

A Challenging Moment for the Protection of Migrant Rights and Human Rights *in the Northern Triangle of Central America & Across the Migrant Route*

Some Risks and Opportunities in Shifting U.S. Immigration and Foreign Policy for Central American, Mexican & U.S. Civil Society Organizations Concerned about Migrant Rights and Human Rights Protections

Introduction

In June 2014, a surge of unaccompanied children, youth and families, mostly from the Northern Triangle of Central America, crossing the U.S. border from Mexico caught the U.S. headlines. This lit a political firestorm in the United States. Critics of immigration reform and opponents of President Obama's policies claimed that President Obama's steps to temporarily halt the deportations of some young immigrants and plans to expand this program had acted as an incentive for families to send their children on a dangerous journey with the hope that they would ultimately cross the border and be permitted to stay in the United States. U.S. authorities were unprepared for the number of unaccompanied migrant children arriving to the United States and turning themselves in to Border Patrol agents. Concerned humanitarian agencies and immigration advocates called for unaccompanied children to be quickly reunited with family members in the United States, for detained immigrant families to be released from detention, and for migrants to have their cases reviewed by an immigration judge and for those seeking asylum or other humanitarian relief to have access to legal representation and a fair hearing to present their claims. They also called for solutions to address the root causes of violence, as well as poverty, which were driving this humanitarian crisis.

Frustrated by the failure of the U.S. Congress to deliver comprehensive immigration reform, President Barack Obama has taken steps to help some of the estimated 11 million people who reside in the United States without authorization, starting in 2011 and culminating in the November 2014 executive actions. These measures are unfortunately currently stalled by a law suit in U.S. courts. If fully implemented, they will offer relief from deportation to as many as four million immigrants.

TABLE OF CONTENTS

- 1 Introduction
- 3 Areas Where Civil Society Groups Can Work Together to Improve U.S. Foreign Policy & U.S. & Mexican Immigration Policy towards Central America
- 5 The Executive Actions on Immigration
- 9 The U.S. Government's Response to the Surge in Unaccompanied Children
- 15 Dialogue with Customs and Border Protection on the Treatment of Migrants in the United States
- 18 The Obama Administration's Actions to Persuade Mexico to Expand Migrant Interdiction and Deportation
- 19 A New U.S. Aid Package for Central America



At the same time, to address a tide of political criticism from sectors opposed to these immigration actions, President Obama intensified U.S. border enforcement, prioritized deportations of those who came after January 1, 2014, and put pressure on the Mexican government to increase deportations of migrants before they reached the U.S. border. Mexico dramatically increased deportations, deporting 107,000 individuals from the Northern Triangle in 2014, a 47 percent increase from the year before. Moreover, the Obama Administration refused to recognize the unaccompanied children and families from Central America as refugees in need of international protection. Thousands of family members are being held in detention centers and unaccompanied children face court proceedings often without access to lawyers.

The Obama Administration also announced in January 2015 a \$1 billion aid plan aimed primarily at the Northern Triangle countries, billed as addressing the root causes of violence and poverty driving migration. However, this plan is not fully shaped nor is it likely to be fully approved this year by the U.S. Congress. This, like other similar aid packages, will be a one-year plan that must be proposed by the executive branch and approved by Congress each year, so there are many opportunities for civil society organizations to try to affect it.

In this rapidly shifting, volatile U.S. foreign policy and immigration policy debate affecting Central America, there are risks and opportunities for Central American, Mexican and U.S. civil society organizations that care about protecting human rights in Central America and migrant and refugee rights throughout the migrant route.

The risks include:

- Stepped-up apprehensions, detentions and deportations from Mexico that expose migrants to violence and abuse and violate migrant rights;
- Violation of the rights of Central American children and families to access asylum and other forms of protection in the United States and Mexico;
- U.S. assistance and diplomatic pressure that could further militarize borders and Central American and Mexican societies; and
- U.S. and multilateral bank aid, loans and policies that, if poorly designed, could go towards corruption, abuse or highly inequitable development, and even contribute to displacement.

The opportunities include:

- Millions of immigrant families and youth in the United States could benefit from relief from deportation, also helping the family members in Central America to whom they provide support;
- U.S. diplomacy, if well directed, could help encourage Central American governments to address some human rights and corruption problems; and
- U.S. assistance programs, if well designed with meaningful civil society participation, could contribute, at least modestly, to addressing violence and poverty.

This report is intended as a resource for Central American, Mexican, regional and U.S. civil society organizations and other interested individuals to understand this rapidly shifting U.S. immigration and foreign policy towards Central America and Mexico. It suggests ways in which we, as civil society organizations, can work together to maximize the opportunities and to minimize the risks in this moment for human rights and migrant rights.

RECOMMENDATIONS: Areas Where Civil Society Groups throughout the Region Can Work Together to Improve U.S. Foreign & Immigration Policy and Mexican Immigration Policy towards Central America

Central American organizations can collaborate with Mexican and U.S. civil society groups to improve U.S. and Mexican immigration policy by documenting abuses taking place in the United States and Mexico and suggesting remedies:

- Collect testimonies of cases of children and families who have been deported after having fled their homes in the Northern Triangle because of violence and persecution – and were deported from Mexico or the United States despite a likely need for international protection. Analyze testimonies to identify trends and patterns of abuse and specific practices that violate the rights of migrants or place migrants at greater risk of abuse or violence. Share these testimonies and analysis with trusted civil society partners in the U.S. and Mexico.
- Collect testimonies of individuals who have experienced abuse or harms while in Customs and Border Protection (CBP) custody in the United States or by Mexican authorities. Document harmful practices, especially when you identify patterns of abuse. Share these specific cases, testimonies that reflect broader patterns of abuse and general concerns with governmental officials from your own country – or with trusted U.S. and Mexican organizations to use in advocacy efforts.
- When problems are identified, work with colleagues to identify solutions and develop concrete recommendations to improve how the U.S. and Mexican governments treat migrants – whether when they are being apprehended, in detention, or upon deportation.
- Collect testimonies and document harmful practices affecting migrants who have been deported from Mexico so that together we can get a clearer picture of escalating enforcement in Mexico. Document patterns of abuse and denial of opportunities for asylum screening. This may include victims of violence from gangs, organized crime, state actors or other sources, victims of domestic abuse, or members of the LGBT community facing violence.
- Work with U.S.-based civil society organizations to develop generalized expert affidavits documenting conditions in your countries such as cartel and gang violence, domestic violence, sexual abuse, and treatment of LGBT individuals, to support claims for asylum in the United States and Mexico.
 - Based on this information, U.S. groups can encourage specific improvements to screening and access to protection, including the asylum process, in the United States and Mexico, especially for children and families, as well as LGBT individuals and victims of domestic violence. Mexican organizations can advocate for improvements for protection and asylum in Mexico.
- Provide information and recommendations to U.S. partners about how the in-country processing programs (which allow parents legally in the United States to sponsor their at-risk children to apply for asylum at U.S. embassies in Northern Triangle countries) are working, and how they can be improved.
- Document the effects, or lack thereof, of the public information campaigns encouraged and funded by the United States in each country to dissuade would-be migrants and urge more effective uses of funds.
- Meet with the U.S. and Mexican embassies in your country to raise concerns regarding treatment of migrants in Mexico and/or the United States and to encourage access to asylum protections. In the U.S. embassy, as well as raising issues regarding treatment of migrants in the United States, you may wish to highlight how U.S. assistance and diplomatic pressure on Mexico to increase deportations places migrants at greater risk.

- Urge the Salvadoran and Guatemalan governments to officially recognize the situation of displacement from violence in their countries (the Honduran government already does), and enlist the support of civil society groups in other countries in encouraging this important step.

Central American organizations can document and visibilize what is happening to returned migrants.

- Document what services are provided to deported migrants, particularly children and youth, when returned to Central American countries, and what humanitarian, reintegration and protection services are lacking and share with U.S. and Mexican civil society organizations, so that together we can call for improved services to returned migrants and migrant-sending communities.
- Document testimonies, particularly of children, who have faced violence or other extreme hardships upon their deportation to share with trusted partners in the United States and Mexico.

Central American and U.S. civil society groups can work together to improve U.S. foreign policy and aid to Central America by the following actions:

- Identify specific human rights improvements needed in your country, ask U.S. civil society groups to prioritize these issues, and collaborate together to put these specific issues on the table for discussion between our governments.
- Identify and advocate for specific kinds of U.S. assistance that would be helpful and against the kinds that would be harmful, and share these recommendations with U.S. partners.
- Join U.S. groups in encouraging USAID to establish a meaningful consultation process on aid to each country and use that mechanism to monitor and improve aid.
- Encourage U.S. assistance and diplomatic support for helpful U.N. mechanisms including CICIG and country offices of the UN High Commissioner for Human Rights in Guatemala and Honduras, possible establishment of a CICIG-like mechanism in Honduras, and increased assistance for the UNHCR for protection activities in Central America.
- Collaborate together with U.S. human rights groups to use the mechanism of country-wide human rights conditions on U.S. security aid to call for security force improvements and justice for violations.
- Encourage application of the Leahy Law on U.S. security assistance by tracking human rights violations by specific units receiving U.S. aid and providing that information to the State Department (see [Leahy Law](#) section) and U.S. human rights partners.
- Track and monitor Inter-American Development Bank and World Bank projects and loans and work with allies in United States, Latin America and Europe to identify and organize around problematic projects and issues.
- Advocate directly on these issues with the U.S. embassy or USAID mission in your country.
- Use delegations or visits to the United States to highlight these concerns and objectives for U.S. civil society groups and U.S. policymakers.
- Issue public statements on these issues and circulate to U.S. partners.

The Executive Actions on Immigration

When President Obama ran for office, he promised that he would get comprehensive immigration reform passed in the United States in his first year. Six years into his presidency, that goal has proven elusive, thanks to the political climate of the country and strong opposition in the U.S. Congress. On the other hand, President Obama faced increasingly bitter criticism from many in the Latino community in particular as deportations mounted and immigration reform stalled. In the face of failed legislation, President Obama has carried out a series of reforms and executive actions available within his legal authority to make some improvements and to protect some immigrants from the imminent threat of deportation.

President Obama does not have the legal authority to grant immigrants a path to citizenship. Only the U.S. Congress can do that. While we wait for Congress to act, the President and his administration can delay deportation for individuals based on certain criteria, make humanitarian decisions to allow certain unauthorized immigrants to remain in the country temporarily,¹ or delay deportation to a country experiencing natural disaster or domestic conflict.² However, without comprehensive immigration reform legislation passed by the U.S. Congress, these measures remain only partial and temporary solutions.

It has long been apparent that the U.S. immigration system is “broken.” The United States has an estimated population of 11.3 million undocumented immigrants.³ For many years, more people have wanted to migrate to the United States than the complicated and backlogged U.S. legal channels have allowed, and so especially in years of huge labor demand in the United States, people have found ways to enter the United States without documentation. U.S. politicians generally acknowledge it would be impossible to deport the over 11 million undocumented immigrants, many of whom have been in the country many years now.

As no immigration reform successfully advanced in Congress, President Obama took the following actions:

2011: Prosecutorial Discretion. The Obama Administration issued memos from the Immigration and Customs Enforcement (ICE) director (known as the “Morton Memos” for ICE director John Morton) which allowed ICE to focus its enforcement efforts on some groups, and not on others, known as “using prosecutorial discretion.” This meant that ICE would focus on those who posed a danger to national security or a risk to public safety; recent illegal entrants; and those who are fugitives or otherwise obstruct immigration controls.⁴

The memos also stated that some characteristics should be considered “positive factors,” making it less likely that people with these qualities would be deported: the elderly, minors, individuals present in the United States since childhood or lawful long-term residents, victims of domestic abuse or trafficking, veterans or members of the armed forces, pregnant or nursing women, or individuals with serious mental or physical disabilities or health problems.⁵

2012: Relief for Young Immigrants. After the bipartisan DREAM Act failed in the Congress, President Obama decided to once again to take action. The DREAM Act would have provided a path to legal residency and possibly citizenship for youth who had been brought to the United States as children “by no fault of their own,” and were willing to go to college or serve in the U.S. military. The President does not have the legal authority to create a path to citizenship for undocumented immigrants; however, he could temporarily defer deportations for the youth who would have qualified for the DREAM Act (often called “DREAMERS”). President Obama announced on June 15, 2012 that the Department of Homeland Security would be “taking steps to lift the shadow of deportation from these young people” by implementing Deferred Access for Childhood Arrivals (DACA) program.⁶ The DACA program delayed deportation for two years and could be renewed, and allowed students to go to school and apply for work permits and drivers’ permits. Over

580,000 young people were approved to benefit from DACA in the first two years.⁷

The young immigrants who would qualify to apply for DACA:⁸

- Had arrived in the United States before the age of sixteen years old;
- Were under the age of 31 on June 15, 2012;
- Had lived in the United States continuously for five years or more prior to 2012;
- Had graduated from high school, received an equivalent certificate, or served in the U.S. military;
- Had not been convicted of a crime or considered a threat to national security or public safety.

2014: The Executive Actions. On November 20, 2014, President Obama made a long-awaited announcement that once again, in the absence of congressional action,⁹ he would take executive action on immigration. This series of executive actions greatly expanded the categories of undocumented immigrants who could benefit from relief from deportation.

An estimated 4 million people would be eligible for relief from deportation under the 2014 actions, in addition to the more than 1 million eligible for the original DACA, and more who are eligible for Temporary Protected Status (provided for certain groups due to natural disasters or domestic conflict).¹⁰

However, **this executive action, which took place after the surge of unaccompanied children to the United States in 2014, explicitly excluded these children and other people who came during 2014 from receiving executive relief** with the rationale that this exclusion would dissuade others from attempting to come to the United States. **Indeed, the White House pledged as it announced the executive actions that it would crack down on illegal immigration at the border.**

Also on November 20, 2014, the Obama Administration issued a memo listing which immigrants DHS officials should prioritize for detention and deportation, in descending order.¹¹

- Priority 1: Threats to national security, border security, and public safety;
- Priority 2: Those convicted of misdemeanor crimes and new immigration violators (particularly those who have been convicted of three or more misdemeanors or a “significant misdemeanor,” or undocumented immigrants who arrived after January 1, 2014);
- Priority 3: Other immigration violations (particularly those who have been issued a final removal order on or after January 1, 2014).

These priorities direct DHS agents to focus their detention and deportation efforts on individuals who fall into these categories. However, it should be noted that an immigration enforcement agent is still permitted to detain and deport someone who does not fit into one of these priority categories, but the agent would need their field director (their boss) to authorize that the deportation serves an “important federal interest.” Finally, the memo directs DHS agents to exercise discretion even within these priorities for detention and deportation, considering mitigating factors such as: extenuating circumstances involving a conviction; length of time in the United States; military service; family or community ties in the United States; status as a victim, witness or plaintiff in civil or criminal proceedings; or compelling humanitarian factors such as poor health, age, pregnancy, a young child, or a seriously ill relative.

The Obama Administration has maintained a policy of militarized border security at the U.S.-Mexico border in the form of tens of thousands of boots on the ground, surveillance, and more walls in an attempt to address a groundswell of political criticism of the executive actions from those members of Congress, members of the U.S. public and media demanding

a harsher immigration policy. Despite the positive executive actions that offer relief from deportation to several million, many people, including families, were detained and

deported as fast as possible, which is especially problematic in cases of vulnerable migrants, especially children and women, who may be seeking protection or asylum.

The 2014 Executive Actions:

- Expanded eligibility for the DACA program by removing the age cap (of 30 years) and adjusting the date of arrival so that anyone who entered the United States before the age of 16 years old and had lived there continuously since January 1, 2010 could apply, and extended the duration of granted deferred action to three years;
- Created a new Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) program. Parents of U.S. citizens and lawful permanent residents would be allowed to request deferred action and employment authorization for three years, if they had lived in the United States continuously since January 1, 2010 and passed a background check;
- Expanded a DHS program to permit the undocumented parents and spouses of lawful permanent residents, not just citizens, to wait out their visa process in the United States rather than abroad;
- Implemented a new DHS enforcement policy that lifts the threat of deportation from immigrants who arrived in the United States before January 1, 2014, but more explicitly singles out for deportation criminals and people who are caught crossing the border or recently crossed the border on or after January 1, 2014;
- Increased resources for immigration court dockets to process unaccompanied minors;
- Ended the highly-criticized “Secure Communities” program, and replaced it with the “Priority Enforcement Program” (PEP)¹² in a (still inadequate) attempt to restore trust between communities and local law enforcement around immigration enforcement; and
- Strengthened U.S. border security by implementing a new “Southern Border and Approaches Campaign Strategy,” involving changes to the command structure and coordination of agencies within DHS across the entire southern United States (both land and sea).¹³

What can Central American and U.S. civil society organizations do to ensure the executive actions that protect migrant rights are implemented and that asylum protections are observed in the United States?

- Central American and U.S. civil society organizations should work together to make sure CBP and ICE authorities are properly screening individuals they apprehend for fear of persecution if they return to their home countries and making appropriate referrals to the asylum process.
- For example, Central American advocates could interview recent deportees for testimonies of individuals who were not referred to the Asylum Office of the U.S. Citizenship and Immigration Service (USCIS) after informing the CBP or ICE agent that they had fear of persecution or torture upon return to their home country.
- Central American organizations can provide detailed information about the context of violence and impunity that has forced people to leave their country for lawyers assisting

Central Americans pursuing asylum claims in the United States.

- Work with U.S.-based civil society organizations to develop generalized expert affidavits documenting conditions in your countries such as cartel and gang violence, domestic violence, sexual abuse, and treatment of LGBT individuals, to support claims for asylum in the United States and Mexico. For example, Central American organizations with expertise can provide information to the Center for Gender & Refugee Studies based at the University of California Hastings College of the Law in San Francisco. The Center is a resource for attorneys representing asylum seekers from Central America and Mexico. It works with in-country experts to develop general affidavits that can be submitted as evidence in a wide range of cases, and maintains a list of experts, especially on issues of the rights of women, children and LGBT individuals as well as general human rights conditions. Potential experts are encouraged to be in contact with the Center by emailing cgrs@uchastings.edu.¹⁴
- U.S. and Central American advocates should work together to urge the Department of Homeland Security to increase transparency about who is being deported and how it is exercising discretion. This can be done by documenting who is being deported from the United States and sharing that information with U.S. advocates to see if those deported match the deportation priorities, have mitigating factors that should have been considered, or do not meet the Obama Administration's stated priority categories for

deportation at all. (For example, priorities should be those with criminal records, while individuals with children in the United States, no criminal record, elderly, those with severe mental or physical disabilities, should not be priorities for deportation.)

Court Challenges to the President's Immigration Action. While some of the President's November 2014 policy changes remain in place, a temporary hold has been placed on the expansion of DACA and implementation of DAPA (Deferred Action for Parents of Americans and Lawful Permanent Residents) pending decisions by the courts. **However, the original 2012 version of DACA is still in effect and new and renewal applications are still being accepted.**

Following the November 2014 announcement by President Obama, 26 U.S. states filed a case against the U.S. federal government, *Texas v. United States*, challenging the expansions to DACA and DAPA under the claim that they would cause economic injury to the states through the cost of having to provide education, drivers' licenses, and other services which are paid by state or local governments.¹⁵ A federal district court ruled that the President's actions may have violated procedural requirements, though they were not unconstitutional, and allowed a temporary block (injunction) to be placed on the expansion of DACA and the implementation of DAPA. The federal government appealed that decision in the 5th Circuit Court of Appeals, which refused to lift the block placed on the expansion of DACA and implementation of DAPA. Now the case to overturn the injunction goes to an appeals court hearing.¹⁶

The Obama Administration's Response to the Surge in Unaccompanied Children and the Border Crisis

Migration from the Northern Triangle countries of Central America to the United States is nothing new. For over 40 years, Central Americans have come to the United States seeking refuge from violence and conflict, reunification with loved ones, and opportunities to support their families. While the number of unaccompanied minors and families arriving at the U.S. southwest border had been increasing steadily for years, they went largely ignored as the overall population of unauthorized immigrants in the United States was stable or decreasing.

However, starting in 2012, the number of unaccompanied children (defined as youth under 18 years old traveling without their parent or legal guardian) who arrived to the U.S. southern border started to rise dramatically. The number of youth apprehended from El Salvador, Guatemala, and Honduras increased exponentially from FY2012 to FY2013 with an even greater jump between FY2013 and FY2014.¹⁷

Unaccompanied Children (ages 0–17) by fiscal year 2009–2015¹⁸ Fiscal year (FY) – October 1 – September 30

Country	FY 2009	FY 2010	FY2011	FY2012	FY 2013	FY 2014	FY 2015 to date*
El Salvador	1,221	1,910	1,394	3,314	5,990	16,404	3,514
Guatemala	1,115	1,517	1,565	3,835	8,068	17,057	6,607
Honduras	968	1,017	974	2,997	6,747	18,224	1,977
Mexico	16,114	13,724	11,768	13,974	17,240	15,634	6,519
Total	19,418	18,168	15,701	24,120	38,045	67,339	18,617

*FY 2015 (October 1, 2014 – June 30, 2015)

The flow of unaccompanied children crossing the U.S. border reached an unprecedented level in the spring and summer of 2014 that overwhelmed the U.S. immigration system and caught the U.S. government seemingly unawares. In FY2014 alone, the U.S. Border Patrol apprehended over 68,000 unaccompanied children—almost double the 2013 total—and over 68,000 family units—over triple the 2013 total.¹⁹ At the peak of apprehensions in June 2014, Border Patrol apprehended well over 10,000 unaccompanied children and over 16,000 adults with children.²⁰

Although most of the unaccompanied children apprehended by U.S. authorities are teenage boys, U.S. authorities and human rights groups were struck by the increased proportion of children who were 12 or younger and the

proportion of girls.²¹ There were more families arriving to the United States as well. The number of individuals apprehended as part of family units increased by over 350 percent from FY2013 to FY2014.²² Most unaccompanied children and families crossed into the United States in southeastern Texas, immediately across the border from the state of Tamaulipas, Mexico, and presented themselves to Border Patrol agents.

This wave of children and families matched another demographic shift in immigration to the United States: while Mexico has traditionally been the source of the most immigrants to the United States, many more of these children and families were coming from the Northern Triangle countries of El Salvador, Guatemala, and Honduras. And unlike past waves of single men who might have immigrated to the United



States for work, the majority of these children, women, and families were coming fleeing their homes and seeking protection.

By the summer of 2014, this “border surge” had overwhelmed the U.S. system. Unaccompanied children and families require different processing procedures than single adults, different facilities, the involvement of more government agencies, and a bigger budget.²³ As the number of unaccompanied children arriving to the U.S. border grew, the agencies tasked with processing and housing children before they could be either returned to their country of origin (the case for most Mexican children) or reunited with a family member (the situation for many Central American youth), were quickly overwhelmed. Those agencies are the U.S. Border Patrol, a law enforcement agency within the Department of Homeland Security (DHS) tasked with migration control and security in the border region between ports of entry, and the Office of Refugee and Resettlement (ORR), an agency of the Department of Health and Human Services.

Unaccompanied children from noncontiguous countries who are apprehended by (or who turned themselves in to) the U.S. Border Patrol are supposed to be quickly turned over to the care and custody of ORR within 72 hours. Children from contiguous countries (like Mexico) must be screened by CBP for trafficking or fear of persecution in their home country and if not, returned to Mexico in a process called “voluntary return.”²⁴

But at the height of the border surge in 2014, children seeking safe haven were turning themselves in to Border Patrol, and were being held in a Border Patrol or converted military base, often without proper sleeping or restroom facilities, sometimes days beyond the seventy-two-hour minimum in which they should have been released into custody of the Office of Refugee Resettlement. Some were staying in Border Patrol custody for a week or more.

Nongovernmental organizations filed complaints with the U.S. government for systemic abuse of children in U.S. Border Patrol custody, including freezing temperatures, inadequate food and

sexual assault.²⁵ The fact that U.S. authorities were unable to appropriately handle the influx of children attracted intense scrutiny by the media and criticism by the public—from some for the poor conditions that children had to endure in CBP custody, from others because they believed that U.S. authorities should be deporting children more quickly.

How did U.S. Authorities Respond to the Influx of Children?

On June 2, 2014, President Obama stated that the “influx of unaccompanied alien children across the southwest border of the United States has resulted in an urgent humanitarian situation.”²⁶ Two months later, he issued a statement noting that he had taken “strong steps to surge resources to our Southwest border to deter both adults and children from this dangerous journey,” made multiple phone calls to Mexican President Peña Nieto to discuss “a regional strategy to address the influx of Central American migrants through Mexico” and touted the Department of Homeland Security’s launch of an “aggressive” Spanish-language media campaign aimed at dissuading would-be migrants, including a letter to Central American parents stressing that no new form of relief was available and that sending their children to the United States “was not a solution.”²⁷

The increase in Central American children crossing the border was highly politicized by some U.S. policymakers. In June 2014, one of the first congressional hearings on the subject of the influx of children arriving to the U.S. southern border was titled by the committee chair, Representative Bob Goodlatte (Republican, Virginia), “An Administration-Made Disaster: The South Texas Border Surge of Unaccompanied Alien Minors.” At this and other hearings, some members argued that President Obama’s new administrative action, the Deferred Action for Childhood Arrivals (DACA)—the program that provides a two-year reprieve from deportation for eligible undocumented youth already residing in the United States—had incentivized youth in Central America to come to the United States.



How Child Immigrants from Central America Are Treated Differently than Those from Mexico: The Trafficking Victims Protection Reauthorization Act

The Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA)²⁸ mandates that child immigrants from non-contiguous countries to the United States—including those from the Northern Triangle—be processed differently than immigrants from contiguous countries—Mexico and Canada. While children from Central America must be transferred to the Office of Refugee Resettlement and screened for fear of return or protection needs, children from Mexico are screened for fear of return or asylum by CBP, which is primarily a law enforcement agency with limited training in child welfare.

The Mexican consulate also interviews children for fear of return, but a child who has fled violence compounded by corruption and collusion with Mexican government agents is unlikely to admit fear to authorities. If the child is found not to qualify for possible protection, the child can “withdraw their application for admission” to the United States²⁹ and return to Mexico, without an immigration hearing. The United States must return (deport) the child in accordance with agreements with Mexico, including returning the child during business hours and to an appropriate government employee, child welfare officials where available. If during the screening process, a Mexican child cannot be determined within 48 hours to be free from credible fear of returning to their place of origin, then the child must be transferred to the Office of Refugee Settlement and placed in removal proceedings, which at least offers some due process. In 2013, however, only 4.5% of unaccompanied minors from Mexico were transferred to the Office of Refugee Resettlement. The vast majority were fast-tracked for deportation.³⁰

Unauthorized immigrant children from Central America, however, cannot be returned without an immigration hearing (though they may not be given legal representation for that hearing). They must be transferred into Health and Human Services (HHS) custody within 72 hours, where they are screened for fear of return, should be placed with a sponsor and given access to counsel, and go through an immigration hearing. If they are deported, they must be deported by air to their country of origin.

The TVPRA meant that processing and deporting the new wave of children from Central America required more resources than the usual process for deporting Mexican children. These unaccompanied children cases were being added on top of an immigration court backlog that had reached 375,000 cases by June 2014.³¹

This need for more resources to process this new wave of child and family migrants, the unknown period of time they would stay in the United States awaiting their court hearing, and the media coverage of thousands of children at the border sparked a political firestorm across the United States. Some policymakers called for the repeal of the act, which would leave Central American children with as little protection as those from Mexico.

The U.S. government responded to the situation of unaccompanied children at the border with a mix of increased border enforcement, actions to dissuade further migration, and expansion of facilities to hold children and families.³²

- The Department of Homeland Security shifted personnel, including Border Patrol agents and criminal investigators, to the Rio Grande Valley of Texas, where the most children were arriving.

- The Department of Health and Human Services opened three temporary shelters for unaccompanied children on military bases in Texas, Oklahoma, and California. Two additional detention facilities in Artesia, New Mexico and Karnes City, Texas were opened for adults with children, and later another in Dilley, Texas, dramatically increasing the number of beds available for family detention.
- Immigration judges were urged to process recently apprehended unaccompanied children and adults more quickly.
- The U.S. government with Northern Triangle governments launched the “Dangers Awareness Campaign,” a public service warning in the Northern Triangle to discourage people from attempting the dangerous journey north through Mexico, while DHS and the Department of Justice launched “Operation Coyote,” a campaign against human smugglers.
- Finally, Vice President Biden met with the Presidents of Guatemala, Honduras and El Salvador to coordinate an international response, and on July 25, President Obama met with the Presidents of El Salvador, Guatemala, and Honduras. The United States pledged assistance to address the root causes of migration while asking the Central American governments to take steps to dissuade migration.

By July 2014, effects of the Administration’s response were evident in the increased deportation of single adults. Secretary Johnson reported: “By July, through the surge of resources, the Department of Homeland Security had reduced the average removal time for many adults to Central America from 33 days to about 4 days. By July, through the addition of extra aircraft and flights, and the cooperation of the Central American governments, DHS was repatriating several thousand migrants a week back to Guatemala, Honduras and El Salvador.”

Though in the removal process, most children and families have not yet been deported since they must still be processed

differently. Thousands are awaiting their immigration hearings. There were some positive developments as nearly 53,500 children were released to sponsors in the United States (mainly family members) in FY2014.³³ Of the 61,585 juvenile immigration court proceedings that were initiated in FY2014, 11,388 have resulted in an “order of removal,” directing the children/youth to be deported.³⁴

However, the expansion of family detention centers and the thousands of children being held in jail facilities is alarming. Already overwhelmed immigration courts are now more so. There is an extreme shortage of legal representation for families and children, leading to children, who may be victims of trauma and often do not speak English, representing themselves in court. “Imagine a child as young as 3 or 4 attempting to make their case for protection without help, and with a government attorney fighting to have them deported,” notes Kids in Need of Defense.³⁵ Nearly 70 percent of children do not have attorneys in immigration court.³⁶ Despite the fact that U.S. authorities’ own statistics show that the great majority of mothers and children from the Northern Triangle in family detention centers show a credible fear of return,³⁷ the U.S. government has acted to process and deport them.

In a much-needed show of concern about the conditions in family detention centers, 136 members of the House of Representatives called for an end to family detention in a May 2015 letter sent to the Obama Administration. Thirty-three senators sent a similar letter in June.

Central American countries that braced for a sudden return of the unaccompanied children did not see many returned in 2014. Given the average year and a half before these children’s immigration hearings are held, it is estimated that many children may be deported in late 2015 and 2016, although the timeline is uncertain at this time.

Finally, the Obama Administration created in November 2014 an “in-country processing” program, the Central American Minors Refugee/Parole Program (CAM), which allows parents residing with legal status in the United States

to sponsor their children at risk from organized crime, gangs, or state actors to seek asylum in the United States by applying at the U.S. Embassy in their home country.³⁸ Parents can apply for their children (unmarried and under the age of 21) to be transported to the United States to have their asylum claims evaluated, thus allowing them to avoid encouraging their children to take the dangerous journey north. While this program is a small step forward and acknowledges that some children are being displaced by violence, it is expected to have limited impact. U.S. advocates have noted the following shortcomings of this program: 1) refugees admitted under this program would count against the current limit of 4,000 refugee admissions for Latin America and the Caribbean, meaning the numbers admitted will be small compared to the need; 2) wait times are currently nine to twelve months³⁹—not a viable waiting time for children at grave risk, and there is no clear strategy for safeguarding the lives of children waiting to benefit; and 3) children who are already in Mexico cannot benefit from the program without returning to their home countries. As of the writing of this document, we are not aware of any children who could benefit from the program who have yet arrived in the United States.

What Can Central American, Mexican and U.S. Civil Society Organizations Do to Encourage the United States to Address Protection Needs?

The U.S. response to the increased migration of children and families to its southern border has acknowledged humanitarian and protection needs in rhetoric, but has failed to adequately address them in practice. They have been completely overshadowed by the traditional enforcement-first strategy. As civil society organizations in Central America, Mexico and the United States, we can express concerns and views about the U.S. response to children and families by collective letters and statements. Together we can make the following kinds of recommendations, among others:

- Emphasize the importance of retaining existing protections and due process for Central

American children, and to further expand them to Mexican child immigrants as well;

- Urge that all migrants, especially children, get an immigration hearing and legal representation, and call for an end to expedited removal;
- Urge the U.S. government to ensure proper access to asylum screenings and internationally mandated protections;
- Call for an end to family detention;
- Keep emphasizing the importance of comprehensive immigration reform; and
- Urge the Central American and U.S. governments to carefully design and implement specific programs and policies that will address the real root causes of this surge in migration, rather than rapidly detaining and deporting (see section on foreign aid below).

Central American organizations can provide the following kinds of information to help support these efforts:

- Provide stories and specific cases of children and families who have fled their homes in the Northern Triangle because of violence and threat, and who need international protection to trusted organizations and U.S. civil society organizations.
- Provide testimonies of children and families who were seeking protection in the United States and were deported without proper screening.
- Provide testimonies of LGBT individuals, victims of domestic violence, and victims at risk by organized crime, gangs, state actors or others who were deported without adequate screening and access to the asylum process or other forms of relief.
- Document cases in which prosecutorial discretion was not applied but should have been for humanitarian reasons (such as poor mental or physical health, age, pregnancy, a young child, or a seriously ill relative) or other reasons such as military service, or strong family or community ties to the United States.



- Document the effects, or lack thereof, of the public information campaigns of the dangers of the journey, and suggest more effective uses of funds.
- Document what services are provided to deported migrants, particularly children and youth, when returned to Central American countries (documenting separately what is provided to those deported from the United States by plane and those deported from Mexico by bus), and what humanitarian, reintegration and protection services are lacking and share with U.S. and Mexican civil society organizations, so that together we can call for improved services (from Central American governments, international donors and humanitarian agencies) to returned migrants and migrant-sending communities.
- Provide information and recommendations to U.S. partners about how the in-country processing programs are working, and how they can be improved. Among other questions, are children and youth suffering persecution with parents legally in the United States aware of the program? How long are wait times for children going through the process? What risks do children and youth face while waiting to have their cases evaluated before they are transported to the United States? Under what conditions are they living in the meantime? Provide information about children who are suffering persecution but who do not meet the narrow eligibility requirements of the in-country processing program (i.e. the children do not have parents who are legal residents of the United States or they are unable to wait in the Northern Triangle to be processed).

The Obama Administration's Actions to Persuade Mexico to Expand Migrant Interdiction and Deportation

Coinciding with growing concern (and panic by policymakers) in the United States in response to the exponential increases in arrivals of Central American children to the U.S. border last summer, Mexican President Enrique Peña Nieto announced the “Southern Border Program” (*Plan Frontera Sur*) on July 7, 2014. The program’s stated aim was to “protect and safeguard the rights of migrants that enter and transit through Mexico and improve and better regulate international crossing points to strengthen development and security in the region.”

With this new plan, Mexico’s National Migration Institute (*Instituto Nacional de Migración, or INM*) dramatically stepped up interdiction efforts in southern Mexico, by carrying out more mobile highway checkpoints and raids, including those targeting migrants riding on the tops of trains. Increased speed and raids have made transport by trains (*la Bestia*), a way that Central American migrants without other means have traditionally used to cross Mexico, even more dangerous. Concentrated interdiction efforts have forced migrants to seek new, likely more treacherous routes that expose them to violence and abuse by criminal groups and unscrupulous officials, while also taking migrants farther away from shelters and humanitarian aid workers, most of which are located along traditional migrant routes.

Advocates have documented the use of brutal tactics by authorities in migration enforcement operations, including pushing individuals off moving trains, and the failure of Mexican authorities to address the rampant abuse and violence migrants endure at the hands of organized crime and corrupt officials. A 2014 Inter-American Commission on Human Rights report identified that public officials were directly involved in or tolerated abductions of migrants in transit through Mexico by organized crime groups. Government agents have also been implicated in human trafficking and other grave human rights crimes. A major critique of Plan Frontera Sur is that it increases INM’s

enforcement efforts without taking steps to address the rampant corruption within the agency. Latin America Working Group and other human rights groups have expressed concern about reports of corruption, abuse, and collusion with human traffickers, and other criminals by agents in Mexico’s security forces and agencies involved in migration enforcement.

Mexico’s ramped up immigration enforcement efforts were warmly received by many U.S. policymakers. In comments made on January 6, 2015 after a meeting with President Peña Nieto, President Obama said: “I very much appreciate Mexico’s efforts in addressing the unaccompanied children who we saw spiking during the summer. In part because of strong efforts by Mexico, including at its southern border, we’ve seen those numbers reduced back to much more manageable levels.”⁴⁰ Several members of the U.S. Congress also publicly expressed their appreciation of Mexico’s efforts to expand immigration enforcement efforts.

This is nothing new. The U.S. government has long provided resources to increase security along Mexico’s border with Guatemala and Belize. Between 2008 and 2015, the U.S. provided inspection equipment and border security-related equipment and training as part of the roughly \$2.5 billion dollar assistance package for Mexico in an aid package called the Merida Initiative. The U.S. Department of Defense has also provided training for troops patrolling Mexico’s borders, communications equipment, and support for the development of Mexico’s air mobility and surveillance capabilities.⁴¹

Mexico has dramatically increased apprehensions and deportations. Mexico deported approximately 107,000 individuals from the Northern Triangle in 2014—approximately 21,000 Salvadorans, 41,000 Guatemalans and 43,000 Hondurans. This reflects a 47 percent increase in deportations from 2013 figures.⁴²



The number of Central Americans being apprehended at the U.S. southern border has decreased—70,448 “other than Mexicans” were apprehended from October 2014 to April 2015, as contrasted with 162,751 during the first six months of FY2013. But this is largely due to an increase in apprehensions within Mexico. Mexico has nearly doubled its number of apprehensions of Central Americans during that same time period, from 49,893 to 92,889.⁴³

For U.S. advocacy, it is important to try to document U.S. pressure on Mexico to increase deportations. However, Mexican human rights advocates caution that the Mexican government is also implementing these measures for its own purposes, not just due to U.S. pressure. They see Program Frontera Sur as an excuse to militarize southern Mexico to pave the way for megaprojects in natural-resource-rich regions and stress the responsibility of the Mexican government in increasing enforcement and militarization.

Mexico’s National Immigration Law

ARTICLE 109⁴⁴

All present, in this case, will have the following rights upon entering the Immigrant Detention Center:

- I. To know where he/she is being detained, and the applicable rules and services that he/she will have access to;
- II. To be informed on the reason for his/her detention; of the immigration proceeding; of his/her right to request recognition of refugee status or statelessness; the right to regulate his/her stay in terms of Articles 132, 133 and 134 of the present law, in this case, with the possibility to request voluntary repatriation to his/her country of origin; as well as the right to take effective recourse against the Institute’s rulings;
- III. To receive protection from and communicate with consular representatives from his/her country of origin, and to facilitate these means of communication as soon as possible;
- IV. To receive a written document of rights and obligations, in order to be able to present complaints or accusations.
- V. To have the proceeding be conducted by a competent authority, as well as the right to receive legal counsel, offer proof and allegations according to the case, and gain access to records in the administrative immigration file;
- VI. To work with a translator or interpreter to facilitate communication in case he/she does not speak or understand Spanish;
- VII. To have access to a telephone;
- VIII. To receive during his/her stay a decent living space, food, and basic provisions for personal hygiene and medical attention in the case that it becomes necessary;
- IX. To receive visitations from family and legal advisors;
- X. To participate in recreational, educational, and cultural activities that are organized within the Center;
- XI. To not be discriminated against by authorities based on ethnicity, nationality, sex, gender, age, disability, socio-economic status, health condition, pregnancy, language, religion, opinion, sexual preferences, civil status or any other circumstance with the objective of impeding or refusing the recognition or exercising of rights and equal opportunities of all people;
- XII. To receive humane and fair treatment during the entirety of his/her stay at the Migrant Detention Center;
- XIII. That Immigrant Detention Centers maintain separate living spaces for men and women, while guaranteeing the right to preserve family units, except in cases where separation is considered in the best interest of the child or adolescent;
- XIV. That Immigrant Detention Centers keep separate areas to accommodate unaccompanied migrant youth until they are transferred to organizations where they can receive adequate attention, and
- XV. All other rights established within general regulations issued by the Secretariat.

Despite the increases in detaining and deporting migrants, Mexico has failed to commensurately increase resources for those seeking international protection. Mexico is a party to multiple relevant treaties and Mexican law states that all migrants must be informed of their right to apply for international protection,⁴⁵ but many advocates report that few, if any, migrants are advised of this right. Instead, advocates report that immigration officials either ignore migrants' stated fear of return or attempt to dissuade individuals from applying for protection in Mexico.

Although it would be impossible to say how many of those apprehended and deported from Mexico should be eligible for asylum in Mexico or the United States, research indicates that a sizeable percentage do have international protection needs. For example, a 2014 study by the United Nations High Commissioner for Refugees (UNHCR), *Children on the Run*, involving interviews with 404 Central American children who had migrated to the United States found that 72 percent of the children from El Salvador, 38 percent from Guatemala and 57 percent of the children from Honduras had international protection needs.⁴⁶

However, advocates indicate that very few migrants are screened for protection needs by Mexican officials or referred to the Mexican Commission for Aid to Refugees (*Comisión Mexicana de Ayuda a Refugiados*, COMAR), the agency in Mexico tasked with responding to asylum solicitations, for processing. Statistics released by COMAR and compiled in a 2015 report by the Georgetown University Law School Human Rights Clinic show that few individuals apply—and even fewer receive—international protection in Mexico. In the first eight months of 2014, COMAR received 17 percent more asylum applications than all of 2013 (1296 applications in 2013, 1524 for Jan-Sept 2014). Despite the tremendous need, COMAR's budget only increased by 4 percent between 2014 and 2015. Mexico issued 332 humanitarian visas in 2014, a slight increase from the 205 granted 2013, but still very low given the need.⁴⁷

Beyond the lack of resources and political will in Mexico to provide protection, advocates and

researchers have cited additional practices and policies, including the practice of detention during the process, and lack of humanitarian assistance or support for asylum seekers during the process, lack of programs to integrate asylum seekers, as just some of the reasons why so few individuals apply for asylum or abandon their application mid-process in Mexico.

What can civil society groups and migrant rights defenders in Central America and Mexico do to encourage appropriate access to asylum and protection in Mexico?

- Document and share testimonies with trusted organizations in Mexico and the United States. Many migrants don't report complaints of abuse or violence they have endured at the hands of corrupt officials or criminal groups because they are deported before they can report it, or choose not to report it out of fear of retaliation or the sense that it would not do any good. For that reason, groups in Central America that work with deported migrants play an important role in documenting the experiences—including abuses and violence—that migrants endured before deportation from Mexico.
- Document how the treatment deported migrants receive compares to the protections provided in Mexican immigration law (see box).
- Document and share testimonies on whether migrants, particularly children and youth, after deportation face violence or other dangerous situations upon their return to Central America.
- Provide specific information and analysis about how U.S. diplomatic pressure and aid programs contribute to decreased protection for Central American migrants in Mexico. Share this with U.S. civil society groups.
- Meet with U.S. and Mexican officials, such as the human rights officer at the U.S. embassies in Mexico or Central American countries, to raise concerns and specific case examples of abuse and violence endured by migrants in transit through Mexico—and highlight how U.S. assistance and diplomatic pressure places migrants at greater risk.

Dialogue between Civil Society & the Department of Homeland Security & Customs and Border Protection on Treatment of Migrants in the United States

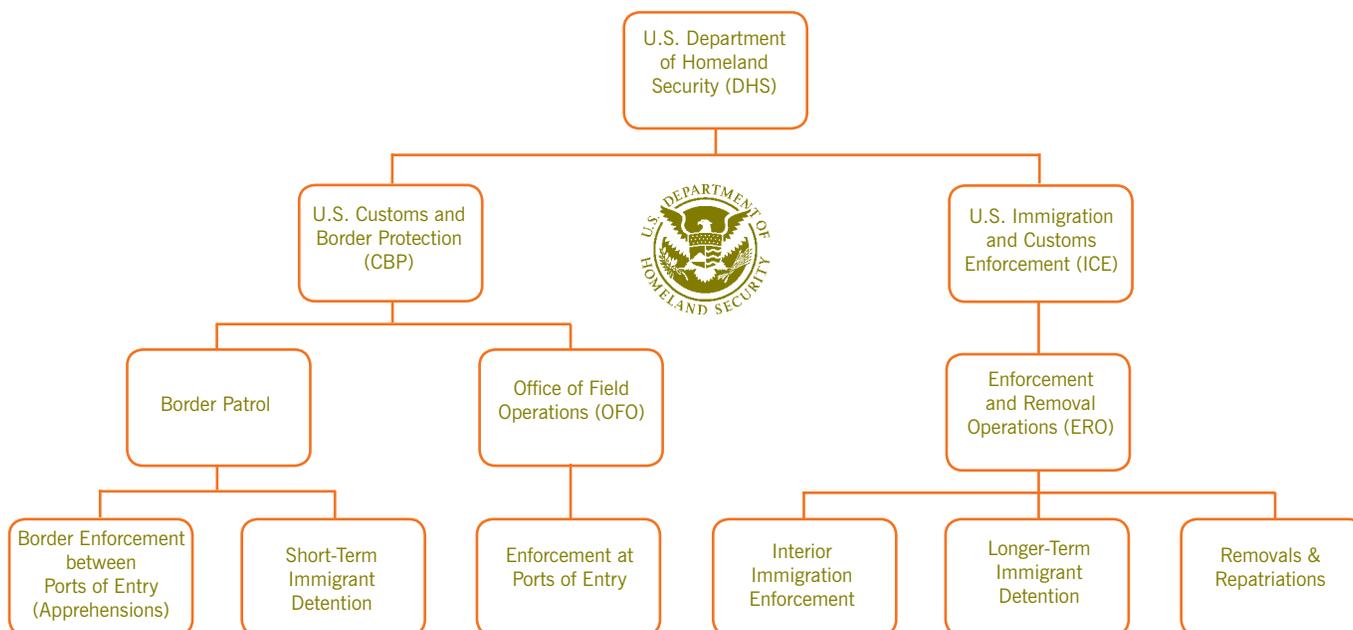
Many organizations in the United States, including border community organizations, humanitarian aid, faith-based, children’s rights, foreign policy, and immigrant rights groups, are engaged in dialogue with the Department of Homeland Security (DHS) and Customs and Border Protection (CBP). This dialogue was not a reaction to the situation of unaccompanied children, but rather is part of a larger effort to encourage policies and practices that protect the human and civil rights of migrants and of U.S. border communities—and to press for accountability and reforms when the rights of migrants or border community members are violated or when policies place migrants or border community members at risk of harms and abuse.

For the past three years, U.S. NGOs have engaged in a series of dialogue sessions with CBP leadership three to four times a year in Washington, DC or at the U.S. northern or southern border. In these meetings, NGOs have the opportunity to raise concerns and ask questions of CBP leadership. Some of the concerns raised in these meetings include: deportation practices that place migrants at greater risk of abuse or violence, such as nighttime deportations or separating family members during deportations; use-of-force

policies and CBP’s response to killing of civilians by CBP agents; conditions in detention facilities; CBP’s failure to respond to complaints of abuse or violence; and treatment of unaccompanied child migrants by CBP agents.

Organizations have formed working groups of NGOs to focus on addressing very specific areas of concern, such as policies that result in many migrants being deported without their belongings or the treatment of children in CBP custody. These working groups meet more frequently with lower-level CBP and other government officials to raise concerns, discuss possible solutions, and press for reforms to policies and practices.

The process to develop and advance this dialogue process has required a lot of persistence and pressure by NGOs. CBP has historically been very reluctant to recognize that abuses or harmful practices identified by NGOs actually occurred, instead blaming migrants or claiming that such policies were necessary to protect U.S. security. However, persistence and unified action by NGOs has resulted in a regular dialogue process, and a few successes—including CBP making some policies public and new protocols to respond to use-of-force incidents.



How can Central American and Mexican groups use this process to reform harmful practices?

- Collect testimonies of individuals who have experienced abuse or harms while in CBP custody. Many migrants apprehended in the United States are deported before they have the opportunity to file a complaint or speak with a lawyer or human rights group. For example, they may have experienced very poor conditions in CBP detention facilities, failure to respond to requests for asylum, or other harmful practices that placed migrants at greater risk. Share these specific cases, testimonies that reflect broader patterns of abuse and general concerns with governmental officials from your own country—or with a trusted U.S. organization to raise directly with CBP.
- Document harmful practices, especially when you see a pattern (i.e., how many migrants are being deported without their identification documents, how many migrants stated that they were fearful to return to their country, but didn't receive any response or additional screening from U.S. officials). Share information via listservs or with trusted organizations.
- When problems are identified, work with colleagues to identify solutions and develop concrete recommendations to improve how the U.S. treats migrants—whether when they are being apprehended, in detention, or upon deportation.

A New U.S. Aid Package for Central America

On January 29, 2015, the White House *announced* that President Obama would include a \$1 billion request for aid to Central America as part of the national budget he presented to the U.S. Congress. The request was intended to “help the leaders of Guatemala, El Salvador and Honduras implement systemic reforms that address the lack of economic opportunity, the absence of strong institutions, and the extreme levels of violence that have held the region back at a time of prosperity for the rest of the region.” By proposing this aid package, the White House was pledging to try to reduce migration by offering aid programs that would address the root causes of migration.

The White House aid proposal followed the presentation in November 2014 by the three Northern Triangle countries of the Alliance for Prosperity plan created with substantial input from the Inter-American Development Bank. While the U.S. aid package is framed as emerging from the Alliance for Prosperity, in fact the Alliance and the aid package are not one and the same. For example, the infrastructure projects included in the back of the Alliance document are likely slated for Inter-American Development Bank, not U.S. government, financing. The USAID package may include programs not emphasized in the Alliance document.

What's in the aid package? The proposed aid package would triple U.S. assistance to the region, especially to the Northern Triangle countries. Unlike aid packages like Plan Colombia and the first years of the Merida program for Mexico, the Obama Administration's proposal is not primarily for security. Over half (\$541 million) of the proposed package is for Development Assistance, and over 80 percent goes to civilian institutions. While there are no specific figures available, the package will likely expand both police and judicial assistance.



The limited descriptions of the proposal available include:

- Aid to strengthen judicial systems;
- Job creation and job placement for youth at-risk;
- Vocation skills training, literacy;
- Community violence prevention programs;
- Aid for rural communities affected by drought and coffee blight;
- Programs to improve delivery of government services and tax collection;
- Support to police forces, including Model Police Precincts, anti-gang and transnational crime task forces, and support for joint police-prosecutor task forces;
- Support for port and border security.

The White House did not increase U.S. military assistance to the region overall in this proposed spending package, and it remains a small percentage of the overall \$1 billion package.

However, the head of the U.S. Southern Command, the military command responsible for U.S. programs in Latin America and the Caribbean, complained to the defense committees in Congress that additional resources were not being provided to the U.S. military as part of the Central America package, and additional military aid was then added to the defense authorization bills (at the moment, an additional \$50 million in the House and less, \$30 million, in the Senate; the exact amount will be determined when the two versions of the bill are finalized later this year). This additional assistance would go towards drug interdiction, other counternarcotics initiatives, and building “partnership capacity,” i.e. strengthening Central American militaries.⁴⁸ It is disturbing that the White House’s proposal, which purposefully did not increase military aid, was undercut by the U.S. military.

Predating this package, the United States has been funding and encouraging Colombian police, military and judicial experts to provide training in Central America, and this will

continue with or without the new aid package.⁴⁹ U.S., Colombian and Central American human rights groups have great concerns about this policy, given the severe human rights violations committed by Colombian military and intelligence officials. These violations include extrajudicial executions, collaboration with paramilitary groups, and use of intelligence to conduct surveillance on, threaten and undermine human rights defenders, members of the judiciary and journalists. (Our concerns do not extend to all Colombian sharing of expertise; Colombian judicial authorities and human rights defender protection program officials, for example, and Colombian civil society groups, can provide helpful advice for some of the challenges facing Central American countries.)

- If specific concerns are raised over the use of Colombian police, military or intelligence trainers, including training of abusive techniques or involvement in or promotion of human rights abuses, Central American human rights groups should convey the information and concerns to U.S. and Colombian human rights groups.

What are civil society concerns about the aid package and the Alliance for Prosperity?

Central American civil society organizations immediately raised concerns regarding lack of consultation over the Alliance for Prosperity, which not only had not been consulted broadly, at least in Honduras and Guatemala, but which had not even been circulated publicly. They also raised concerns about the type of development and the type of security that this development plan would promote. As Honduras’s Radio Progreso noted, “Either the Alliance for Prosperity will be open to all sectors, especially those most affected by economic policies that produce inequality, or these millions of dollars will make stronger and more powerful those members of our governments and economic elites who are corrupt and beyond the reach of justice.”⁵⁰ These concerns have escalated with the growing corruption crises in Guatemala and Honduras.

As few details about the U.S. aid package were forthcoming, U.S. civil society organizations had a series of questions, concerns, and recommendations regarding the package. Some of the central concerns are the following:

- Serious concerns over U.S. investment in police forces in the absence of a firm commitment by these governments to reform police and move definitively away from the use of the military in policing.
- Did the package include investment in large infrastructure projects, and if so, were there any guarantees to ensure free, prior and informed consent by communities, as large-scale infrastructure, agroexport and extractive projects have been drivers of violence and displacement?
- What did the package offer to ensure protection for the rights of migrants, and conversely, did the aid package include assistance to or pressure on Mexican immigration authorities and Central American border guards to step up deportations from Mexico and prevent migration?
- Would judicial assistance programs include benchmarks so that aid helped to reduce impunity?
- Would the U.S. and Central American governments be willing to ensure meaningful consultations on aid and policy with Central American and U.S. civil society groups?
- Would U.S. aid and policy include a major focus on improving labor rights, and how does that mesh with its proposed goals of improving the business climate? Would it ensure no investment in Model Cities (Honduras) or other investment zones that restrict environmental and labor rights and that any jobs project respects labor rights and provides decent work?
- Given that the Salvadoran government differs considerably from the current Guatemalan and Honduran governments, is there any way aid and policy towards El Salvador differs/should differ?
- What controls would exist to ensure that no aid went to corruption, given ongoing

corruption scandals in, at least, Guatemala and Honduras?

- Will the U.S. contribute funding to helpful UN institutions like a new office of the UN High Commissioner for Human Rights in Honduras, to the CICIG and UN High Commissioner for Human Rights office in Guatemala, and to the UNCHR for protection and assistance activities for Central American refugees and IDPs?

What happens next with the aid package? The package has been presented to the Congress. The Congress will not vote on it as a separate package but as part of the annual foreign aid appropriations bill that funds U.S. aid and security programs around the world. This timeline for consideration began with hearings in February and March 2015, and ends when the full bill is approved between September and December 2015. (Before that time, the Obama Administration will begin to change and repackage smaller amounts of already approved aid for FY2015 along the lines of that proposed in the package.)

Currently, members of the Republican Party control both chambers of the U.S. Congress: the House of Representatives and the Senate. Traditionally fonder of security assistance than “soft” aid, the Republican leadership is likely to tilt the package more in the direction of security and border assistance, or simply choose not to fund much of the proposed aid.

In fact, that seems to be happening. The House of Representatives in June 2015 approved this year’s foreign aid bill in committee. The committee included little of the additional development assistance proposed by President Obama, while continuing existing security, violence prevention and judicial assistance. The committee inserted tough conditions to encourage Central American governments to deter migration by publicity campaigns and strengthened borders. If the State Department does not certify that a specific government is taking these steps, much of the assistance to that government can be suspended. These are similar to conditions included in a spending bill that was passed in December 2015 (see box p. 22).



Conditions Urging Increased Border Security in Central America and Mexico in the FY2015 Consolidated and Further Appropriations Act

SEC. 7045. (a) CENTRAL AMERICAN MIGRATION PREVENTION AND RESPONSE.—

(1) STRATEGY.—Not later than 90 days after enactment of this Act, the Secretary of State, in consultation with the Administrator of the United States Agency for International Development (USAID), and after consultation with the heads of other relevant Federal agencies and the Committees on Appropriations, shall submit to such Committees a strategy to address the key factors in the countries in Central America contributing to the migration of unaccompanied, undocumented minors to the United States...

(2) BORDER SECURITY.—The strategy required by paragraph (1) shall address the need for greater border security for the countries in Central America and for Mexico, particularly the southern border of Mexico: Provided, That funds shall be made available by this Act to assist such countries to improve border security.

(3) ECONOMIC AND SOCIAL DEVELOPMENT.—The strategy required by paragraph (1) shall include economic and social development programs, with a focus on communities that are major contributors of unaccompanied migrants and where there is significant gang activity.

(4) JUDICIAL AND LAW ENFORCEMENT REFORM.—The strategy required by paragraph (1) shall include judicial and police reform and capacity building programs, with a focus on strengthening judicial independence and community policing.

(5) TRAFFICKING IN PERSONS.—The strategy required by paragraph (1) shall include activities to combat human trafficking in Central America, including through the use of forensic technology: Provided, That funds in this Act shall be made available to support a multi-faceted approach to combat human trafficking in Guatemala.

(6) REPATRIATION AND REINTEGRATION.—The strategy required by paragraph (1) shall address the need for the safe repatriation and reintegration of minors into families or familylike settings: Provided, That funds shall be made available to support repatriation facilities for the processing of undocumented migrants returning from the United States.

(7) Not later than 60 days after submission of the strategy required by paragraph (1), and every 120 days thereafter until September 30, 2016, the Secretary of State, in consultation with the USAID Administrator, shall submit a report to the Committees on Appropriations on progress toward achieving the goals and objectives contained in such strategy and an updated spend plan, as appropriate: Provided, That such report shall specify the amount of funds obligated and expended pursuant to this section by country and the steps taken by the government of each country to—

(A) improve border security;

(B) enforce laws and policies to reduce the flow of illegal migrants to the United States, including to increase penalties for human smuggling;

(C) conduct public outreach campaigns to explain the dangers of the journey to the southwest border of the United States, and to inform potential migrants of relevant United States immigration laws; and

(D) cooperate with United States Federal agencies to facilitate and expedite the return, repatriation, and reintegration of illegal migrants arriving at the southwest border of the United States.

(8) SUSPENSION OF ASSISTANCE.—The Secretary of State shall suspend further obligation of funds provided pursuant to this subsection for assistance for the government of a country if the Secretary determines and reports to the appropriate congressional committees that such government is not taking the steps specified in subparagraphs (A) through (D) of paragraph (7).

How can Central American and U.S. civil society groups affect the aid package? As this aid package is not fully designed yet—either by the Obama Administration or by the U.S. Congress—there is still time to present ideas, recommendations and concerns regarding the first year of the aid package. And this will be aid that has to be voted upon each successive year, rather than set in stone the first year, so there will be opportunities each year for change.

- Central American civil society groups can share ideas, recommendations and concerns with U.S. civil society partners. Be as specific as possible about the kinds of U.S. assistance that can be helpful and the kind that can be harmful, including recommendations about the kind of institutions and organizations that should be funded, how programs should be designed with community input, what kinds of aid or programs should be avoided, and mechanisms for accountability.
 - You may want to encourage U.S. assistance and diplomatic support for helpful U.N. mechanisms including CICIG and country offices of the UN High Commissioner for Human Rights in Guatemala and Honduras, possible establishment of a CICIG-like mechanism in Honduras, and increased assistance for the UNHCR for protection activities in Central America.

In addition, together we can press for USAID to establish a meaningful civil society consultation process in each Central American country so that civil society organizations, whether they are grantees of USAID or not, can have input into policies and programs each year.

- USAID programs are often largely shaped in the USAID missions in each country, not just in Washington, so Central American civil society groups can try to have input by discussions with the USAID mission in their country's capital or by participating in such consultations if we succeed in ensuring that they are established.

Military and Police Assistance. For U.S. and Central American civil society groups, U.S. security assistance is the most difficult to track and influence. However, there are several tools you can use.

- **Security Assistance Monitor:** Consult www.securityassistance.org for information about U.S. security assistance to your country. The Center for International Policy, in partnership with LAWGEF and WOLA, publishes all available official information on U.S. security assistance to Latin America and the Caribbean at this website. See instructions for how to use in English at <http://securityassistance.org/content/faqs?language=en>, and instructions for how to use in Spanish at <http://securityassistance.org/node/165516?language=es>.

There are two kinds of human rights conditions on security assistance that civil society groups can try to use to leverage human rights improvements.

Leahy Law: Introduced by U.S. Senator Patrick Leahy in the 1990s, the Leahy Law prohibits the United States from providing assistance to any foreign military or police unit if there is credible information that such unit has committed grave human rights violations with impunity. If the foreign country takes “effective steps to bring the responsible members of the security forces unit to justice,” the U.S. government can resume assistance to that unit. In countries such as Colombia, Guatemala and Honduras, nongovernmental organizations based in the United States and in Latin America have already used the law to stop assistance to abusive military and police units, and to encourage armed forces to improve their practices with respect to human rights.

Currently there are efforts in the United States to make the Leahy Law more effective. U.S. embassies around the globe are supposed to be actively collecting information about abusive members and units of police and armed forces for a database, so that abusive individuals and units will not receive U.S. support or training. You can present information directly to the U.S.



embassy in your country, or send information via email to: DRL-SHR-Leahy@state.gov. In the subject line, please include 1) the country and 2) the unit, individual name, or a quick description. For more information about how to use the Leahy Law, see our Leahy Law Guide at <http://securityassistance.org/publication/applying-leahy-law-us-military-and-police-aid>.

Country human rights conditions on Guatemala and Honduras. Given the severity of current human rights problems in these countries, there are special “country human rights conditions” on U.S. aid to Guatemala and Honduras (see box p. 25). These conditions require the State Department to certify that the governments meet the conditions that are attached to a percentage of security assistance (both military and police aid). An advantage of the country conditions is that there is no need to prove that the unit or security force member who committed the abuse received U.S. funding—the conditions apply to the country’s security forces as a whole.

While the State Department almost always certifies a given government meets the conditions, the Senate appropriations committee

which controls the flow of assistance has the power to freeze a portion of aid if a member of the committee is concerned that the conditions have not been met. This puts pressure on the State Department to encourage the government to comply. A portion of Honduras’s police aid has been frozen in recent years over concerns with police reform, police leadership and extrajudicial executions allegedly committed by members of the police. While it takes considerable information and effort to trigger an aid freeze, these conditions can at times be a useful tool to encourage reforms. These conditions are approved each year as part of the annual foreign aid appropriations bill. While the conditions are now in place through September 30, 2015, and may be extended into December 2015, they may or may not be renewed in as strong a form next year.

- As a Central American civil society organization, you can present your concerns about application of the Leahy Law or the country human rights conditions directly to the U.S. embassy in your country. However, it can be most powerful to ensure that U.S. civil society partners echo and reinforce your concerns.



Human Rights “Country Conditions” on Security Assistance to Guatemala and Honduras in the Omnibus Spending Bill for FY2015

Guatemala:

In accordance with section 7045(d), funds under Foreign Military Financing Program may be obligated for assistance for the Guatemalan army only if the Secretary of State certifies and reports to the Committees on Appropriations that—

- 1) the Government of Guatemala is implementing a credible plan to build a professional, accountable police force and end the army’s involvement in internal law enforcement; and
- 2) civilian judicial authorities are investigating and prosecuting current and retired army personnel who are credibly alleged to have committed gross violations of human rights, and the Guatemalan army is fully cooperating in such cases, with the Inter-American Commission for Human Rights, and with the International Commission against Impunity in Guatemala, including providing timely access for investigators to witnesses, documents (including archival documents), forensic evidence, and other relevant information.

In addition to the increased assistance, the U.S. government, for good and ill, will be increasing its diplomacy with Central American governments. As civil society organizations, we might be concerned about some of this diplomacy, including encouraging “strengthened border management” and improving the climate for foreign investment. However, this can also include pressure for improvements in human rights, respect for human rights

Honduras:

In accordance with section 7045(f), 25 percent of the funds under International Narcotics Control and Law Enforcement and Foreign Military Financing Program that are available for assistance for the Honduran army and police may be obligated only if the Secretary of State certifies and reports to the Committees on Appropriations that—

- 1) agreements between the United States and Honduras concerning counternarcotics operations, including assistance for innocent victims of such operations, are being implemented;
- 2) the Government of Honduras is implementing policies to protect freedoms of expression, association, and assembly, and due process of law, including in the Bajo Aguán Valley, and taking steps to prevent threats and attacks against social activists and human rights defenders; and
- 3) civilian judicial authorities are investigating and prosecuting army and police personnel who are credibly alleged to have violated human rights, including forced evictions, or to have aided or abetted armed groups involved in such acts, the Honduran army and police are cooperating in such cases, and judicial proceedings are making steady progress.

defenders and journalists, improved labor rights, and investigation and prosecution of abuses allegedly committed by members of security forces or government officials.

The U.S. government has an annual “human rights dialogue” with Honduras and might establish such a mechanism with Guatemala, which gives us a particular moment when coordinated advocacy can be most effective.



How Can Central American and U.S. Civil Society Organizations Work Together to Improve U.S. Diplomacy towards Central America?

- As Central American and U.S. civil society organizations, we can work together to encourage U.S. government diplomacy in favor of key human rights improvements. It is most effective if in each country we narrow the focus on a couple of the most crucial issues and work together to consistently emphasize these objectives.
- We should specifically work together to improve the climate for human rights defenders (in the broadest definition) and journalists, including calling for establishment and improvement of human rights defender and journalist protection programs, advocating for specific protection measures for defenders and for advancement in investigating and prosecuting cases, urging an end to specious prosecutions, and calling for government rhetoric and policies that protect, not endanger, defenders and journalists.
- It would be helpful to address the situation of those displaced by violence if together we urge the Salvadoran and Guatemalan governments to officially recognize the situation of displacement from violence in their countries, which would allow the UNHCR to play a role in providing and advocating for protection.⁵¹

Pay Attention to the Multilateral Banks. Most of the large-scale infrastructure projects, such as roads and dams, will be financed by the Inter-American Development Bank and the World Bank—not by the U.S. government through USAID or other channels. Therefore, Central American civil society organizations concerned about megaprojects that could have a potentially problematic impact on communities and the environment should pay attention to the IDB and World Bank.

- Central American civil society organizations may want to consult with the Bank Information Center for tools and advice about IDB and World Bank projects in the region, and ways to affect them. See the BIC website at <http://www.bicusa.org>.

Endnotes

- 1 Called "parole in place."
- 2 Called "Temporary Protected Status." <http://www.nilc.org/powertofix.html>
- 3 Estimate of March 2013 undocumented immigrant population from Pew Research Center: <http://www.pewhispanic.org/2014/09/03/as-growth-stalls-unauthorized-immigrant-population-becomes-more-settled/> accessed May 11, 2015.
- 4 ICE identified Priority 1 as the highest priority, with priorities 2 and 3 as equal, but lower, priorities. <http://www.ice.gov/doclib/news/releases/2011/110302washingtondc.pdf>
- 5 <http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf>
- 6 <https://www.whitehouse.gov/the-press-office/2012/06/15/remarks-president-immigration>
- 7 An estimated 1.2 million unauthorized immigrant youth in the United States were eligible to receive deferred action in 2012. In the first two years of the DACA program, over 680,000 applications were received, and over 580,000 of them were approved. ("DACA at the Two-Year Mark," Migration Policy Institute, August 2014, <http://www.migrationpolicy.org/research/daca-two-year-mark-national-and-state-profile-youth-eligible-and-applying-deferred-action>) Now those immigrants who received deferred action in 2012 must reapply. U.S. Immigration and Citizenship Services has already received over 247,000 renewal applications in 2014 and 2015, and granted nearly 235,000. (http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/1821d_performancedata_fy2015_qtr1.pdf)
- 8 <http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-daca>
- 9 In June 2014, the Senate had passed a bipartisan comprehensive immigration bill (that included provisions to dramatically increase immigration enforcement at the U.S.-Mexico border) with a resounding majority. However, the House of Representative's leadership refused to bring the Senate bill or even any of its own immigration bills to the floor for a vote by the full House of Representatives.
- 10 <http://www.pewresearch.org/fact-tank/2014/11/20/those-from-mexico-will-benefit-most-from-obamas-executive-action>.
- 11 These priorities were laid out in a memo from DHS Secretary Jeh Johnson on November 20, 2014. http://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf
- 12 The Priority Enforcement Program was developed to respond to public criticism and lawsuits over issues such as the number of unauthorized migrants who were being deported just for a minor traffic violation. Now, ICE should request the transfer of custody of unauthorized immigrants from local law enforcement only if they have committed a felony, significant misdemeanor, three or more misdemeanors, or are considered a possible terrorist or threat to national security. However, it remains to be seen if this program will create a real change in adherence to the new priorities for deportation. See http://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf.
- 13 <http://www.uscis.gov/immigrationaction>; <http://www.dhs.gov/immigration-action>
- 14 More information can be found on the organization's website at <http://cgrs.uchastings.edu>.
- 15 <https://cliniclegal.org/resources/articles-clinic/dapa-expanded-daca-and-court-injunction>
- 16 See: <http://www.benachragland.com/2015/02/injunction-dapa-daca-executive-action-means/>
- 17 FY = Fiscal Year. The U.S. government's fiscal year runs from October 1 through September 30.
- 18 <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children>
- 19 U.S. Customs and Border Protection, "Southwest Border Unaccompanied Alien Children (FY 2014)," <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children-2014>, accessed May 13, 2015.
- 20 Department of Homeland Security Press Office, "Statement by Secretary Johnson about the Situation along the Southwest Border," Sept. 8, 2014, <https://www.dhs.gov/news/2014/09/08/statement-secretary-johnson-about-situation-along-southwest-border>, accessed May 13, 2015.
- 21 <http://fas.org/sgp/crs/homesecc/R43702.pdf> proportion of children that were 12 or younger increased from 9% in FY2013 to 16% in FY2014, and the proportion that were girls increased from 19% in FY2013 to 28% in FY2014
- 22 <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children-2014>
- 23 For example, the U.S. Border Patrol short-term detention facilities have been primarily used for holding adult men apprehended between ports of entry, interviewing them, and then determining where they went next in a matter of hours. Also, by law, unaccompanied minors must be transferred to the custody of Health and Human Service's Office of Refugee and Settlement and held in the "least restrictive setting possible," which often means they are released to a "sponsor," usually a close family member, while awaiting their immigration hearing. These processes take time and resources to administer.
- 24 Many advocates are very concerned that Mexican children do not receive appropriate screening or are not screened at all.
- 25 <http://www.acluaz.org/sites/default/files/documents/DHS%20Complaint%20re%20CBP%20Abuse%20of%20UICs.pdf>
- 26 <https://www.whitehouse.gov/the-press-office/2014/06/02/presidential-memorandum-response-influx-unaccompanied-alien-children-acr>
- 27 <https://www.whitehouse.gov/the-press-office/2014/08/01/obama-administration-s-government-wide-response-influx-central-american> <http://www.dhs.gov/news/2014/06/24/written-testimony-dhs-secretary-jeh-johnson-house-committee-homeland-security#letter>
- 28 <http://www.state.gov/j/tip/laws/113178.htm>
- 29 Known as a "voluntary return."
- 30 http://www.wola.org/commentary/forgotten_at_the_border
- 31 <http://bipartisanpolicy.org/blog/unaccompanied-alien-children-primer/>
- 32 <https://www.dhs.gov/news/2014/09/08/statement-secretary-johnson-about-situation-along-southwest-border>
- 33 <http://www.acf.hhs.gov/programs/orr/programs/ucs/state-by-state-uc-placed-sponsors>
- 34 TRAC Immigration, Juveniles—Immigration Court Deportation Proceedings, Court Data through May 2015, <http://trac.syr.edu/phptools/immigration/juvenile/>.
- 35 Kids in Need of Defense, "One Year Later: Where Are the Refugee Mothers and Children?" June 22, 2015, <https://supportkind.org/wp-content/uploads/2015/06/One-Year-Later-Memo-6-22-15.pdf>
- 36 TRAC Immigration, Representation for Unaccompanied Children in Immigration Court, Syracuse University, <http://trac.syr.edu/immigration/reports/371/>.
- 37 93.7 percent of Salvadorans, 91.2 percent of Hondurans, and 73.6 percent of Guatemalans in family detention centers in the second quarter of 2015 had a reasonable fear of return according to the U.S. Citizenship and Immigration Services, Asylum Division, <http://www.uscis.gov/sites/default/files/USCIS/Outreach/PED-CF-RF-family-facilities-FY2015Q2.pdf>.
- 38 See this link: <http://www.uscis.gov/humanitarian/refugees-asylum/refugees/country-refugeeparole-processing-minors-honduras-el-salvador-and-guatemala-central-american-minors-cam>.
- 39 Mary Meg McCarthy, National Immigrant Justice Center, Senate Subcommittee on Immigration and the National Interest Hearing on "Eroding the Law and Diverting Taxpayer Resources: An Examination of the Administration's Central American Minors Refugee/Parole Program," April 23, 2015.
- 40 <https://www.whitehouse.gov/the-press-office/2015/01/06/remarks-president-obama-and-president-pe-nieto-after-bilateral-meeting>
- 41 CRS: U.S. Mexican Security Cooperation: Merida Initiative and Beyond May 7, 2015
- 42 <http://www.eluniversal.com.mx/nacion-mexico/2014/se-disparan-numero-de-deportados-en-2014-1064483.html>
- 43 http://www.wola.org/news/mexico_now_detains_more_central_american_migrants_than_the_united_states.
- 44 http://dof.gob.mx/nota_detalle.php?codigo=5190774&fecha=25/05/2011
- 45 Article 109 of the Mexican National Immigration Law, la Ley Nacional de Migración.
- 46 http://www.unhcrwashington.org/sites/default/files/1_UAC_Children%20on%20the%20Run_Full%20Report.pdf
- 47 Humanitarian visas allow migrants who require international protection due to specific humanitarian needs to stay in Mexico. They can receive work permission and family reunification rights for renewable periods. Those eligible for humanitarian visas include unaccompanied children, victims of crime, and asylum applicants.



- ⁴⁸ Adam Isacson, "The House Defense Bill Would Give Central America \$50 Million in New Military Aid," May 5, 2015, <http://securityassistance.org/blog/house-defense-bill-would-give-central-america-us50-million-new-military-aid>.
- ⁴⁹ The House version of the State, Foreign Operations Appropriations bill for FY16 includes an additional \$10 million for Colombian security forces to train other nations' security forces. This bill still has to be finalized with the Senate version when it is passed. See more about the exporting of Colombian training by the United States to Central America in "The U.S. Shouldn't Export Colombia's Drug War 'Success'" by Sarah Kinosian, John Lindsay-Poland and Lisa Haugaard, Insight Crime, July 9, 2015, <http://www.insightcrime.org/news-analysis/the-us-shouldnt-export-colombia-drug-war-success>.
- ⁵⁰ Radio Progreso, "Alianza: Para la Prosperidad de Quienes?" 26 February 2015, <http://radioprogreso.net/index.php/comunicaciones/nuestra-palabra/item/1889-alianza-%C2%BFpara-la-prosperidad-de-qui%C3%A9nes?-26-febrero-2015>.
- ⁵¹ The Honduran government has officially recognized the situation of displacement from violence in the country.

Thank you for the support for this project from:



For specific comments and ideas about this report, please contact lisah@lawg.org.

Latin America Working Group Education Fund

2029 P Street NW, Suite 301
Washington, DC 20036 USA
202.546.7010
lawg@lawg.org
www.lawg.org