

# Refugee Crisis in the Western Hemisphere

Violence, Movement, and the Response of the United States

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## Introduction

In June 2014, President Obama released a statement detailing his “Administration’s efforts to address the urgent humanitarian situation in the Rio Grande Valley areas of our Nation’s Southwest border” (Obama 2014b). Since the movement of people from Mexico and Central America across the border of the United States has been occurring for decades, the President’s usage of the phrase “urgent humanitarian situation” indicates that something unusual had occurred in mid-2014. In fact, the catalyst for President Obama’s statement was a four hundred percent increase in the number of immigrants apprehended by the U.S. Border Patrol in one year. Specifically, between June 2013 and the same month in 2014, 10,631 minors and 16,357 family units were detained. The overwhelming majority of the minors and family units originated from the Northern Triangle of Central America, an area representing three of the five countries with the world’s highest murder rates (Chishti and Hipsman, 2016). A surge of this magnitude indicated that significant push-factors were causing these children and families to seek refuge in the U.S.

Criminal organizations in Honduras, El Salvador, and Guatemala have largely been responsible for the excessive prevalence of violence in these nations. Many children and their families are victimized by these powerful and sophisticated gangs, and the governments of these countries are fragile institutions that often are unable to provide justice or protection. A series of surveys across the Northern Triangle in 2014 demonstrated that victims of violent crime were as much as twenty-eight percent more likely to intend to migrate than those who had not been victimized (Hiskey et al. 2016, 6-7). The Central Americans who continue to arrive daily at the U.S.-Mexican border have determined the risk of travelling thousands of miles across international borders to be preferable to enduring rampant gang violence in their native countries.

Gangs often demand that families living in the Northern Triangle – particularly in El Salvador, Guatemala, and Honduras – provide adolescent male relatives for gang recruitment and females as young as ten-years-old for sexual exploitation (Semple 2016). Should a family refuse to comply, it is common for gangs to place corpses of mutilated children outside the family home or to murder close relatives (Semple 2016; Robles 2014). Children in particular are susceptible to randomized acts of terror enacted by gangs to demonstrate their authority and power. In a gruesome case of public violence, an eleven-year-old girl in Honduras was found dead in a ravine with her undergarments stuck in a hole in her throat after resisting a robbery of five dollars (Nazario 2014). Brutal acts of violence are commonplace, and nearly ten percent of the thirty million people in the Northern Triangle have left their homes in search of safety abroad in the last decade (Renwick, 2016 & Taylor and Dinan, 2016).

When he released his statement in summer 2014, President Obama understood the violent push-factors that have caused the recent influx of people from the Northern Triangle to the U.S. He chose the adjective “humanitarian” because the situation did not resemble past migration patterns across the southern U.S. border. In 2014, the U.S. began to acknowledge a refugee crisis that continues until the present. The federal government made efforts to address this crisis both domestically and internationally, but many of these efforts have been unsuccessful, unlawful, inhumane, or a combination of the three. In many instances, the U.S. government does not receive those fleeing the violence in the Northern Triangle with the respect that is due to a refugee. Instead, the U.S. government often views the victims of the Central American refugee crisis as criminals and treats them accordingly.

The aim of this paper rests on the argument that the nature of the violent conflict in the Northern Triangle of Central America necessitates that those who are fleeing the region should

be considered asylum-seekers or refugees. To organize my argument, I begin by providing an overview of the terminology that is used to categorize general immigration and distinguish migrants from refugees and asylum-seekers. I proceed to provide a brief history of Central American criminal organizations, their destabilization of governments in the Northern Triangle, and the general violence that they introduce into their societies. The paper then analyzes the general U.S. responses to the influx of asylum-seekers catalyzed by the violent situation in the Northern Triangle and the general ineffectiveness of those responses. Subsequently, I describe the asylum-seeking process for Central Americans who hope to attain refuge in U.S. territory and the ways in which this system allows for inhumane and often illegal treatment of asylum-seekers. Finally, I review the international and domestic laws and agreements that the U.S. has violated in their response to the Central American refugee crisis. The various analyses, I contend, lead to the conclusion that the U.S. has failed to treat asylum-seekers and refugees humanely and has violated several international laws and agreements by its reaction to the crisis.

### Terminology

In the United States, politicians and citizens alike often use the blanket term “immigration” to describe movements of people born in foreign countries that seek to establish permanent or semi-permanent residence in U.S. territory. The International Organization for Migration, the migration agency of the United Nations, defines immigration as “a process by which non-nationals move into a country for the purpose of settlement” (2011). It is therefore acceptable to use this term to describe the aforementioned movements generally speaking. However, the usage of a broad and ambiguous term to characterize a complex reality often has the effect of misconstruing or overlooking major details, and the common application of the

word “immigration” as a hypernym for foreigners who seek to establish U.S. residence is no exception.

The millions of people across the world who immigrate each year differ depending on their reasons for leaving a country of origin and their desired outcomes in the destination countries. The majority of foreigners pursuing permanent or semi-permanent residence in the U.S. most typically fall into the category of “migrants.” According to the United Nations High Commissioner for Refugees (UNHCR), the agency with the most international authority over matters of human movement, “migrants choose to move not because of a direct threat of persecution or death, but mainly to improve their lives by finding work, or in some cases education, family reunion, or other reasons” (2016). Should a migrant be forced or decide to return to her country of origin, she is not considered to face an imminent threat of persecution or death. Governments of sovereign nations “deal with migrants under their own immigration laws and processes,” and – assuming that authorities treat migrants humanely – individual governments have more autonomy over migrant policy than international institutions or agreements (UNHCR 2016). By definition, migrants freely choose to uproot and seek residence in a foreign country largely because they foresee better opportunities abroad – pull factors. On the other hand, others *flee* their homelands due to a significant fear that they will face persecution or death by remaining – push factors.

People who decide to flee their countries of origin because of fear anticipate that another country might be able to provide them with safety. Those who seek safety via residence in a foreign country for the most part are more accurately classified as refugees or asylum-seekers than migrants, and they are thus protected under international law. The 1951 Convention Relating to the Status of Refugees and the 1967 Protocol expanding on that Convention serve as

the internationally binding documents for determining who is a refugee or asylum-seeker and the rights to which that person is entitled. The 1951 Convention defined a refugee as any person who:

. . . owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country . . . (14)

UN member-states must consider anyone who fits these criteria as a refugee, and they are legally bound to afford that person certain rights, discussed in a later section of this essay.

Often, the terms “refugee” and “asylum-seeker” are interchangeable. However, the modern definition of an asylum-seeker varies slightly from that of a refugee, and this minor difference is relevant in the context of Central Americans fleeing to the U.S. While a refugee technically confirms and secures asylum – a term interchangeable with “refugee status” – in a foreign country before entering that country’s territory, an asylum-seeker begins the process of pursuing special admission into a country upon arrival in that country’s territory (Johnson-Vazquez 2013). Once an asylum-seeker – commonly referred to as an “asylee” – is granted asylum after the formal legal process, that person is officially considered a refugee. It is thus accurate to describe a mass movement of people from a country to seek asylum abroad as a “refugee crisis” because these particular asylum-seekers desire to attain refugee status eventually. Although Article 14 of the Universal Declaration of Human Rights states, “everyone has the right to seek and to enjoy in other countries asylum from persecution,” individual governments reserve the right to interpret who qualifies for asylum under international guidelines (1948, 4). Many countries such as the U.S. also limit the number of people from specified regions to whom they grant asylum annually.

It is important to note that many of the problems that asylum-seekers from the Northern Triangle confront upon entering the U.S. stem from interpretations of the 1951 Convention Relating to the Status of Refugees. The reasons for persecution listed by the Convention continue to be modern issues, but they do not consider the full span of possibilities. Whereas several areas across the world have instituted regional conventions and doctrines to account for modern refugee realities, the U.S. remains reluctant to embrace any interpretation that clarifies or expands on the antiquated 1951 definition of a refugee. Several nations in Africa adhere to the 1969 Organization of African Unity (OAU) Refugee Convention, which the UNHCR has labeled a “cornerstone of modern refugee protection” (2016). This progressive convention states that, in addition to the UN’s 1951 definition:

The term ‘refugee’ shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality. (3)

This definition accounts for the possibility that people may flee their homelands due to significant turmoil that is not specifically targeted at a religious, racial, national, or social group.

Mexico and Central America used the OAU Convention as a model for establishing their own breakthrough criteria for the recognition of refugees: The Cartagena Declaration on Refugees. Approved by the Organization of American States (OAS) in 1985 and since adopted by fifteen Latin American nations, the Cartagena Declaration considers refugees in a modern, Latin American context. This groundbreaking declaration “is mainly based on the objective situation and the social and political environment of the country of origin. Recognition as a refugee, therefore, occurs regardless of the individual attributes of the person in need of protection . . . unlike in the traditional universal criteria applied since 1951” (Jubilut 2011, 67).

In a similar way to the OAU Convention, the Cartagena Declaration accounts for a variety of modern scenarios that would cause people to search for safety in a foreign country. The countries that have adopted this declaration recognize “people fleeing massive violation of human rights as refugees” and have thus made “an important advancement of International Refugee Law and protection in the region” (Jubilut 2016, 154). Despite not having adopted the Cartagena Declaration, the U.S. is part of this region and experiences its refugee situation. Presently, the U.S. government’s antiquated interpretation of the term “refugee” causes many asylum-seekers to return to their countries of origin and face life-threatening danger.

Although the basic definitions of a refugee and an asylum-seeker are recognized internationally by members of the UN, the way in which a nation or region interprets and enlarges on those definitions has real implications for people fleeing crises. The definition of a refugee from the 1951 UN Convention accounts for many people in need of asylum, but it fails to consider several modern realities, such as the refugee crisis that stems from the Northern Triangle. Anyone who would face a legitimate threat of persecution by a return to his country of origin falls outside the definition of “migrant” according to the statutes cited above. In the United States, a general misunderstanding of the differences between migrants and those who seek or have obtained asylum have resulted in policies and institutions that harm people in pursuit of safety and human rights. It is therefore essential that citizens, policymakers, and law enforcement are able to distinguish clearly between various types of immigrants.

### Roots of the Northern Triangle Refugee Crisis

In the early 1990s, the U.S. Immigration and Naturalization Service began a crackdown in Los Angeles on several predominately Latino street gangs that had proliferated after a mass movement of Central Americans to the U.S. in the 1970s and 1980s (Valdez 2011, 29-30). Many



Salvadorans, Hondurans, and Guatemalans established residence in Los Angeles after escaping civil wars and guerilla movements that swept the region in what was later labeled the “Central American crisis” of the 1970s and ‘80s. Some of these immigrants were able to attain legal U.S. residency in some form while many others “were routinely denied refugee status and forced to live clandestine lives” (Wolf 2012, 71). Central American families often settled in Los Angeles barrios dominated by Chicano and Mexican gangs, and many Central American youths became attracted to gang culture (Cruz 2010, 384). Membership in a gang provided these youths with a source of community, identity, and perceived upward mobility, regardless of their citizenship status. The established Chicano and Mexican gangs were largely unwelcoming to outsiders, and rival Central American gangs formed that became involved in drug trafficking, robbery, extortion, and murder (Valdez 2011, 29-30). The law enforcement crackdown of the ‘90s deported an estimated 40,000 Central American gang members without U.S. permanent residency per year to their countries of origin during the peak of the crackdown (Valdes 2011, 30). Law enforcement also sought and deported “those who [had] legal permanent residency but [had] committed felonies” (Wilkinson 1994).

Many of the Central American deportees and the hundreds of thousands of others who voluntarily opted to return to their countries of origin hardly spoke Spanish and had spent the majority of their lives in the United States (Cruz 2010, 385). They arrived in countries with weak institutions still recovering from the Central American crisis, and they found that fragmented gangs already controlled areas of large cities. For former members of Los Angeles gangs, “many of their first and most significant contacts with Central American society took place through the local gangs,” which transmitted to these local gangs “American gang identities and, with them, a sense of belonging to gangs that have been originated in the United States” (Cruz 2011, 385-86).

The influx of young men and women who had spent the majority of their lives as gang members in Los Angeles eventually molded gang culture in the Northern Triangle of Central America into its violent, modern form. Jose Miguel Cruz accurately describes this significant change in the region's gang culture in the 1990s:

Influenced by the growing influx of returnees . . . the majority of the existing gangs in El Salvador and Guatemala first, and in Honduras later, began to adopt the ways and aesthetics of returning gang members – deportees or not. Over a span of 5 years, the gang identities from the United States spread out throughout the region . . . through straightforward imitation and the gradual adaptation of identities. (2010, 386)

Throughout the 1990s and into the 2000s, many gangs that were born in the barrios of Los Angeles grew and gained significant power in El Salvador, Guatemala, and Honduras – nations with institutions that struggled to handle the rapid increase in criminal activity. Today, “soaring revenues from transporting and selling cocaine and crack” have provided gangs with money and influence that would have been inconceivable in United States (Farah 2016).

As gang activity evolved and became more complex in terms of its network, local delinquency expanded to take on characteristics associated with influential and powerful organized crime. Commonly referred to in Spanish as *maras*, Cruz makes the distinction that these organized crime syndicates constitute “a vast network of groups of people associated with the identity franchises of . . . street gangs that had their origins in the city of Los Angeles . . . but whose development no longer depends upon the American dynamics” (2010, 382). Perhaps the most famous and most powerful *mara* is the Mara Salvatrucha, which now is commonly known as MS-13. The Mara Salvatrucha and its rival, Barrio 18, currently function as international criminal organizations, but they operate most successfully in the Northern Triangle, particularly in El Salvador. These *maras* were originally small street gangs that “spent much of their time hanging out, partying and taking drugs, fighting their rivals, and committing robberies” in the

early 1990s (Wolf 2011, 44). As these small gangs developed hierarchies, began to delegate criminal tasks among members, and started to use “instrumental violence for economic purposes,” they became more organized, influential, and powerful (Cruz 2010, 393). In the last decade, some scholars and observers “believe that Salvadoran gangs – and in particular the MS-13 gang – are now entering a . . . phase in which their organization resembles that of transnational crime syndicates” (Pedraza Fariña et al. 2010, 60). As *maras* such as MS-13 gain increasingly more international power, they are able to terrorize the citizens and undermine the governments of the Northern Triangle nations in which they maintain their greatest presence and influence.

The mass movement in the 1990s of Los Angeles gang members to their Central American countries of origin also had the result of placing experienced criminals in a strategic geographic location. Today, illicit drugs – particularly cocaine and heroin – pass through El Salvador, Honduras, and Guatemala on their route from South America to the U.S. and Canada. However, a shift in patterns of drug trafficking “from the Caribbean corridor to the Central American transit corridor” did not begin until the 1990s as the *maras* began to establish themselves in the Northern Triangle (Mateo 2011, 95). While geography was likely the initial reason for this relocation of a major vein of the international drug trade, the presence of experienced criminals in nations recovering from decades of conflict was also a major factor. Julie Marie Bunck and Michael Ross Fowler assert, “had those working in Central American drug trafficking confronted modern laws against transnational organized crime, vigilant law enforcement, able persecution, and stiff penalties . . . the potential costs of involvement might have deterred some individuals” (2012, 17). The Central American Northern Triangle in the 1990s was thus an ideal location for *maras* to grow with the international drug trade. The *maras*

took advantage of “a judicial and security environment incapable of confronting complex issues such as the illicit drug industry” (Mateo 2011, 95). As they profited and gained power from the drug trade, the *maras* further crippled the judicial and security institutions of their countries in a reinforcing cycle that continues today.

*Maras* have been able to thrive in El Salvador, Guatemala, and Honduras in large part because the governments of these countries have taken ineffective approaches to protecting their citizens, deterring the drug trade, and addressing the root causes of organized criminal activity. The governments of these three nations implemented programs “dominated by zero-tolerance and *mano dura* (“iron fist”) policies, aimed directly at gangs and youths suspected of being involved in violence” (Cruz 2011a, 141). Instead of providing youths with alternatives to gang membership, *mano dura* policies constructed the government to be, at best, unhelpful and, at worst, an enemy of the people. These authoritative policies curtailed individual rights while empowering the military and police (Pérez 2013, 219). A primary characteristic of the policies was to “introduce discretionary crimes, meaning laws that allow police to arrest suspected criminals on subjective evidence” on the reasoning that legal constraints have prevented governments from subduing identifiable criminals in society (Holland 2013, 46). Gangs, from large *maras* to smaller street gangs, differ from most other criminal organizations by their deliberate “visibility on the streets and in communities” (Hume 2007, 741). Many gangs designate territory and generate fear through the use of public symbolism such as graffiti, tattoos, clothing, and gang signs. In El Salvador and Honduras, the usage or drawing of a *placa* – a *mara* symbol – or the presence of a *mara*-associated tattoo can result in as many as twelve years in prison (Arana 2005 & Holland 2013, 46). These stringent laws grant the police authority to impose major sentences for relatively minor offences. Someone serving several years for a non-

violent action is likely to perceive the policy as the enemy and identify more with those she meets in prison.

In their attempt to regain control of the security of a nation, *mano dura* policies eliminate many rights of detained suspected criminals and rely heavily on the military for internal peacekeeping. These policies reduce guaranteed procedural and due process rights based on the idea that “weak judiciaries cannot convict ‘criminals’ with the legal protections afforded in advanced democracies” (Holland 2013, 47). Arbitrary elimination of procedural rights serves to weaken the judiciary by creating inconsistencies and increasing the likelihood of the incarceration of innocents. Lastly, in a desperate attempt to curtail rampant gang violence, *mano dura* policies in El Salvador and Guatemala have granted “the armed forces . . . a more permanent role in the control of organized, gang, or common crime” (Holland 2013, 47). The purpose of a military in a well-functioning liberal democracy is not to handle internal matters. The usage of the armed forces to combat crime militarizes the government and can create distrust of a nation’s institutions among the populace. At first glance, a harsh, militarized crackdown may seem an appropriate response to the rampant crime in El Salvador, Guatemala, and Honduras. The reality, however, is that these policies are ineffective. As evidence, despite the fact that governments adopted *mano dura* approaches in the early 2000s, the increase in murders and other criminal activities – particularly since 2009 – demonstrate their inefficiency (Pérez 2013, 218-19).

*Mano dura* policies constructed the governments of El Salvador, Guatemala, and Honduras – already struggling to maintain monopolies on power within their borders – as personal enemies of the *maras* in those countries. Cruz asserts that, in response to the governments’ harsh approaches, the *maras* strengthened their organizations and increased

recruitment to prepare “for an all-out war against the state and its agents” (Cruz 2011b, 135).

Instead of preventing violence, the authoritarian approaches had the opposite effect and helped mold the *maras* into the ultra-violent organizations that they are today. Ana Arana, writing for *Foreign Affairs* in 2005, reported:

The *maras* retaliated against the crackdown by launching a wave of random violence. Shortly after the introduction of the new antigang laws, they began killing and beheading young victims; at least a dozen decapitated bodies were found in Honduras and Guatemala, grisly symbols of the *maras*’ undiminished power.

Whereas the targeting of innocent civilians and children was not a common tactic of the *maras* prior to the government’s adoption of the *mano dura* approach, it became a way for the *maras* to demonstrate that they maintained the power in their countries and that authoritarian government policies would indirectly result in the killing of innocents. Additionally, *maras* in the early 2000s began to target and murder bus drivers and halt public transportation as an attempt to cripple infrastructure “and to make government appear to be impotent” (Starita 2009, 62-63). Despite the undesirable results of *mano dura* policies on violence and crime, the environment of panic in the Northern Triangle reinforces and promotes authoritative and repressive government actions that citizens and policy-makers continue to adopt (Hume 2007, 745-746). Instead of embracing a long-term democratic and institution-building plan, El Salvador, Guatemala, and Honduras continue to prefer *mano dura* policies; in the second decade of the twenty-first century, violence is now worse than ever in these three countries.

The crimes committed by the *maras* are various and differ in their degrees of violence. One of the most commonly employed tactics is the operation of major extortion rackets, which bring *mara* members into direct contact with most people in their communities. Sonja Wolf claims that “shopkeepers, sex workers, students and teachers, taxi and bus companies must all comply with the requests, though the transport sector is most heavily affected” (2012, 78). In

some *mara*-controlled neighborhoods, families are even required to pay *mara* members simply because they live there (Pedraza Fariña et al. 2010, 69). These extortion rackets are well-organized and highly vigilant. In order to evade detection by the police, *mara* members often force citizens, under a threat of harm to their family, to collect extortion money – dubbed “*la renta*” by locals – from friends, neighbors, and relatives (Pedraza Fariña et al. 2010, 70). Their ability to successfully collect extortion money from communities across the Northern Triangle has given the *maras* a significant source of territory, influence, and wealth. Journalists and authorities estimate that Guatemalans pay a total \$61 million in annual extortion fees while El Salvadorans and Hondurans pay upwards of \$390 and \$200 million, respectively (*La Prensa* 2015 & Renwick 2016). For people in countries that each have a GDP per capita less than \$4,000, the burden of *la renta* alone could encourage citizens to migrate. The *maras*, on the other hand, rely on extortion rackets to function, and in recent years, extortions have surpassed the drug-trade to “constitute the gangs’ principal source of revenue” (Wolf 2012, 78).

While extortion is not an intrinsic form of violence, any failure of citizens to comply with extortion demands frequently yields brutal results. As the *maras* become increasingly organized and hierarchical, “one of the most frightening features of [their] recent extortion practices is their enhanced ability to fulfill their death threats against those who do not comply with their demands” (Pedraza Fariña et al. 2010, 70). When a citizen does not provide her *renta* to the *mara* that demands it, she can anticipate not only her own murder but also potential harm to her family. In one large Guatemalan factory where workers are required to give two percent of their monthly income to the *maras*, a worker who refused to pay was found dead in a public area (Delpech 2013). Repercussions for non-compliance with extortion are daily concerns for those involved in the transportation industry because buses and other public and commercial vehicles

travelling large distances must provide extortion payments at multiple checkpoints and sometimes to various gangs. *Mara* members attacked 134 buses and murdered 93 transport employees in 2015 alone, and more than 1,000 employees of the transportation industry have been killed since 2004 (*The Economist* 2016). In addition to providing the *maras* with a key source of income, acts of violence related to extortion function as messages to citizens of El Salvador, Guatemala, and Honduras that the *maras* maintain the power and control in those countries.

Extortion may be the most effective and prevalent crime committed by Central American *maras*, but these organizations commit a host of other crimes that often result in the harm or death of completely innocent people, many of whom are children. *Maras* threaten to enact violence not only to enforce the payment of extortion fees, but also to compel families to hand over their children for recruitment. Children may receive phone calls during the night from *mara* members threatening to mutilate them unless they join the *mara*'s ranks (Nolen 2015). Should the children resist, these calls are followed by hints to the children that they are being followed, and eventually the situation escalates to physical violence (Nolen 2015). Recently, *maras* have been pressuring or forcing many children to abandon school prematurely so that they can begin training for a life of crime. The number of Salvadoran children who drop out of school annually increased threefold from 13,000 in 2014 to 39,000 in 2015, but one study estimates that the actual number of drop-outs due to gang threats in El Salvador in 2015 was closer to 100,000 (Tjaden & LaSusa 2016). This increased pressure – often followed by violence if the children do not comply – was a response to the government's abandonment of a gang truce and reinstatement of harsh *mano dura* policies (Nolen 2015). The 2014 uptick of pressure and violence against children was a major reason that an unprecedented 10,631 minors were apprehended by U.S.

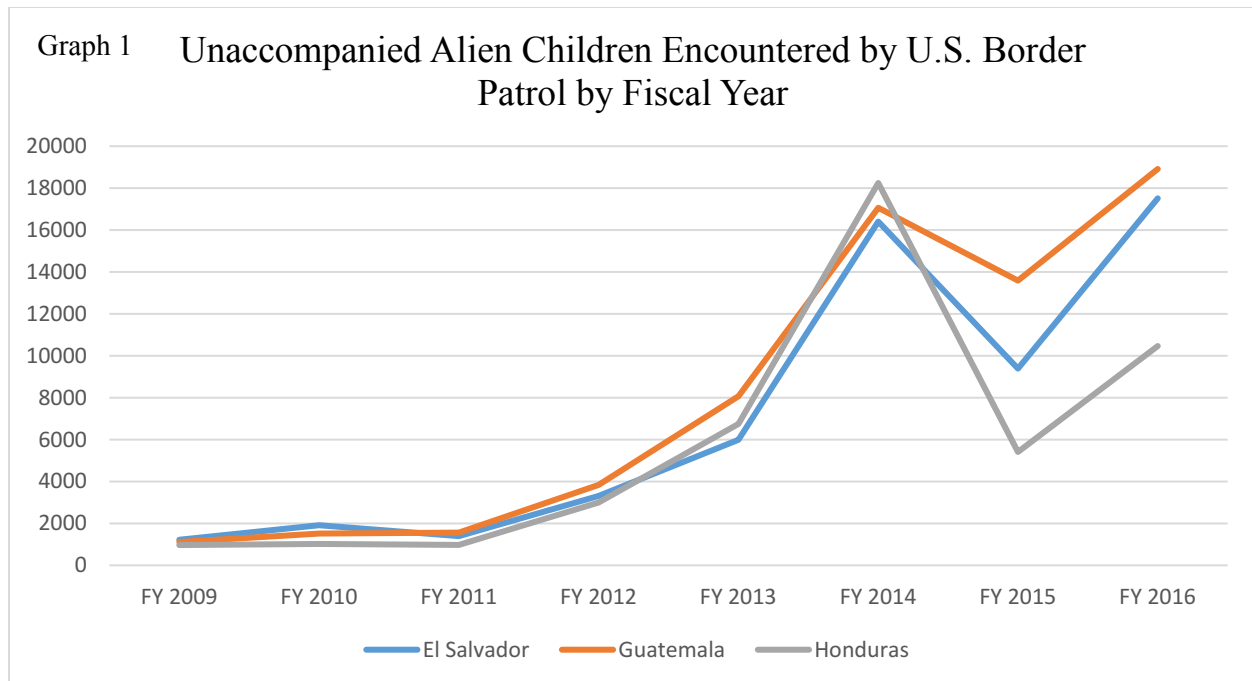


border patrol in June 2014. The aggressive and calculated targeting of youths makes the *maras* a particular threat to the community because a society is bound to struggle if children are discouraged from attending school. Douglas Farah notices similarities between *maras*, such as MS-13, and the Islamic State: both primarily target young people with limited economic opportunity, promise a life of purpose, and radicalize recruits with videos of savage violence against civilians (2016). Tactics that aim to exploit children are central to the operation of many *maras*, and countless civilians in El Salvador, Guatemala, and Honduras constantly fear for their children's lives as well as for their own.

*Maras*, however, do not limit their recruiting or acts of terror to young males. As gangs in the Northern Triangle became more violent and powerful after the implementation of *mano dura* policies, women in many areas suffered greatly. The UN reported a 263.4 percent increase in violent deaths of women in El Salvador between 2005 and 2013 (Manjoo 2015, 9). *Maras* often target young girls for recruitment, and the punishment for non-compliance for women can be especially horrific. Tina Zadginidze recounts the story of a young woman in El Salvador who refused to join MS-13 and was kidnapped at knifepoint, hit with a glass bottle in the face, and brutally gang raped as a result (2016, 221). In another gruesome case, after her brother was killed for refusing to join a gang, one girl was raped and impregnated by gang members and then forced to pay extortion to her rapists, which increased over time (CGRS n.d.). *Maras* also target girls strictly for sexual exploitation. It is common for girls as young as eleven-years-old to be kidnapped and forced to work as *jainas*, or sex slaves (Farah 2016). The strong culture of *machismo* in the Northern Triangle of Central America already makes women prone to discrimination, gendered violence, and abuse. The presence of *maras* and the inability of weak

government institutions to protect women and girls from crime amplifies the possibility that criminals will continue to victimize females with no legal repercussions.

The evolution of street gangs in the Northern Triangle into forcible and influential *maras* – a process in which the U.S. was a significant enabler – has jeopardized the safety of Salvadoran, Honduran, and Guatemalan families in recent years more so than ever. In 2013, Guatemala, Honduras, and El Salvador each earned a spot as one of the five most dangerous countries in the world, demonstrating that the situation continues to worsen in the Northern Triangle (Restrepo 2014). As their governments continue to encounter little success in the struggle to control crime, many people no longer desire to raise a family in a region that is now more violent than ever. Countless families come to the difficult conclusion that they must flee their home countries in order to survive. After coming to this conclusion, they confront two realities: a *coyote* who will guide their entire family to the border is unaffordable; and the U.S. is more likely to grant entry to an unaccompanied child than to a family. Many parents then decide that they must send their children north because, in the words of one mother discussing the options for her son, “if I send him, he may die . . . but if I keep him here, he *will* die” (Nolen 2015). As the *maras* have gained more power and inflict more violence, more parents have had to make the difficult decision to send their children on the perilous journey to the U.S. (see figure 1). Central American women, too, “are fleeing their countries in rising numbers to escape a surge in deadly, unchecked gang violence” (UNHCR 2015). The United States government is aware of this significant change in the demographic of those detained at its southern border, but it has not treated the situation as the refugee crisis that it is.



Source: U.S. Customs and Border Protection, *United States Border Patrol Southwest Family Unit Subject and Unaccompanied Alien Children Apprehensions Fiscal Year 2016*, USCBP, Oct. 2016.

### Central American Refugee Crisis and the U.S. Policy Response

Many policy-makers in the United States neglect to devote sufficient resources and attention to the roots of the Central American refugee crisis and those that it affects. This remains true despite the UNHCR's warnings that countries in Central and North America need to "recognize the growing refugee situation in the region, establish adequate capacity at borders to ensure the identification of persons in need of international protection, [and] move swiftly towards a coordinated regional approach to this problem" (2015). At best, the U.S. government has made inadequate reforms at crucial moments that attract international attention, such as after the June 2014 uptick in asylees at the border. Although immigration generally was a key issue during the 2016 U.S. presidential campaign, candidates failed to mention or describe the influx of asylum-seekers fleeing violence in the Northern Triangle and the obligations that the U.S. government has to assist them. On the other hand, those who research the situation believe that it demands urgent national attention and, if neglected, has the possibility to devolve into a much

larger crisis. Douglas Farah warns that while “the possible arrival of a few thousand Syrian refugees in the United States has caused a political firestorm . . . there is a much more serious humanitarian crisis brewing on America’s southern border” (2016). Nina Lakhani states that she and other advocates believe the “invisible refugee crisis” on America’s doorstep parallels the situation in which thousands of Syrian and African refugees risk their lives crossing the Mediterranean to escape war (2016). Both the people and government of the U.S. must acknowledge this swelling refugee crisis as a major concern for the Western Hemisphere.

Public opinion in the U.S. demonstrates that a majority of U.S. citizens fail to understand two crucial points concerning the influx of people fleeing violence in the Northern Triangle: these asylum-seekers are not economic migrants, and international law guarantees the right to seek asylum. In an August 2014 poll, fifty percent of those respondents answered that foreign children at the border should be deported before an immigration hearing, and sixty-five percent were in favor of introducing legislation that would facilitate the process of deporting these children (Dutton et al., 2014). The reality, however, is that the U.S. has international and domestic legal obligations to handle any claims to asylum; any action to deport asylum-seekers to a country where they could face serious harm or death is a violation of the 1951 Refugee Convention and the UN’s Convention Against Torture (Thornton 2017). The U.S. maintains considerable authority to determine if an asylum-seeker has a credible or reasonable fear of persecution in her country of origin, but it is not permissible for the U.S. or any other country to deport an asylee before any immigration hearing, as fifty percent of the respondents to the ABC poll desired. Evidently, many U.S. citizens believe that these children are economic migrants, not refugees who face the threat of harm or death should they be deported. Because public opinion in a nation directly affects government policy, the U.S. government continues its attempts to

blockade itself from the Central American refugee crisis as opposed to providing assistance to asylum-seekers or working with other governments to address the root of the crisis.

Although the number of Central American asylum-seekers – particularly unaccompanied children – arriving at the U.S. border steadily increased for a few years, the U.S. government did not majorly respond until the “immigration crisis” of mid-2014. In July of that year, President Obama requested “an emergency appropriation of \$3.7 billion to deal with the influx of migrant children illegally crossing the border” (Liasson 2014). The White House allocated money primarily to hire “unprecedented numbers” of Border Patrol agents to apprehend those trying to enter the U.S. illegally and to assess claims and expedite the removal of children who sought asylum but did not qualify (Obama 2014c; Obama 2014d). Further, President Obama, in September 2014, approved a plan that facilitated the in-country refugee application process for children in El Salvador, Guatemala, and Honduras in an attempt to curb the flow of children seeking asylum at the U.S.-Mexico border (Shear 2014). A sharp decline in the number of Central Americans seeking asylum within U.S. territory followed in 2015 (see Graph 1).

The Obama administration’s strengthening of border security and facilitation of abroad refugee application processes, however, cannot be the cause of the 2015 decrease. The vast majority of women and children who have sought asylum in the U.S. in the past years have not attempted to evade apprehension; rather, they turned themselves over to Border Patrol agents upon arrival (AIC 2015b, 3). A strengthening of security at the border thus would have done little to deter immigration. Additionally, the plan facilitating the refugee application process for Central American children in their countries of origin did not change the number of refugee visas granted to people from Latin America and the Caribbean (excluding Cuba), which was capped at 4,000 (Shear 2014). At the end of 2014, 40,627 applications for asylum from Salvadorans,

Guatemalans, and Hondurans were pending; thousands more had been rejected much more swiftly (UNHCR, n.d.). It is clear that these policies could have done little to discourage asylum-seekers from reaching the U.S. border. The decline in women and children reaching the U.S. border in 2015 is thus attributable in large part to less publicized action undertaken by the U.S. in response to the 2014 Central American refugee surge.

Prior to August 2014, latching onto a northbound train known to locals and travelers as *La bestia* – the Beast – provided a period of relative safety to refugees on their perilous journey across Mexico (Sorrentino 2015, 10). This network of trains, despite the many dangers associated with riding them illegally, eliminated the need to travel by foot across thousands of miles where asylees could be robbed, kidnapped, or die from thirst or exhaustion. The attention drawn by the 2014 Central American refugee surge in the U.S., however, indirectly eliminated *La bestia* as an option for refugees travelling through Mexico. In late June 2014, President Obama met with President Enrique Peña Nieto of Mexico for an encounter that the White House claimed was “to develop concrete proposals and address the root causes of unlawful migration from Central America” (Obama 2014a). Less than a month later, Peña Nieto introduced the *Plan Frontera Sur*, an initiative to heighten security across Mexico’s southern border and on major migration routes such as the railways of *La bestia*. Some scholars and analysts claim that during the June meeting the U.S. actually exerted pressure on Mexico to crack down on immigration at its southern border and implement this plan (Sorrentino 2015). Alejandro Olayo-Méndez goes even further, asserting that “the United States have not only externalized the American southern border to the southern border of Mexico, but have also created a dynamic of interdiction of those who may have a rightful claim to refugee status” (2017, 24). While the precise role of the U.S. in pressuring Mexico to adopt *Plan Frontera Sur* remains unclear, “the growing number of

apprehensions skyrocketed over fiscal year 2015” – Mexico’s apprehensions of Central Americans increased 71% in the first year of *Plan Frontera Sur* (Castillo 2016; Isacson, Meyer, & Smith 2015). The U.S., on the other hand, encountered far fewer Central American migrants and asylum-seekers on its border than in 2015.

With the decrease in apprehensions of Central Americans at the U.S.-Mexico border in 2015, it appeared that “the United States, through its financial and political support, ha[d] exported, or ‘outsourced’ its humanitarian crisis to Mexico” (Korthuis, 2016). Shifting the frontline to Mexico’s southern border made the U.S. less liable for any breaches of international law that might occur. Under *Plan Frontera Sur*, for example, the U.S. would not be culpable if Mexico violated human rights law by failing to consider the cases of any asylum seekers. The first two months of *Plan Frontera Sur* indeed resulted in 67,000 deportations of Central Americans from Mexico, often with little regard for the dangers they would confront upon their return (Soletterre, 2015). The overwhelming refugee crisis seemed to have shifted to Mexico’s southern border. However, *Plan Frontera Sur* and several initiatives by the U.S. government, such as a widespread advertising campaign in the Northern Triangle to warn of the dangers of immigration, failed to address the violent root causes of the humanitarian crisis. The 2015 decline in refugees apprehended at the U.S. border proved to be an anomaly in a broader trend. Perhaps driven by a drought and sharp uptick in violence in the Northern Triangle in late 2015, the number of family units and children apprehended at the U.S.-Mexico border in 2016 exceeded that of the “peak,” 2014 (Hauslohner 2016; Chishti & Hipsman 2016). Record numbers of Central American migrants and refugees continued to reach the U.S.-Mexican border in 2016. *Plan Frontera Sur* is therefore an inefficient solution that complicates the already-dangerous journey across Mexico for many refugees.

### The Asylum-Seeking Process: Intended to Deter

Despite the aforementioned policies and initiatives, the humanitarian crisis in the Northern Triangle continues to intensify, and the trend of asylum-seekers arriving at the U.S. border in greater numbers shows no signs of abating. One of the principle approaches of the U.S. to deter the influx of asylum-seekers is subtler and more inhumane than the implementation of policy or efforts to collaborate with Northern Triangle countries. In an effort to discourage immigrants, the Department of Homeland Security has embraced “an immigration enforcement system that has been fundamentally characterized by the inappropriate and arbitrary detention” of asylum-seekers and migrants (Detention Watch Network, 2015, 1). Not only does this violate the rights of immigrants generally, but it is particularly controversial to subject asylum-seekers to detention. Once asylees invoke their internationally recognized right to seek asylum, international law stipulates that they must not be penalized for entering the destination country (UNHCR, 2012, 13). Governments have some ability to detain asylees for “a limited initial period for the purpose of recording, within the context of a preliminary interview, the elements of their claim to international protection” (UNHCR 2012, 18). International law vaguely states that the ideal duration of detention for an asylee being interviewed is 48 hours; for further detention, there must be a “legitimate purpose” for detention determined by each asylee’s individual case (UNHCR, 2012, 17-18). Despite these regulations, the U.S. has implemented a system of mass detention, the purpose of which is to deter asylum-seekers from reaching the U.S. border. Because the international law relevant to detention of asylum-seekers is vague, the U.S. is able to interpret and portray its actions as concurrent with UNHCR regulations.

Upon arrival at the U.S. border, “men, women, and children, including toddlers and infants, who are suspected of being in the United States without authorization” are grouped into



temporary holding cells, regardless of whether or not they express an intention to seek asylum (AIC, 2015a, 1). The U.S. Customs and Border Patrol (CBP) places foreigners who have crossed the border without permission into these temporary holding cells “until they can be transferred to a long-term Immigration and Customs Enforcement detention facility, returned to their native country or released until their immigration hearing” (Bale, 2013). The temporary holding cells are known by immigrants and Border Patrol officers as *las hieleras* – the Spanish word for “ice boxes” – because the inside temperatures are unreasonably frigid. Although they are designed to hold people for a few hours, Border Patrol officers have been known to keep people in *las hieleras* for multiple days or even weeks (AIC 2015a, 1). Despite complaints, lawsuits, and testimony from immigrants who have experienced *las hieleras*, the CBP continues to operate these facilities with insufficient regard for the human rights of those detained (Navarrete et al., 2016; Bracken, 2017). The reality is that it is difficult to hold the CBP accountable, particularly under vague international laws. Border Patrol agents often downplay the deficiencies in *las hieleras*, and many DHS responses to complaints acknowledge the issues but fail to enact real change (AIC 2015a, 2). According to immigration attorney Vance Berry, Border Patrol agents commonly deny the frigid temperatures in *las hieleras* and claim that the cells feel cold to the immigrants since they have just spent days crossing a scorching desert (Berry 2017, 2). Former detainees, however, assert that the temperatures in these cells induced physical illness or made fingers and toes turn purple, and a Human Rights First report claimed, “virtually every child who had cycled through *las hieleras* was sick when we saw them [at the long-term detention center] (O’Dowd, 2013; Dyer, 2015).

The next step for many migrants and asylum-seekers is *la perrera* – the dog kennel. At this stage, children are separated from their parent(s) into different sections of a warehouse

complex divided by chain-linked fence (Berry 2017, 2). Many immigrants report that they are overcrowded into “cage[s] and being denied food, water, and access to proper sanitation (Jeffrey, 2016; Guenther, 2016). *La hielera* and *La perrera* provide no respite for asylum-seekers after their arduous journey to safety. Instead of quickly assessing their claims to asylum, the U.S. welcomes asylum-seekers by crowding them into facilities that are hardly suitable for criminals. Indeed, there are many indications that CBP agents and other federal employees interpret these asylum-seekers to be somehow in violation of domestic law. This is demonstrated by the fact that “federal authorities had no provisions or policies for differentiating between criminals, undocumented immigrants, and women and children seeking asylum” (Guenther, 2016). Even though refugees and asylum-seekers must be considered and treated as such under international guidelines, the U.S. continues to view them as criminals and subject them to conditions that many consider to be torture.

The U.S. government rarely acknowledges the inhumane conditions that asylum-seekers and other immigrants confront once they cross into the U.S.; thus, one can only speculate about the intentions behind subjecting immigrants to intense cold in *las hieleras* and excessive overcrowding in *la perrera*. The process that immigrants, including asylum-seekers, face in their first days across the border is a form of psychological torture. Many reports claim that CBP officers threaten to send detainees in *las hieleras* to facilities with worse conditions or extend their detainment if they do not sign their deportation papers, which are in English and rarely explained by the officer to the immigrant (AIJ, 2013; Dyer, 2015). CBP officers generate fear and confusion, coercing many immigrants to sign these papers that they do not understand. Subjecting asylum-seekers to this psychological coercion is dangerous and inhumane because they are often physically and psychologically vulnerable after fleeing violence and abuse. One

man in *la hielera* “was threatened with a federal prison sentence if he didn’t sign his deportation order. A CBP officer laughed and mocked [this man] when he began crying because he was afraid to return to his home country” (AIJ, 2013). The conditions in these temporary holding facilities and pressure from the officers cause many asylum-seekers and migrants to “agree” to be deported back to their countries of origin days after they cross the border.

The women and children asylum-seekers who are able to persevere through the psychological tests of *las hieleras* and *la perrera* are transferred to one of three centers for mass incarceration while male asylees are held in several smaller facilities (Berry, 2017, 3). The largest of the detention centers for women and children is located in Dilley, Texas, and is equipped with 2,400 beds. The Dilley detention center opened in June 2014 when “the Department of Homeland Security (DHS) began implementing a border security policy of detaining nearly all mothers and children fleeing violence and persecution in Central America” (AIC, 2015b). The vast majority of the women and children detained at the Dilley facility intend to apply for asylum, and they await their “credible fear” interview in the detention center (Planas, 2015b). This interview provides the basis for approval or denial of a migrant’s opportunity to begin the process of seeking asylum in the U.S. The asylum application process, which usually requires several appeals, can take over a year, and asylees who formerly were able to spend that time outside of detention with relatives prior to 2014 now live in prison-like conditions for extended periods of time (Mehta, 2015). Since these people have committed no crime by seeking asylum, detention centers such as Dilley should provide a comfortable environment for women and growing children. However, many advocates and people who have visited the detention centers report that they are no different from internment camps: privacy is nonexistent and guards determine many aspects of the detainees’ daily schedules (Takei, 2015).

Facilities such as Dilley are officially called “Family Residential Centers,” but in reality they are camps in which innocent asylum-seekers are treated more or less as criminals.

Reports of abuse of the women and children in these detention centers are widespread, and guards and employees are often able to avoid charges simply by denying the asylees’ claims. Until recent complaints resulted in some reforms, asylum-seekers detained in the Dilley facility were made to sleep with the lights on or, at best, dimmed; today, the asylees are still subject to frequent late-night inspections by the guards, who awaken the women and children and shine flashlights close to their faces (Hennessy-Fiske, 2015). Accounts of sexual abuse by the guards are uncommon but not unheard of, and it is probable that most incidents of sexual abuse are not reported. Regarding a detention center that preceded the one in Dilley, a complaint issued by the Mexican American Legal Defense and Educational Fund (MALDEF) alleged that employees had removed women from their beds late at night to engage in nonconsensual “kissing, fondling, and/or groping,” sometimes in front of the women’s children (Bono 2014, 2). GEO Group, the for-profit correctional services company contracted to operate the detention center, contested that the women’s accusations were false and that their company was providing a “family friendly environment” for these women and children asylees (Taylor, 2014). The most common abuses against asylees in detention centers are denials of basic medicine or treatment. One woman reported that after refusing to treat her fractures or provide assistance to her vomiting son, employees “referred to her and other detainees as ‘f\*\*king migrants’ who ‘came to invade their country’” (Planas, 2015a). When doctors found a brain tumor in one Salvadoran woman detained at Dilley, immigration officers proceeded to treat her “like a dangerous criminal – shackling her, withholding information about her location and neglecting to provide her with adequate medical care” (Mettler, 2017). Immigrants and advocacy groups continue to report instances of abuse that

occur in large-scale asylee detention centers, but the detained are often deprived of the freedoms necessary for them to present evidence or argue their case accurately and effectively. The result is that employees and guards are able to commit everyday abuses, such as the denial of medical treatment, largely without consequence.

Asylum-seekers must endure life in detention centers while they participate in a series of interviews and court cases that will determine whether they will be granted refuge in the U.S. Under U.S. law and the 1951 Convention, an asylee must prove that she has a credible fear of persecution “for reasons of race, religion, nationality, membership of a particular social group or political opinion” and therefore cannot be safely return to her country of origin (14). Although reports claim that 90% of asylees from El Salvador, Honduras, and Guatemala have credible fear of persecution, many asylum officers have determined that violence from *maras* and failure of the governments to combat this violence do not allow someone to claim asylum as part of a particular social group (AILA, 2016, 2). The officer who determines an asylee’s qualification for refuge therefore has considerable authority, particularly when the asylee lacks legal representation. Asylum officers and others involved in oversight of the asylum-seeking process can be influenced by “the history and political climate surrounding US immigration policy,” and this has made “asylum cases based on fears of gang-based persecution notoriously difficult to win” (Cheng, 2011, 1). In the past few years, however, advocates have provided lawyers to many asylum-seekers for their credible fear interviews. According to Berry, before lawyers assisted asylees at this stage, nearly 90% of applicants would be denied asylum and deported after the interview (2017, 6). Lawyers have helped to reduce the rate of denial at the credible fear interview stage to 10-12% (Berry, 2017, 6). Due to legislation restricting long-term detention of children, many – but certainly not all – women and children are released after this interview to

live with friends or relatives (Berry, 2017, 3; Noferi, n.d.). Aside from vague and interpretable international guidelines, no such restrictions apply to the detainment of male asylum-seekers, and some may spend months or years in detention until a judge hears their case for asylum in court (Berry, 2017, 3; Noferi, n.d.). An asylee's experience in the detention centers is characterized by stress and uncertainty. Many types of abuse are prevalent and hard to combat, and, for some people, a detention center may be their last stop in the U.S. before deportation.

The U.S. government has designed the asylum-seeking process from *las hieleras* until detainment in a large-scale detention center to deter future refugees or migrants from arriving at the U.S. border. Berry claims that the harsh conditions of these facilities – particularly *las hieleras* – are likely designed to encourage detainees to contact friends and relatives in their countries of origin and recount their experience in the U.S. to be traumatic and unwelcoming (2017, 2). The rationale is that these interactions will discourage people in the Northern Triangle from seeking safety in the U.S. Although the usage of mass detention of immigrants – asylum-seekers in particular – to deter future migration is illegal under international law, former secretary of Homeland Security Jeh Johnson, in a speech given at the opening of the Dilley detention center, openly stated his belief that detention of immigrants “is a good deterrent” (Preston, 2014). The evidence, however, suggests that this inhumane and illegal form of deterrence does not produce the desired effect. A report by the Detention Watch Network concluded that “many countries, despite having increasingly severe detention systems, experience similar – and even greater – rates of unauthorized migration” and that the DHS lacked empirical evidence to justify detention as an effective deterrent (DWN, 2015, 2-3). The treatment of Central American asylum-seekers as criminals by subjecting them to detention is inhumane, illegal, and ineffective.

After the 2014 surge of asylees at the U.S. border, the Obama administration expanded its reliance on detainment and attempted to expedite the process of deporting immigrants – including asylum-seekers – to their countries of origin. In its first few months in Washington, the Trump administration has already demonstrated an intention “to radically expand the program and facilities for the detention of families seeking asylum” (Hayes & Montopoli, 2017). A recent executive order states that the U.S. will “take all appropriate action and allocate all legally available resources to immediately construct, operate, control, or establish contracts to construct, operate, or control facilities to detain aliens at or near the land border with Mexico” (Trump, 2017). This clause importantly neglects to distinguish asylees from other immigrants, and it implies that anyone crossing into the U.S. must be a criminal, regardless of the 1951 Convention’s guidelines that assure safety for those fleeing violent persecution. The Obama administration’s use of immigrant detention was rightfully deplored by human rights groups, but many asylum-seekers who were determined to have a credible fear of persecution were paroled and able to leave detention while awaiting their court date. President Trump’s Border Enforcement Order(s) place even greater restrictions on parole, making long-term detention more likely for many who seek asylum in the U.S. (Harvard Law School, 2017, 4). The Trump administration has demonstrated that it will expand the practice of treating asylees as criminals despite their innocence.

More alarmingly, the new administration has exhibited a lack of concern for the international right to seek asylum. President Trump’s anti-immigrant rhetoric and executive orders concerning immigration, despite legal difficulties preventing their implementation, have already negatively impacted Central American asylum-seekers at the U.S.-Mexico border. Several CBP officers in recent months have violated international law by turning away or

criminally prosecuting asylum-seekers at the border in unprecedented examples of disregard for the right to seek asylum (HRF, 2017, 1). These violations of human rights agreements could endanger the lives of thousands of Central Americans who have exerted considerable effort to bring themselves and often their families to safety. Additionally, President Trump advocates for policies that will directly harm children seeking refuge and severely punish relatives and friends who attempt to assist asylum-seeking children. President Trump's newest immigration executive order halts the Central American Minors (CAM) program – one of Obama's responses to the 2014 surge – that allowed children in Central America to more easily attain refugee status in their countries of origin and live with a relative in the U.S. (Linthicum, 2017, 1). CAM was implemented as a safe alternative for children who otherwise would have attempted the perilous journey to the U.S.-Mexico border, and the program helped thousands of children safely enter the U.S. However, the number of children from the Northern Triangle seeking refuge was too large for that program to cover, and many continued to seek asylum upon their arrival at the U.S. southern border. In regards to these children who arrive unaccompanied at the border, President Trump and Secretary of Homeland Security John Kelly have proposed that they be deported and that anyone who helped them arrive in the U.S. be prosecuted for human trafficking (Domonoske & Rose, 2017). In recent months, more than unwelcoming, the United States has become a dangerous country for asylum-seekers and the people that assist them in their pursuit of a right to asylum.

#### Review of the Human Rights Violations Committed by the U.S.

The United States has responded to the humanitarian crisis in Central America in an inhumane and inefficient manner and is guilty of multiple violations of international human



rights law. The following is a review of ways in which the U.S. has failed to respect the rights of Central American asylees or has breached certain international and domestic laws or agreements.

The immediate rejection of an asylum-seeker at the border blatantly violates Article 14 of the Universal Declaration of Human Rights, the 1951 Convention Relating to the Status of Refugees, and U.S. federal law. Article 14 of the Universal Declaration of Human Rights states, “Everyone has the right to seek and to enjoy in other countries asylum from persecution” (1948). The immediate rejection of someone invoking this right is a violation of this internationally-binding declaration. Article 33 of the 1951 Convention states, “No Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion” (30). In order to comply with this, a government must determine someone seeking asylum to be ineligible to attain refugee status before that government can legally return that person to his country of origin. In order to determine if an asylum-seeker can legally be deported, the U.S. conducts credible fear interviews. The removal of an asylee before the credible fear interview is unquestionably illegal. The denial of an asylee at the border and before the determination of credible fear not only violates international law, but is also illegal under U.S. Federal Law. Section 208 of the Immigration and Nationality Act asserts that “any alien who is physically present in the United States or who arrives in the United States . . . irrespective of such alien’s status, may apply for asylum in accordance with this section” (1952). The U.S. government has not complied with international and domestic law in its recent practice of denying asylees the opportunity to begin the asylum-seeking process.

The mass detainment of asylees – particularly of women and children – is a breach of Common Article 3 of the Geneva Convention, the United Nations Convention Against Torture,

and Article 31(2) of the 1951 Convention Relating to the Status of Refugees. The violence in the Northern Triangle that has catalyzed the influx of refugees to the U.S. can be categorized as “armed conflict” and thus the text of the Geneva Conventions should apply (Hatoum, 2015, 73-76). Common Article 3 of the Geneva Convention states that a signatory State shall not subject “persons taking no active part in the hostilities” of an armed conflict to “cruel treatment and torture . . . [or] outrages upon personal dignity, in particular humiliating and degrading treatment” (ICRC, 1949). Similarly, the United Nations Convention Against Torture (CAT) prohibits a state from intentionally subjecting aliens to needless suffering, whether physical or mental (1984). Daniel Hatoum argues that housing asylees in cages or denying them medical assistance are two examples of how the U.S. subjects Central American asylees to torture while they are detained (2015, 81). The U.S. violates these two Conventions by placing asylees into physically and psychologically taxing detention centers. Often, detention of asylees can be considered unlawful under Article 31 of the 1951 Refugee Convention, which prohibits States from using detention “as a punitive . . . measure or a disciplinary sanction for irregular entry or presence in the country” (Domínguez, Lee, & Leiserson, 2016, 22). The U.S. detainment of asylees subjects them to intentional and unnecessary punishment, which is impermissible under international laws and agreements.

### Conclusion

Violence by organized crime groups in the Northern Triangle of Central America has created a humanitarian crisis. *Maras* target civilians and weaken a nation’s institutions in a way that reinforces chaos. The violence is so widespread that, today, many families and individuals consider the societies of El Salvador, Honduras, and Guatemala to be unlivable. The United States has several obligations to provide Central Americans seeking asylum within its borders

with safety and protection because the majority of these asylees cannot return to their countries of origin without fear of persecution or death. Instead of providing the Central American asylees with assistance, however, the U.S. has implemented a complicated and inhumane asylum-seeking process that is arbitrarily cruel and confusing. The U.S. began to recognize the scale of the Central American refugee crisis after the 2014 surge, but its approaches have not attempted to address the root of the violence in the Northern Triangle. Because the flow of asylum-seekers has not abated, the U.S. adopted more illegal methods for dealing with the crisis.

As one of the key signatories of the 1951 Convention Relating to the Status of Refugees, the United States made a commitment to the world that it would be a leader in assuring that those fleeing intense persecution and violence would confront a humane and just process for attaining asylum upon arrival at the U.S. border. As the Central American humanitarian crisis has challenged the U.S. to put this promise into practice, border patrol agents, policy-makers, and civilians have all demonstrated that the U.S. would not remain committed to several of its agreements pertaining to human rights. Its unwillingness to provide a legal or humane asylum-seeking process to welcome the innocent victims of one of the Western Hemisphere's most violent conflicts suggests that the U.S. does not deserve a reputation for being a country of opportunity and accommodation.

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Appendix

## Interview with Vance Berry, 18 March 2017

Taylor:

Alright so I only have a few questions. I'm basically just a little bit confused about the process from when an asylee finally arrives at the border, from that point until the decision is made whether or not to send that asylee back. I understand that a lot of the time the Border Patrol and the other officers might subvert the process and even illegally send an asylee back before due process. Is that true?

Vance:

Right yeah that is happening with increasing frequency right now. So, often times in the past few months, people who come to the border are being turned away by the Border Patrol officer and told that we have a new president, we don't allow asylum here, or we don't allow Guatemalans here, or something along those lines, and they're sent back into Mexico. Often these people try time after time, obviously they're desperate to get in. There are particular cases where people try four, five, six times before they are let into the country to seek asylum.

Taylor:

That is illegal not to let someone seek asylum, right? Is that against international law?

Vance:

Yeah that is a violation of international human rights obligations.

Taylor:

Okay, yeah that is pretty bad. Would you mind quickly walking me through the process -- so from when someone arrives at the border and until they're granted or denied asylum?

Vance:

sure. So when you arrive at the border, people will cross two ways, and in my experience they're close to 50-50. Some people will try to go without being caught, across the Rio Grande, and a number of other people will cross through the border crossing, point of entry.

Taylor:

If you don't mind me asking, people that are trying to subvert the border patrol and avoid being detained, are those typically people that are going to seek asylum in the future and people that are fleeing violence in Central America?

Vance:

So it is a mixed bag. Recently it's been an increasing number of asylum-seekers from Central America. Historically, those have been economic migrants from Mexico. So I think part of the problem is that we've got this detention system and deterrence system that is still basically assuming that we have economic migrants coming in. The numbers now show that it is predominately asylum-seekers from Central America. So, you need to react to those two groups in really different ways. You're seeing more people come from Central America than from Mexico, and I think that's where the public policy debate

needs to shift a little bit, because these people are not coming for economic opportunity. They're coming for a chance to live. They cross either through the port of entry – assuming they are allowed in – or across the Rio Grande. Then they are taken first to *La Hielera*, which, as I mentioned in class, they're really a number of them. They're these ice-cold holding facilities – Immigration Customs Enforcement holding cells that are sort of scattered through the desert just north of the border. They will go there, usually for two to three days, and then they will be taken to *La Perrera* – the dog kennel – which is where they are kept in sort of a warehouse setting and separated from their children. These are big warehouses with chain-link fences separating different areas. They stay there in a little cell for one to two days before they're brought to a detention center. If it is a woman with a child, it's going to be one of three places: Dilley, which is in Texas, Corinth is in Texas, or Berks, which is in Pennsylvania. If it is a man, they could go to a number of different places. If the whole family unit arrives together, they split them up. The man will go to a detention center on his own. The women and children will go to a separate place. Then they need to find a way to reunite, once they are released from detention.

Taylor:

Right, and so detention is while they're still awaiting their hearing? Let me rephrase it. I remember in the interview that you had with our class, you mentioned that these people are intentionally subjected to a psychological process as they are seeking asylum. Maybe that is what I am getting at.

Vance:

Yeah, absolutely. That is where *La Hielera* and *La Perrera* come in. These are both sort of forms of psychological torture.

Taylor:

Intentionally?

Vance:

Oh, yeah. I think without a doubt. Of course, the government would never admit to that. What they say is that "*La Hielera* just *feels* cold to them because they been out in the desert for days, and they are very warm. But we hear *repeatedly* from a number of families that the children's hands and feet turn blue. Their lips turn blue. Often, if they've crossed through the river in wet clothing, they are not given dry clothes. They are forced to sleep on the concrete with all of the lights on. They go to the bathroom and all the guards watch them. It is a really humiliating sort of process, and this is why to me, and to a lot of people, this is a form of torture. It is intended to be a form of deterrence so that these quote-unquote "economic migrants" will just seek opportunities in their own country without coming here to try to get jobs.

Taylor:

Yeah. So the intention is to subject them to this psychological process and have them basically admit that they are not seeking asylum or that they are not qualified or have no credible fear?

Vance:

Not at that stage. *La Hielera* and *La Perrera*, I think the idea, the rationale there, is that they will call their families at home, and they'll say, "Oh my God, I got to America, and it is not at all what people say it is. It is terrible and you should not come." Because they think that they're economic migrants, and the standard pattern for economic migrants is the one person – usually the man – will come first. He'll find a job and he'll do well, and then he'll try to bring his whole family up. They're seeing it through that lens, and they think, "oh, these people are going to come here, and whoever is the first person from the family

is going to come, and we want them to call their family and say, ‘absolutely don’t come here.’” It’s terrible.

Taylor:

I see. So it is a form of deterrence. I did not realize that it was that intentional. So, how many days are they in this system of *hieleras*, *perreras*, and detention centers before they move on with the process?

Vance:

It varies greatly depending on who you are and who you call. Pretty much everybody goes to *La Hielera* or *La Perrera* for at least a day or two. I’d say that 90% of people spend between one and three days in *La Hielera*. From there, I’d say about two thirds go to *La Perrera*. Some people don’t, and I’m not really sure why. About two thirds of the people that you talk to go to *La Perrera* usually one to two days. If it is a woman with a child, they are going to go to one of those detention centers: Corinth, Dilley, or Berks. They’re supposed to – under a settlement called Flores – they’re only supposed to keep children for the least restrictive period of time possible. Basically, this is an accord that said that detention centers are not childcare facilities, they don’t have the capacity to care for children, so you must keep them least restrictive setting possible and for the least amount of time you reasonably can – that is normally interpreted to be 15 days. Usually, they’re trying to get them out of detention to be either deported back home or released into the community within 15 days, if it’s women and children. If it is a man, they don’t have that kind of restriction. So, we see men who come seeking asylum that are held in immigration detention centers for years. There is a large detention center just south of where I live here in Atlanta called Stewart Detention Center, and they have at least thousands of men detained there, most of whom are seeking asylum, and they’ve been there for years. It’s really hard for them to get out of detention

Taylor:

And is it legal, internationally or even domestically, to hold an asylum-seeker in a detention center, much less for years?

Vance:

It is debatable. Honestly I’d have to do some research on it to see if it’s permitted as a practice. It is certainly not the best practice. The idea is, you know, that the developed world is supposed to provide asylum for those who fear imminent threats to their lives or severe persecution based on their race, religion, nationality, membership in a particular social group. Is putting them in prison you’re really satisfying that requirement? I guess you’re keeping them in the United States; they’re not being sent home to the gangs. There’s an argument to me there, but I think it’s a tenuous one.

Taylor:

Definitely. I agree with that. A lot of these people arriving at the border are children, right? Unaccompanied? Is the process the same for those children?

Vance:

The children will go to separate detention centers, where they have facilities for just children. There are a lot of these very small detention centers, which make it hard to represent them. They do try to get the children out of detention fairly quickly, just like the women and children. So, they’ll try to find family members in the United States, and most children won’t show up at the border without a family member

or close family friend somewhere in the U.S. By and large, they are going to be resettled with a family member or friend who's here in the U.S. Under the Obama administration they wouldn't require the status of the person they were going to live with. Often it would be a non-documented family member. Under the new administration they are going to start inquiring into the status of those family members and maybe going after them. So there is a lot of anxiety about what is going to happen to our unaccompanied children.

Taylor:

Yeah, I saw that. So basically you can be charged with child trafficking or human trafficking if bring a child.

Vance:

Right, so the Trump administration has said that they are only going to deport criminals, and the way they get around this is by expanding the definition of a criminal. They say, "well, you know, you're a criminal if you engage in human trafficking." So far, I'm on board. That sounds pretty good. Then, they say, "we define human trafficking as sponsoring an unaccompanied child when you don't have any status here in the United States." That makes me scratch my head a little bit, but it really, really expands the definition. You are going to make a lot of people criminals that way, and you are going to be able to deport them. They've sort of come at the reasoning backwards and that's how they're going to do it.

Taylor:

Going back a little bit, if a child shows up at the border – let's say we are under the Obama administration right now – and can find an undocumented family member or family friend to go with in the U.S., is that child admitted into the U.S.?

Vance:

The child is given a notice to appear in court.

Taylor:

I've read that they are sometimes sending children back – legally or illegally -- at the border. They would sort of bring some in and deport as many as they could as soon as possible?

Vance:

You could be right, but not that I am aware of. I tend to work more with the families. I hadn't I had heard about that. Certainly, I think Obama's rhetoric was very favorable toward unaccompanied children. What we'd normally see is that they'd come in, get their notice to appear in court, and be able to apply for a work permit if they were old enough. They might even attend an asylum court hearing, just like an adult would.

...

Taylor:

Are you of the opinion that this movement of people coming from the Northern Triangle could be considered a refugee crisis?

Vance:

Well, I think that it is a humanitarian crisis, no doubt about it, when you look at the numbers. You can call them asylees, refugees. Under the law it is the exact same legal standard. The only difference is whether they are in the United States or outside the United States. So, it is 100% a refugee crisis.

...

Taylor:

Do you think that the Trump administration even acknowledges this is as a refugee crisis or a humanitarian crisis, or do they see it basically as another influx of economic migrants that are breaking the law?

Vance:

I think absolutely. What they will tell you is that anyone who crosses the border without documentation has broken the law. In fact, we've seen in the El Paso district that they are actually criminally prosecuting people seeking asylum for undocumented entry of the United States.

Taylor

And that is a human rights violation, right?

Vance:

Right. Yeah. It's almost comical. By coming in and saying that they are seeking asylum at the border, they are doing something that is inscribed in our law as *legal*. It's really clear. I just, I'm really flabbergasted. The Obama administration did some great things on the immigration front, but they saw these people as economic migrants. It was it was really tough politically for Obama because he was trying to show that he was tough on immigration so that he could get the legislature behind him to pass comprehensive immigration reform. He wanted show, "I'm tough on the border, and now that I'm tough on the border, let's go ahead and reform Citizens' Comprehensive Plan. The surge in 2014 really undermined that whole narrative, and so he had to push back really hard. The way he pushed back was to say, "these are economic migrants. We are going to treat them like it. We are going to deter them. We are going to keep this from happening." That is when we created this whole mechanism of detention centers. So I can't say that he was any better on the issue, but the Trump administration has certainly not seen this as any sort of humanitarian crisis worthy of any sort of serious effort.

...

We're seeing it on the ground. They are making it tougher for applicants working within these detention centers, often revoking their security clearances for trivial reasons. They are really just doing anything they can to put up impediments to allowing these people to stay in the U.S.

Taylor:

So, would you agree that the United States is violating international law, human rights law in many aspects of this process?

Vance:

Yeah, I mean it's really tough to say what a violation of international law is because the laws are written so vaguely that they allow these countries for a lot of flexibility. Certainly a government lawyer would argue that anyone of meritorious claim is allowed to stay in the United States – whether that is in detention or not – until their case is heard. So, we're meeting all of our requirements. I think were you

really see that they are flagrantly violating international law is by turning people around at the border. That is a clear and flagrant violation of international law, and I don't think that there is any argument for the contrary.

Taylor:

And that is happening more in the last couple of months?

Vance:

Yes. I hadn't heard of that happening before the Trump administration came in. I don't know if that's an official policy. I think, more likely, some of these officers just know that they won't get any reprimand from above, and maybe they'll even get promoted for sort of carrying out this policy. So they think they're allowed to do it. Whereas before, under Obama, you absolutely would not have been allowed to do that. Obama is a lawyer and he has this legal mind. While he was willing to push some boundaries, like detaining people and doing some forms of torture once they cross the border, when it comes to clearly violating the law, he knows that his administration cannot make an argument there. He is not going to let his people do something that does not leave any argument available, which is what we see happening now.

...

Taylor:

So, they arrive at the border. Then, if [the border officers don't break the law, they will to you to *la hielera*, right?

Vance:

Yep.

Taylor:

So that's the first step – two nights there. Then, *perrera*. Then, is it the detention center?

Vance:

Then it is the detention center for a woman and child. Well, for anybody really, but the split up the men from the women and children. They go to different detention centers, and that's where they'll have their credible fear interview, where they try to determine whether or not there is a credible fear of persecution. It's not the actual asylum judgment that is granted there, it's just the chance to go seek asylum within the U.S.

Taylor:

At that point, the U.S. can say, "you have no credible fear," and can turn people away?

Vance:

Yeah, absolutely. That's where lawyers have made a big difference where I work down in Dilley. They turned about 90% of people away at that stage, before we got lawyers in there. Now, they turn about 10-12% of people away at that stage. It has really changed the process.