



NATIONAL IMMIGRATION FORUM

Statement for the Record

U.S. Senate Committee on the Judiciary

“The Unaccompanied Children Crisis: Does the Administration Have a Plan to Stop the Border Surge and Adequately Monitor the Children?”

February 23, 2016

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

Introduction

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

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

Specific to this hearing, we must both address the short-term needs of those fleeing violence and find a long-term solution to the problem of families and children coming from Central America. The influx of families and UAC fleeing violence in Central America’s Northern Triangle is a hemispheric problem in need of a regional solution. The U.S. should lead and engage with our regional partners to ensure the safety of the region as a whole, as well as our nation’s safety, including addressing the root causes in Honduras, El Salvador and Guatemala.

In addition to living in countries with some of the highest murder rates in the world,¹ families and children from Central America face extreme poverty, exploding levels of gang violence and terror, unchecked domestic violence, and deepening social unrest. Additionally, sex trafficking and forced labor are becoming increasingly prevalent in these three countries.² Children from Honduras, El Salvador and Guatemala are increasingly recruited to participate in armed conflicts or to join gangs.³ Faced with these horrific options, desperate Central American families and children are increasingly choosing to risk everything to come to the U.S. to escape violence in their native countries and seek refuge.⁴ The problem has only been further compounded by human traffickers, who have used unrest in the Northern Triangle as an opportunity to exploit vulnerable populations and profit off their misery, placing tens of thousands of children and families in danger. Rather than blaming the victims of these traffickers, we urge Congress to work to combat human trafficking, working under the existing framework of the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) to protect at-risk refugees and asylees while going after the traffickers who trade in human misery.

The Asylum Process

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

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

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

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

³ *Id.*

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

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

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

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

situation in Central America, the Forum would urge Congress to examine alternative ways to afford relief to those who face serious dangers in Central America.

Due Process

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

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

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

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

Increase funding for the Executive Office of Immigration Review (EOIR). EOIR includes funding for our nation's immigration courts and judges. For years, funding for EOIR has failed to keep pace with increases in immigration enforcement. From FY 2003 to FY 2015, Customs and Border Protection and Immigrations and Customs Enforcement spending increased approximately \$9.6 billion or 105 percent, yet EOIR spending increased only \$158 million or 74 percent.⁹ During this same time period, the immigration court backlog increased by 163 percent.¹⁰ By April 2015,

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

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

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

immigration courts had a backlog of nearly 450,000 cases, with an average wait time of 604 days – nearly a year and eight months.¹¹ Exacerbating the problem are budget cuts, retirements and attrition that have led to a reduction in judges from 270 in April 2011 to 233 in May 2015.¹² In FY 2014, each immigration judge was handling an average of 1,400 matters a year.¹³ The most recent influx of families and UAC only further underscores the need to adequately fund the immigration court system.

Provide legal counsel to families and UAC. Under existing regulations, families and UAC are permitted to obtain legal counsel, but are not entitled to counsel at government expense. Studies have demonstrated that individuals who nonetheless are able to secure representation for their Immigration Court cases are far more likely to successfully obtain relief. According to a report by the Transactional Records Access Clearinghouse (TRAC) at Syracuse University, nearly three in four represented UAC (73 percent) are able to obtain relief allowing them to remain in the country, while only about one in six without representation obtain such relief.¹⁴

Similarly, TRAC has reported that nearly one-third of women with children who obtain legal representation (32.9 percent) are granted relief allowing them to remain in the United States.¹⁵ In contrast only about one in fifty such individuals without representation (2.3 percent) are granted such relief.¹⁶

We urge Congress to pass legislation to provide legal representation to families and UAC during immigration proceedings. In addition to providing more funding for attorneys and judges, the DOJ could partner with service organizations, law firms, and other organizations to provide pro-bono legal services to those needing legal assistance. Effective legal assistance would ensure that families and UAC have clear and accurate information, including clear notice when they are to appear for a screening interview or in immigration court and ensure that they have the opportunity to attend scheduled immigration court hearings.

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

¹¹ *Id.*

¹² *Id.*

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

¹⁴ Syracuse University’s Transactional Records Access Clearinghouse (TRAC) “Representation for Unaccompanied Children in Immigration Court,” 25 November 2014. <http://trac.syr.edu/immigration/reports/371/>.

¹⁵ Syracuse University’s Transactional Records Access Clearinghouse (TRAC) “Representation Makes Fourteen-Fold Difference in Outcome: Immigration Court “Women with Children” Cases” 15 July 2015. <http://trac.syr.edu/immigration/reports/396/>.

¹⁶ *Id.*

Conclusion

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

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

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