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# UNACCOMPANIED CHILD MIGRATION TO THE UNITED STATES

## THE TENSION BETWEEN PROTECTION AND PREVENTION

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By Marc R. Rosenblum

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April 2015

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## Executive Summary

Between 2011 and 2014, several hundred thousand Central American women and children attempted to enter the United States on humanitarian grounds, with arrivals surging to record highs during the spring and summer of 2014. While some of these migrants had genuine humanitarian claims, others were motivated by circumstances not eligible for protection under U.S. and international law, such as generalized violence, endemic poverty, and a desire to reconnect with family members.

The arrivals created a significant policy challenge for two reasons. First, the dramatic pace of new inflows overwhelmed existing U.S. immigrant detention facilities and already strained adjudication capacity—resulting in wait times of up to two years for minors to appear before an immigration judge. Second, these arrivals differed significantly from other illegal flows, and thus were subject to special procedures. While most unauthorized immigrants apprehended at the U.S.-Mexico border are subject to speedy administrative deportation procedures, the recent arrivals of women and children from primarily three Central American countries represent a complex, mixed flow with unique vulnerabilities and requirements.

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*Ultimately, the tension between protection and enforcement can only be resolved on a case-by-case basis.*

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The central policy challenge for the United States—raised anew by this crisis—is how to provide protection for genuinely vulnerable migrants while restricting the admission of unauthorized immigrants who do not have valid humanitarian claims. Ultimately, the tension between protection and enforcement can only be resolved on a case-by-case basis through adjudication processes that determine whether or not individuals are eligible for relief. Lacking timely and fair mechanisms to make these determinations, the U.S. immigration enforcement system has failed either to deter additional unauthorized flows or to provide adequate protection to vulnerable groups.

Surging inflows prompted a multifaceted regional policy response from the United States, Mexico, and the migrants' main countries of origin in Central America: El Salvador, Guatemala, and Honduras (together known as the Northern Triangle). Beginning in May 2014, the Obama administration strengthened cross-agency coordination, allocated additional enforcement resources to the U.S.-Mexico border, added detention space to accommodate arriving family units, created a new child and family court docket to ensure speedy immigration hearing start dates, and negotiated cooperative deterrence and enforcement programs with Mexico and Central American countries. In December 2014 it introduced in-country processing in the three Northern Triangle countries for specific groups of applicants.

The short-term policies put in place by the United States and its regional partners were a success, in that an inflow widely seen as a crisis—thousands of women and children risking their lives to migrate illegally through Mexico to the United States—was greatly reduced in a matter of months. After peaking at 10,622 arrivals in June 2014, the number of unaccompanied child arrivals at the United States' Southwest border had fallen to 2,424 by September—the lowest monthly total in two years—and arrivals through the first five months of fiscal year (FY) 2015 were on pace for a 40 percent drop from FY 2014.

Yet while these measures successfully slowed the pace of child and family flows, they have a limited focus: on deterrence and enforcement at the U.S. border and along migrant transit routes. The 2014 policies do not advance longer-term solutions, which should include viable alternatives to illegal and humanitarian migration, timely and fair adjudication of protection claims, and successful integration of migrants in the United States—or their reintegration in Central America upon return. As a result, important questions remain: can current policies effectively address enforcement *and* protection concerns, and can the reduction in flows be sustained?



## I. Introduction

Between 2011 and 2014 the number of Central American children and “family units” (official terminology for parents traveling with minor children) arriving at the U.S.-Mexico border grew rapidly, reaching a peak of 137,000 in fiscal year (FY) 2014.<sup>1</sup> While many of these migrants have valid claims for political asylum or other forms of humanitarian relief, others are primarily motivated by economic concerns and a desire to reconnect with family members—constituting a complex, mixed flow that has challenged the capacity of the United States to respond.

While the numbers are small compared with the 51 million refugees, asylum seekers, internally displaced persons (IDPs), and other populations “of concern” to the United Nations High Commissioner for Refugees worldwide,<sup>2</sup> the growing inflow tested the ability of the United States to carry out its core immigration functions of (1) preventing the admission of unauthorized immigrants while (2) providing protection to those who cannot be safely returned to their home countries.

Media coverage of Central American arrivals in 2014 portrayed their entry as a failure of border security, but the actual policy failures were in the processing and adjudication of claims for relief from migrants presenting in a mixed migration flow of humanitarian and irregular migrants. With few exceptions, children and families arriving at the U.S. border *presented themselves* to the first Border Patrol agent they encountered.<sup>3</sup> There is no evidence of an increase in children and families *circumventing* U.S. border enforcement and entering the United States without being detected.

While Border Patrol agents can take immediate action to deport most childless adults apprehended at the border, children and families are usually entitled to a hearing before an immigration judge, where they may seek relief from removal. Amid inadequate judicial and legal resources, migrants may wait more than two years for such a hearing, and in most cases they are released into the country during this period, and usually reunited with family members. These delays thus amount to a de facto policy of open admission for children and families, and have proved to be an important factor encouraging additional irregular flows. Thus, the core challenge is how to move a high volume of mixed-status flows—including vulnerable children and families—through a fair adjudication process in a timely way.

The Obama administration responded to rising Central American flows by directing greater law enforcement resources to the border, expanding detention facilities for family units, establishing dedicated child and family immigration court dockets, and working with Mexico and Central American countries to discourage or prevent illegal migration closer to the source. These measures successfully checked the immediate crisis, but they focused exclusively on immediate needs rather than longer-term solutions and they failed either to adequately protect vulnerable immigrants or to prevent future unauthorized flows.

This report makes recommendations on policies that advance both critical protection and enforcement goals in situations of complex, mixed flows. It explains the shifting pattern of Central American migration between 2011 and 2014, analyzes why inflows during this period prompted a particularly acute policy challenge, and outlines the U.S. and regional policy responses put into place to address the crisis. The report concludes with recommendations on additional policies that the United States, Mexico, and the Northern Triangle countries of El Salvador, Guatemala, and Honduras might adopt to better manage child and family migration pressures today and in the future.

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1 Migration Policy Institute (MPI) calculations from U.S. Customs and Border Protection (CBP), “Southwest Border Unaccompanied Alien Children (FY 2014),” [www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children-2014](http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children-2014). Throughout this report data are for the fiscal year (October 1-September 30), unless otherwise indicated.

2 United Nations High Commissioner for Refugees (UNHCR), *Mid-Year Trends 2014* (Geneva, UNHCR, 2014), [www.unhcr.org/54aa91d89.html](http://www.unhcr.org/54aa91d89.html).

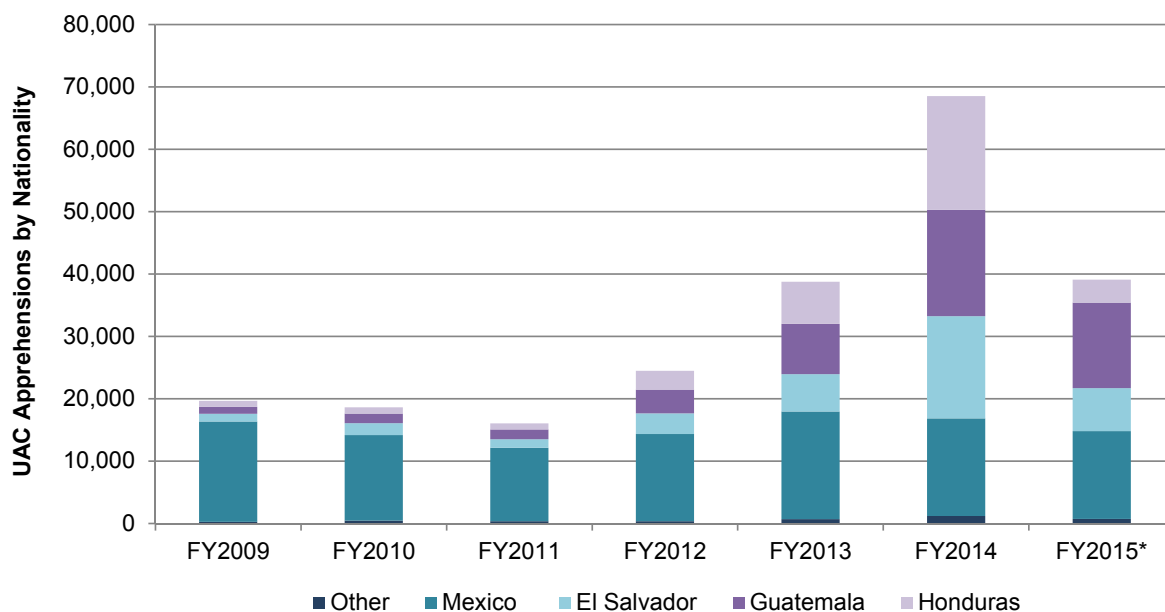
3 See for example, National Public Radio (NPR), “Court System Not Equipped for Deluge of Underage Immigrants,” NPR, July 5, 2014, [www.npr.org/2014/07/05/328888371/court-system-not-equipped-for-deluge-of-underage-immigrants](http://www.npr.org/2014/07/05/328888371/court-system-not-equipped-for-deluge-of-underage-immigrants).



## II. Unaccompanied Child Migration from Central America to the United States

The United States experienced exponential growth in the number of unaccompanied children (UACs) arriving at the U.S.-Mexico border between FY 2011 and 2014 (see Figure 1), when apprehensions increased from 15,949 to 68,551, before falling back to a projected flow based on the first five months of FY 2015 of about 39,000 for the year, assuming current trends continue.<sup>4</sup> As Figure 1 illustrates, minors from the Northern Triangle countries accounted for the overwhelming majority of this growth—increasing from an average of 3,900 in FY 2009-11 to 52,000 in FY 2014.<sup>5</sup>

**Figure 1. Apprehensions of Unaccompanied Child Migrants, by Country of Nationality, FY 2009-15 (Projected)**



*Note:* Fiscal year 2015 data represent a Migration Policy Institute (MPI) projection based on the proportion of annual unaccompanied child apprehensions observed during the first five months of the fiscal year; historically, these months have accounted for 32 percent of annual UAC apprehensions.

*Source:* MPI calculations for fiscal year (FY) 2015 from U.S. Customs and Border Protection (CBP), “Southwest Border Unaccompanied Alien Children,” accessed March 31, 2015, [www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children](http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children); for FY 2013-14 from U.S. Border Patrol (USBP), “Southwest Border Family Units and UAC Apprehensions,” accessed March 31, 2015, [www.cbp.gov/newsroom/media-resources/stats](http://www.cbp.gov/newsroom/media-resources/stats); for FY 2009-12 from USBP, “Juvenile and Adult Apprehensions,” accessed March 31, 2015, [www.hsdl.org/?view&did=734433](http://www.hsdl.org/?view&did=734433).

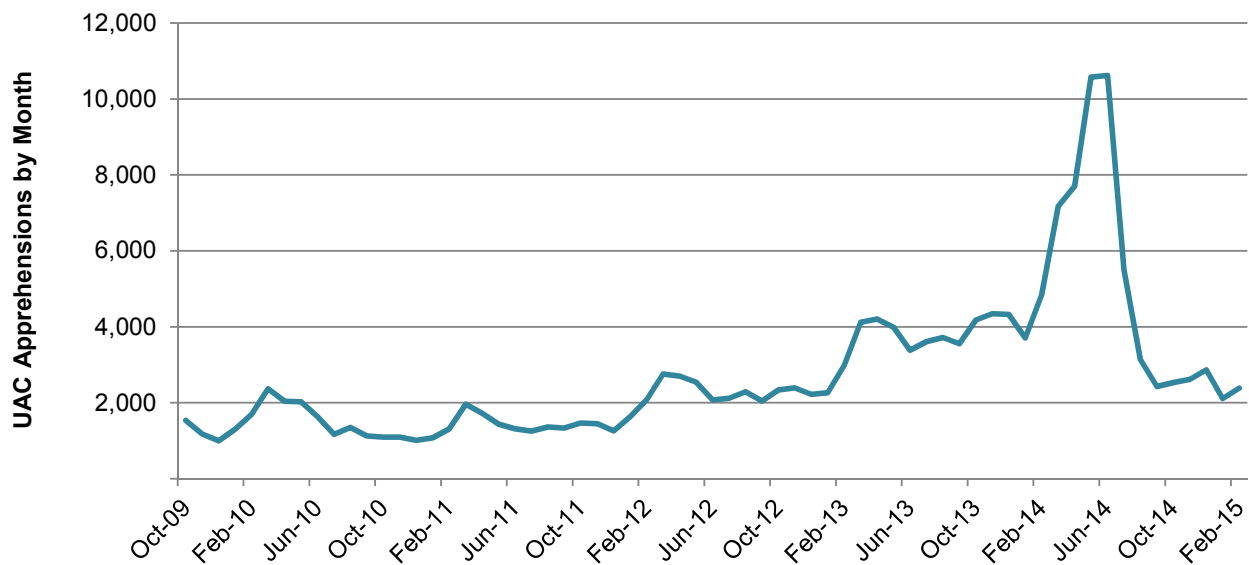
- 4 MPI projects the number of unaccompanied child (UAC) apprehensions for fiscal year (FY) 2015 at about 39,000 based on 12,509 apprehensions occurring between October 2014 and February 2015, as reported by CBP. Between FY 2012 and FY 2014, an average of 32 percent of annual UAC apprehensions occurred during the first five months of the fiscal year (i.e., between October and February). This projection assumes that apprehensions in FY 2015 will follow this historical pattern, but actual apprehensions could be substantially higher or lower than 39,000, depending on future developments within Central America, along transit routes, and in the United States.
- 5 Thus, 75 percent of unaccompanied children apprehended in FY 2014 were from the Northern Triangle countries. See CBP, “Southwest Border Unaccompanied Alien Children.” Almost all other UACs (23 percent) were from Mexico. Both the drivers and the policy issues surrounding Mexican UAC and family migration differ from those in Central America, and this policy brief focuses exclusively on the Central American cases. For a discussion of Mexican UACs, see Betsy Cavendish and Maru Cortazar, *Children at the Border: The Screening, Protection, and Repatriation of Unaccompanied Mexican Minors* (Washington, DC and Mexico City: Appleseed, 2011), <http://appleseednetwork.org/wp-content/uploads/2012/05/Children-At-The-Border1.pdf>.





Figure 2 provides a more granular view of the changing pace of child arrivals, depicting monthly UAC apprehensions between October 2009 and February 2015. As the figure indicates, apprehensions have traditionally followed a cyclical pattern of increases from January to April, followed by declines in May to December. This pattern held—combined with an overall increase in inflows—during the initial rise in child arrivals in FY 2011 through FY 2013.

**Figure 2. Monthly Apprehensions of Unaccompanied Child Migrants, October 2009 – February 2015**



Source: For FY 2010-14, USBP, “Total Monthly UAC Apprehensions by Month, by Sector (FY 2010 – FY 2014)” accessed March 31, 2015, [www.cbp.gov/document/stats/us-border-patrol-total-monthly-uac-apprehensions-month-sector-fy-2010-fy-2014](http://www.cbp.gov/document/stats/us-border-patrol-total-monthly-uac-apprehensions-month-sector-fy-2010-fy-2014); for FY 2015, MPI calculations from monthly updates to CBP, “Southwest Border Unaccompanied Alien Children.”

The pattern changed in 2014, with a larger-than-expected cyclical rise in the first half of the year, followed by additional, sharper increases during May and June. As a result, by July U.S. officials were predicting that 150,000 unaccompanied children could arrive in FY 2014, along with a similar increase in family units.<sup>6</sup> Yet by September, monthly apprehensions had dropped from their high point of 10,622 in June to 2,424—the lowest total in two years. Apprehensions for the first five months of FY 2015 project to about 39,000 unaccompanied child apprehensions for the year, a number that would be a 40 percent drop from FY 2014, but which still would represent the second-highest level of UAC apprehensions since at least 2008.<sup>7</sup>

While attention has focused on unaccompanied child arrivals, even more dramatic growth occurred in FY 2014 in the number of apprehensions of people within family units. As Figure 3 illustrates,

6 Steve Holland and Richard Cowan, “Obama Seeks Money, Fast Hearings to Curb Young Migrant Surge,” Reuters, July 8, 2014, [www.reuters.com/article/2014/07/08/us-usa-immigration-obama-idUSKBN0FC28220140708](http://www.reuters.com/article/2014/07/08/us-usa-immigration-obama-idUSKBN0FC28220140708).

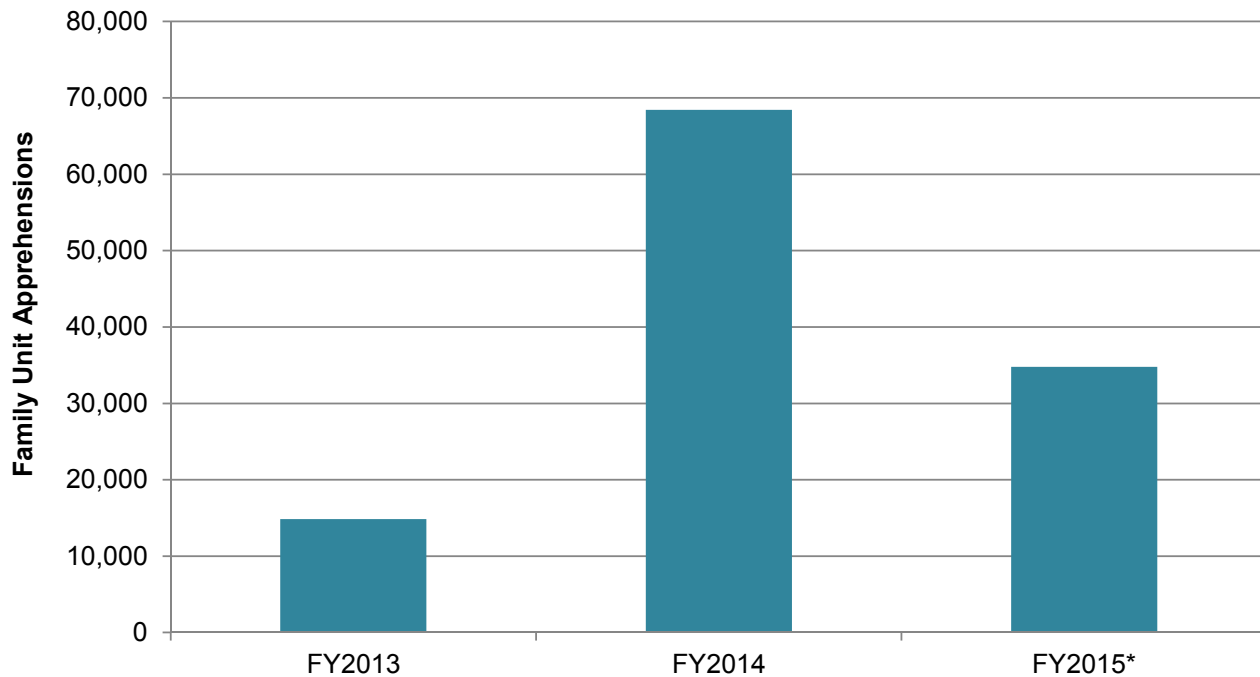
7 Reported apprehensions of unaccompanied children totaled 19,668 in FY 2009 and just 8,041 in 2008; but the numbers were much higher in the early 2000s, averaging 99,500 between FY 2001-06. See William A. Kandel, Andorra Bruno, Peter J. Meyer, Claire Ribando Seelke, Maureen Taft-Morales, and Ruth Ellen Wasem, *Unaccompanied Alien Children: Potential Factors Contributing to Recent Immigration*, CRS Report R43628 (Washington, DC: Congressional Research Service, 2014), <http://fas.org/sgp/crs/homesec/R43628.pdf>; Chad C. Haddal, *Unaccompanied Alien Children: Policies and Issues*, CRS Report RL33896 (Washington DC: Congressional Research Service, 2007), [www.rcusa.org/uploads/pdfs/CRS%20UAC%20Report%202007.pdf](http://www.rcusa.org/uploads/pdfs/CRS%20UAC%20Report%202007.pdf).





family unit apprehensions grew from 14,855 in FY 2013 to 68,445 in FY 2014—a 360 percent increase.<sup>8</sup> Based on reported apprehensions during the first five months of FY 2015, MPI projects total family unit apprehensions for FY 2015 to be about 35,000, assuming current trends continue.

**Figure 3. Family Unit Apprehensions, FY 2013–15 (Projected)**



*Note:* FY 2015 data represent an MPI projection based on the proportion of annual unaccompanied minor apprehensions observed during the first five months of the fiscal year; historically, these months have accounted for 32 percent of annual UAC apprehensions. Historical data on family unit apprehensions are not available.

*Source:* For FY 2015, MPI calculations from CBP, “Southwest Border Unaccompanied Alien Children;” for FY 2013-14, USBP, “Southwest Border Family Units and UAC Apprehensions.”

The sharp increase in Central American migration flows was a humanitarian emergency that demanded an immediate response. Women and children were subject to extensive crime and violence along the transit routes through Mexico that connect Central America to the United States. One survey of 931 migrants crossing through Mexico found that 52 percent had been robbed in transit and 33 percent had been victims of extortion.<sup>9</sup> Researchers report that the severity of abuses at the hands of criminal groups and Mexican officials has increased substantially in recent years.<sup>10</sup> Many of the poorest Central Americans (those who cannot afford high smuggling fees) traversed Mexico by stowing away on freight trains—known collectively as *la bestia* (“the beast”)—where extortion, abduction, sexual abuse, and other forms of violence are

<sup>8</sup> Government statistics on the nationalities of arriving family units are unavailable, but the great majority are also from the Northern Triangle countries. See Women’s Refugee Commission, “Border Surge of Unaccompanied Children: Why They’re Coming and What the Government Should Do,” (news release, June 26, 2014), <http://womensrefugeecommission.org/press-room/2080-an-administration-made-disaster-the-south-texas-border-surge-of-unaccompanied-alien-minors>. The great majority of immigrants apprehended within family units are women and young children.

<sup>9</sup> Adam Isacson, Maureen Meyer, and Gabriela Morales, *Mexico’s Other Border: Security, Migration, and the Humanitarian Crisis at the Line with Central America* (Washington, DC: Washington Office on Latin America, 2014), 16–7, [www.wola.org/sites/default/files/Mexico%27s%20Other%20Border%20PDF.pdf](http://www.wola.org/sites/default/files/Mexico%27s%20Other%20Border%20PDF.pdf).

<sup>10</sup> Ibid. Also see Instituto Tecnológico Autónomo de México (ITAM), *Central American Transit Migration through Mexico to the United States: Diagnosis and Recommendations* (Mexico City: ITAM, 2014), [www.migraciontransito.org](http://www.migraciontransito.org).



particularly widespread.<sup>11</sup>

Migrants who reached the United States encountered additional challenges as they overwhelmed U.S. reception facilities in 2014. Bottlenecks in this system left children warehoused in makeshift facilities of many kinds with inadequate access to emergency services. Images of an out-of-control border and waves of child refugees produced widespread anxiety across the United States, stoking a backlash in some U.S. communities as federal officials scrambled to find emergency housing facilities in far-flung locations.<sup>12</sup>

### III. U.S. Enforcement and Protection Policies in Practice

Immigrants who attempt to enter the United States without a valid visa or other travel documents generally are subject to apprehension and deportation—the primary mechanisms used to *enforce* immigration controls. But the law also describes various conditions under which otherwise deportable immigrants may be permitted to remain in the United States for humanitarian reasons. Relief from removal is the primary mechanism used to *protect* vulnerable individuals. Ultimately, the tension between enforcement and protection is resolved, on a case-by-case basis, through adjudication processes that determine whether or not individuals are eligible for relief. This section describes how the U.S. enforcement and protection system works in general, as well as special laws and policies in place for unaccompanied children and family units.

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*Images of an out-of-control border and waves of child refugees produced widespread anxiety across the United States.*

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#### A. Enforcement Policies

U.S. immigration law includes two main provisions for the deportation of unauthorized immigrants and other removable noncitizens. Those who are *removed* (or formally deported) from the United States are ineligible to return on a permanent or temporary visa for at least five years, and a noncitizen who re-enters the United States following formal removal may be subject to criminal charges. Noncitizens who are *returned* (or informally deported) from the United States do not face additional penalties on top of their deportation. An average of approximately 671,000 immigrants were apprehended annually in FY 2011-13, resulting in 414,000 removals and 243,000 returns.<sup>13</sup>

#### B. Protection Policies

U.S. immigration law includes two main visa types designed to protect certain vulnerable child and family

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- 11 Rodrigo Dominguez Villegas, “Central American Migrants and ‘La Bestia’: The Routes, Dangers, and Government Responses,” *Migration Information Source*, September 10, 2014, [www.migrationpolicy.org/article/central-american-migrants-and-la-bestia-route-dangers-and-government-responses](http://www.migrationpolicy.org/article/central-american-migrants-and-la-bestia-route-dangers-and-government-responses).
  - 12 See, for example, Michael Martinez and Holly Yan, “Showdown: California Town Turns away Buses of Detained Immigrants,” CNN, July 3, 2014, [www.cnn.com/2014/07/02/us/california-immigrant-transfers/](http://www.cnn.com/2014/07/02/us/california-immigrant-transfers/). Also see Elżbieta M. Goździak, *What Kind of Welcome: Integration of Central American Unaccompanied Children into Local Communities* (Washington, DC: Georgetown University, Institute for the Study of International Migration, 2015), <https://isim.georgetown.edu/sites/isim/files/files/up-load/Kaplan%20UAC%20Report.compressed%20%282%29.pdf>.
  - 13 MPI calculations from John Simanski, *Immigration Enforcement Actions: 2013* (Washington, DC: Department of Homeland Security, Office of Immigration Statistics, 2014), [www.dhs.gov/sites/default/files/publications/ois\\_enforcement\\_ar\\_2013.pdf](http://www.dhs.gov/sites/default/files/publications/ois_enforcement_ar_2013.pdf).



arrivals.<sup>14</sup> Individuals who show that they suffered past persecution or have a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion may be eligible for *asylum*. Children under the age of 21 who have been abused, abandoned, or neglected by a parent also may be eligible for Special Immigrant Juvenile (SIJ) visas. Asylum and SIJ status provide generous immigration benefits: individuals are permitted to remain in the United States, and may apply for work authorization and permanent residence—and, eventually, for U.S. citizenship.

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*Few children successfully apply for asylum or SIJ status, particularly without the assistance of an attorney.*

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Yet, the law describes narrow grounds for asylum and SIJ status. Successful asylum applicants must prove an *individualized* fear of persecution, and existing guidance to immigration courts discourages judges from recognizing those fleeing criminal or gang violence as a protected class. Successful SIJ visa applicants must first be certified by a state court (i.e., not an immigration court) as a dependent of the court, and the court must also certify that it is not in the child's best interest to be returned to his or her country of nationality and that reunification with one or both of the child's parents is not viable.<sup>15</sup>

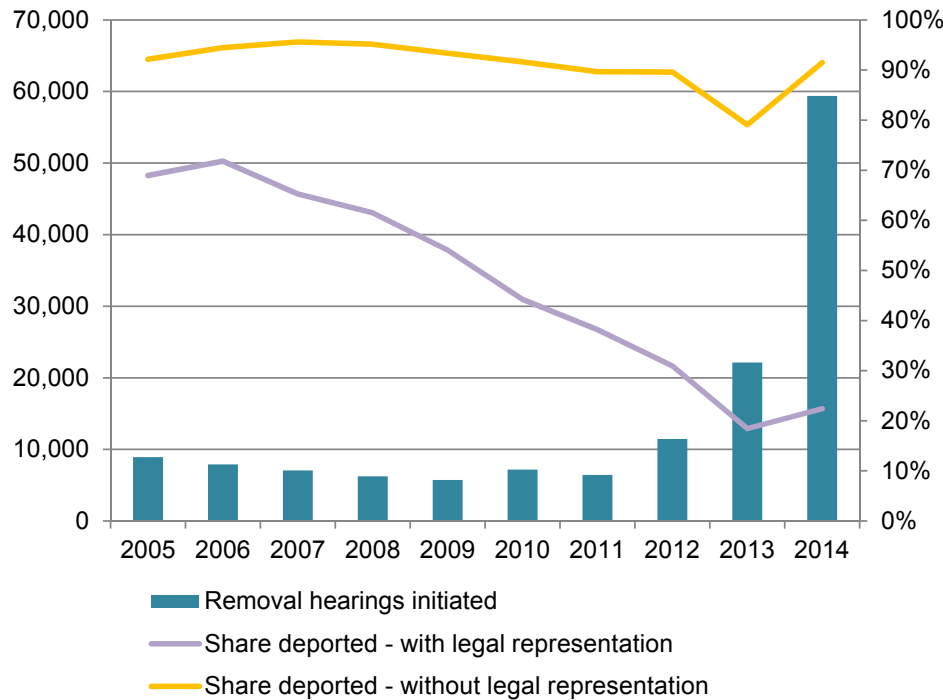
Given these evidentiary and procedural hurdles, few children successfully apply for asylum or SIJ status, particularly without the assistance of an attorney (and, as of October 2014, fewer than one in three unaccompanied minors appearing in immigration court had access to legal counsel).<sup>16</sup> In FY 2011-13, for example, U.S. Citizenship and Immigration Services (USCIS) data indicate that a total of about 1,800 unaccompanied children filed asylum applications with USCIS, resulting in about 300 approvals. Meanwhile, 9,000 filed SIJ applications, resulting in about 8,000 approvals.<sup>17</sup> Data from the Executive Office for Immigration Review (EOIR, i.e., the immigration court system) confirm a substantial difference in case outcomes for children with and without legal representation—and that the gap has widened in recent years. As Figure 4 illustrates, of the 9,000 removal cases initiated against unaccompanied children in FY 2005, 69 percent of those with attorneys were ordered deported or accepted voluntary departure, versus 92 percent

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- 14 In addition to the humanitarian visas discussed in this report, certain immigrants may also apply for relief from deportation if they have been victims of severe forms of human trafficking (T visas) or victims of crime (U visas). About 1,500 immigrants per year received T visas in FY 2011-13, and about 18,000 received U visas, based on MPI calculations from U.S. Citizenship and Immigration Services (USCIS), "Data Set: Form I-914 Application for T Nonimmigrant Status," November 21, 2014, [www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-form-i-914-application-t-nonimmigrant-status](http://www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-form-i-914-application-t-nonimmigrant-status); USCIS, "Data Set: Form I-918 Application for U Nonimmigrant Status, FY 2014," November 21, 2014, [www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-form-i-918-application-u-nonimmigrant-status](http://www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-form-i-918-application-u-nonimmigrant-status). Certain individuals outside the United States, who are of special humanitarian concern and who were persecuted or fear persecution because of their membership in a particular group, also may qualify for refugee status. Refugees may work in the United States, and must apply for permanent residency one year after arrival. About 61,000 refugees were admitted annually in FY 2011-13; see Department of Homeland Security (DHS), *Yearbook of Immigration Statistics, FY 2013* (Washington, DC: DHS, 2014), [www.dhs.gov/yearbook-immigration-statistics](http://www.dhs.gov/yearbook-immigration-statistics).
- 15 See USCIS, "Eligibility Status for SIJ," updated July 12, 2011, [www.uscis.gov/green-card/special-immigrant-juveniles/eligibility-sij-status/eligibility-status-sij](http://www.uscis.gov/green-card/special-immigrant-juveniles/eligibility-sij-status/eligibility-status-sij).
- 16 Syracuse University, Transactional Records Access Clearinghouse (TRAC), *Representation for Unauthorized Children in Immigration Court* (New York: TRAC, 2014), <http://trac.syr.edu/immigration/reports/371/>. See, for example, Dennis Stinchcomb and Eric Hershberg, "Unaccompanied Migrant Children from Central America: Context, Causes, and Responses" (Working Paper Series no. 7, American University Center for Latin American and Latino Studies, Washington, DC, November 2014), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2524001](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2524001).
- 17 MPI calculations on application rates from data in USCIS, "Refugees, Asylum, and Parole System, MPA and PRL Report, 10/01/13 - 06/30/14," July 9, 2014, [www.uscis.gov/sites/default/files/USCIS/Outreach/Minors\\_FY14\\_Q3.pdf](http://www.uscis.gov/sites/default/files/USCIS/Outreach/Minors_FY14_Q3.pdf). USCIS, "Number of I-360 Petitions for Special Immigrant with a Classification of Special Immigrant Juvenile (SIJ) by Fiscal Year and Case Status, 2010-2013," accessed March 31, 2015, [www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Adjustment%20of%20Status/I-360FY2013.pdf](http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Adjustment%20of%20Status/I-360FY2013.pdf). Given the time lag between apprehension and the resolution of an asylum or SIJ claim, it is difficult to match arrival and outcome data in order to calculate the proportion of arriving unaccompanied minors who are granted relief. Also, see University of California Hastings College of Law, Center for Gender and Refugee Studies (CGRS), and Kids in Need of Defense (KIND), *A Treacherous Journey: Child Migrants Navigating the U.S. Immigration System* (San Francisco and Washington, DC: CGRS and KIND, 2014), 38, [www.uchastings.edu/centers/cgrs-docs/treacherous-journey\\_cgrs\\_kind\\_report.pdf](http://www.uchastings.edu/centers/cgrs-docs/treacherous-journey_cgrs_kind_report.pdf).



of those without legal representation. The deportation rate for children with legal representation climbed to 72 percent in FY 2006, but then fell steadily to just 18 percent in FY 2013, before rebounding slightly to 22 percent in FY 2014. In contrast, among children without legal representation, the deportation rate has been 90 percent or higher in every year other than FY 2013 (79 percent), and 91 percent of all children without lawyers have been ordered deported.<sup>18</sup>

**Figure 4. UAC Removals, by Legal Representation Type, FY 2005-14**



*Note:* Percent ordered deported includes formal orders of removal and grants of voluntary departure. Calculations of deportation rates exclude pending cases.

*Source:* MPI calculations from TRAC, “Juveniles—Immigration Court Deportation Proceedings,” accessed April 7, 2015, <http://trac.syr.edu/phptools/immigration/juvenile/>.

### C. Immigration Adjudication

The fate of potentially deportable immigrants who petition for humanitarian relief is determined through an adjudication process: U.S. government officials decide who gets protection and who is to be deported.

For most unauthorized adults apprehended near a U.S. border or port of entry, the adjudication process is in the hands of a Customs and Border Protection (CBP) agent or officer. When immigrants entering without permission are apprehended at the border, Department of Homeland Security (DHS) personnel interview them to determine whether they intend to apply for asylum, fear being persecuted or tortured, or fear being returned to their home country. If the arresting agent determines the immigrant is not in need of protection, DHS can order the person formally removed without additional judicial review—a process known as expedited removal (for first-time arrivals) or reinstatement of removal (for

<sup>18</sup> MPI calculations based on data provided by TRAC, “Juveniles—Immigration Court Deportation Proceedings,” data through February 2015, <http://trac.syr.edu/phptools/immigration/juvenile/>. Deportation orders include orders of removal and cases in which children were granted voluntary departure. These statistics do not include cases that are still pending—45 percent of all cases, 90 percent of which were initiated in FY 2013-14.



noncitizens previously deported).

Immigrants who express a fear of return or related concern are detained by DHS and interviewed by a member of the department's Asylum Corps, composed of specialized officers with training in refugee and human-rights law and in humanitarian conditions in countries of origin. An asylum officer determines whether the immigrant has a "credible" or "reasonable" fear of return. Immigrants found to lack such a fear are subject to expedited or reinstated removal, and those found to have a credible or reasonable fear are placed in judicial removal proceedings, a civil administrative process before an immigration judge.

Immigrants in removal proceedings may be represented by legal counsel at their own expense, but they do not have the right to counsel at the government's expense or the right to review evidence against them. Also in contrast with criminal proceedings, immigrants in removal proceedings are presumed to be removable unless they can convince the judge that they meet the criteria for asylum, SIJ status, or some other grounds for relief from removal.

#### D. Detention

DHS has broad authority to detain most immigrants suspected of being deportable, pending the resolution of removal proceedings. U.S. immigration law also requires that DHS detain most immigrants apprehended at the border. These immigrants are subject to detention until their removal order is executed or, in the case of those seeking asylum, until they demonstrate a credible fear of persecution upon return to their country of origin.

#### E. Special Rules for Families and Children

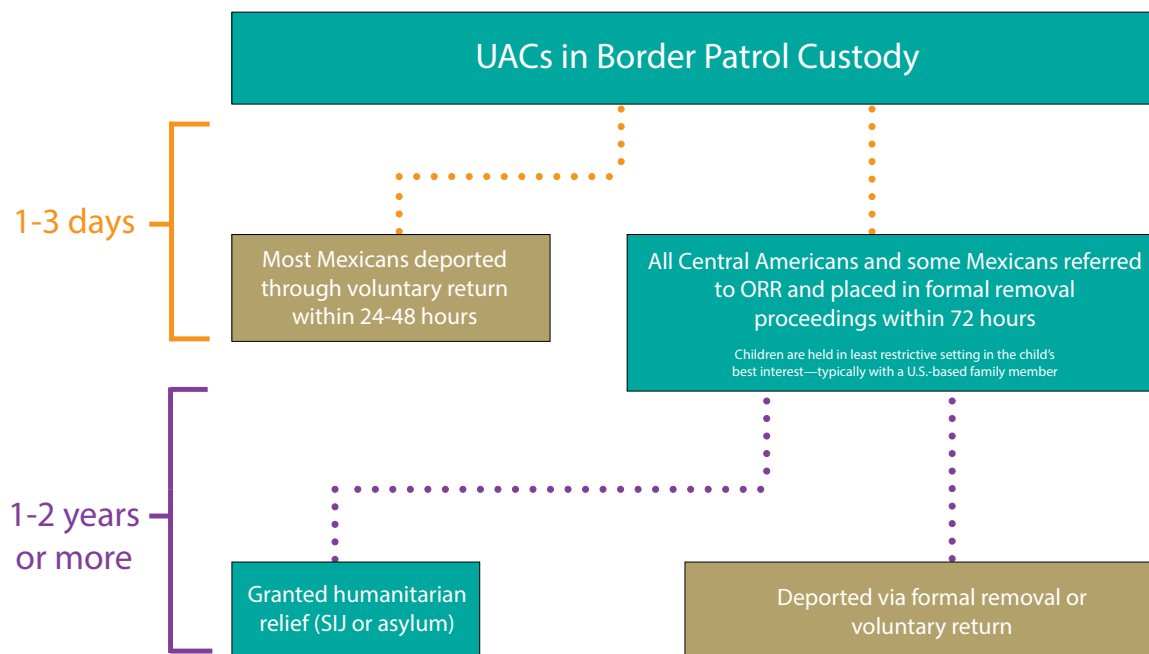
Under longstanding DHS rules that were formalized by a 2008 law known as the *Trafficking Victims Protection Reauthorization Act (TVPRA)*, unaccompanied children from countries other than Mexico and Canada cannot be deported directly by DHS (that is, they are not subject to expedited removal or reinstatement). Instead, such minors are always permitted to appear before an immigration judge to petition for humanitarian relief from removal.<sup>19</sup>

TVPRA also mandates that unaccompanied minors may not be held in DHS custody for longer than 72 hours. DHS must transfer these children to the custody of the Office of Refugee Resettlement (ORR) within the U.S. Department of Health and Human Services (HHS) while the children await an immigration hearing. Children in HHS custody must be held in "the least restrictive setting that is in the best interest of the child."<sup>20</sup> In practice, this standard means that most children are placed pending their immigration court hearing with a family member in the United States—including, in many cases, a relative who is in the country without authorization—rather than being held in a detention facility (see Figure 5).

19 The *Trafficking Victims Protection Reauthorization Act (TVPRA)* establishes a separate set of procedures for Mexican and Canadian unaccompanied minors. For these children, CBP agents are required to determine whether a child has been a victim of severe trafficking, whether he or she may have an asylum claim, and whether he or she is willing to return voluntarily to Mexico or Canada. Those who are found not to merit protection under this screening protocol still are not subject to expedited removal, but they may be informally returned (that is, via voluntary return) to Mexico or Canada without judicial review.

20 *Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA)*, §235(c)(2), codified at 8 U.S.C. §1232(c)(2). The law codified conditions related to the detention, release, and treatment of children in the custody of immigration enforcement agents that were initially agreed to as part of a 1997 settlement agreement stemming from a class-action lawsuit known as *Reno v. Flores* 507 U.S. 292 (1993); for a fuller discussion see Haddal, *Unaccompanied Alien Children: Policies and Issues*.

Figure 5. Process for Handling of UAC Cases



Under longstanding Border Patrol guidelines, migrants arriving as family units are also normally permitted to appear before an immigration judge rather than be deported directly by DHS. And because DHS maintained only 90 beds for family unit detainees prior to the summer of 2014,<sup>21</sup> arriving families were typically not held in detention while awaiting an immigration hearing. Instead, they were usually placed in formal removal proceedings (that is, ordered to appear before an immigration judge), and then paroled or temporarily released into the United States while awaiting their hearing dates. (This policy was changed in June 2014, as will be discussed below.)

## IV. Central Americans Arriving at the U.S. Border: Why the Recent Surge?

At least three sets of factors contributed to rising child and family migration from Central America in the 2011-14 period.

### A. Structural Push and Pull Factors

Migrants travel from Central America to the United States for two main reasons: (1) to escape violence and poor economic conditions in the region, and (2) to reconnect with family members already living in the United States. These factors are longstanding, and illegal migration from the Northern Triangle countries to the United States started long before the recent child and family surge.<sup>22</sup>

21 Prior to 2009 the immigrant detention system included about 500 additional family detention beds in the T. Don Hutto detention facility in Texas.

22 According to MPI estimates, the U.S. unauthorized population in 2012 included 652,000 Guatemalans, 375,000 Salvadorans, and 284,000 Hondurans, making the three Northern Triangle countries the second-, third-, and fourth-largest countries of origin for U.S. unauthorized immigrants; see MPI, "Profile of the Unauthorized Population: United States," accessed March 27, 2015, [www.migrationpolicy.org/data/unauthorized-immigrant-population/state/US](http://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/US).





The legacy of violence in Central America may be traced in part to the civil wars fought throughout the region during the 1970s and 1980s—wars that were largely funded by the United States, and that resulted in a heavily armed population. Violence was exacerbated by the proliferation of transnational criminal organizations, including a pair of U.S. gangs that flourished in Central America following the deportation of gang members to the region,<sup>23</sup> and more recently by the presence of regional drug cartels pushed into Central America by relatively successful operations to close down trafficking routes through Mexico and the Caribbean.<sup>24</sup> National political developments have also contributed to rising violence in the region, including a 2009 coup in Honduras that decimated the country’s political and police infrastructure, resulting in a high level of corruption and weak mechanisms for combating crime,<sup>25</sup> and a 2012 gang truce in El Salvador that resulted in a temporary drop in the homicide rate but an even stronger gang infrastructure.<sup>26</sup>

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*Homicide rates in Honduras, El Salvador, and Guatemala are, respectively, ranked the first, fourth, and fifth highest in the world.*

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For these reasons, homicide rates in Honduras, El Salvador, and Guatemala are, respectively, ranked the first, fourth, and fifth highest in the world.<sup>27</sup> Nearly one in five residents of these countries was a victim of a crime in 2012, and studies indicate that between 23 percent and 43 percent felt unsafe in their own neighborhoods.<sup>28</sup> Anecdotal accounts from legal service providers, law enforcement agents, and international observers consistently describe a level of brutality that exceeds what can be imagined from simply looking at homicide and crime statistics.<sup>29</sup> The violence is a push factor for women and children in

23 Between 1993 and 2013 the United States completed 254,752 deportations of convicted criminals to El Salvador, Guatemala, and Honduras (a figure that somewhat overstates the total number of criminals deported to the region since some individuals were deported more than once). MPI calculations from DHS and Immigration and Naturalization Services (INS) Office of Immigration Statistics, *Statistical Yearbook*, various years (Washington, DC: INS), [www.dhs.gov/archives#1](http://www.dhs.gov/archives#1).

24 See, for example, Manuel Orozco and Julia Yansura, *Understanding Central American Migration: The Crisis of Central American Child Migrants in Context* (Washington, DC: Inter-American Dialogue, 2014), [www.thedialogue.org/page.cfm?pageID=32&pubID=3652](http://www.thedialogue.org/page.cfm?pageID=32&pubID=3652); Scott Johnson, “American-Born Gangs Helping Drive Immigrant Crisis at U.S. Border,” *National Geographic*, July 23, 2014, <http://news.nationalgeographic.com/news/2014/07/140723-immigration-minors-honduras-gang-violence-central-america/>; U.S. Conference of Catholic Bishops, Migration and Refugee Services, “Mission to Central America: The Flight of Unaccompanied Children to the United States,” November 2013, [www.usccb.org/about/migration-policy/fact-finding-mission-reports/upload/Mission-To-Central-America-FINAL-2.pdf](http://www.usccb.org/about/migration-policy/fact-finding-mission-reports/upload/Mission-To-Central-America-FINAL-2.pdf). The security challenges resulting from transnational gangs with roots in the United States has been building for years. See, for example, Ana Arana, “How the Street Gangs Took Central America,” *Foreign Affairs*, May/June 2005, [www.foreignaffairs.com/articles/60803/ana-arana/how-the-street-gangs-took-central-america](http://www.foreignaffairs.com/articles/60803/ana-arana/how-the-street-gangs-took-central-america).

25 InsightCrime, “Honduras,” accessed March 31, 2015, [www.insightcrime.org/honduras-organized-crime-news/honduras](http://www.insightcrime.org/honduras-organized-crime-news/honduras). Government weakness and corruption are also cited as push factors in El Salvador. See, for example, Elizabeth Kennedy, “No Childhood Here: Why Central American Children Are Fleeing Their Homes” (American Immigration Council *Perspectives*, July 2014), [www.immigrationpolicy.org/sites/default/files/docs/no\\_childhood\\_here\\_why\\_central\\_american\\_children\\_are\\_fleeing\\_their\\_homes\\_final.pdf](http://www.immigrationpolicy.org/sites/default/files/docs/no_childhood_here_why_central_american_children_are_fleeing_their_homes_final.pdf).

26 Steven Dudley, “El Salvador’s Gang Truce: Positives and Negatives,” InsightCrime, June 11, 2013, [www.insightcrime.org/investigations/el-salvadors-gang-truce-positives-and-negatives](http://www.insightcrime.org/investigations/el-salvadors-gang-truce-positives-and-negatives); Fox News Latino, “Even Stronger: Truce between El Salvador Gangs has Unintended Consequences,” Fox News Latino, September 7, 2014, <http://latino.foxnews.com/latino/news/2014/09/07/even-stronger-truce-between-el-salvador-gangs-has-unintended-consequence/>.

27 United Nations Office on Drugs and Crime (UNODC), *The Global Study on Homicide* (Vienna: UNODC, 2013), [www.unodc.org/gsh/en/data.html](http://www.unodc.org/gsh/en/data.html).

28 Victimization rates were 17 percent in El Salvador, 19 percent in Honduras, and 21 percent in Guatemala. Perceptions of insecurity were lowest in Honduras (at 23 percent), followed by Guatemala (32 percent) and El Salvador (43 percent). See Jonathan Hiskey, Mary Malone, and Diana Orcés, “Violence and Migration in Central America,” *AmericasBarometer Insights 2014*, no. 101: 2–3, [www.vanderbilt.edu/lapop/insights/IO901en.pdf](http://www.vanderbilt.edu/lapop/insights/IO901en.pdf). Also see Helen Clark, Rebeca Grynspan, and Heraldo Muñoz, *Regional Human Development Report 2013-2014, Citizen Security with a Human Face: Evidence and Proposals for Latin America*, Executive Summary (New York: United Nations Development Program, 2014), [www.undp.org/content/dam/rblac/docs/Research%20and%20Publications/IDH/IDH-AL-ExecutiveSummary.pdf](http://www.undp.org/content/dam/rblac/docs/Research%20and%20Publications/IDH/IDH-AL-ExecutiveSummary.pdf).

29 See, for example, Kennedy, “No Childhood Here.”





particular: the region's criminal gangs often recruit children to serve as foot soldiers in their turf wars,<sup>30</sup> while decades of civil war and criminal instability have left women and children vulnerable to widespread domestic violence.<sup>31</sup> Thus, a variety of studies based on interviews with arriving Central American children and families since 2013 have found that 50 percent or more are escaping conditions that may entitle them to political asylum under existing U.S. law.<sup>32</sup>

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*As violence and economic insecurity push migrants out of Central America, the possibility of reuniting with family members represents a third key structural factor explaining this migration.*

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In addition to ranking among the most violent countries in the hemisphere, Honduras, Guatemala, and El Salvador are also among the poorest—more than one-third of the *employed* surviving on incomes of less than \$4 a day.<sup>33</sup> Economic prospects are particularly poor for young Central Americans, about one in four of whom neither work nor study,<sup>34</sup> and many leave the region for economic reasons.

As violence and economic insecurity push migrants out of Central America, the possibility of reuniting with family members represents a third key structural factor explaining this migration. Of the Salvadoran population worldwide, about one in five already live in the United States. This figure is smaller for the

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30 In all three countries citizens recognize gangs as the main threat to their security, over organized crime, drug dealers, and regular criminals. Clark, Grynspan, and Muñoz, *Regional Human Development Report 2013-2014*, 3; United Nations High Commissioner for Refugees (UNHCR), *Children on the Run: Unaccompanied Children Leaving Central America and Mexico, and the Need for International Protection* (Washington, DC: UNHCR, 2014), [www.unhcrwashington.org/sites/default/files/1\\_UAC\\_Children%20on%20the%20Run\\_Full%20Report.pdf](http://www.unhcrwashington.org/sites/default/files/1_UAC_Children%20on%20the%20Run_Full%20Report.pdf). Also see Stinchcomb and Hershberg, "Unaccompanied Migrant Children from Central America."

31 In surveys conducted by UNHCR, more than 20 percent of unaccompanied children from the Northern Triangle had been subject to domestic abuse; see UNHCR, *Children on the Run*, 9–10. These numbers may underestimate actual rates of domestic violence, most of which is not reported or documented. See Isabel Aguilar Umaña and Jeanne Rikkers, *Nine Strategies to Prevent Youth Violence in Central America* (Brussels: Interpeace, 2012), 3, [www.interpeace.org/publications/central-american-youth-programme/328-nine-strategies-to-prevent-youth-violence-in-central-america-english/file](http://www.interpeace.org/publications/central-american-youth-programme/328-nine-strategies-to-prevent-youth-violence-in-central-america-english/file). Also see Stinchcomb and Hershberg, "Unaccompanied Migrant Children from Central America."

32 In 2014 UNHCR found 58 percent of surveyed unaccompanied children had valid humanitarian claims; see UNHCR, *Children on the Run*, 6. In 2010 the Vera Institute of Justice found that approximately 40 percent of surveyed children in custody of the Office of Refugee Resettlement (ORR) within the Department of Health and Human Services (HHS) were potentially eligible for relief from removal. See Olga Byrne and Elise Miller, *The Flow of Unaccompanied Children through the Immigration System* (New York: Vera Institute of Justice, 2012), 24, [www.vera.org/sites/default/files/resources/downloads/the-flow-of-unaccompanied-children-through-the-immigration-system.pdf](http://www.vera.org/sites/default/files/resources/downloads/the-flow-of-unaccompanied-children-through-the-immigration-system.pdf). In 2014 the Refugee and Immigrant Center for Education and Legal Services (RAICES) found that 63 percent of surveyed unaccompanied children in HHS custody at Lackland Air Force Base in San Antonio, Texas, were eligible for relief from removal. RAICES, "At Least 63% of Refugee Children at Lackland Air Force Base Qualify for Relief" (news release, July 22, 2014), [www.raicestexas.org/#!/At-Least-63-of-Refugee-Children-at-Lackland-Air-Force-Base-Qualify-for-Relief/c4x3/48917F75-F1DC-40B4-8F0C-2E2270900065](http://www.raicestexas.org/#!/At-Least-63-of-Refugee-Children-at-Lackland-Air-Force-Base-Qualify-for-Relief/c4x3/48917F75-F1DC-40B4-8F0C-2E2270900065). According to a report by *The New York Times*, lawyers counseling nearly 300 women in Artesia, New Mexico, found that as many as 80 percent could win asylum claims. Julia Preston, "In Remote Detention Center, a Battle on Fast Deportations," *The New York Times*, September 5, 2014, [www.nytimes.com/2014/09/06/us/in-remote-detention-center-a-battle-on-fast-deportations.html](http://www.nytimes.com/2014/09/06/us/in-remote-detention-center-a-battle-on-fast-deportations.html). In Artesia, attorneys from the American Immigration Lawyers Association (AILA) found that most screened mothers and children would likely qualify as refugees under U.S. law; AILA, "AILA Letter to Congress on Artesia," September 16, 2014, [www.aila.org/content/default.aspx?bc=6714|6866|50093](http://www.aila.org/content/default.aspx?bc=6714|6866|50093). Also see International Rescue Committee (IRC), "IRC Field Visit to Texas and Arizona: Key Findings and Recommendations to Policy Makers," October 2014, [www.rescue.org/sites/default/files/resource-file/Unaccompanied%20children%20in%20the%20U.S.%20IRC%20report.pdf](http://www.rescue.org/sites/default/files/resource-file/Unaccompanied%20children%20in%20the%20U.S.%20IRC%20report.pdf).

33 Steve Kapsos and Evangelia Bourmpoula, "Employment and Economic Class in the Developing World" (ILO Research Paper No. 6, International Labor Office, Geneva, 2013), [www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms\\_216451.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms_216451.pdf).

34 ILO, *Trabajo Decente y Juventud en América Latina 2013: Políticas para la acción* (Lima: ILO Regional Office for Latin America and the Caribbean, 2014), 44, [www.ilo.org/americas/publicaciones/WCMS\\_235577/lang-es/index.htm](http://www.ilo.org/americas/publicaciones/WCMS_235577/lang-es/index.htm).



world's Guatemalan and Honduran populations, but still significant at about one in 15.<sup>35</sup> Family members are a key source of support for immigrants seeking to finance a trip north, and the improving U.S. economy has made more resources available for such travel in the recent period. At least 85 percent of Central Americans arriving at the border have parents or other close family members in the United States.<sup>36</sup> Yet, because most Central Americans in the United States are unauthorized or lawfully present with temporary status, they are unable to sponsor their relatives for legal visas.<sup>37</sup> Thus, those many Central American migrants who might otherwise seek to legally enter through family reunification channels have no means to do so.

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*Long hearing wait times and limited legal services also undermine the system's ability to protect vulnerable groups.*

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In sum, the structural factors at the heart of the Central American mixed flows are complex. Those thousands of women and children have fled criminal and domestic violence that may make them eligible for political asylum, but most of them are also motivated, at least in part, by economic and family considerations that do not entitle them to remain in the United States. A 2014 Government Accountability Office (GAO) report, for example, finds that experts in the region almost universally attribute UAC outflows to a *combination* of crime and violence, economic concerns, poor educational systems, and the desire for family reunification.<sup>38</sup>

## **B. Limits and Unintended Consequences of U.S. Immigration Policy**

While the ongoing violence and poverty in Central America offer a compelling explanation for the dramatic rise in flows since 2012, they do not tell the whole story. Another significant contributing factor is the way in which the United States processes and adjudicates mixed flows of immigrants, and the sizeable time lag between when immigrants arrive and when they appear before an immigration judge.

Pursuant to the TVPRA, unaccompanied children from Central America arriving in the United States without permission to enter are placed in judicial removal proceedings and usually turned over to the care of a U.S.-based family member, as noted above. An immigration judge determines whether their individual histories make them subject to humanitarian protection under U.S. law, or whether they are ineligible for

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35 In 2012 in the United States there were approximately 522,000 nationals from Honduras, 859,000 nationals from Guatemala, and 1,272,000 nationals from El Salvador; MPI, "Data Hub: U.S. Immigration Trends," accessed December 2, 2014, [www.migrationpolicy.org/programs/data-hub/us-immigration-trends](http://www.migrationpolicy.org/programs/data-hub/us-immigration-trends). This is compared to in-country 2012 populations of 7,935,846 in Honduras, 15,082,831 in Guatemala, and 6,297,394 in El Salvador; World Bank, "Data: Population, Total," accessed December 2, 2014, <http://data.worldbank.org/indicator/SP.POP.TOTL/countries/all?display=graph>. The vast majority of Northern Triangle citizens outside their own countries live in the United States.

36 As of May 2014 family members had been identified to take custody of about 85 percent of unaccompanied minors who had arrived at that time. See HHS, Unaccompanied Alien Children Program, "Fact Sheet" (updated May 2014), [www.acf.hhs.gov/sites/default/files/orr/unaccompanied\\_childrens\\_services\\_fact\\_sheet.pdf](http://www.acf.hhs.gov/sites/default/files/orr/unaccompanied_childrens_services_fact_sheet.pdf).

37 Based on MPI's estimates of the unauthorized population (see footnote 22) and data on the total population from Central America in the United States (see footnote 35), about 50 percent of immigrants in the United States from the Northern Triangle are unauthorized, and therefore unable to sponsor relatives abroad for immigrant visas. In addition, about 10 percent of the Central American population in the United States (212,000 Salvadorans and 64,000 Hondurans) has Temporary Protected Status (TPS), a form of humanitarian relief that permits immigrants to remain in the United States without a visa, but which does not allow them to adjust to legal permanent status or to sponsor family members abroad for immigrant visas; see Madeleine Messick and Claire Bergeron, "Temporary Protected Status in the United States: A Grant of Humanitarian Relief that Is Less than Permanent," *Migration Information Source*, July 2, 2014, [www.migrationpolicy.org/article/temporary-protected-status-united-states-grant-humanitarian-relief-less-permanent](http://www.migrationpolicy.org/article/temporary-protected-status-united-states-grant-humanitarian-relief-less-permanent).

38 U.S. Government Accountability Office (GAO), *Central America: Information on Migration of Unaccompanied Children from El Salvador, Guatemala, and Honduras*, GAO-15-362 (Washington, DC: GAO, 2015), [www.gao.gov/assets/670/668749.pdf](http://www.gao.gov/assets/670/668749.pdf). Crime and violence were identified as factors explaining UAC outflows by nine out of nine experts consulted; economic conditions, educational systems, and family reunification were identified as factors by eight out of nine experts consulted. Also see Stinchcomb and Hershberg, "Unaccompanied Migrant Children from Central America."



relief, and therefore deportable. This individualized review is a critical element of the response to a mixed flow.

But the United States has systematically under-resourced the immigration court system. Between 2002 and 2013, funding for frontline immigration enforcement operations increased 300 percent (from \$4.5 billion to \$18.0 billion), while funding for immigration adjudications increased just 70 percent (from \$175 million to \$304 million), resulting in growing court backlogs as cases flow into the system faster than they can be accommodated.<sup>39</sup> The fact that immigrants in removal proceedings have no right to legal counsel and that most immigrants appear in court without a lawyer results in further delays because judges are often forced to issue continuances and extend hearing dates to give unrepresented immigrants time to seek an attorney. Thus, the average processing time for noncitizens to move through the immigration court system more than doubled between 2002 and 2013—from 250 days in 2002 to more than 511 days in 2013.<sup>40</sup>

Inadequate legal and judicial resources prevent TVPRA from functioning as intended, and the combination of mandatory hearings, family placements, and long hearing wait times have become an important policy-driven pull factor for Central American children. Anecdotal reports from Central America indicate that the ability of children, as well as certain family units, to remain in the United States while awaiting immigration hearings were widely misunderstood within the region as *permisos*, or ongoing legal authority to live in the United States. These views reportedly were supported by intentional misinformation campaigns by migrant smugglers advertising their services.<sup>41</sup> Thus, the TVPRA's two-track system—with unaccompanied Mexican youth usually subject to rapid deportation, and those from Central America admitted into the United States pending long-off immigration hearings—is likely an important reason that the sharp rise in Central American apprehensions since 2012 has not been observed among Mexican children.

At the same time, long hearing wait times and limited legal services also undermine the system's ability to protect vulnerable groups. Given the complexity of U.S. asylum and SIJ policies, few immigrants file successful claims without legal representation, as noted above, raising important questions about whether vulnerable individuals receive adequate protection.<sup>42</sup> And even those immigrants who are eventually granted relief must wait months or years to receive legal status, delaying their access to services, hindering their successful integration, and preventing them from sponsoring their families abroad, leaving many in harm's way. Thus, even if the border itself is highly secure—or if immigrants routinely present themselves to enforcement authorities, as in the case of most unaccompanied child migrants and families—inadequate legal services and adjudication resources mean that the system fails both to protect vulnerable populations and to prevent unlawful entries.

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39 Marc R. Rosenblum and Doris Meissner, *Deportation Dilemma: Reconciling Tough and Humane Enforcement* (Washington, DC: MPI, 2014), 18, <http://migrationpolicy.org/research/deportation-dilemma-reconciling-tough-humane-enforcement>.

40 TRAC, "Immigration Court Processing Time by Outcome," accessed December 2, 2014, [http://trac.syr.edu/phptools/immigration/court\\_backlog/court\\_proctime\\_outcome.php](http://trac.syr.edu/phptools/immigration/court_backlog/court_proctime_outcome.php).

41 See, for example, El Paso Intelligence Center (EPIC), "Misperceptions of U.S. Policy Key Driver in Central American Migrant Surge," July 7, 2014, [www.scribd.com/doc/233856565/Leaked-EPIC-Document#scribd](http://www.scribd.com/doc/233856565/Leaked-EPIC-Document#scribd); also see GAO, *Central America*. Critics of the Obama administration have argued that the president's support for comprehensive immigration reform (CIR) and the 2012 Deferred Action for Childhood Arrivals (DACA) program offering temporary legal status to certain unauthorized youth also incentivized illegal immigration. While confusion about the program may have fed into misinformation about U.S. policies, "comprehensive immigration reform" has been a persistent topic of conversation in the United States since the mid-2000s. And the president announced his intention to expand a DACA-style program on June 30, 2014—immediately after the peak in UAC inflows. Thus, the CIR and DACA debates likely made smaller contributions to the mythology of *permisos* than did the actual U.S. policy of releasing children and families with distant immigration hearing dates.

42 See for example, American Bar Association (ABA) Commission on Immigration, "A Humanitarian Call to Action: Unaccompanied Alien Children at the Southwest Border," (statement, October 17, 2004), [www.americanbar.org/content/dam/aba/administrative/immigration/UACStatement.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/immigration/UACStatement.authcheckdam.pdf); TRAC, "Representation for Unaccompanied Children in Immigration Court," <http://trac.syr.edu/immigration/reports/371/>; also see Andrew Ian Schoenholtz, Philip G. Schrag, and Jaya Ramjo-Nogales, *Lives in the Balance: Asylum Adjudication by the Department of Homeland Security* (New York: New York University Press, 2014).



### C. Immigrant Smugglers and Social Networks

A third set of factors contributing to the rise in Central American migration since 2011 involves the complex web of smugglers and social networks connecting communities in Central America and the United States. Historically, smuggling operations were concentrated at the U.S.-Mexico border, and most Central American immigrants crossed through Mexico on their own before hiring a smuggler to facilitate their entry to the United States. In recent years, tougher U.S. border enforcement has raised the cost of illegal entry, leading to more expensive and professionalized smuggling operations; rising violence in Mexico has made the entire journey from Central America riskier—and more profitable for these professional operations.<sup>43</sup>

Smugglers have adapted to these incentives by offering door-to-door services that extend all the way to remote Central American villages, and money-back guarantees that children will be delivered to family members in the United States. At the village level, smuggling networks often connect with trusted local agents; smugglers are perceived as providing needed services, not exploiting vulnerable travelers. They are thus part of the dense information networks connecting immigrants and home communities. As reported by news media in 2014, smugglers often misrepresented the fact that child and family migrants were being routinely released into the United States with a lawful *permiso* to remain in the United States.<sup>44</sup>

Such marketing efforts by smugglers reinforce other, underlying social network effects. According to a survey in July 2014, more than half (54 percent) of Central American immigrants to the United States knew another recent immigrant from their country.<sup>45</sup> With each previous immigrant's successful U.S. trip, networks exerted a stronger pull on those considering the journey—a pull that in some cases included obligations to repay the loans taken out to finance other family members' journeys. Smugglers then cut their prices in the spring and summer of 2014, encouraging immigrants to travel quickly in anticipation of an expected tightening of U.S. immigration enforcement.<sup>46</sup>

## V. Mixed Flows: Challenges and Recent Responses

Many—but not all—of the unauthorized children and families from Central America who reached the U.S. border in 2011-14 were entitled to humanitarian protection. Responding to this type of mixed flow creates unique policy and political challenges, which in turn make it difficult to craft policies that are both effective and compassionate.

### A. Policy Challenges

The steep rise in Central American arrivals in 2011-14 presented the United States with a difficult policy challenge: a high volume of people migrating for different reasons, and therefore subject to different legal responses. On the one hand, under U.S. and international law, the United States is required to provide

43 The going rate for being smuggled from Central America to the United States reportedly was \$5,000-\$7,000 in 2012. See U.S. Conference of Catholic Bishops, Migration and Refugee Services, *The Changing Face of the Unaccompanied Alien Child: A Portrait of Foreign-Born Children in Federal Foster Care and How to Best Meet their Needs* (Washington, DC: U.S. Conference of Catholic Bishops, 2012), 4, [www.usccb.org/about/children-and-migration/unaccompanied-refugee-minor-program/upload/A-Portrait-of-Foreign-Born-Children-in-Federal-Foster-Care-and-How-to-Best-Meet-Their-Needs\\_USCCB-December-2012.pdf](http://www.usccb.org/about/children-and-migration/unaccompanied-refugee-minor-program/upload/A-Portrait-of-Foreign-Born-Children-in-Federal-Foster-Care-and-How-to-Best-Meet-Their-Needs_USCCB-December-2012.pdf).

44 See Damien Cave and Frances Robles, "A Smuggled Girl's Odyssey of False Promises and Fear," *The New York Times*, October 5, 2014, [www.nytimes.com/2014/10/06/world/americas/a-smuggled-girls-odyssey-guatemala-migration-abduction.html?\\_r=0](http://www.nytimes.com/2014/10/06/world/americas/a-smuggled-girls-odyssey-guatemala-migration-abduction.html?_r=0); CAN/EWTN News, "Bishop: Child-Migrant Surge Begins in Smugglers' Lies," *National Catholic Register*, December 28, 2014, [www.ncregister.com/daily-news/bishop-child-migrant-surge-begins-in-smugglers-lies/](http://www.ncregister.com/daily-news/bishop-child-migrant-surge-begins-in-smugglers-lies/).

45 Orozco and Yansura, *Understanding Central American Migration*, 14.

46 *Ibid.*, 16; Cave and Robles, "A Smuggled Girl's Odyssey."





protection to those who have been persecuted or fear being persecuted in their home countries.<sup>47</sup> On the other hand, like all sovereign states, the United States also must maintain border controls and deny entry to unauthorized immigrants who don't meet the requirements for being granted political asylum or other forms of humanitarian protection.

Reconciling these policy goals is problematic: immigrants' motives are complex, and fear of persecution may be both difficult to document (for those with genuine protection needs) and easy to claim (for those who are not actually eligible for relief). Thus, a fundamental immigration policy challenge is how to protect vulnerable populations while restricting the admission of people who may be fleeing deeply difficult conditions but lack valid claims to humanitarian protection in the United States.

## **B. Political Challenges**

Apart from the complexity of migration flows, the politics of immigration in the United States—as in most wealthy countries—place a premium on immigration enforcement.

The tension between protection and prevention must be understood in the context of ongoing U.S. attempts to prevent illegal immigration across the Southwest border. Since the 1980s the United States has engaged in a sustained effort to strengthen border security and immigration enforcement; spending on federal immigration enforcement totaled \$18.3 billion in FY 2014, up from \$580 million in 1986.<sup>48</sup> After more than three decades of intense efforts to prevent illegal crossings at the Southwest border, many U.S. policymakers and much of the American public are strongly inclined to view border flows—regardless of the circumstances—through an enforcement lens rather than as a humanitarian issue. As the number of child and family arrivals increased in 2014, advocates for a more restrictive immigration policy reinforced this perception by blaming the arrivals on weak enforcement practices by an administration criticized as being too lax.

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*Mixed flows always require a differentiating response that reserves protection for those with genuine claims for political asylum or humanitarian relief, while denying the claims of others.*

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More generally, mixed flows always require a differentiating response that reserves protection for those with genuine claims for political asylum or humanitarian relief, while denying the claims of others. Effective enforcement is important in this context, as unauthorized immigrants compete with genuine refugees for scarce social support resources. Enforcement failures may create a vicious cycle, in which ineffective control policies incentivize further unauthorized flows, placing additional strains on the system. Eventually, the failure to prevent “regular” illegal immigration undermines domestic political support for generous protection policies, jeopardizing protection for those who need it most.

## **C. The Policy Response**

By May 2014 U.S. policymakers from both sides of the aisle described child migrant arrivals as a crisis,

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<sup>47</sup> As a signatory to the United Nations Refugee Convention, the United States follows the principle of *nonrefoulement*, which says that people should not be deported back to a country where they face a well-grounded fear of persecution based on membership in a particular social group.

<sup>48</sup> DHS, *DHS Budget in Brief, FY 2015* (Washington, DC: DHS, 2014), [www.dhs.gov/sites/default/files/publications/FY15BIB.pdf](http://www.dhs.gov/sites/default/files/publications/FY15BIB.pdf); Department of Justice, “Immigration and Naturalization, Service Budget, 1975-2003,” [www.justice.gov/archive/jmd/1975\\_2002/2002/html/page104-108.htm](http://www.justice.gov/archive/jmd/1975_2002/2002/html/page104-108.htm). Controlling for inflation, enforcement spending increased more than thirteen-fold during this period.



though they disagreed about how to respond. In July President Obama submitted to Congress a request for \$3.7 billion in emergency supplemental appropriations to provide additional funding for child and family detention facilities, DHS enforcement operations, immigration judges and adjudication services, and assistance to Central America to combat unauthorized flows.<sup>49</sup> But Congress declined to approve the extra funding.<sup>50</sup> As a result, the U.S. response to the crisis was limited to administrative changes within existing budget authority and to measures that could be accomplished in cooperation with Mexico and Central America. These actions have fallen within five main areas since May 2014, summarized below.

## I. Institutional Reforms

DHS and the White House announced a series of changes to centralize UAC and family arrival procedures and to coordinate a single, cohesive whole-of-government response. In May Homeland Security Secretary Jeh Johnson implemented departmental procedures to enable a centralized, DHS-wide response to the child arrivals. In June President Obama likewise announced a full government-wide response, to be coordinated by the Federal Emergency Management Agency (within DHS).<sup>51</sup> In October Secretary Johnson announced additional, permanent changes to the DHS border security structure, creating three new interagency task forces within DHS to coordinate enforcement and investigations on the Southwest border.<sup>52</sup>

## 2. Enhanced Enforcement

The United States, Mexico, and the Northern Triangle countries all took steps to strengthen border security and to more reliably detain and remove arriving immigrants. Within the United States, DHS reassigned hundreds of Border Patrol agents from other border sectors to the Rio Grande Valley sector, where most child and family immigrants had been arriving. DHS and the Department of Justice (DOJ) also initiated an interagency task force to prosecute human-smuggling cases.

DHS further strengthened immigration enforcement by adding new immigrant detention facilities for women and children. Between August 2009 and June 2014 DHS generally did not detain immigrant families seeking asylum protection in the United States, as noted above. In June DHS reversed that policy, opening an emergency family detention facility to accommodate up to 700 people, and implementing a policy of generally detaining family units awaiting asylum hearings.<sup>53</sup> Over the next six months DHS opened four additional facilities, expanding family detention capacity to 3,700 beds.<sup>54</sup> In February 2015 a federal court issued a preliminary injunction to block the mandatory detention policy, ordering that DHS cannot automatically detain arriving families as part of a strategy to deter future unauthorized flows.<sup>55</sup>

Mexico and the Northern Triangle countries also implemented new enforcement policies. For the Central American states, cooperation on enforcement meant issuing travel documents and landing rights to permit

49 President Barack Obama, "Letter to the Honorable John Boehner" (White House, July 8, 2014), [www.whitehouse.gov/sites/default/files/omb/assets/budget\\_amendments/emergency-supplemental-request-to-congress-07082014.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/budget_amendments/emergency-supplemental-request-to-congress-07082014.pdf).

50 Ed O'Keefe and Robert Costa, "House Passes Two Republican Measures in Response to Surge of Child Migrants," *Washington Post*, August 1, 2014, [www.washingtonpost.com/politics/house-gop-moves-closer-on-immigration-bill-ahead-of-recess/2014/08/01/11084a2e-1983-11e4-9e3b-7f2f110c6265\\_story.html](http://www.washingtonpost.com/politics/house-gop-moves-closer-on-immigration-bill-ahead-of-recess/2014/08/01/11084a2e-1983-11e4-9e3b-7f2f110c6265_story.html).

51 DHS, "Statement by Secretary Johnson about the Situation along the Southwest Border," (news release, September 8, 2014), [www.dhs.gov/news/2014/09/08/statement-secretary-johnson-about-situation-along-southwest-border](http://www.dhs.gov/news/2014/09/08/statement-secretary-johnson-about-situation-along-southwest-border).

52 DHS, "Remarks by Secretary of Homeland Security Jeh Johnson: 'Border Security in the 21st Century,'" (news release, October 9, 2014), [www.dhs.gov/news/2014/10/09/remarks-secretary-homeland-security-jeh-johnson-border-security-21st-century](http://www.dhs.gov/news/2014/10/09/remarks-secretary-homeland-security-jeh-johnson-border-security-21st-century).

53 Julia Preston, "Detention Center Presented as Deterrent to Border Crossings," *The New York Times*, December 15, 2014, [www.nytimes.com/2014/12/16/us/homeland-security-chief-opens-largest-immigration-detention-center-in-us.html?\\_r=0](http://www.nytimes.com/2014/12/16/us/homeland-security-chief-opens-largest-immigration-detention-center-in-us.html?_r=0).

54 Franco Ordoñez, "U.S. Looks to Detain More Mother, Child Migrants, Sometimes for Months," McClatchy News Service, February 10, 2015, [www.mcclatchydc.com/2015/02/10/256181/us-looks-to-detain-more-mother.html](http://www.mcclatchydc.com/2015/02/10/256181/us-looks-to-detain-more-mother.html).

55 *R.I.L.R. v. Johnson*, No. 15-11, memorandum opinion by the U.S. District Court for the District of Columbia, February 20, 2015, [www.scribd.com/doc/256418581/Immigration-order](http://www.scribd.com/doc/256418581/Immigration-order). Also see American Civil Liberties Union (ACLU), "ACLU Opposes Funding for Family Detention, Immigration Detention Bed Quota, and ICE 287(g) Program in H.R.240, Department of Homeland Security FY 2015 Appropriations," (letter to senators, February 25, 2015), [www.aclu.org/sites/default/files/assets/15\\_2\\_25\\_aclu\\_views\\_on\\_dhs\\_appropriations\\_for\\_fy2015\\_final.pdf](http://www.aclu.org/sites/default/files/assets/15_2_25_aclu_views_on_dhs_appropriations_for_fy2015_final.pdf).

additional deportation flights, amounting to several thousand additional deportations per week. For Mexico cooperation on enforcement meant scaling up its own interdiction and removal efforts, primarily through the Programa Frontera Sur (“Southern Border Program”), focused on the disruption of traditional migrant routes and transportation methods and the installation of new interior checkpoints.<sup>56</sup> According to Mexican media accounts, Mexico apprehended 22,000 Central American children in the first 11 months of 2014, almost a three-fold increase over the same period in 2013.<sup>57</sup> Data released by Mexico’s national migration institute (Instituto Nacional de Migración) indicate that deportations of children from Mexico to Central America more than doubled between 2013 and 2014, from 7,000 to 18,000.<sup>58</sup>

### 3. Adjudication Process

Both the Obama administration and congressional Republicans initially proposed to respond to surging child inflows by creating new fast-track removal proceedings for arriving Central American minors traveling alone. But the administration retreated from this position by June 2014, and congressional Democrats blocked proposals to amend the TVPRA to speed the child deportation process. Congress also failed to support provisions in President Obama’s supplemental funding request to expand the number of immigration judges and to provide additional legal services to arriving immigrants.<sup>59</sup>

In the absence of other changes, DOJ and DHS created a special docket for child arrivals, and employed video conferencing and related technology to involve judges from around the country in providing speedier hearings. The administration also announced a pair of small-scale programs to expand migrants’ access to legal counsel.<sup>60</sup> By July arriving minors were scheduled for initial hearings within 21 days of arrival. Nonetheless, 72 percent of removal hearings for unaccompanied minors that were initiated in FY 2014 remained unresolved as of February 28, 2015, meaning that the minimum wait time in the great majority of cases was between four and 17 months.<sup>61</sup> For women and children flagged for rapid family docket hearings, 64 percent of cases initiated in FY 2014 remained unresolved as of February 28.<sup>62</sup>

### 4. Information Campaign to Deter Unauthorized Flows

The United States worked with the three Northern Triangle countries to discourage unauthorized outflows through public information campaigns, highlighting the costs and dangers associated with an unlawful journey to the United States.<sup>63</sup> The United States also sought to counter widespread rumors that child and family arrivals would be permitted to remain in the United States, warning Central Americans

56 See for example, Paulina Villegas and Randal C. Archibold, “Mexico Makes Route Tougher for Migrants,” *The New York Times*, September 21, 2014, [www.nytimes.com/2014/09/22/world/americas/mexico-makes-route-tougher-for-migrants.html?r=0](http://www.nytimes.com/2014/09/22/world/americas/mexico-makes-route-tougher-for-migrants.html?r=0).

57 Manu Ureste, “La Detención en México de Migrantes Menores de 11 Años Aumentó un 541% en 2014,” *Animal Politico*, December 31, 2014, [www.animalpolitico.com/2014/12/detencion-en-mexico-de-migrantes-menores-de-11-anos-aumento-un-541/](http://www.animalpolitico.com/2014/12/detencion-en-mexico-de-migrantes-menores-de-11-anos-aumento-un-541/).

58 MPI calculations from Instituto Nacional de Migración, “Boletín Mensual de Estadísticas Migratorias,” 2009-14 (Mexico City: Interior Ministry, Bureau of Population, Migration, and Religious Affairs, 2009-2014).

59 Obama, “Letter to the Honorable John Boehner.”

60 In July the Department of Justice’s Executive Office for Immigration Review (EOIR) and the Corporation for National and Community Service (AmeriCorps) announced a \$2 million grant program to provide legal services to UACs in immigration proceedings. And in September, HHS announced a \$9 million grant to two refugee organizations to provide legal services to UACs. See Corporation for National and Community Service, “Announcement of Federal Funding Opportunity,” (news release, July 18, 2014), [www.nationalservice.gov/sites/default/files/upload/JusticeAmeriCorpsNOFO.pdf](http://www.nationalservice.gov/sites/default/files/upload/JusticeAmeriCorpsNOFO.pdf); and Miriam Jordan, “U.S. Government to Provide \$9 Million for Legal Aid to Child Migrants,” *Wall Street Journal*, September 30, 2014, <http://online.wsj.com/articles/u-s-government-to-provide-9-million-for-legal-aid-to-child-migrants-1412106221>.

61 MPI calculations based on data provided by TRAC, “Juveniles—Immigration Court Deportation Proceedings.” Minimal wait-time estimates based on the difference between when children entered the immigration court system (that is, between September 1, 2013, and August 31, 2014) and the date on which their cases were known to remain unresolved (that is, February 28, 2015).

62 MPI calculations from TRAC, “Priority Immigration Court Cases: Women with Children,” data through February 2015, <http://trac.syr.edu/phptools/immigration/mwc/>.

63 See, for example, Government of El Salvador, “Don’t Believe the Coyote” campaign, Gobierno de El Salvador, “Bienvenidos a nuestro sitio,” accessed March 31, 2015, <http://ninezmigrante.rree.gob.sv/>.





that they would be returned home.<sup>64</sup>

## 5. In-Country Processing

In November the administration announced a new Central American Minors Refugee/Parole Program.<sup>65</sup> Under this in-country processing initiative, which began in December 2014, refugee status claims for certain minors in El Salvador, Guatemala, and Honduras are being accepted and decided within their home countries. Access is limited to children with parents who are already lawfully present in the United States, including parents who have Temporary Protected Status (TPS). The program plans to accept fewer than 4,000 applications in FY 2015, though the Obama administration could waive this limit if circumstances in the region call for additional admissions. In addition, children who do not meet the specific conditions for refugee status may be considered on a case-by-case basis to be paroled into the United States for humanitarian reasons on a temporary basis. The program will also extend to certain family members of qualifying minors, including a second parent who lives with the minor in Central America and is married to the U.S.-based parent, and any children of the qualifying minor.

# VI. Discussion and Recommendations

On a basic level, the policies put into effect in 2014 were a success. A situation widely described as a humanitarian crisis—thousands of women and children risking their lives to migrate illegally through Mexico to the United States—was widely reversed in a matter of months. Comparing the first four months of FY 2015 (that is, October 2014-January 2015) to the same period in FY 2014, apprehensions of UACs were down 39 percent, to 10,123, and apprehensions of family units were down 16 percent, to 9,090.<sup>66</sup>

Yet these totals are still on pace for the volume of unaccompanied minor and family arrivals in FY 2015 to rank as the second-largest in recent years. Though the United States and its migration partners strengthened deterrence and enforcement policies in 2014, the policy changes failed to address the fundamental drivers of illegal and humanitarian migration from Central America, leaving the system primed for a continuing high volume of child and family flows. Indeed, the 2011-14 surge occurred despite the fact that an estimated 80 percent of migrants traveling from Central American were apprehended prior to entering the United States.<sup>67</sup> Recent reforms also left important gaps in the systems for adjudicating humanitarian claims and promoting the successful integration (or reintegration) of children and families at the end of the migration process. A durable response to high-volume mixed flows requires interventions at all points along the migration pathway.

## A. Attacking the Drivers of Migration

Within Central America, mitigating the drivers of unauthorized and humanitarian flows requires improving citizen security, fighting corruption, and enhancing economic opportunities.

64 See, for example, Homeland Security Secretary Jeh Johnson, “An Open Letter to the Parents of Children Crossing Our Southwest Border” (Department of Homeland Security, June 23, 2014), [www.dhs.gov/news/2014/06/23/open-letter-parents-children-crossing-our-southwest-border](http://www.dhs.gov/news/2014/06/23/open-letter-parents-children-crossing-our-southwest-border).

65 U.S. Department of State, “Fact Sheet: In-Country Refugee/Parole Program for Minors in El Salvador, Guatemala, and Honduras with Parents Lawfully Present in the United States” (fact sheet, Department of State, Washington, DC, updated November 14, 2014), [www.state.gov/j/prm/releases/factsheets/2014/234067.htm](http://www.state.gov/j/prm/releases/factsheets/2014/234067.htm).

66 CBP, “Southwest Border Unaccompanied Alien Children.”

67 ITAM, *Central American Transit Migration*.



## I. Investment in Security and Economic Development

The hard work of mending damaged and lawless communities and building a strong economic infrastructure must be led by Central American governments and civil societies themselves. But the United States has a clear stake in these efforts, and must provide a share of the needed financial support. Creating realistic alternatives to migration, so that Central Americans have meaningful opportunities at home, will take years, even decades. Thus, such investments are politically challenging—a fact that highlights the urgency of according them higher priority. Nonetheless, in rejecting President Obama’s supplemental funding proposal, Congress denied a State Department request for \$295 million designed, in part, to address root causes of migration in Central America.

In November the presidents of El Salvador, Guatemala, and Honduras announced a trilateral plan to promote growth and citizen security in the region.<sup>68</sup> The plan reflects a significant degree of cooperation and coordination among the three countries, and identifies a coherent set of development goals. Though the plan emphasizes large-scale infrastructure investments, its success will depend, to a significant degree, on the availability of substantial—and uncertain—external financing from partner countries such as the United States and from international financial institutions such as the Inter-American Development Bank. The Obama administration has requested \$1 billion in FY 2015 to support the plan,<sup>69</sup> though it is far from certain that Congress will provide the funds.

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**Recommendation: Invest in Central American security and economic development.** The United States should provide strong support for Central American development efforts. The president’s proposed investment of \$1 billion would represent about 5 percent of annual U.S. spending on migration control and enforcement. Investments in Central America should focus on increasing productive regional investments, building human capital, improving public safety, and strengthening political institutions—along the lines described in the November 2014 Northern Triangle development road map.<sup>70</sup>

## 2. Visa Policy Changes

Family reunification is also a significant driver of mixed flows from Central America. In short, hundreds of thousands of Central American parents and spouses are separated from their partners and children by thousands of miles. Many have lived in the United States for years—including 276,000 Salvadorans and Hondurans who have been lawfully present with TPS for more than a decade<sup>71</sup>—but current policy prevents them from sponsoring an immediate family member for a U.S. visa, or from adjusting their own visa status in order to eventually sponsor a relative. When the only legal alternatives for these families are either to remain separated—or for the U.S.-based family members (and often the sole breadwinners) to abandon the family’s foothold in the United States—these conditions create powerful incentives for

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68 Governments of El Salvador, Guatemala, and Honduras, *Plan for the Alliance for Prosperity in the Northern Triangle: A Road Map*, Regional plan prepared by El Salvador, Guatemala, and Honduras, September 2014, <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=39224238>.

69 Joseph R. Biden, Jr., “Joe Biden: A Plan for Central America,” *The New York Times*, January 29, 2015, [www.nytimes.com/2015/01/30/opinion/joe-biden-a-plan-for-central-america.html?\\_r=0](http://www.nytimes.com/2015/01/30/opinion/joe-biden-a-plan-for-central-america.html?_r=0).

70 Governments of El Salvador, Guatemala, and Honduras, *Plan for the Alliance for Prosperity*; also see Demetrios G. Papademetriou, Doris Meissner, and Eleanor Sohnen, *Thinking Regionally to Compete Globally: Leveraging Migration & Human Capital in the U.S., Mexico, and Central America* (Washington, DC: Migration Policy Institute, 2013), [www.migrationpolicy.org/research/thinking-regionally-competes-globally-leveraging-migration-human-capital-us-mexico-and](http://www.migrationpolicy.org/research/thinking-regionally-competes-globally-leveraging-migration-human-capital-us-mexico-and).

71 Messick and Bergeron, “Temporary Protected Status in the United States.”



families to consider illegal migration.

**Recommendation: Develop legal channels for certain Central American flows.** In the long run, the pull of family connections can only be addressed in the context of the wider U.S. immigration debate—either through a broad legalization program or by deporting a substantial share of this population. The problem of divided families also could be addressed indirectly, by facilitating legal employment-based immigration within the region, for example, through a targeted low-skilled visa for Mexican and Central American workers.

## **B. Enforcement and Adjudication in the Region**

One of the United States' primary enforcement strategies in the post-9/11 period has been to “push the border out” by extending immigrant screening to earlier and more remote points in the migration process, including through partnerships with foreign governments and international carriers to enhance enforcement at foreign ports of departure.<sup>72</sup> Similarly, one of the key enforcement tools deployed in response to Central American inflows in 2014 was for the United States to collaborate with Mexico and the Northern Triangle countries on earlier and more remote interdictions and apprehensions of unauthorized immigrants in transit. Along with the coordinated U.S. and Central American information campaigns,

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*Deterrence policies primarily promote enforcement goals, not the protection of vulnerable populations.*

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enforcement in the region is designed to combat illegal immigration by discouraging potential migrants from even initiating travel.

Such deterrence is attractive: convincing migrants not to depart is more efficient than deporting them. Preventing illegal migration attempts deprives migrant smugglers of revenue, and deterrence also serves a protection function by discouraging children and families from undertaking dangerous and expensive unauthorized travel.

At the same time, however, deterrence policies primarily promote enforcement goals, not the protection of vulnerable populations. Indiscriminate efforts to discourage migration outflows may trap vulnerable populations at home. In the absence of careful screening for humanitarian concerns, strong apprehension and detention programs strengthen enforcement but undermine the protection of vulnerable groups.

**Recommendation: Ensure adequate adjudication mechanisms in Central America and Mexico.**

Fundamentally, a balanced response to a mixed migration flow requires a fair and complete review, on a case-by-case basis, of every immigrant's claim to humanitarian relief—regardless of where he or she enters the immigration enforcement system. Yet available evidence suggests that many Central Americans apprehended while in transit to the United States are returned to Central America with limited humanitarian screening.<sup>73</sup> The United States should not support efforts to apprehend and return immigrants in transit without ensuring that they have a genuine opportunity to seek humanitarian relief. U.S. support for adequate humanitarian protections within Mexico and Central America is especially important to the extent that enforcement within the region is undertaken at the urging of, and with financial and/or technical support from the United States.

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<sup>72</sup> For a fuller discussion of these trends, see Marc R. Rosenblum, *Border Security: Immigration Inspections at Port of Entry*, CRS Report R43356 (Washington, DC: Congressional Research Service, 2014), <http://fpc.state.gov/documents/organization/234359.pdf>.

<sup>73</sup> Isacson, Meyer, and Morales, *Mexico's Other Border*, 15.



The United States can also undertake its own humanitarian screening within the region, as it has already begun to do through the Central American Minors (CAM) program initiated in December 2014. In-country processing is a powerful tool from a protection standpoint because it allows certain vulnerable children to obtain relief in the United States without undertaking the dangerous trip through Mexico. Notably, the CAM program is designed to permit DHS to exercise its humanitarian parole authority; parole can be a particularly important protection tool because it may apply to children who do not meet the specific refugee criteria (i.e., because they do not face persecution on account of race, religion, nationality, membership in a particular social group, or political opinion), but who still face grave dangers in Central America.

At the same time, the CAM program's exclusive focus on children with a parent who is lawfully present in the United States means that many potential child migrants will be excluded.<sup>74</sup> In addition, similar programs have proven to be problematic in certain other cases, because the availability of in-country processing services often has been combined with near-zero-tolerance enforcement policies for those who are unwilling or unable to take advantage of the programs. For example, following the implementation of in-country processing in Haiti in 1992, the United States adopted a policy of immediately returning Haitian nationals interdicted at sea to Haiti without conducting asylum interviews or any humanitarian screening.<sup>75</sup> The existence of an in-country processing program does not obviate the need for humanitarian screening of migrants apprehended in transit or at the U.S. border. This history, along with the provisional cap of 4,000 admissions per year, raise questions about how in-country processing will be deployed in the Central American case. These questions mostly remain unanswered as of March 2015 because, to date, no applicants have been fully processed through the program.

### C. Enforcement and Adjudication in the United States

For children and families apprehended—or presenting themselves—at the U.S.-Mexico border, resolving the tension between enforcement and protection also requires a case-by-case, fair, and expeditious adjudication processes. The absence of such a process is arguably the single most important U.S. policy failure with respect to the recent surge of Central American child and family arrivals. At least until the February 2015 injunction blocking routine detentions of Central American families, mothers with children were routinely being detained in the United States—including those who express an intention to apply for asylum—with limited access to legal services, making it difficult or impossible to ensure that their protection claims are subject to a fair and complete review. As a result, some Central Americans have been returned to dangerous conditions with limited opportunities to apply for relief from removal.<sup>76</sup> The Obama administration took modest steps to shorten hearing wait times by establishing a special docket for child and family arrivals. But limited judicial and legal services mean that unaccompanied minors and family units in removal proceedings still face months or years of delays before their cases are finally resolved.

**Recommendation: Consider nonjudicial measures to adjudicate certain asylum claims.** One way to free up judicial resources for difficult asylum cases is to expedite the processing of cases that are not complex. While the United States already has mechanisms for fast-track deportations (that is, for adults and family units not found to have a credible or reasonable fear of persecution), it should also

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74 Many Central American parents who have lawful permanent residency in the United States likely would already have petitioned for their minor children to be admitted as family-based permanent immigrants, particularly in the case of children who face threatening conditions in Central America. Thus, the main group likely to be affected by the Central American Minors (CAM) program are children of the 276,000 Salvadorans and Hondurans who have TPS status. Children of the 1.3 million unauthorized Central Americans in the United States, along with those without a U.S.-based parent, will not be covered by the program.

75 White House, Executive Order 12807 – Interdiction of White Illegal Aliens, May 24, 1992, [www.presidency.ucsb.edu/ws/?pid=23627](http://www.presidency.ucsb.edu/ws/?pid=23627).

76 See, for example, HRW, “You Don’t Have Rights Here”: U.S. Border Screening and Returns of Central Americans to Risk of Serious Harm, October 16, 2014, [www.hrw.org/reports/2014/10/16/you-don-t-have-rights-here-0](http://www.hrw.org/reports/2014/10/16/you-don-t-have-rights-here-0); Kennedy, “No Childhood Here;” Bob Ortega, “Revisiting the Immigration Pipeline: Deported into Danger,” *Arizona Republic*, November 13, 2014, [www.azcentral.com/story/news/politics/immigration/2014/11/13/immigration-pipeline-children-deported/18969561/](http://www.azcentral.com/story/news/politics/immigration/2014/11/13/immigration-pipeline-children-deported/18969561/).



develop policies to permit USCIS asylum officers to grant asylum to arriving immigrants with strong, valid protection claims, rather than sending such cases before an immigration judge. (Asylum officers can already grant asylum to “affirmative applicants,” i.e., those who apply for asylum upon entering the country lawfully on a temporary visa; they are not currently permitted to grant asylum to those who have not been lawfully admitted to the United States.)

**Recommendation: Ensure fair and timely adjudication of humanitarian claims within the United States.** Ultimately, the only way to ensure fair and timely adjudication is to substantially increase legal and judicial resources. Congress should fund immigration judges at least at levels that are proportional to the rest of the immigration enforcement system, and dedicate funding to legal services for unaccompanied minors and asylum applicants.<sup>77</sup>

**Recommendation: Consider alternatives to detention for family units awaiting removal hearings.** Routinely detaining Central American family arrivals is costly and arguably out of step with the country’s character—especially in the case of immigrants who have passed a credible fear interview and so are reasonably likely to be granted asylum or another form of relief. As an alternative, DHS should enroll most family units awaiting removal hearings in one of the U.S. Immigration and Customs Enforcement (ICE) Alternatives to Detention (ATD) programs, which involve various models for supervising people in nondetained settings. Such programs also support protection goals by facilitating immigrants’ access to more complete legal services. Moreover, these gains come at little cost, as ICE’s main ATD program achieved a 99 percent court appearance rate in 2011-13 at a fraction of the cost of traditional detention facilities.<sup>78</sup>

#### D. Integration/Reintegration

Policies that promote the successful integration of immigrants within host countries, or a successful return to their countries of origin, are a necessary final stage of a well-functioning immigration system. Such policies were conspicuously absent among those introduced in 2014 to address rising child and family arrivals. Limited downstream services and support for those who will spend months or years in immigration proceedings—and in many cases will be granted some form of relief from removal—is an important barrier to the successful integration of arriving child and family migrants. And inadequate reintegration programs in Central America mean that deportations may result in “revolving-door” enforcement patterns, with many deported immigrants seeking re-entry into the United States.

Within the United States, children and families awaiting removal hearings (that is, before potentially receiving asylum or some other form of relief from deportation) are ineligible for most government-funded health or educational services, even as many face acute challenges to their physical and mental health, integration, and academic achievement. Federal funds are limited even for those few who do receive a grant of asylum. In the absence of such support, costs fall on the communities where immigrants settle, typically already home to a large number of recently arrived, often unauthorized, immigrants.

In Central America even fewer services are available to most returning migrants. This leaves them vulnerable to being recruited—or extorted—by the same criminal smuggling organizations responsible for their initial north-bound trips. Many are returned to the same high-crime, low-opportunity communities from which they had fled.

<sup>77</sup> President Obama’s supplemental request included \$45 million to hire additional immigration judge teams and \$18 million for expansion of legal services and legal representation for UACs, and would have been a small step in this direction.

<sup>78</sup> GAO, *Alternatives to Detention: Improved Data Collection and Analyses Needed to Better Assess Program Effectiveness*, GAO-15-26 (Washington, DC: GAO, 2014), [www.gao.gov/assets/670/666911.pdf](http://www.gao.gov/assets/670/666911.pdf). For the main U.S. Immigration and Customs Enforcement (ICE) Alternatives to Detention program, which involves regular monitoring of immigrants through Global Positioning System (GPS) tracking and telephone reporting, program costs are \$10.55 per immigrant, per day, as compared to \$158 per immigrant, per day to be housed in a traditional detention facility. Also see DHS Office of Inspector General, *U.S. Immigration and Customs Enforcement’s Alternatives to Detention (Revised)*, OIG-15-22 (Washington, DC: DHS Office of Inspector General, 2015), [www.oig.dhs.gov/assets/Mgmt/2015/OIG\\_15-22\\_Feb15.pdf](http://www.oig.dhs.gov/assets/Mgmt/2015/OIG_15-22_Feb15.pdf).





Although U.S. communities, and especially school systems, are feeling the strain of these new residents, many have made impressive efforts—often with strong support from elected leaders and municipal officials—to welcome and assist child migrants. Meanwhile those children who accompany their deported parents back to the country of origin are most often being returned to communities far less equipped to receive, reintegrate, and assure safety. It is an urgent need—both from the standpoint of humanitarian imperatives and enforcement effectiveness—that efforts to support vulnerable people and groups who face life-threatening dangers focus on conditions at the community level in countries of origin.

**Recommendation: Support immigrant integration within U.S. communities.** Unaccompanied minors and the U.S. communities in which they are settled pending determination of their cases face daunting conditions, and their long-term success—regardless of location—will require significant financial investments in their health, education, and well-being. The federal government should establish a grant program to support ongoing education, health, and mental health services for child migrants living in the United States.

**Recommendation: Support more robust reintegration programs for minors who are returned to Central America.** A number of promising, but small, programs exist in Central America to support returning UACs and other deportees. The Guatemalan Child Return and Reintegration Project (GCRRP), for example, was launched in 2010 by the U.S.-based NGO Kids in Need of Defense, and has provided temporary shelter, help with family reunification, medical and psychological services, and longer-term assistance with education or job training to about 123 Guatemala child deportees.<sup>79</sup> The United States should monitor existing programs and provide funding to expand those with promise.

## VII. Conclusion

The sudden rise in Central American women and children arriving at the U.S. border in recent years overwhelmed existing capacity to process new arrivals and exposed flaws in the United States' ability to determine which new arrivals qualify for humanitarian protection and which should be subject to deportation. In the absence of a fair and efficient system to distinguish between humanitarian and nonhumanitarian cases, lengthy delays have limited the quality of protection offered to vulnerable groups, while also undermining immigration enforcement by encouraging additional unauthorized inflows.

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*Important questions remain about whether the United States and its regional partners are doing enough to balance protection and enforcement concerns.*

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New policies adopted by the United States in 2014—in partnership with Mexico and the Northern Triangle nations—likely contributed to a subsequent drop in flows, and should be viewed as a success in that respect. Yet an evaluation of the 2014 policies finds that they focused primarily on short-term enforcement concerns, particularly at U.S. borders and along transit routes. The lack of a longer-term vision and broader geographical focus may limit the policy's success.

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<sup>79</sup> Kids in Need of Defense, “Guatemalan Child Return and Reintegration Project,” accessed March 31, 2015, <https://support-kind.org/en/about-us/10-kind-in-action/155-guatemalan-child-return-and-reintegration-project-gcrrp>. For a fuller discussion, see Victoria Rietig and Rodrigo Dominguez Villegas, *Stopping the Revolving Door: Reintegration Services for Deported Migrants in Central America* (Washington, DC: Migration Policy Institute, forthcoming 2015).



In sum, important questions remain about whether the United States and its regional partners are doing enough to balance protection and enforcement concerns, and about how best to address the fundamental drivers of Central American migration to the United States. The country's ongoing effort to manage its borders *and* the well-being of thousands of vulnerable immigrants—many of them children—both hang in the balance.





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