guarantee everyone in this country. The ACLU takes up the toughest civil liberties cases and issues to defend all people from government abuse and overreach. With more than a million members, activists, and supporters, the ACLU is a nationwide organization that fights tirelessly in all 50 states, Puerto Rico, and Washington, D.C., for the principle that every individual's rights must be protected equally under the law, regardless of race, religion, gender, sexual orientation, disability, or national origin.

The ACLU submits this letter to the U.S. House of Representatives' Committee on the Judiciary's Subcommittee on Immigration and Border Security for its hearing: "Interior Immigration Enforcement." Specifically we write in opposition to two of the bills being considered by the Subcommittee during this hearing: H.R. 2278,[1] the "Strengthen and Fortify Enforcement Act" (The SAFE Act), and H.R. 5143,[2] the "Protection of Children Act." The ACLU has not yet taken a position on the third bill being considered by the Subcommittee – H.R. 5137,[3] a bill about which we have significant concerns. Our silence here should not be construed as acquiescence to the legislation and we reserve the right to set forth our formal position in the event the bill moves forward this session. We have previously submitted a statement in strong opposition to H.R. 2278 (SAFE Act)[4] in 2013, which we reiterate at this time. Our statement below will focus on the reasons for our opposition to H.R. 5143.

II. The Protection of Children Act (H.R. 5143) eviscerates critical due process protections for unaccompanied children fleeing brutal violence

Many unaccompanied children fleeing the Northern Triangle region of Central America have escaped sexual violence and gang-related violence. They arrive in the U.S. alone, often with only the clothes on their back. H.R. 5143 would gut crucial existing protections for unaccompanied children who have fled violence in their home countries and have legitimate claims for immigration relief. Among other problematic provisions, Section 2(a)(1) of H.R. 5143 would subject unaccompanied children who are apprehended by the Department of Homeland Security ("DHS") to "voluntary" return procedures that would deprive them of numerous due process protections including the opportunity to present their claims to an immigration judge in a full hearing. While similar "voluntary" return procedures are currently in place for children from contiguous countries (Canada and Mexico), H.R. 5143 would apply those procedures to all unaccompanied children, regardless of their nationality.

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[1] H.R. 2278 was the bill number assigned to this bill during the 113th Congress (2013-14). This bill has not been reintroduced in the 114th Congress, and no current bill number has been assigned.
[2] H.R. 5143 was the bill number assigned to this bill during the 113th Congress (2013-14). This bill has not been reintroduced in the 114th Congress, and no current bill number has been assigned.
[3] H.R. 5137 was the bill number assigned to this bill during the 113th Congress (2013-14). This bill has not been reintroduced in the 114th Congress, and no current bill number has been assigned.
[4] ACLU written statement opposing H.R. 2278 for House Judiciary Committee hearing (June 14, 2013), *available at* https://www.aclu.org/immigrants-rights/aclu-statement-house-judiciary-committee-hearing-hr-2278.

The United Nations High Commissioner on Refugees has released reports criticizing the use of the existing voluntary return procedures on Mexican children, noting that they result in the deportation of numerous children who may have valid claims for immigration relief.[5] Broadening the scope of these "voluntary return" provisions would result in deporting even more children without due process.

Not only would H.R. 5143 expand the scope of these voluntary return procedures, but the bill would also make those already-weak procedures even less protective. Section 2(a)(2) of H.R. 5143 would eliminate the current requirement that DHS, before subjecting a child to "voluntary" return, ensure that the child has the capacity to make an independent decision to withdraw her application for admission, i.e. give up her chance to remain in the United States. The deletion of this provision would permit DHS to return children who, because of their youth or other capacity issues, have no comprehension of the consequences or magnitude of their decisions.

For those few children who manage to get past these "voluntary" return procedures, H.R. 5143 would prevent them from getting a fair hearing. Section 2(a)(5) of the bill would place children who are not voluntarily returned into accelerated removal proceedings by mandating that they appear for a hearing before an immigration judge within a mere 14 days after DHS screens them for return. Requiring children to appear for removal hearings so quickly would deprive them of any meaningful chance to obtain the legal representation necessary for their claims to be presented effectively.

Section 2(c)(5) of H.R. 5143 also seeks to weaken the right to counsel for unaccompanied children. H.R. 5143 would add language indicating that the Department of Health and Human Services ("DHHS") has no obligation to provide legal representation to children at Government expense. The bill would only require the Department of Health and Human Services ("DHHS") to ensure that children have "access to counsel." The presence of immigration counsel has been shown greatly to increase children's chances of gaining relief from deportation to dangerous conditions in their countries of origin.[6]

Finally, H.R. 5143 adds provisions designed to increase the length of time that children spend in immigration detention. Assuming that the child is not "voluntarily" returned, the law currently requires that DHS transfer children to the custody of DHHS within three days of determining that they are an unaccompanied child. H.R. 5143 would permit DHS to wait up to 30 days before transferring custody, thereby lengthening the time that such children remain detained in conditions that have been widely documented as inhumane.[7]

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[5] UNHCR Confidential Report, "FINDINGS AND RECOMMENDATIONS RELATING TO THE 2012 - 2013 MISSIONS TO MONITOR THE PROTECTION SCREENING OF MEXICAN UNACCOMPANIED CHILDREN ALONG THE U.S.-MEXICO BORDER" (July 2014), *available at* http://americanimmigrationcouncil.org/sites/default/files/UNHCR_UAC_Monitoring_Report_Final_June_2014.pdf.

[6] *See*, e.g., Laura Meckler and Ana Campoy, "Children Fare Better in U.S. Immigrant Courts if They Have an Attorney." *Wall Street Journal* (July 16, 2014), *available at* http://www.wsj.com/articles/children-fare-better-in-u-s-immigrant-courts-if-they-have-an-attorney-1405531581.

[7] *See*, e.g., ACLU et al. "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

Children, by definition, lack the capacity to represent themselves in legal proceedings, much less in proceedings that could lead to their expulsion from the U.S. and deportation to a country where they could face future harm and persecution. The overwhelming majority of children also lack the financial resources and know-how to find and retain their own attorneys. Without legal representation, unaccompanied children have to fend on their own to present complex asylum, human trafficking, and other immigration claims. The very notion of deporting children to life-threatening conditions without ensuring due process runs contrary to our constitutional history as well as our nation's commitment to protecting the most vulnerable among us.

III. Conclusion

The ACLU urges the House Judiciary Committee to reject the SAFE Act (H.R. 2278) and the Protection of Children Act (H.R. 5143). These bills violate our country's commitment to ensuring due process and protecting human rights, and represent a significant step backward in our nation's efforts to reform our broken immigration system.

TAHIRIH JUSTICE CENTER®

Protecting Immigrant Women and Girls Fleeing Violence

Statement of Tahirih Justice Center
Submitted to the Committee on the Judiciary of the U.S. House of Representatives
Hearing on "Interior Immigration Enforcement Legislation"
Hearing Held on February 11, 2015
Submitted in Writing on February 10, 2015

Tahirih Justice Center respectfully submits this statement to the Committee on the Judiciary to request that the Committee consider immigration enforcement in the context of our nation's commitment to protect immigrant women and children from domestic and sexual violence and human trafficking.

We are concerned that the bills under discussion before this Committee would make our communities less safe; limit due process and diminish the procedures in place to screen women and children for humanitarian protection; and prioritize the costly and inhumane prolonged detention of these most vulnerable immigrant populations.

Tahirih Justice Center is a national, nonprofit organization dedicated to protecting courageous immigrant women and girls who refuse to be victims of violence. Over the last eighteen years, we have provided holistic legal and social services to thousands of immigrants who have experienced severe trauma in the form of domestic and sexual violence and other gender-based violence through offices in the Washington, DC area, Houston, Texas, and Baltimore, Maryland.

The SAFE Act, previously introduced as H.R. 2278

The "Strengthen and Fortify Enforcement Act" ("SAFE Act") will have the effect of pushing immigrant survivors of violence into the shadows.

- **The SAFE Act will have a chilling effect on cooperation with law enforcement, making all of our communities less safe.** Because the SAFE ACT encourages local and state law enforcement to act as immigration enforcement officers, immigrant victims of crime, including domestic and sexual violence, will be more reluctant to report the crimes of their abusers, which undermines the protections enacted by VAWA and similar legislation. The SAFE Act will foster a climate of fear for immigrants and their communities, and reluctance to report crimes or cooperate with law enforcement will jeopardize overall public safety.
- **Criminalizing unlawful presence will negatively impact our communities.** Criminalizing unlawful presence will negatively impact families and communities, especially where parents without status may hesitate to report crimes against themselves or their children, seek medical help for themselves or

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their children, or even participate in their children's schooling – even if their children are U.S. citizens.

- **Expanding the immigration consequences for domestic violence-related crimes without including waivers for women who have been victims themselves will result in deportation of domestic violence survivors the Violence Against Women Act might otherwise protect.** In many cases, when police respond to a domestic violence call, both parties are arrested, and sometimes a survivor who acted in self-defense is wrongly accused.[1] If the abuser speaks English better than the survivor, or if other language or cultural barriers (or fear of retaliation from the abuser) prevent the survivor from fully disclosing what happened, a survivor can be faced with charges and tremendous pressure to plead guilty (without being advised about the long-term consequences) in order to be released from jail and reunited with her children.
- **Prolonged immigration detention is not appropriate for women or children.** Many of the immigrant women and children who arrive at the border have already experienced trauma, especially in the form of domestic or sexual violence. Detention re-traumatizes vulnerable individuals and prevents them from accessing appropriate medical and mental health care. Current detention facilities are geographically isolated, placing women and children hours away from sufficient access to medical and legal resources. Furthermore, the current version of the SAFE Act eliminates the Family Residential Standards, which set a bare minimum for conditions in family residential facilities, without setting in place other safeguards.
- **Detention is very expensive, while effective alternatives are dramatically more economical.** Detention of women and children in immigration jails costs almost $300 per person, per day. Alternatives to detention, which have a success rate of 96%, cost less than $10.[2]

The Asylum Reform and Border Protection Act, previously introduced as H.R. 5137

This bill would rescind critical substantive and procedural protections codified in the Trafficking Victims Protection Reauthorization Act (TVPRA) that aid in assessing the humanitarian claims of children. To avoid turning away children who seek protection from severe harm, such as rape, abuse, sexual violence, torture, and human trafficking, their claims must be adjudicated in a full and fair manner.

- **Customs and Border Protection officers at ports of entry should not be given the power to repatriate children on the spot.** Unaccompanied children are often exhausted, malnourished, and experiencing symptoms of trauma when they are first apprehended by border officers. In this moment of disorientation and fear, it is not possible for a child to adequately express his or her fear of harm. With the stakes so high, and children's lives at stake, CBP officers should not have the power to assess whether a child should be placed into expedited removal or ushered into the asylum process. It is more appropriate for children's fears to be assessed by plain-clothes officers with specialized training in interviewing children as well as in humanitarian forms of immigration relief and only after they have had the opportunity to secure legal counsel.
- **The law must ensure that children are not sent away to experience violence, abuse, rape, torture, and trafficking.** This bill contemplates raising the standard for the threshold credible fear interview,

[1] *See* John Morton, ICE Director, *Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs* 1 (June 17, 2011), *available at* http://www.ice.gov/doclib/secure-communities/pdf/domestic-violence.pdf.
[2] Lutheran Refugee Service and Women's Refugee Commission. *Locking Up Family Values, Again.* October 2014. http://womensrefugeecommission.org/resources/document/1085-locking-up-family-values-again

applying the one-year filing deadline to children, and making possible removal of children to a third country where the child may have no guardian. These changes do nothing to improve the enforcement of immigration laws, but rollback critical protections that ensure children are not repatriated to be subjected to further harm.

- **Detention of children is inappropriate.** According to international guidelines, prolonged immigration detention is inappropriate for all children, especially those who have experienced sexual or domestic violence or trafficking. This bill contemplates detaining children for the duration of the full adjudication of their claims for humanitarian protection. Detention of survivors of violence is re-traumatizing and can significantly reduce the ability of survivors to access counsel, mental health care, and community support, and makes it nearly impossible for them to adequately express their claims for protection. Prolonged detention of survivors, including children, therefore diminishes their access to due process and the legal protections that would otherwise be available to them.

Protection of Children Act to Amend the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, previously introduced as H.R. 5143

This bill incorporates many similar provisions to those in H.R. 5137, and is problematic for the same reasons. In addition, the bill targets supportive family of children entering the country.

- **Guardians of minors should not be forced into removal proceedings.** As described above, children are often survivors of violence and trauma and require support as they attempt to make their claims for humanitarian protection. Detention is known to be an inappropriate place for them, and release to trusted guardians is often their only option to be able to access social and legal services while they seek protection. Families and guardians who step forward to offer refugee children this support should not be penalized with removal proceedings.

Recommendations

Tahirih Justice Center offers the following recommendations for this Committee's consideration which will help improve the efficiency of our immigration system without rolling back key commitments to immigrant survivors of gender-based violence.

- **Legislation and funding should be directed towards care and adjudication, not detention and removal.** Legislation should prioritize the safety and wellbeing of women and children.
    - The proposed legislation discussed above places disproportionate emphasis on detention and removal while ignoring the fiscal burden of continued detention.
    - It is widely known and reported that detention of women and children costs $200-$300 per person, per day, while effective alternatives to detention can cost much less, topping out at $17 per person, per day. Legislation should emphasize the use of alternatives to detention and redirect funding to other needed areas.

- **Legislation should recognize the importance of credible fear interviews.** Each individual's fear of return to his or her country of nationality should at a minimum be assessed by asylum officers who are trained to interview traumatized women and children while using accurate translation. The impetus to enforce immigration laws does not justify lowered standards of protection for those who may qualify for protection under the same immigration laws. Instead, it demands a greater

vigilance to ensure due process especially for such vulnerable migrants as women and children. If anything, DHS must be adequately funded to increase and improve the training and capacity of asylum officers to adequately screen applicants through credible fear interviews.

- **Funding to hire additional immigration judges must be increased.** Increased funding for immigration courts is needed to prevent against worsening backlogs.
    - In some immigration courts, individuals have been scheduled for hearings as far out as 2019. Lengthy delays mean a longer period of uncertainty for the individuals awaiting adjudication and less efficiency for the immigration courts and staff, including immigration judges, government attorneys, and client counsel.

Thank you for the opportunity to offer this submission.

Archi Pyati
Director of Policy and Programs
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Statement of the U.S. Committee for Refugees and Immigrants
Submitted to the Committee on the Judiciary of the U.S. House of Representatives
Subcommittee on Immigration and Border Security for the Hearing on "Interior Immigration Enforcement Legislation"
February 11, 2015

The U.S. Committee for Refugees and Immigrants (USCRI), a national non-profit organization, submits this statement to the House Judiciary Committee Subcommittee on Immigration and Border Security. For the past 100 years USCRI has helped shape our nation's history, from publishing the first book on U.S. citizenship to helping refugees from war-torn places in Europe, Vietnam, Cuba, Burma, Iraq, and Sudan build new lives in the U.S. We have witnessed these newcomers contribute to our nation. The mission of USCRI is to address the needs and rights of persons in forced or voluntary migration worldwide by advancing fair and humane public policy, facilitating and providing direct professional services, and promoting the full participation of migrants in community life.

Since 2005, USCRI's Immigrant Children's Legal Program has worked with over 275 law firms and thousands of attorneys throughout the U.S. to provide unaccompanied immigrant children *pro bono* legal representation in their immigration proceedings. To date USCRI has made a positive difference in the lives of over 7,500 children. USCRI is also government contracted to help unaccompanied immigrant children, deemed to be in need of additional services due to extensive histories of abuse, trauma or neglect. USCRI has provided in-home social services and linkages to education, legal, health, and mental health providers to over 1,000 children. USCRI sees the direct impact of these programs and the needs of unaccompanied immigrant children.

USCRI has also opened a regional office in San Salvador, the capitol city of El Salvador. For the past four years, USCRI has been providing training for Central American government and embassy officials regarding the US immigration process and policy with a particular focus on the protection of children; human trafficking and unaccompanied minors. The local office will facilitate expansion of these training opportunities as well as enable the provision of direct services to repatriated children.

Recommendations

I. **Consider USCRI's Six Solutions** – USCRI offered these six policy solutions that will work to stop trafficking, protect children and save money discussed in depth below.

II. **Vote no on bills H.R. 2278, H.R. 5137, and H.R.5143 because they:**
- Roll back protections in the Trafficking Victims Protection Reauthorization Act (TVPRA) that protect children from return to traffickers or persecution by putting all unaccompanied children into expedited removal proceedings
- Put children at risk by narrowing the definition of an "unaccompanied child" and prohibit any government funding of counsel, including for children or those with mental disabilities, who would be left to represent themselves in complicated and legally complex immigration court proceedings

Summary of the Bills

H.R. 2278, the Strengthen and Fortify Enforcement Act (SAFE Act), would negatively impact individuals fleeing persecution, including refugees, asylum seekers, and stateless people. This legislation worsens expansive laws targeting terrorism that instead have consequences for refugees and asylees. It expands our immigration detention system that currently holds many torture survivors, asylum seekers, and others seeking protection in the United States from persecution in their home countries. Finally, it unwisely delegates the enforcement of our national immigration laws to state and local law enforcement agencies despite demonstrated instances of profiling and subsequent weakening of community safety.

H.R. 5137, the Asylum Reform and Border Protection Act of 2014 would overturn provisions in the Trafficking Victims Protection Reauthorization Act (TVPRA) that protect children from return to traffickers or persecution by putting all unaccompanied children into expedited removal proceedings**;** narrow the definition of an "unaccompanied child" and prohibit any government funding of counsel, including for children or those with mental disabilities, who would be left to represent themselves in complicated and legally complex immigration court proceedings.

H.R. 5143, the Protection of Children Act of 2014, would roll back protections in the bipartisan William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008

Access to Counsel is an Urgent Need

Immigrant children are particularly vulnerable when navigating the complexities of immigration law and procedures. USCRI was awarded a grant from the Administration for Children and Families Office of Refugee Resettlement (ORR) to support and expand direct legal representation services for unaccompanied minor children after their release from ORR custody. USCRI partners with local legal services programs to extend representation in immigration court hearings to children in eight regions of the U.S. Some children also receive the support of child advocates while their case is pending. The Wall Street Journal reported that between July 18 and September 30, 2014, about 85% of unaccompanied minors showed up for a scheduled first hearing, and about two-thirds of adults with children appeared, according to data obtained from the Executive Office for Immigration Review, the agency that oversees the nation's immigration courts.

It is essential that children facing immigration court proceedings or petitioning other federal agencies be afforded legal representation. Child immigrants are often forced to defend themselves against prosecution by an experienced government attorney in immigration court proceedings. These children have frequently experienced trauma, lack resources, and are generally unfamiliar with American laws, procedures, customs, agencies, and language—rendering them incapable of providing competent pro se representation. U.S. immigration law is a complex and constantly evolving area of practice that is often challenging to experienced attorneys, and therefore nearly impossible to navigate for noncitizen children lacking such specialized knowledge and language. Underfunded and overextended non-profits, law schools, and other community organizations have tried to address the problem through pro bono projects, "Know Your Rights" presentations, and legal orientation of sponsors. While pro bono initiatives have

succeeded in matching large law firm resources with children in need of representation, the number of children in need far exceed available pro bono volunteers.

Solutions that Can Work

Recommendations

This past summer USCRI went to the office of every member of Congress to not only call attention to the needs of unaccompanied immigrant children but to offer Six Policy Solutions.

1. **Respect Families**

Allow parents or legal guardians from El Salvador or Honduras who reside legally in the U.S. under Temporary Protected Status (TPS) to apply for their minor children to reunite. Their minor children may be residing either in the U.S. or in their country of origin and their status would be linked to their parents. This will immediately reduce immigration court backlogs and apply to an estimated 30-40% of the children surrendering at the borders.

2. **Keep the Children Out of the Courtroom**

Institute a Children's Corps based on the Asylum Officer Corps model. Children Corps officers would be trained in child-sensitive interview techniques and Best Interest Determination standards. They would determine if a child is eligible for legal relief such asylum, Special Immigrant Juvenile Status (SIJS), Trafficking Victims Visa (T-Visa) or other forms of legal relief. This would move the adjudication process from an adversarial, judicial process to an administrative process for most children. Those who are not eligible for legal status would be placed in removal proceedings. It is estimated that 40% to 60% may be eligible for legal protection.

3. **Help Children Avoid the Dangerous Journey**

We congratulate the Administration and the Department of State for the establishment of in-country processing for Central American minors, which allows applicants to apply for refugee status in their home country. In-country processing has been used in the past for the resettlement of Soviet Jews, Vietnamese, and Cubans, so they could avoid life-threatening escapes. Other countries in North or South America may also be willing to accept children for resettlement.

4. **Engage the UNHCR**

Unaccompanied children and adults can receive international protection from UNHCR after they have fled their home country. Through long established procedures, the UNHCR could then refer their cases for resettlement to a receiving country. The U.S. Department of State coordinates the program, the refugees are interviewed by a USCIS Officer and, if approved for entry, undergo extensive security and medical clearances prior to being moved to the U.S.

5. **Forgive the Children**

Grant Children's Protected Status (CPS) to all unaccompanied children who have already been brought into custody. As precedent, the Cubans and Haitians who arrived illegally during the Mariel Boatlift in 1980 were given Cuban/Haitian Entrant Status. Simultaneously with the announcement of CPS, the government could announce a cut-off-date for all future arrivals. After the cut-off date, new arrivals would be subject

to expedited removal. Granting CPS will relieve the government of the burden and cost of adjudicating the cases of thousands of unaccompanied minors. This will increase capacity for the Department of Homeland Security to handle other immigration cases.

6. Introduce Hope

Create a Regulated Entry Procedure (REP) for 10,000 Unaccompanied Immigrant Children per year per country from Honduras, El Salvador, and Guatemala. As precedent, to end the Mariel Boatlift in 1980, a lottery was established which allows 20,000 Cubans to enter the US every year. The hope of "winning" has kept Cubans from hazarding the ocean for the last 34 years. The Central American Children would be permitted to enter the U.S. legally through a regulated system managed and processed by the U.S. Government.

As Americans, we will not turn our backs on children.

For questions about this statement please contact Stacie Blake, Director of Government and Community Relations at sblake@uscridc.org or Esmeralda Lopez, Advocacy Officer at elopez@uscridc.org

Thank you for your consideration in this very important issue.

Statement of
Church World Service
The Episcopal Church
HIAS
International Rescue Committee
Jesuit Refugee Service USA
Jubilee Campaign USA
Lutheran Immigration and Refugee Service
US Conference of Catholic Bishops
Women's Refugee Commission and
World Relief

Submitted to the Committee on the Judiciary of the U.S. House of Representatives
Hearing on February 11, 2015
Interior Immigration Enforcement Legislation

The Strengthen and Fortify Enforcement Act, also known as the SAFE Act, would negatively impact individuals fleeing persecution, including refugees, asylum seekers, and stateless people. This legislation worsens expansive laws targeting terrorism that instead have consequences for refugees and asylees. It expands our immigration detention system that currently holds many torture survivors, asylum seekers, and others seeking protection in the United States from persecution in their home countries. Finally, it unwisely delegates the enforcement of our national immigration laws to state and local law enforcement agencies despite demonstrated instances of profiling and subsequent weakening of community safety.

In 2001, Congress enacted legislation that significantly broadened the definition of "terrorist activity." Because the definition is so broad, it is encompassing some activities that have no real-life connection to terrorism. Refugees who fled because they were forced to provide money or services to terrorists, and those who

supported freedom fighters rising up against the most repressive regimes in the world, are mislabeled as "terrorists" under the expansive law.

The provisions that created these new bars to admission are collectively known at the "TRIG" or "material support" provisions. For nearly a decade they have been causing tremendous unnecessary hardship for individuals who have fled persecution.

Under these provisions, many refugees seeking safety – including those with family already in the United States – are barred from entering the U.S. In addition, many refugees and asylees already granted protection and living in the U.S. legally are barred from obtaining green cards and reuniting with their spouses and children who remain in dangerous situations abroad.

A bipartisan coalition in Congress led by Senators Patrick Leahy (D-VT) and Jon Kyl (R-AZ) amended the law in 2007 to authorize the Administration to exempt persons with no actual connection to terrorism from the broad anti-terrorism provisions of the immigration law.
However, because of the sweeping nature of the law, and the Administration's slow implementation of its authority to grant exemptions in deserving cases, thousands of people in the United States and abroad have been stuck in legal limbo by immigration law definitions of "terrorism" that are widely acknowledged to be needlessly harming refugees the United States is committed to protect.

As Congress considers reforms to our immigration system, it should be fixing this problem for the thousands of refugees and asylees who have been mislabeled as "terrorists."

Instead the SAFE Act would make the problem even worse.

Sections 202 and 203, "Terrorist Bar to Good Moral Character" and "Terrorist Bar to Naturalization," would bar from a finding of good moral character and naturalization, anyone who is described as a "terrorist" under section 212(a)(3)(b) of the Immigration and Nationality Act. While on its face this may seem reasonable, in fact, this provision would bar law abiding refugees who have lived in the U.S. for years or even decades from naturalization.

The Department of Homeland Security (DHS) and the Department of Justice interpret the term "terrorist activity" to include *any amount and all types of support* to armed opposition to any established government, no matter how repressive, and even to include acts committed under duress. Support can include providing small amounts of money or food, attending meetings or joining groups, and even political speech. Under these agencies' interpretation of the law, *even if this "support" is coerced*, it can bar a refugee's admission to the United States or adjustment to permanent resident status.

Under this legal interpretation, even survivors of the Warsaw Ghetto uprising are considered "terrorists," as are Iraqis who rose up against Saddam Hussein and fought alongside Coalition forces, Afghan groups that fought the Soviet invasion of Afghanistan with U.S. support, democratic opposition parties in Sudan and the South Sudanese opposition movement (that is now the ruling party of South Sudan), nearly all Ethiopian and Eritrean political parties and movements, religious and other minority groups that fought the ruling military junta in Burma, and any group that has used armed force against the regime in Iran since the 1979 revolution.

The assumption that "aliens described in section 212(a)(3)" are "Persons Endangering the National Security" is a false one. This is one of the core problems with the INA's terrorism-related

inadmissibility grounds, and is also the reason why Congress gave the Administration statutory authority to grant people exemptions from those grounds. We are concerned that this provision could even result in the denial of naturalization for refugees who have gone through the arduous process of being granted an exemption from the terrorism bars by the Department of Homeland Security.

Section 206, "Background and Security Checks" would require DHS to complete background and security checks before granting any immigration application, including for employment authorization, or any immigrant or non-immigrant petition, or before issuing any proof of status to a person. This could have serious consequences for applicants for immigration benefits or relief, including those who apply for asylum, whose security and background checks are grossly delayed for reasons beyond their control and who are ultimately cleared. Individuals mislabeled as terrorists whose cases have been on hold while the Administration slowly develops procedures for issuing exemptions from the terrorism bars under the Kyl-Leahy agreement would be denied work authorization while their cases drag out for years.

Additionally, **Title I** of the SAFE Act would expand the role of state and local law enforcement agencies in enforcing federal immigration law. By granting states and localities full authority to create, implement, and enforce immigration laws, the Act would hand state and local police officers vast authority without federal oversight. The approach could lead to racial profiling and discrimination. Those who "look undocumented," including refugees and asylees, would be subject to law enforcement stops, arrests, and detention. This approach could decrease public safety by fostering a fear of law enforcement in migrant and refugee communities making survivors and witnesses of crimes less willing to cooperate with law enforcement.

Finally, **Section 107** of the SAFE Act requires DHS to add

additional detention facilities to the network of over 200 jails and jail-like facilities used to detain individuals in immigration proceedings or awaiting repatriation. **Section 310** also eliminates current prohibitions on indefinite detention of individuals for immigration purposes. Many individuals seeking protection in the United States from persecution and torture in their home countries would be directly harmed by these changes. Notably, stateless individuals often spend significant lengths of time in immigration detention given their inability to obtain travel documents.

The SAFE Act undermines our nation's legal obligations to refugees and would cause unnecessary hardship for those who seek and those who have already proved they are legitimate refugees and have received protection in the United States.

LAW ENFORCEMENT
IMMIGRATION TASK FORCE

February 10, 2015

The Honorable Trey Gowdy
Chairman, Subcommittee on Immigration and Border Security
1404 Longworth House Office Building
Washington, DC 20515

The Honorable Zoe Lofgren
Ranking Member, Subcommittee on Immigration and Border Security
1401 Longworth House Office Building
Washington, DC 20515

Dear Chairman Gowdy and Ranking Member Lofgren:

We, the undersigned law enforcement officers, write to express our opposition to the Strengthen and Fortify Enforcement (SAFE) Act, which was previously introduced in the 113th Congress as H.R. 2278. By requiring state and local law enforcement to become immigration agents, the SAFE Act distracts local law enforcement from our core public safety mission.

Immigration enforcement is, first and foremost, a federal responsibility. Immigration enforcement at the state and local levels diverts limited resources from public safety. State and local law enforcement agencies face tight budgets and should not be charged with the federal government's role in enforcing federal immigration laws. Rather than apprehending and removing immigrants who have no criminal background or affiliation and are merely seeking to work or reunite with family, it is more important for state and local law enforcement to focus limited resources and funding on true threats to public safety and security.

Additionally, state and local law enforcement need the trust of our communities to do our primary job, which is apprehending criminals and protecting the public. Immigrants should feel safe in their communities and comfortable calling upon law enforcement to report crimes, serving as witnesses, and calling for help in emergencies. This improves community policing and safety for everyone.

The SAFE Act threatens to undermine trust between immigrant communities and state and local law enforcement. When state and local law enforcement agencies are required to enforce federal immigration laws, undocumented residents may become fearful that they, or people they know, will be exposed to immigration officials and are less likely to cooperate. This undermines trust between law enforcement and these communities, creating breeding grounds for criminal enterprises.

Rather than requiring state and local law enforcement agencies to engage in additional immigration enforcement activities, Congress should focus on overdue reforms to allow state and local law enforcement to focus their resources on true threats — dangerous criminals and criminal organizations. We believe that state and local law enforcement must work together with federal authorities to protect our communities and that we can best serve our communities by leaving the enforcement of immigration laws to the federal government.

We continue to recognize that what our broken system truly needs is a permanent legislative solution. We believe the SAFE Act is the wrong approach. Our immigration problem is a national problem deserving of a national approach.

One of the key lessons learned from past reform efforts is that *all* parts of our complex immigration system are interrelated, and must be dealt with in a cohesive manner, or we will see the results of unintended consequences and will need to revisit the issues again in the future as the failings become apparent. Movement to a piecemeal, enforcement-only model that foists responsibilities on state and local law enforcement is not the answer. The 114th Congress has a tremendous opportunity to fix our broken immigration system, advancing reforms that will help the economy and secure our borders. We look forward to continuing this positive discussion on how best to move forward with passing broad immigration reform into law.

Sincerely,

Chief J. Thomas Manger, President, Major Cities Chiefs Police Association (MCCA)

Chief Art Acevedo, Austin, Texas, Police Department

Chief Richard Biehl, Dayton, Ohio, Police Department

Chief Chris Burbank, Salt Lake City, Utah, Police Department

Sheriff Adell Dobey, Edgefield Country, South Carolina,Sheriff's Office

Sheriff Clarence Dupnik, Pima County, Arizona, Sheriff's Office

Sheriff Tony Estrada, Santa Cruz County, Arizona, Sheriff's Office

Sheriff Paul Fitzgerald, Story County, Iowa, Sheriff's Office

Assistant Chief Randy Gaber, Madison, Wisconsin, Police Department

Chief Ron Haddad, Dearborn, Michigan, Police Department

Chief James Hawkins, Garden City, Kansas, Police Department

Chief Dwight Henninger, Vail, Colorado, Police Department

Chief Michael Koval, Madison, Wisconsin, Police Department

Chief Jose Lopez, Durham, North Carolina, Police Department

Sheriff Leon Lott, Richland County, South Carolina, Sheriff's Office

Chief Ron Teachman, South Bend, Indiana, Police Department

Chief Mike Tupper, Marshalltown, Iowa, Police Department

Sheriff Lupe Valdez, Dallas County, Texas, Sheriff's Office

Sheriff Donny Youngblood, Kern County, California, Sheriff's Office

Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

November 20, 2014

MEMORANDUM FOR: Thomas S. Winkowski
Acting Director
U.S. Immigration and Customs Enforcement

Megan Mack
Officer
Office of Civil Rights and Civil Liberties

Philip A. McNamara
Assistant Secretary for Intergovernmental Affairs

FROM: Jeh Charles Johnson
Secretary

SUBJECT: **Secure Communities**

The Secure Communities program, as we know it, will be discontinued.

The goal of Secure Communities was to more effectively identify and facilitate the removal of criminal aliens in the custody of state and local law enforcement agencies. But the reality is the program has attracted a great deal of criticism, is widely misunderstood, and is embroiled in litigation; its very name has become a symbol for general hostility toward the enforcement of our immigration laws. Governors, mayors, and state and local law enforcement officials around the country have increasingly refused to cooperate with the program, and many have issued executive orders or signed laws prohibiting such cooperation. A number of federal courts have rejected the authority of state and local law enforcement agencies to detain immigrants pursuant to federal detainers issued under the current Secure Communities program.

The overarching goal of Secure Communities remains in my view a valid and important law enforcement objective, but a fresh start and a new program are necessary. As recommended by the Homeland Security Advisory Council Task Force, Secure Communities "must be implemented in a way that supports community policing and sustains the trust of all elements of the community in working with local law enforcement."

Accordingly, I am directing U.S. Immigration and Customs Enforcement (ICE) to discontinue Secure Communities. ICE should put in its place a program that will continue to rely on fingerprint-based biometric data submitted during bookings by state and local law enforcement agencies to the Federal Bureau of Investigation for criminal background checks. However, ICE should only seek the transfer of an alien in the custody of state or local law enforcement through the new program when the alien has been convicted of an offense listed in Priority 1 (a), (c), (d), and (e) and Priority 2 (a) and (b) of the November 20, 2014 Policies for the Apprehension, Detention and Removal of Undocumented Immigrants Memorandum, or when, in the judgment of an ICE Field Office Director, the alien otherwise poses a danger to national security. In other words, unless the alien poses a demonstrable risk to national security, enforcement actions through the new program will only be taken against aliens who are convicted of specifically enumerated crimes.

Further, to address the increasing number of federal court decisions that hold that detainer-based detention by state and local law enforcement agencies violates the Fourth Amendment,[1] I am directing ICE to replace requests for detention (*i.e.*, requests that an agency hold an individual beyond the point at which they would otherwise be released) with requests for notification (*i.e.*, requests that state or local law enforcement notify ICE of a pending release during the time that person is otherwise in custody under state or local authority).

If in special circumstances ICE seeks to issue a request for detention (rather than a request for notification), it must specify that the person is subject to a final order of removal or there is other sufficient probable cause to find that the person is a removable alien, thereby addressing the Fourth Amendment concerns raised in recent federal court decisions.

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[1] *See, e.g.*, *Miranda-Olivares*, 2014 WL 1414305, at *11 (D. Ore. Apr. 11, 2014) (holding that county violated the Fourth Amendment by relying on an ICE detainer that did not provide probable cause regarding removability); *Morales v. Chadbourne*, 996 F. Supp. 2d 19, 29 (D.R.I. 2014) (concluding that detention pursuant to an immigration detainer "for purposes of mere investigation is not permitted"). *See also Moreno v. Napolitano*, Case No. 11 C 5452, 2014 WL 4814776 (N.D. Ill. Sept. 29, 2014) (denying judgment on the pleadings to the government on plaintiffs' claim that ICE's detainer procedures violate probable cause requirements); *Gonzalez v. ICE*, Case No. 2:13-cv-0441-BRO-FFM, at 12-13 (C.D. Cal. July 28, 2014) (granting the government's motion to dismiss, but allowing plaintiffs to file an amended complaint and noting that plaintiffs "have sufficiently pleaded that Defendants exceeded their authorized power" by issuing "immigration detainers without probable cause resulting in unlawful detention"); *Villars v. Kubiatoski*, --- F. Supp. 2d ----, 2014 WL 1795631, at * 10 (N.D. Ill. May 5, 2014) (rejecting dismissal of Fourth Amendment claims concerning an ICE detainer issued "without probable cause that Villars committed a violation of immigration laws"); *Galarza v. Szalczyk*, Civ. Action No. 10-cv-06815, 2012 WL 1080020, at *14 (E.D. Penn. March 30, 2012) (denying qualified immunity to immigration officials for unlawful detention on an immigration detainer issued without probable cause), rev'd and remanded on other grounds, 745 F.3d 634 (reversing district court's finding of no municipal liability); *Uroza v. Salt Lake City*, No. 2:11CV713DAK, 2013 WL 653968, at *6-7 (D. Utah Feb. 21, 2013) (denying dismissal on qualified immunity grounds where plaintiff claimed to have been held on an immigration detainer issued without probable cause). *Cf. Makowski v. United States*, --- F. Supp. 2d ---, 2014 WL 1089119, at *10 (N.D. Ill. 2014) (concluding that plaintiff stated a plausible false imprisonment claim against the United States where he was held on a detainer without probable cause).

This new program should be referred to as the "Priority Enforcement Program" or "PEP."

Nothing in this memorandum shall prevent ICE from seeking the transfer of an alien from a state or local law enforcement agency when ICE has otherwise determined that the alien is a priority under the November 20, 2014 Policies for the Apprehension, Detention and Removal of Undocumented Immigrants Memorandum and the state or locality agrees to cooperate with such transfer. DHS will monitor these activities at the state and local level, including through the collection and analysis of data, to detect inappropriate use to support or engage in biased policing, and will establish effective remedial measures to stop any such misuses.[2] I direct the Office of Civil Rights and Civil Liberties to develop and implement a plan to monitor state and local law enforcement agencies participating in such transfers.

Finally, acquainting state and local governments, and their law enforcement components, with this policy change will be crucial to its success. I therefore direct the Assistant Secretary for Intergovernmental Affairs to formulate a plan and coordinate an effort to engage state and local governments about this and related changes to our enforcement policies. I am willing to personally participate in these discussions.

[2] *See* Homeland Security Advisory Council, *Task Force on Secure Communities Findings and Recommendations*, September 2011.

NISKANEN CENTER

February 9, 2015

Examining the UAC-DACA Link

New Data Show Child Migrant Crisis Began Before DACA

BY DAVID BIER

EXECUTIVE SUMMARY

Since 2012, Deferred Action for Childhood Arrivals (DACA) has granted relief from deportation to illegal immigrants who, before June 2007, entered the United States as children. This month, the administration will begin to accept applications from anyone who arrived as a child before 2010. While this policy is understandably attacked as executive overreach, some critics further claim that it motivated a rush of migrant children to the Southwest border.

Newly available data—analyzed in this study for the first time—show that the massive increase in unaccompanied alien children (UACs) began before DACA was even announced in June 2012. Without knowledge of the program, the children who came to the border in early 2012 could not have been motivated by DACA. In fact, fewer UACs entered illegally in the 3 months after DACA than the 3 months before it.

In fact, fewer children entered the United States illegally in 2014 than in 2004, indicating that illegal child migration is not a recent phenomenon. While the percentage of illegal entries by children has increased, this is mainly because entry for adults has become much more difficult due to greater border security and the absence of legal avenues for admission. Congress should respond to the expansion of DACA by enacting its own reforms without fear that those reforms will launch a rush to the border.

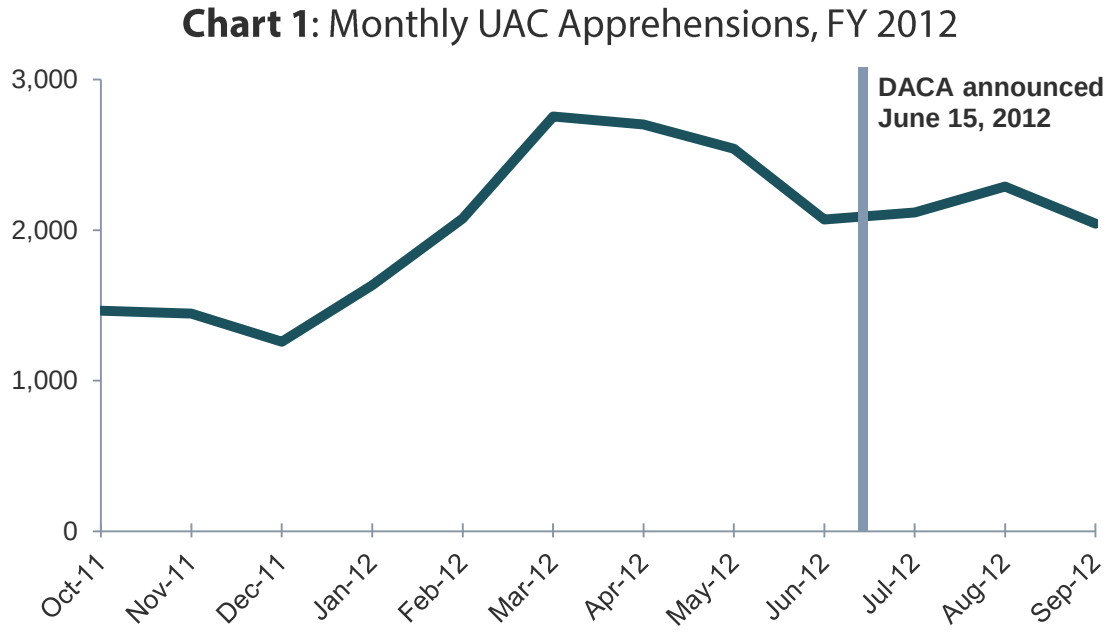
DACA'S IMPLEMENTATION AND REACTION

Under DACA, the Department of Homeland Security (DHS) formally defers for 2 years the deportation of illegal aliens who were under the age of 31 on June 15, 2012, had no lawful status on that date, and who entered the United States prior to June 15, 2007 as a child under the age of 16.[1] DHS began to accept applications in August 2012 and has since approved over 700,000 applications.[2] In November 2014, the president announced DHS would expand DACA to accept applications from anyone who arrived in the United States as a child prior to January 2010.[3]

Almost immediately critics argued that DACA was encouraging illegal immigration and enticing young children to come to the border.[4] In August 2014, the House passed a bill to end DACA mainly based on the argument that it motivated young immigration.[5] In his press release on the bill, House Judiciary Chairman Bob Goodlatte said, "Since the implementation of DACA, the number of unaccompanied alien minors seeking to enter the U.S. illegally has risen dramatically."[6]

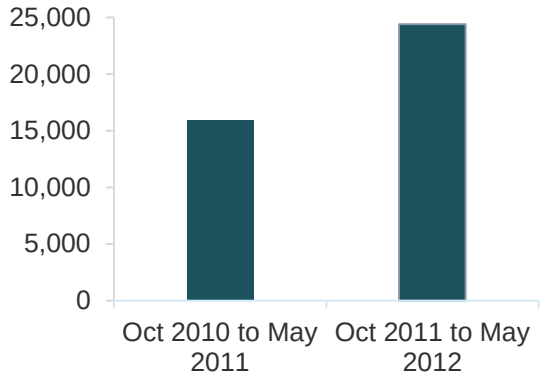
UNACCOMPANIED ALIEN CHILDREN

This DACA-UAC narrative initially appeared to be plausible based on the annual numbers of apprehensions of unaccompanied children. Fiscal year 2012, which began in October 2011, did see a 53 percent increase in the number of apprehensions over 2012. Recently, however, Customs and Border Protection released the monthly data on UAC apprehensions from 2012.[7] These numbers clearly confirm that the surge started well before the June announcement.



As Chart 2 shows, October through May of FY 2012 saw a more than 50 percent increase over the same period in FY 2011.[8]

Chart 2: UAC Apprehensions in FY 2011 vs. FY 2012, pre-DACA

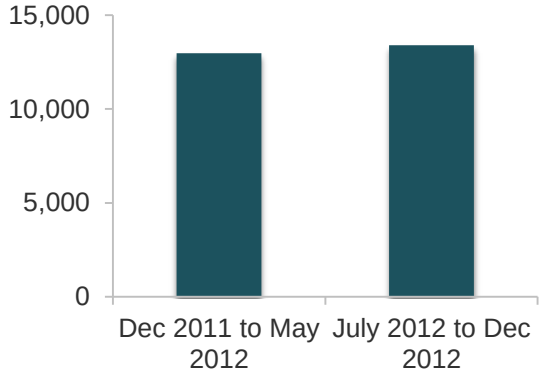


In the months leading up to the president's DACA announcement, Border Patrol officials and humanitarian groups expressed alarm about the number of children fleeing Central American countries, mainly from Honduras, El Salvador, and Guatemala. By early June 2012, Mexican authorities were catching twice as many Central Americans illegally traveling through Mexico as in 2011.[9] So many children were apprehended during the early part of FY 2012 that Lackland Air Force Base in San Antonio was used to house the children, and Texas Governor Rick Perry wrote a letter to the president in May to demand the federal government step up its efforts to control the flow.[10]

These events could still be blamed on DACA if prospective child migrants anticipated such an announcement. Leaked memos in 2010 showed that the administration was planning for DACA should comprehensive immigration reform fail,[11] but by 2012, the idea was not on the media's radar. The preparation for DACA's implementation was so closely guarded that many high-level DHS officials were surprised by the announcement.[12] Moreover, the president had, for years, claimed that he needed Congress to act to slow deportations.[13] Rumblings about DACA could not have motivated minors who came to the border in early 2012.

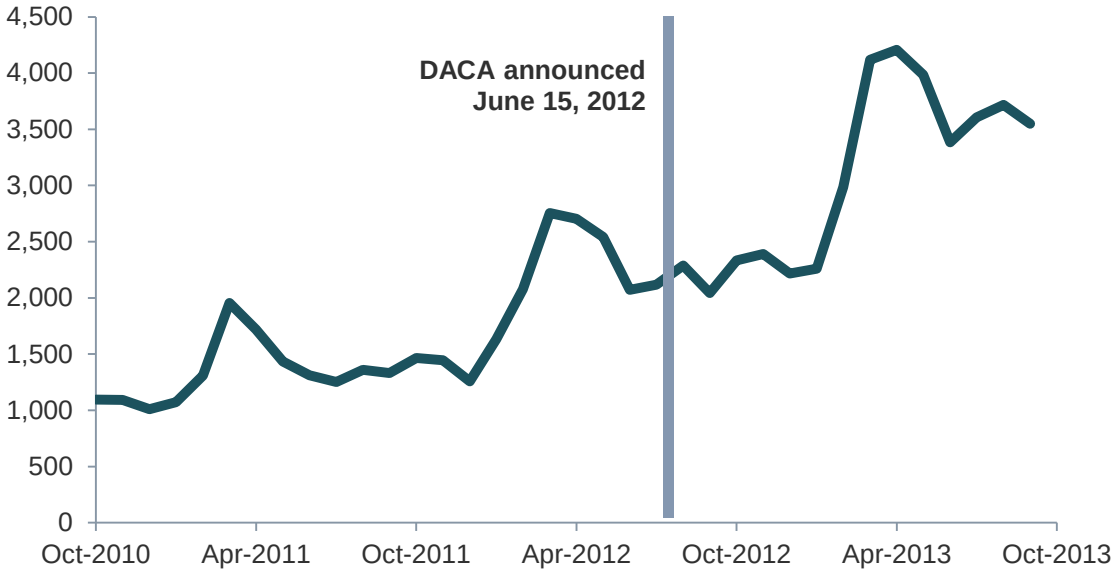
The monthly apprehension figures do not reveal a response by Central American children to DACA's announcement either. Border Patrol actually caught 25 percent fewer UACs in the 3 months after the president's decision than in the 3 months before it.[14] Virtually the same numbers were apprehended in the 6 months before the month of DACA's announcement as the 6 months after it (Chart 3).

Chart 3: UAC Apprehensions 6 Months Before and After DACA



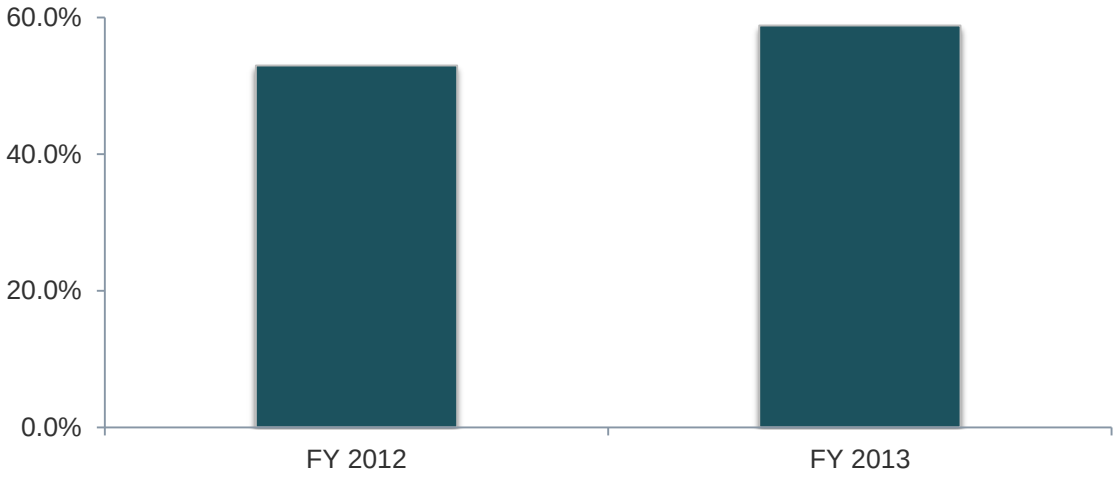
As seen in Chart 4, the number of apprehensions actually dropped in June 2012, and it would be another 8 months after DACA was announced before apprehensions exceeded those in May 2012.

Chart 4: Monthly UAC Apprehensions, FY 2011 - 2013



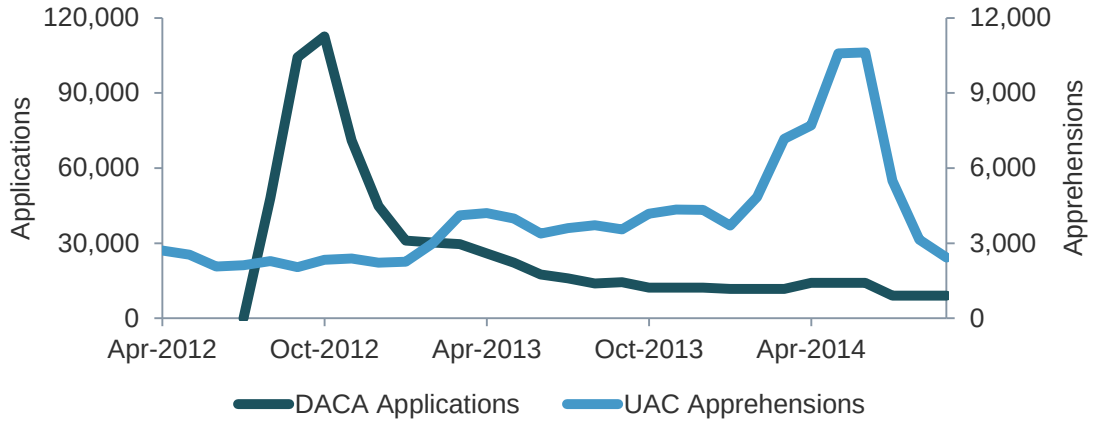
While it is true that UAC apprehensions increased in the year following DACA's implementation, they also increased in the prior year. DACA did little, if anything, to affect the upward trend of child migration in the year after its implementation. The annual rate of increase in UACs apprehended remained almost constant from 2012 through 2013, as seen in Chart 5.

Chart 5: Annual Growth in UAC Apprehensions



Another sign that DACA did not cause the increased border crossings can be seen in the number of DACA applications relative to the number of UACs, as displayed in Chart 6. The new monthly figures reveal a negative correlation between the number of DACA applications and the number of UAC apprehensions.[15]

Chart 6: Monthly UAC Apprehensions vs. New DACA Applications



DACA did not cause the child migrant crisis. In fact, although the U.S. Border Patrol appears to have only recorded the number of UACs since 2008, the overall number of apprehended children—unaccompanied and accompanied—is currently lower than it was a decade ago.[16] As Chart 7 shows, annual juvenile apprehensions have simply returned to pre-recession levels.[17] In other words, the child migrant crisis is not unique to this presidency.

Chart 7: Annual Juvenile Apprehensions

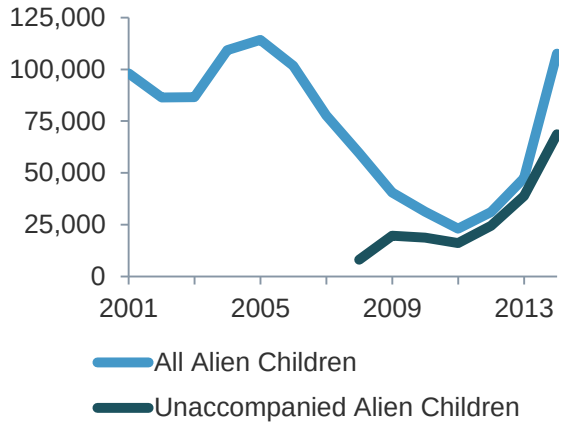
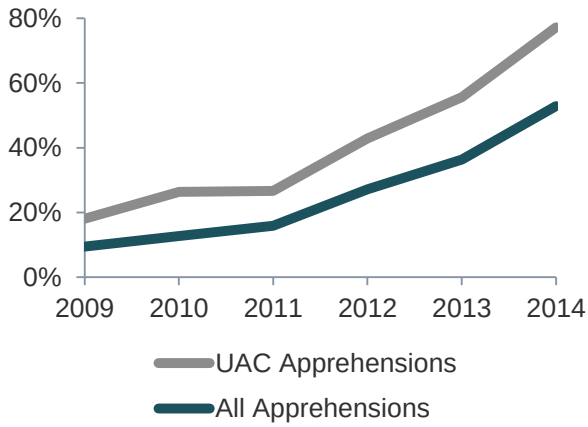


Chart 8: Non-Mexicans as a Share of All Apprehensions



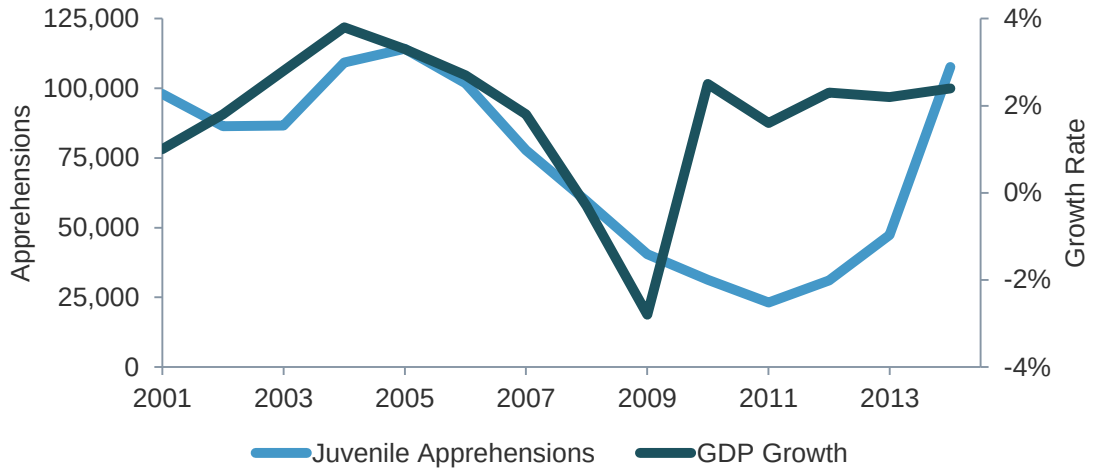
Nearly all UAC apprehensions resulted from increased migration of children from Central America. As seen in Chart 8, this change reflects the general trend toward migration from non-Mexican countries, not American policies toward child migrants. Even though migration flows of Mexican illegal aliens reversed beginning in 2008, the number of Central Americans in the United States illegally actually rose 24 percent from 2008 to 2012.[18] At the same time, non-Mexican border crossers rose from 5 percent of the total a decade ago to a majority for the first time last year.[19]

The main reason why this wave of children has received more attention than the prior wave is that Mexican children are immediately removed and handed over to Mexican authorities. By contrast, Central American children are handed over to Health and Human Services, which must then attempt to place the child with a guardian pending an immigration court hearing, all of which can be a very lengthy and expensive process.

EXPLANATIONS FOR THE RECENT UAC WAVE

Four explanations for the increases in illegal entry by Central American children present themselves. First, economic conditions in the United States have improved, and child apprehensions over the last decade and a half appear to roughly track economic growth, as seen in Chart 9. Economic conditions could affect immigration decisions not only if the child is pursuing a job, but also if the family in the U.S. is more financially secure and can more easily afford to transport their children across the border and care for them once they arrive.[20]

Chart 9: Juvenile Apprehensions and US GDP Growth



The second explanation for the recent increase is the escalating violence in Central America. From 2007 to 2012 (the most recent year for which data is available), the homicide rate in Central America rose from about 15 homicides per 100,000 to over 26.[21] The higher homicide rates are driven primarily by three countries: El Salvador, Honduras, and Guatemala, countries with some of the highest murder rates in the world.[22]

These countries were also the source countries for 75 percent of all UACs in 2014, and 98.3 percent of the increase in UACs since 2009.[23] As one researcher noted, Honduras was more dangerous for civilians in 2012 than Iraq in 2007.[24] In interviews with the United Nations in 2014, nearly half of all children apprehended at the border said that violence was a factor in their decision to immigrate.[25]

Chart 10: North American Murder Rates

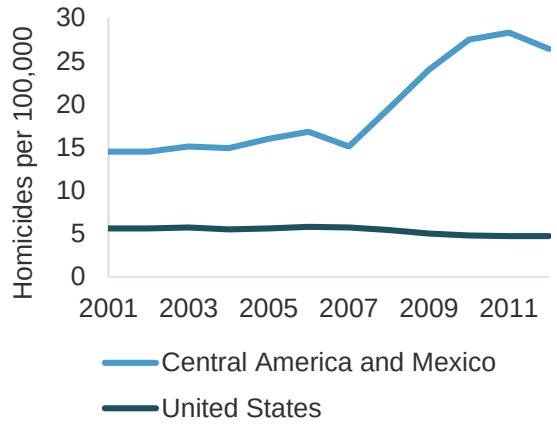
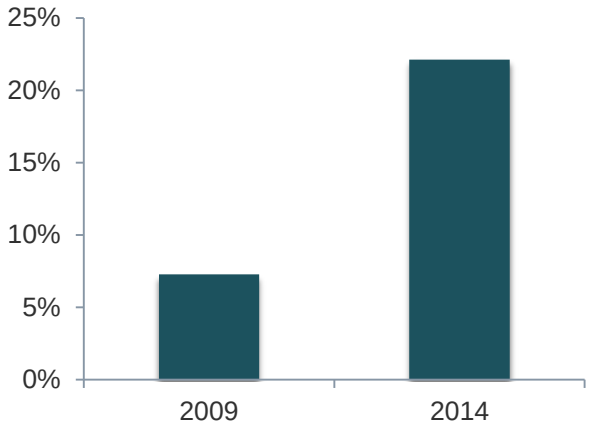


Chart 11: Children as a Share of All Apprehensions



The final two likely explanations have to do with the shift in the overall composition of illegal immigration away from adult laborers toward children and family units. Not only are more children migrating as percentage of all illegal entries, the children are also, on average, younger. The number of children under the age of 12 increased from 9 percent to 16 percent from 2013 to 2014.[26] It is likely that this activity is a response to two U.S. policies – the increased intensity of border enforcement and the differential legal treatment of children and family units.

As the intensity of border enforcement has increased,[27] the price of border crossing has also increased, as Chart 12 shows.[28] Smuggling costs from Central America are even higher than those from Mexico, averaging about $7,500 per crossing.[29] Higher prices discourage illegal entries by adult migrants at the margin. Adult laborers tend to respond to increased enforcement not by refusing to come at all, but by extending their illegal stay in the United States, as seen in Chart 13.[30]

Chart 12: Smuggling Costs vs. Border Agents

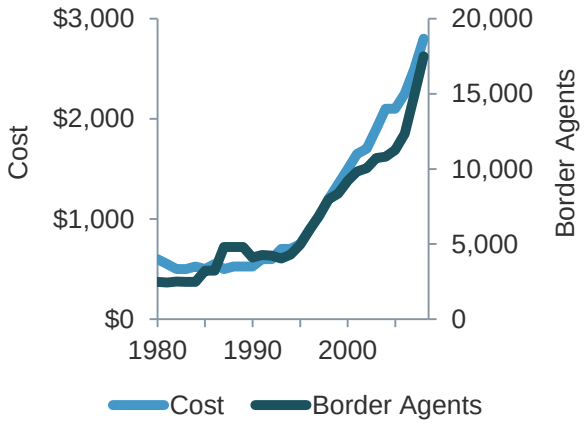
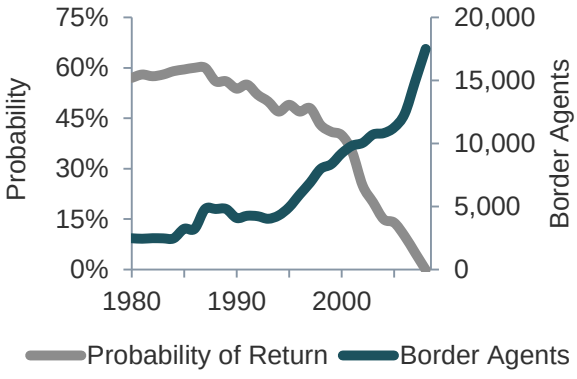
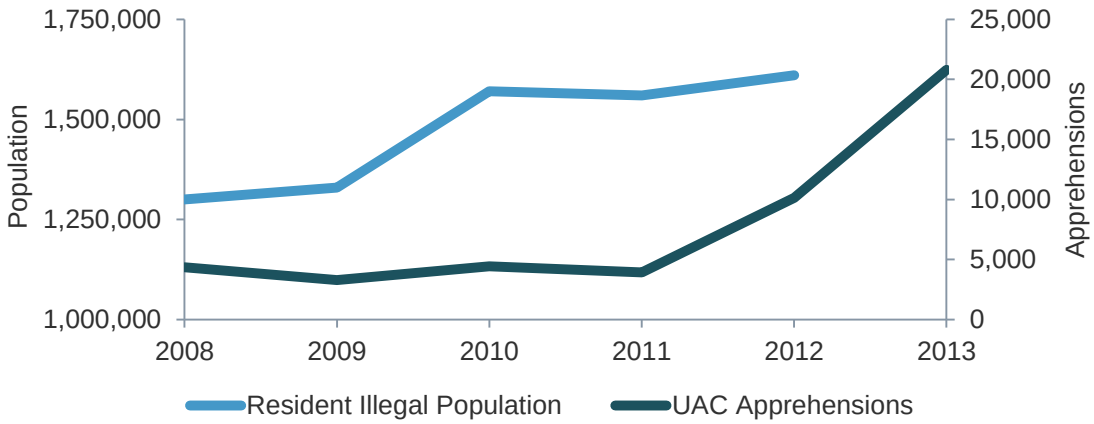


Chart 13: Probability of Return Home within 1 Year of Entry vs. Border Agents



Rather than cycling back and forth across the border almost annually as they did in the 1980s, immigrants remained illegally for increasingly longer periods, particularly since 2001. These extended stays encourage illegal immigrants to send for children left behind in their home country. These laborers likely leave their children initially to find employment and save enough to send for their children, a process termed "stage migration."[31] Chart 14 shows how the increase in illegal residents from El Salvador, Guatemala, and Honduras in 2010 was followed 2 years later by large increases in UAC apprehensions from those countries.[32]

Chart 14: Illegal Immigrants from El Salvador, Guatemala, and Honduras



Anecdotal reports from Central America support the view that human smugglers are actively recruiting children.[33] Smugglers appear to have responded to the lower demand from would-be adult migrants by informing juveniles and their parents that even if Border Patrol apprehended the children, they would be guaranteed access to the United States. This sales pitch has the benefit of actually being true, but not because of DACA.

The Trafficking Victims Protection Reauthorization Act of 2008 codified procedures created in the 1990s under which Mexican children were removed without a court hearing unless they told Border Patrol that they feared persecution or were trafficked. Mexican authorities take custody of almost all Mexican children, often in less than 48 hours,[34] but all Central American UACs are granted a removal hearing before an immigration judge and are released to a guardian in the U.S.—a fact now well known in Central America.[35]

Hearings are often delayed for several years due to an increasingly long backlog of removal cases.[36] In a May 2014 survey conducted by Border Patrol agents, 95 percent of child migrants expected that they would receive a "permiso" or a free pass to enter, which they identified as the Notice to Appear in court for a removal hearing before an immigration judge.[37] In other words, smugglers began to use the dysfunctional hearing process as a tool to encourage children to journey from Central America to the United States.

CONCLUSION

As President Obama proceeds with his plan to expand administrative relief to more individuals under DACA, Congress should focus on the legality of that decision, not on its potential consequences for border security. The overwhelming weight of evidence reveals that DACA was not a factor in the recent influx of children.[38]

The Obama administration blamed the crisis on the Trafficking Victims Protection Reauthorization Act and human smugglers who use the law to their advantage.[39] While those factors did contribute to the problem, the administration's narrative overlooks the reality that human smugglers only changed strategy after entry for adults became much more difficult. Adults remained in the United States rather than moving back and forth from their home countries. Smugglers discovered that the only group for whom entry could be assured was children.

The president is correct that the removal process needs greater efficiency, but that alone will not address the underlying causes of illegal child migration. In order to prevent future crises, Congress should create worker visas that allow adult migrant workers to circulate legally between their home countries and the United States for employment. This would greatly reduce the incentive to pay thousands of dollars to smuggle their children across the border. Remittances and work experience in the United States would also increase the standard of living of workers in Central America, which would encourage many migrant workers to return home voluntarily after working in the United States.

APPENDIX : TABLES

Table 1: Annual UAC Apprehensions

2008	2009	2010	2011	2012	2013	2014
8,041	19,668	18,634	15,949	24,403	38,759	68,541

Table 2: Monthly UAC Apprehensions

	FY 2011	FY 2012	FY 2013	FY 2014
October	1,097	1,465	2,333	4,181
November	1,092	1,446	2,392	4,344
December	1,011	1,259	2,218	4,327
January	1,073	1,635	2,260	3,706
February	1,310	2,077	2,986	4,845
March	1,956	2,755	4,120	7,176
April	1,718	2,703	4,206	7,701
May	1,435	2,541	3,985	10,578
June	1,313	2,071	3,384	10,620
July	1,253	2,118	3,607	5,499
August	1,360	2,289	3,718	3,138
September	1,331	2,044	3,550	2,426

Table 3: Monthly Initial DACA Applications

	FY 2012	FY 2013	FY 2014
October	-	112,660	12,250
November	-	71,114	12,250
December	-	44,815	12,250
January	-	31,034	11,730
February	-	30,255	11,730
March	-	29,688	11,730
April	-	25,972	14,218
May	-	22,215	14,218
June	-	17,485	14,218
July	-	15,986	8,998
August	48,051	13,960	8,998
September	104,371	14,403	8,998

Table 4: Annual Total Juvenile Apprehensions

2001	**2002**	**2003**	**2004**	**2005**	**2006**	**2007**
97,954	86,433	86,606	109,285	114,222	101,778	77,778
2008	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**
59,578	40,461	31,291	23,089	31,029	47,397	107,613

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Vatican City, December 19, 2014

Dear Brother:

I thank you for your letter, in which you make me aware of the young people from the Kino Teens who work on behalf of migrants in that border city, and who live daily the immigration phenomenon that generates all sorts of inhumane consequences.

I also received several letters from these young persons. I beg you to give them my regards, along with my grateful acknowledgement for their generous commitment and above all, my nearness and encouragement to them not to tire in their labor of edifying love of others and embrace against discrimination and exclusion.

These young people, who have come to learn how to strive against the propagation of stereotypes, from people who only see in immigration a source of illegality, social conflict and violence, can contribute much to show the world a Church, without borders, as Mother of all; a church that extends to the world the culture of solidarity and care for the people and families that are affected many times by heart-rending circumstances. I am also pleased to see that in their project, these young people do not forget the spiritual and religious attention, which provides a source of hope for those that have been hardest hit in their lives.

Dear Brother, your letter and the ones from the Lourdes Catholic School students have touched my heart, not only because of the drama they describe, but also for the hope they manifest. I wish for all of you a Holy and Happy Christmas.

I beg you to please pray and ask them to pray for me. May Jesus Christ bless you and the Holy Virgin care for you.

Fraternally,

Francisco

Vaticano, 19 de diciembre de 2014

Querido Hermano:

Agradezco tu carta, con la que me haces partícipe del compromiso de los jóvenes del *Kino Teens* en favor de los migrantes, en esa ciudad fronteriza, que convive cotidianamente con el fenómeno de la emigración, con sus secuelas de situaciones inhumanas de todo tipo que genera.

También me envías algunas cartas de estos jóvenes. Te ruego que los saludes de mi parte, les hagas llegar mi gratitud y reconocimiento por su generosa entrega y, sobre todo, mi cercanía y aliento para que no se cansen de construir fraternidad y acogida, contra la disgregación y la exclusión.

Ellos, que saben vivir a contracorriente de tantos estereotipos muy aireados, que sólo ven en la emigración una fuente de ilegalidad, conflictos sociales y violencia, pueden contribuir mucho a mostrar a la Iglesia sin fronteras, como madre de todos, que extiende por el mundo la cultura de la solidaridad y de la atención a las personas y familias que se encuentran en situaciones tantas veces desgarradoras. Y me alegra saber que los proyectos de estos jóvenes no olvidan la atención espiritual y religiosa, fuente de esperanza para los más golpeados por la vida.

Querido Hermano, tu carta y las de estos estudiantes de la Escuela Católica de Lourdes de Nogales, me han llegado al corazón, por el drama que describen, pero también por la ilusión que manifiestan. A todos les deseo una santa y feliz celebración de la Navidad.

Por favor, te pido que reces y hagas rezar por mí. Que Jesús te bendiga y la Virgen Santa te cuide.

Fraternalmente,

Francisco