



The New Reality of Migrant Flows at the U.S. Southwest Border

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Executive Summary

The United States Government made remarkable progress from the 1990s through the early 2010s (coupled with changing demographic and economic conditions in Mexico) in improving security and reducing illegal immigration at its border with Mexico. Beginning in 2014, however, the situation changed, and it has deteriorated substantially in the last year. A flood of asylum seekers from the Northern Triangle countries of Central America—Honduras, El Salvador, and Guatemala—have overwhelmed U.S. (and Mexican) border officials. Urgent attention is required to address a mounting crisis, requiring action across numerous policy fronts: from foreign affairs and international assistance through reform of the U.S. immigration system and asylum law to amelioration of the dismal security conditions extant in the Northern Triangle.

Following preparation of this paper, the Trump and López Obrador administrations reached an agreement pursuant to which Mexico will take additional action to attempt to stem the flood of Central American asylum seekers. The core aspects of the accord are (1) Mexico's deployment of some 6,000 members of its new National Guard to address the flows of Central Americans crossing Mexico's southern border and (2) an expansion of the Migrant Protection Protocols, under which more asylum applicants will wait in Mexico during the adjudication of their petitions. There also is apparently a preliminary accord regarding some form of a "safe third country" agreement, which the Government of Mexico may submit to its Congress.

This all amounts to a positive development: not only does the agreement take President Trump's threatened tariffs on Mexico off the table (at least for now), these steps have the potential to modestly deter and disrupt the human smuggling networks fueling the current crisis. However, the agreement is not a comprehensive and permanent solution. It remains to be seen how the agreement is implemented, including whether Mexico has the capacity and infrastructure to deport tens of thousands of migrants let alone to care properly for an increase in Central Americans waiting in Mexico. Consistent with the original analysis of this paper and accompanying recommendations, the situation still requires urgent attention and a concerted response from the U.S. Congress and the Executive Branch.

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Background

The growth of the U.S.-Mexico border region since the 1980s, including improvements in security, is a little noticed but remarkable success story. Border communities have become some of the most vibrant economic and cultural areas in North America, and cities like El Paso and San Diego are among the safest cities in America. Undocumented migration of Mexican nationals into the United States, once the central border management and security issue, has become a manageable problem. In recent years, however, increasing numbers of asylum seekers from Central America have posed a new challenge and, in 2019, precipitated a border and political crisis in the United States and Mexico. The dynamics behind these phenomena are complex, including economic, governmental, societal, and demographic changes. This paper focuses on the U.S. government border security and enforcement components of what has transpired at the southwest border.

By the 1980s and 90s, border communities had become inundated with illicit crossing activity. Throughout this period, the U.S. Border Patrol was regularly apprehending in excess of one million undocumented migrants annually (overwhelmingly Mexican economic migrants) at the southwest border.¹ The situation was particularly problematic in and around the urban areas of San Diego, California, and El Paso, Texas. In fiscal year (FY) 1992, for instance, the Border Patrol apprehended 565,581 undocumented migrants in the San Diego Sector and 248,642 in the El Paso Sector.² It was “a border that was virtually out of control” and “completely porous.”³

The federal government lacked the resources to properly address the situation. The Border Patrol counted only 4,130 agents among its ranks at the time,⁴ and it lacked the supporting infrastructure and technology now embodied in the U.S. border security enterprise. What agents did exist were overwhelmed by the flows of Mexican economic migrants crossing illegally into the United States. The situation was untenable, and the Clinton administration began the process of reorienting the federal government’s approach.

Through a series of strategic and tactical innovations, along with massive investments in border security resources, the government pushed illicit crossing activity out of the urban areas and into more remote locations. In FY2000, the number of apprehensions in San Diego and El Paso had dropped to 110,075 and 115,696, respectively.⁵ As President George Bush entered office, however, overall apprehensions remained high, reaching a modern highwater mark of 1,643,679 in FY2000.⁶ Continuing the same approach of targeting high-traffic areas and investing in more agents, infrastructure, and technology—and driven by the reorientation of the federal government around “homeland security” following the 9/11 attacks—the Bush administration made substantial progress in reducing illicit crossings. By FY2008, the number of apprehensions had fallen to 705,005.⁷ Apprehension numbers continued to fall during the Obama administration to 408,870 in FY2016—and even lower in FY2017 to 310,531.⁸ From FY2000 through FY2018, the number of Mexican nationals apprehended by the Border Patrol dropped approximately 90 percent.⁹ Research has shown that since 2014 more Mexican nationals have departed from the United States, voluntarily or involuntarily (i.e. deported), to Mexico than have arrived in the United States from Mexico legally or illegally.¹⁰

While overall apprehensions fell during the Obama administration, a change became apparent by 2013: the arrival of Central American unaccompanied minors and family units seeking asylum in the United States. The number of unaccompanied children (UACs) encountered by the Border Patrol on the southwest border jumped from 15,949 in FY2011 to 24,403 the next year and then to 38,759 in FY2013.¹¹ By FY2013, the number of family unit encounters reached 14,855—a number which rose to 68,445 the next year.¹² It had become, as DHS officials testified in 2014, an “urgent situation,”¹³ and one which has persisted.

In 2019, the situation exploded. U.S. Customs and Border Protection apprehensions and inadmissibility determinations at the southwest border substantially outpaced prior years. In March and April alone, the Border Patrol apprehended nearly 100,000 persons each month; and in May, apprehensions and inadmissibility determinations reached 144,000, the highest level in seven years. Of those, a majority each month were UACs or family units, primarily asylum seekers from Central America.¹⁴

Analysis

The primary immigration challenge at the U.S. southwest border has changed dramatically. The historical enforcement concern was the flow of undocumented Mexican economic migrants into the United States. Beginning in the 1990s and continuing to the present, the U.S. Government has effectively addressed that issue (aided by improved economic conditions in Mexico and changing demographics there) by increasing the size of the Border Patrol; making substantial investments in infrastructure (fencing, vehicle barriers, lighting, and roads); deploying cutting-edge technology; and using consequence and deterrence programs like expedited removal, interior and lateral repatriation, and targeted criminal prosecution.¹⁵ While the number of Mexican nationals caught crossing the border illegally has fallen dramatically because of substantially enhanced border security and economic growth in Mexico, the numbers of persons of other nationalities caught entering illegally has increased. The Border Patrol now apprehends significantly more undocumented migrants from countries other than Mexico.

Most of the non-Mexican nationals originate from the Northern Triangle countries of Central America—El Salvador, Honduras, and Guatemala—and they are seeking asylum in the United States. A combination of factors is driving this emigration. For most of their citizens, these countries lack basic public safety and security. Gang violence and extortion remain prevalent, as does domestic and family violence. There is a lack of economic opportunity in these countries. Economic growth is anemic and below the levels necessary to alleviate poverty. Although some progress has been made, the Northern Triangle countries' governments lack the resources, capacity, and expertise to effectively restore public safety and security, reorient their nations' economies, and tackle endemic corruption and impunity.

As described by the then-Commissioner and now Acting Secretary of DHS, Kevin McAleenan, the flood of Central American asylum seekers has overwhelmed U.S. border authorities and pushed the system to a “breaking point.”¹⁶ The crisis finds its roots in the sheer numbers of Central Americans arriving and the nature of the asylum process. The asylum applicants do not attempt to evade capture; to the contrary, they actively seek out Border Patrol agents in order to initiate the asylum process. Once in custody, the asylum applicants must be fed, housed, and cared for pending their “credible fear” interview. This interview is the preliminary test for an asylum claim, passage of which allows the applicant to proceed to full adjudication. It is a relatively low standard, which a large majority of applicants are meeting. Complicating the government's ability to detain the applicants is a federal court order that strictly limits the amount of time juveniles can be detained. Immigration authorities are now giving asylum applicants a “notice to appear” for a later court date and releasing them into the United States. If the applicant meets the credible fear standard, the applicants are able to live and work in the United States until the immigration courts resolve their asylum claims.

However, the immigration courts are not adequately staffed and resourced to handle the deluge of cases. The backlog of immigration cases is approximately 900,000,¹⁷ with the number of pending asylum applications exceeding 300,000.¹⁸ It is a years-long backlog.¹⁹ Of those who have their claims fully adjudicated, only approximately 15 percent of asylum applicants

from the Northern Triangle countries will have their applications granted.²⁰ Nearly all of the Central American applicants, however, who arrived in 2017 are still in the United States.²¹ And even when an asylum application is heard and denied, there is a reasonable likelihood the applicant will never be found, detained, and deported.

There are, in short, strong “push” and “pull” factors driving the asylum crisis. On the “push” side, the Northern Triangle countries are, and are likely to remain for the foreseeable future, undesirable places to live for most of their citizens, and these individuals will not unreasonably continue to seek to leave for a better life. On the “pull” side, the U.S. asylum and immigration court system is uniquely mis-designed to handle a flood of applicants, the consequences of which are that applicants can live and work in the United States for years while their cases plod through the immigration courts and the federal judicial appeals process. The asylum applicants are able to access better jobs in the United States than in Central America, and the United States is a safer place. They have every incentive to try for asylum in the United States even though the chance of formally obtaining it are small. Human smuggling networks have exploited this situation to the fullest.

Recommendations

Recommendation 1: The U.S. Congress must reform U.S. asylum law.

The United States did not craft its asylum laws to handle the types of claims the United States is now confronting. El Salvador, Honduras, and Guatemala exemplify this situation, as it is the prevalence of crime, including gang and domestic violence, and lack of opportunity—not persecution—that is causing their citizens to leave. Attorney General Jeff Sessions’ 2018 decision to exclude gang and domestic violence victims from the asylum system underscores the extent to which U.S. asylum standards may no longer be responsive to the conditions leading people to flee their home countries. The United States, along with other western countries, needs to review and determine the conditions under which asylum, or some other form of lawful immigration like temporary protected status and/or temporary work visas or permits, are available. Although this recommendation urges an update to U.S. asylum law, it recognizes that the asylum and refugee assistance process cannot be designed to remedy every human tragedy and misfortune that arises in the world.

Pending these reforms, Congress must appropriate additional funds to ensure the health and safety of asylum applicants. The agencies responsible for receiving and caring for asylum applicants do not have the expertise and resources to meet their care needs. Congress must appropriate additional funds, and as necessary grant contracting flexibility, so that CBP and other agencies can quickly procure medical, housing, and food support for arriving applicants wherever they are housed. America should not be a place that stores people under bridges and where sick children cannot receive the care that they need.

Recommendation 2: The United States must revamp its immigration court system.

The United States has not built an immigration court system capable of handling the breadth and scope of the modern immigration caseload. Although some like President Trump criticize providing undocumented border crossers with any judicial process, the opportunity for a fair proceeding before an impartial decisionmaker is a core component of American due process. Congress should authorize additional funds to at least double the number of immigration court judges from approximately 400 to 800, if not more. It should also consider authorizing DHS officers from U.S. Citizenship and Immigration Services—rather than judges—to fully adjudicate asylum petitions, which determinations would be subject to review through appropriate appeal procedures.²²

In the near term, the United States needs to deploy a process to fairly and expeditiously hear the asylum claims of arriving Central Americans. For instance, the government could establish specialized, regional asylum courts along the southwest border. Staffed through a substantial temporary assignment of current immigration judges (or officers), the adjudicators would be tasked with quickly and fairly resolving new asylum applications in weeks not years. This type of system would strain the remaining immigration system while new judges are hired and other measures are explored, but such strain appears unavoidable in order to stem the flood of new applicants in the near to mid-term.

Recommendation 3: The United States needs to receive and process Central American asylum requests away from the border.

Currently, the United States government waits for Central American asylum applicants to arrive at the border. The U.S. border is, however, a poor and inefficient place in which to manage the flow of asylum applicants. CBP officers and agents are law enforcement personnel with pressing criminal and national security responsibilities. Processing the flood of asylum seekers detracts from their priority missions and endangers U.S. public safety. The Trump administration's proposal to force asylum applicants to present their claims at the ports of entry rather than between the ports of entry is not a solution. Although that would alleviate the strain on the Border Patrol, such a change simply relocates the problem to a different part of CBP and undermines the agency's ability to screen and process lawful trade and travel. Ports of entry also were not designed to process asylum seekers and are as inappropriate as Border Patrol stations to handle large numbers of vulnerable families.

The federal government should consider revitalizing efforts to direct Northern Triangle applicants to make their claims in country in a U.S.-sponsored safe zone or in a regional processing center in southern Mexico. At the very least, an applicant would have to pass the credible fear interview stage of the process, before they would receive documentation to come to the United States for the remainder of their claim. In a more ambitious version, applicants would be required to stay at a U.S.-guaranteed safe zone in Mexico or Central America until their asylum application is fully adjudicated onsite or through a virtual proceeding. Either scenario will require a substantial commitment of financial resources, along with policy adjustments by the Department of State and U.S. Citizenship and Immigration Services. We recognize that a large U.S. presence in Central America or Mexico could raise political concerns in those countries regarding U.S. intervention. However, the United States has successfully partnered with Mexico and other countries on security and immigration-related initiatives, including through deployment of U.S. personnel in-country. These types of initiatives demonstrate that, through careful diplomacy and public relations, these types of concerns can be managed satisfactorily.

The United States also should pursue a regional resettlement program, under which Central Americans who have an asylum claim approved would be resettled in other Western Hemisphere countries. This type of program would discourage economic migrants who are using asylum claims to obtain status in the United States. At the same time, those who in fact need asylum protection would still find refuge in a safe country.

Recommendation 4: The United States must make a determined effort to work with its allies to improve conditions in Central America.

So long as the conditions in Central America remain poor, Central Americans will look to leave for a better life in the United States and, increasingly, in Mexico. Accordingly, the United States needs an ambitious development agenda for Central America: the Marshall Plan meets Plan Colombia, that is, a substantial and focused development initiative tailored to the unique conditions driving the crisis in Northern Triangle countries. The enormity of the problem requires a commensurate level of effort: foreign aid, technical advice, economic incentives, and security cooperation. This approach undoubtedly will take time to produce results but the “push factors” driving the current exodus from the Northern Triangle cannot be ignored.

The urgent first-level need is to restore public safety and security. Working with allies like Mexico and Colombia, the United States should deploy substantial law enforcement and supporting intelligence resources to tackle the gang violence problem and other threats to citizen security. Working with and through our allies, and perhaps under the auspices of the Organization for American States (or some other multilateral arrangement), the United States can mitigate the historic concerns in Latin America with American intervention. Recent experiences in Colombia and Mexico provide important lessons, but the strategy must be scoped to address the specific conditions on the ground in each of Guatemala, El Salvador, and Honduras. (A subsequent paper in this series will address the elements of an approach to tackle the crime problem in the Northern Triangle countries.)

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Editor’s Note

Future contributions to this paper series will address, among other related topics: (1) U.S.-Mexico cooperation to strengthen Mexico’s infrastructure and disrupt human smuggling networks and (2) sequencing properly development efforts in the Northern Triangle.

Endnotes

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