No. 19-16487

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EAST BAY SANCTUARY COVENANT, et al.
Plaintiffs-Appellees,

v.

WILLIAM P. BARR, Attorney General of the United States, et al.
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EMERGENCY MOTION UNDER CIRCUIT RULE 27-3 FOR ADMINISTRATIVE STAY AND MOTION FOR STAY PENDING APPEAL

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CIRCUIT RULE 27-3 CERTIFICATE

The undersigned counsel certifies that the following is the information required by Circuit Rule 27-3:

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(2) Facts showing the existence and nature of the emergency

As set forth more fully in the motion, the district court has entered a nationwide injunction barring enforcement of an important Executive Branch rule that is designed to address the dramatically escalating burdens of unauthorized migration by rendering ineligible for the discretionary grant of asylum aliens who cross our southern border after failing to apply for protection from persecution or

torture in a third country through which the alien transited en route to the United States. The injunction is imposing irreparable harm on Defendants and the public. The injunction contravenes the constitutional separation of powers by preventing the Executive from using its delegated statutory authorities; harms the public by thwarting enforcement of a rule implementing the Attorney General's and Secretary of Homeland Security's statutory authority over the border and whether aliens may receive the discretionary benefit of asylum in this country; and second-guesses the Executive Branch's considered foreign-policy judgments concerning efforts to negotiate a diplomatic solution to the crisis at the southern border with Mexico and Central American countries.

(3) When and how counsel notified

The undersigned counsel notified counsel for Plaintiffs by email on August 1, 2019, of Defendants' intention to file this motion. Service will be effected by electronic service through the CM/ECF system.

(4) Submissions to the district court

Defendants requested a stay from the district court, which the district court denied on August 1, 2019.

(5) Decision requested by

A decision on the motion for an administrative stay is requested immediately, and a request on the motion for a stay pending appeal is requested as soon as possible, but no later than August 16, 2019.

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INTRODUCTION

This Court should expedite this appeal and stay, pending resolution of the appeal, the district court's flawed nationwide injunction of a critical rule designed to prioritize urgent and meritorious asylum claims, deter non-urgent or baseless ones, and aid ongoing international negotiations to address the flow of migrants through Mexico and the Northern Triangle. *See* Asylum Eligibility and Procedural Modifications, 84 Fed. Reg. 33,829 (July 16, 2019). The government respectfully requests an immediate administrative stay and a decision on this stay motion by Friday, August 16, 2019.

The United States is facing an astonishing surge in migrants at our southern border where, in the first eight months of FY2019, the number of apprehended non-Mexican border-crossers reached 524,446—nearly double that of the prior two years combined. *Id.* at 33,838. From May 2017 to May 2019 that number increased over 1600%, with 121,151 in May 2019 compared to 7,108 in May 2017. *Id.* Many such aliens claim a fear of persecution, secure release into our country, and then never apply for asylum, never show up for their hearings, or ultimately have their asylum claims rejected as meritless. *Id.* at 33,839-41. The proliferation of such asylum claims depletes our asylum resources and has overwhelmed our immigration-enforcement agencies. Faced with this crush on our asylum system—and amidst ongoing diplomatic international negotiations, *id.* at 33,831, 33,842—the Attorney

General and Acting Secretary of Homeland Security issued a rule that renders ineligible for asylum aliens who cross our southern border after failing to apply for protection from persecution or torture in a third country through which they transited en route to the United States. *Id.* at 33,838. Such aliens can still seek protection from removal in the United States—so they will not be sent back to countries where they are likely to face persecution or torture. By disqualifying from asylum those who fail "to apply for protection at the first available opportunity," however, the rule aims to channel our asylum system's resources to aid those who truly have nowhere else to turn, to discourage the gaming of our system by those who seek asylum simply to gain indefinite entry to our country, and to press our foreign partners to share the burdens presented by mass migration. *Id.* at 33,839.

The district court issued a nationwide injunction halting the rule—concluding that the rule likely is not authorized by statute, may run afoul of notice-and-comment requirements, and is likely arbitrary and capricious. Those conclusions are manifestly wrong. The injunction should be stayed pending appeal.

The rule is authorized by statute. Congress granted the Executive Branch broad discretion to impose categorical "limitations and conditions" on asylum eligibility. 8 U.S.C. § 1158(b)(2)(C). The rule reasonably exercises that discretion by prioritizing the most urgent asylum claims and halting the drain imposed by the baseless ones. And the rule respects the one limit on the Executive's regulatory

authority: it is "consistent with" the asylum statute, *id.*, because nothing in the statute prohibits such a rule and, indeed, the rule complements existing provisions barring asylum for those who have an option in another country. The district court concluded that the rule conflicts with existing statutory bars on asylum for an alien who can be removed to a safe third country to seek protection (*id.* § 1158(a)(2)(A)) or an alien who was "firmly resettled" in another country before reaching the United States (*id.* § 1158(b)(2)(A)(vi)). Op. 22-24. But there is no inconsistency between (1) allowing someone to be removed to a safe country to seek protection (as the safe-third-country provision allows) and (2) requiring someone to have sought relief in a third country that he transited as a prerequisite to obtaining asylum in the United States (as the rule provides). Nor is there is any inconsistency between (1) barring an obviously unsuitable category of aliens from asylum (those who have firmly resettled in another country under that country's laws, *see* 8 U.S.C. § 1158(b)(2)(A)(vi)) and (2) also barring an *additional* category of unsuitable aliens—those who fail even to seek protection in a third country before reaching the United States (as the rule does).

The agencies also properly invoked two exceptions to notice-and-comment requirements. The Departments had "good cause" to issue the rule as an interim final rule because advance notice and comment could cause aliens to "surge to the border to enter the United States before the rule took effect," 84 Fed. Reg. at 33,841,

precipitating the very harms that the rule addresses. And the Departments properly invoked the foreign-affairs exception to advance-notice-and-comment rulemaking, because "ongoing diplomatic negotiations with foreign countries regarding migration issues" "would be disrupted" by a surge in migration, "eroding the sovereign authority of the United States to pursue the negotiating strategy it deems to be most appropriate as it engages its foreign partners." *Id.* at 33,841-42. The district court thought that Plaintiffs raised "serious questions" as to whether these two exceptions applied. Op. 30, 32. But the record strongly supports each exception, and the court's cavalier approach is not a sound basis for enjoining a critical and statutorily authorized asylum measure nationwide.

The rule also rests on sound and well-supported policy judgments. The rule encourages aliens to seek protection at the first opportunity and discourages aliens with meritless asylum claims from seeking to enter the United States—thereby relieving the strain on our asylum system, devoting resources to the most urgent claims, and promoting a foreign policy of sharing the burdens presented by mass migration. 84 Fed. Reg. at 33,838-39. Record evidence reflects that the rule will promote those aims. The district court deemed the rule arbitrary primarily on the ground that "asylum in Mexico" is not "a feasible alternative to relief in the United States." Op. 33. But the rule's rationales do not depend on conditions in Mexico beyond the finding that the Departments made: that Mexico is a party to and in

compliance with relevant international agreements benefiting asylum-seekers. 84 Fed. Reg. at 33,839-40. And even if conditions in Mexico were relevant, the court erred by second-guessing the agencies' reasonable determinations regarding those conditions.

At all events, the injunction is vastly overbroad. Plaintiffs are organizations who did not identify a single alien affected by the rule. And the injunction applies nationwide, denying other district courts—such as the D.C. district court that denied materially identical relief to similar organizations just hours before the district court ruled here—a full opportunity to rule on the claims presented by this case.

The Court should stay the injunction pending appeal.

BACKGROUND

Congress has granted the Attorney General and Secretary of Homeland Security broad discretionary authority to decide who may be admitted to this country as a refugee. 8 U.S.C. §§ 1101(a)(42), 1158, 1225. Generally, "[a]ny alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival ...), irrespective of such alien's status, may apply for asylum in accordance with this section or, where applicable, [8 U.S.C. § 1225(b), which governs expedited removal of aliens]." *Id.* § 1158(a)(1). But a grant of asylum is entirely discretionary. Asylum "*may* [be] grant[ed] to an alien who has applied," *id.* § 1158(b)(1)(A) (emphasis added), if the alien satisfies certain

standards and is not subject to an application or eligibility bar, *id.* § 1158(a)(2), (b)(1)(B), (b)(2). As part of this discretion, "[t]he Attorney General [and Secretary] may by regulation establish additional limitations and conditions, consistent with this section [§ 1158], under which an alien shall be ineligible for asylum." *Id.* § 1158(b)(2)(C). Separate from the discretionary authority to grant asylum, the United States has a duty to provide two forms of protection from removal: withholding of removal (when an alien faces a probability of persecution on a protected ground in another country) and protection under the Convention Against Torture (CAT) (when an alien faces a probability of torture in another country). *See* 8 U.S.C. § 1231(b)(3)(A) (withholding); 8 C.F.R. § 1208.16(c) (CAT).

On July 16, 2019, the Attorney General and Acting Secretary issued a joint interim final rule providing (with limited exceptions) that an alien "is ineligible for asylum" if he "enters or attempts to enter the United States across the southern border after failing to apply for protection in a third country outside the alien's country of citizenship, nationality, or last lawful habitual residence through which the alien transited en route to the United States." 84 Fed. Reg. at 33,830. The agency heads invoked their authority under section 1158(b)(2)(C) to establish "additional limitations and conditions" on asylum eligibility. *Id.* at 33,832. The rule provides that aliens who are ineligible for asylum may still receive withholding or CAT protection. *Id.* at 33,834, 33,837-38.

The day the rule was published, four organizations that provide services to aliens filed this suit. The district court granted a nationwide injunction on June 24, barring implementation of the rule. The court concluded that the rule likely conflicts with the Immigration and Nationality Act (INA) (Op. 13-27), that Plaintiffs raised "serious questions" regarding the lack of advance-notice-and-comment procedures (Op. 27-32), and that the rule is likely arbitrary and capricious (Op. 32-41), and that other considerations favored relief (Op. 41-45). *See* Dkt. 43 (Ex. A, B). The court issued that ruling just hours after a D.C. district court denied nationwide (or any) relief in a challenge to the same rule. *CAIR v. Trump*, No. 19-2117, 2019 WL 3436501 (D.D.C. July 24, 2019).

On August 1, the district court denied the government's motion to stay the injunction pending appeal. Dkt. 52.

ARGUMENT

An immediate stay is warranted. The government is likely to prevail on appeal, it will be irreparably harmed without a stay, a stay will not substantially harm Plaintiffs, and the public interest supports a stay. *See Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). This case also warrants expedited consideration—including of this stay request—and the Court should grant an administrative stay while it receives briefing and considers this stay request.

I. Defendants Are Likely to Succeed on Appeal

A. The Rule Is a Valid Exercise of Asylum Authority

The rule is consistent with the INA—and, in particular, with the asylum statute, 8 U.S.C. § 1158. The asylum statute provides that a grant of asylum is a matter of the Executive's discretion: asylum "*may* [be] grant[ed] to an alien" who satisfies all governing requirements—it never *must* be granted. 8 U.S.C. § 1158(b)(1)(A) (emphasis added). And the asylum statute expressly authorizes the Executive to establish categorical "limitations and conditions" on asylum eligibility, beyond those already provided by statute (*see id.* § 1158(b)(2)(A)), so long as those limits and conditions are "consistent with" the asylum statute. *Id.* § 1158(b)(2)(C).

The rule falls within the Department heads' authority. The rule is consistent with the discretionary nature of asylum. In the rule, the Department heads determined, in the exercise of discretion, that aliens who fail to apply for protection in at least one third country through which they transited should not be granted asylum, because they are less likely to be refugees with nowhere else to turn. 84 Fed. Reg. at 33,839. That new eligibility bar is "consistent with" section 1158. 8 U.S.C. § 1158(b)(2)(C). The rule bars from asylum eligibility an alien who, rather than seek asylum at the first opportunity, waits to reach his preferred destination of the United States, rendering doubtful the validity and urgency of his claim. Nothing in section 1158 precludes such a rule. The discretionary decision whether to grant

asylum can, under longstanding precedent, consider "whether orderly refugee procedures were in fact available to help [an alien] in any country he passed through, and whether he made any attempts to seek asylum before coming to the United States." *Matter of Pula*, 19 I&N Dec. 467, 473-74 (BIA 1987); *Kalubi v. Ashcroft*, 364 F.3d 1134, 1140 (9th Cir. 2004) (forum-shopping "sheds light on a request for asylum in this country").

The district court held that the rule is inconsistent with section 1158's safe-third-country provision, 8 U.S.C. § 1158(a)(2)(A), and its firm-resettlement bar, *id.* § 1158(b)(2)(A)(vi). Op. 21-24. The safe-third-country provision bars an alien from applying for asylum "if the Attorney General determines that the alien may be removed, pursuant to a bilateral or multilateral agreement, to a country ... in which the alien's life or freedom would not be threatened on account of" a statutorily protected ground, "and where the alien would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection." 8 U.S.C. § 1158(a)(2)(A). The firm-resettlement bar renders ineligible for asylum any alien "who was firmly resettled in another country prior to arrival in the United States." *Id.* § 1158(b)(2)(A)(vi). The court recognized that these provisions, like the rule, "limit an alien's ability to claim asylum in the United States when other safe options are available." Op. 22. But the court reasoned that the rule is not "consistent with"

those provisions because they "incorporate requirements to ensure that the third country in question actually *is* a 'safe option,'" while the rule does not. *Id*.

Not so—the rule is consistent with both provisions. The safe-third-country and firm-resettlement provisions establish necessary—but not sufficient—conditions for receiving asylum. An alien who falls within those provisions is automatically ineligible for asylum, but an alien who falls outside them is not automatically entitled to asylum. A rule requiring the alien to satisfy additional criteria to receive asylum is thus "consistent" with the provisions.

More specifically, the safe-third-country provision bars an alien from even *applying* for asylum and instead permits the government to remove him to a third country to seek relief—even though the alien may have no connection with (and may have never transited) that country. 8 U.S.C. § 1158(a)(2)(A). Nothing in that bar forecloses the Department heads from taking into account, in exercising discretion over when an alien is *eligible* for asylum, the alien's failure to seek potential relief in a third country—a country in which the alien necessarily spent meaningful time—while in transit to the United States. Barring asylum on this ground complements the safe-third-country provision's purpose of "prevent[ing] forum-shopping by asylum seekers." *United States v. Malenge*, 294 F. App'x 642, 645 (2d Cir. 2008); 84 Fed. Reg. at 33,384. There is nothing inconsistent in allowing someone to be removed to a safe country to pursue asylum (as the safe-third-country provision

allows) and requiring someone to have sought relief in a third country as a prerequisite to obtaining asylum in the United States (as the rule provides).

The firm-resettlement bar, meanwhile, reflects a judgment that asylum *clearly* should not be available to someone who has "firmly resettled" in another country, 8 U.S.C. § 1158(b)(2)(A)(vi)—be it by receiving "permanent resident status, citizenship, or some other type of permanent resettlement," 8 C.F.R. § 208.15. There is no inconsistency in barring such an obviously unsuitable category of aliens from asylum eligibility and also barring an *additional* category of unsuitable aliens—those who fail even to seek protection in a third country before reaching the United States. That is what the rule reasonably does. Indeed, the rule promotes aims that are complementary to the firm-resettlement bar—it prioritizes applicants "with nowhere else to turn." *Matter of B-R-*, 26 I&N Dec. 119, 122 (BIA 2013).

The district court deemed the rule inconsistent with the statute on the separate ground that it "is based on an unrebuttable categorical inference that is arbitrary and capricious": that not applying for protection while in transit "is sufficiently probative that the alien should be denied asylum." Op. 24; *see* Op. 24-26. This too is wrong. In granting the Executive the authority to adopt additional "limitations" and "conditions" on asylum eligibility, Congress contemplated that new bars could establish categorical rules, and nowhere does the statute require that every alien covered by a new "limitation" himself fall perfectly within the rule's rationale. *Fook*

Hong Mak v. INS, 435 F.2d 728, 730 (2d Cir. 1970) (agency may "determine[ ] certain conduct to be so inimical to the statutory scheme that all persons who have engaged in it shall be ineligible for favorable consideration"). And the rule rests on sound logic: "those fleeing genuine persecution" should be expected "to seek protection as soon as possible"; if someone does not seek protection promptly it is far more likely that he has a "non-viable claim[ ]"; and it is appropriate to bar asylum for such aliens, to avoid "further overburdening the Nation's immigration system." 84 Fed. Reg. at 33,838-39. The district court also thought that the inference established by the rule is contrary to Ninth Circuit cases "reject[ing] this assumption as unreasonable as applied *to an individual*." Op. 24. Nothing in those cases forecloses the rule, which rests on the Department heads' own evidence-based determination regarding the importance, *today*, of a failure to seek asylum in a third country. 84 Fed. Reg. at 33,838-39 (recounting experience with asylum claimants at southern border and the merit of their claims). Given the evidentiary support for this inference, it was impermissible for the court to second-guess this conclusion based on its own view of the evidence. *Dep't of Commerce v. New York*, 139 S. Ct. 2551, 2571 (2019).

B. The Rule Was Properly Issued as an Interim Final Rule

The Department heads lawfully issued the rule as an interim final rule because the good-cause and foreign-affairs exceptions to notice-and-comment rulemaking applied. The district court erred in concluding otherwise. Op. 27-32.

First, the Departments demonstrated good cause to forego advance-notice-and-comment rulemaking because "the very announcement" of the rule could "be expected to precipitate activity by affected parties that would harm the public welfare." *Mobil Oil Corp. v. DOE*, 728 F.2d 1477, 1492 (TECA 1983). The Departments recognized that pre-promulgation notice and comment or a delayed effective date could cause aliens to "surge to the border to enter the United States before the rule took effect." 84 Fed. Reg. at 33,841. The agencies' "experience has been that when public announcements are made regarding changes in our immigration laws and procedures, there are dramatic increases in the numbers of aliens who enter or attempt to enter the United States along the southern border." *Id.* The record bears out these findings. Southwestern-border family-unit apprehensions are up 469% from the same time in 2018, AR223, and there has been a surge of nearly four times the number of non-Mexican-national apprehensions and inadmissible aliens from May 2018 to May 2019 (121,151 in May 2019 compared to 32,477 in May 2018). AR119. And numerous news articles connect this surge to changes in immigration policy. *See* AR438-48 (describing how smugglers sold

migrants on crossing the border after family separation was halted by telling them to "hurry up before they might start doing so again"); AR452-54 (migrants refused offers to stay in Mexico because their goal is to enter the United States); AR663-65, 683 (Mexico faced a migrant surge when it changed its policies); AR683 (the surge seems to be related to changes in smuggling and availability of express buses).

The district court discounted this evidence, instead requiring specific data showing that changes in policies created a surge. Op. 31-32. Although the district court recognized that the record contained the same article that permitted "the agencies to infer [in a rule issued last year] that 'smugglers might [] communicate' the rule's unfavorable terms to potential asylum seekers," thereby inducing a surge to the border if advance-notice-and-comment was undertaken, Op. 31, it rejected the same article as a basis for good cause here because "[a] single, progressively more stale article cannot excuse notice-and-comment for every immigration-related regulation *ad infinitum*." *Id.* But that article is supplemented by more recent articles detailing the crisis and showing that migrants respond to a change in policies. The court also faulted the government for not submitting "objective evidence to link a similar announcement and a spike in border crossings or claims for relief." *Id.* But as explained, the Departments supplied information supporting their conclusion, and the district court's approach improperly "second-guess[es]" the agencies' determinations. *Dep't of Commerce*, 139 S. Ct. at 2571.

Second, the Departments properly invoked the foreign-affairs exception, which exempts from advance-notice-and-comment rulemaking agency actions involving a "foreign affairs function of the United States." 5 U.S.C. § 553(a)(1). As the Departments explained, the "rule will facilitate ongoing diplomatic negotiations with foreign countries regarding migration issues, including measures to control the flow of aliens into the United States ... and the urgent need to address the current humanitarian and security crisis along the southern land border." 84 Fed. Reg. at 33,841-42. The Departments concluded that "negotiations would be disrupted" by the surge of migrants seeking to enter the United States in response to the rule and would "erod[e] the sovereign authority of the United States to pursue the negotiating strategy it deems to be most appropriate as it engages its foreign partners." *Id.* These interlocking points are all "linked intimately with the Government's overall political agenda concerning relations with another country." *Am. Ass'n of Exporters v. United States*, 751 F.2d 1239, 1249 (Fed. Cir. 1985). As the record reflects, immigration initiatives like the rule materially advance the Executive Branch's foreign-policy goals. The recent Migrant Protection Protocols—policy guidance, issued without notice and comment, under which asylum seekers may be returned to Mexico while their asylum proceedings are pending—facilitated the negotiations between the United States and Mexico resulting in a U.S./Mexico Joint Declaration on June 7, 2019, reflecting significant progress in addressing mass migration.

AR46-50, 231-32. Similar policy initiatives (like the Dublin Convention in the European Union) have aided international negotiations. AR138-39. And the rule here gives the Executive Branch immediate leverage in ongoing safe-third-country negotiations with Mexico and Guatemala—leverage that would be lost with the delay from advance-notice-and-comment rulemaking. AR537-38, 635-37.

The district court held that Plaintiffs raised "serious questions" about this exception, Op. 30, because the rule did not "articulate some connection" with ongoing negotiations with other countries. Op. 29; *see also* Op. 28-30. But the rule details how "ongoing diplomatic negotiations with foreign countries regarding migration issues," including efforts to secure a safe-third-country agreement, "would be disrupted" and would prevent the Executive from pursuing its chosen strategy for "engag[ing] its foreign partners." 84 Fed. Reg. at 33,841-42. Given that sound explanation, the court lacked any basis to second-guess the Executive's assessment.

C. The Rule is Not Arbitrary and Capricious

The rule reflects sound and well-supported decision-making. The district court erred in concluding that the rule is likely arbitrary and capricious. Op. 32-40.

The rule is reasonably related to meeting each of its objectives. The rule aims to discourage aliens with non-urgent or meritless asylum claims from seeking admission to this country—claims that have increased dramatically, AR21, 45, 120-21, 770—thereby relieving stress on overwhelmed immigration-enforcement and

adjudicatory authorities. 84 Fed. Reg. at 33,831; AR21-22, 37-44, 208-11, 558-59. The rule promotes that objective: aliens with non-meritorious asylum claims will have less incentive to seek entry into the United States, because they will no longer be able to take advantage of a lengthy delay in adjudicating that claim to live in this country. This relieves stress on the adjudicatory authorities of both DHS and DOJ, 84 Fed. Reg. at 33,831 (noting significant increase in removal proceedings in recent years), and on border enforcement given the fewer incentives to illegally cross the border just to claim asylum to secure years-long release into the country, *id.* at 33,830 (noting "dramatic increase in the number of aliens encountered along or near the southern land border"). This does not mean that all claims covered by the rule are baseless: some meritorious claims will be channeled to other countries' asylum systems. But that was a reasonable policy choice given the overwhelming crush on the United States' asylum system and the sound aim of sharing asylum burdens with international partners. *Id.* at 33,838-39; *cf. Singh v. INS*, 134 F.3d 962, 967 (9th Cir. 1998) (statute's purpose is not "to grant asylum to everyone who wishes to mov[e] to the United States").

The rule also "prioritize[s] individuals who are unable to obtain protection from persecution elsewhere and individuals who are victims of a 'severe form of trafficking in persons,'" "ensur[ing] that those refugees who have no alternative to U.S.-based asylum relief or have been subjected to an extreme form of human

trafficking are able to obtain relief more quickly." 84 Fed. Reg. at 33,838-39. The rule achieves that humanitarian purpose of asylum by ensuring that adjudicators can focus on claims by aliens who have not been able to obtain relief in another country. *Id.*

And the rule seeks to "facilitate ongoing diplomatic negotiations with Mexico and the Northern Triangle countries regarding general migration issues," by encouraging "other countries [to] increase efforts to help reduce the flow of illegal aliens north to the United States" and by "encourag[ing] aliens to seek protection at the safest and earliest point of transit possible." *Id.* at 33,842. The district court itself recognized that "the Rule's intent is to incentivize putative refugees to seek relief at the first opportunity," and that "[t]he agency's explanation as to how this exhaustion requirement serves its stated aims is adequate." Op. 40. That should have been the end of the arbitrary-and-capricious inquiry.

The district court nevertheless held that the rule is flawed because there was no basis for concluding that "asylum in Mexico is a feasible alternative to relief in the United States." Op. 33. But none of the rule's rationales depends on conditions in Mexico beyond the finding that the agencies made: that these countries meet key standards—*i.e.*, they are parties to and in compliance with relevant international agreements benefiting asylum-seekers—so aliens can seek asylum there. *See* 84 Fed. Reg. at 33,839-40. There is no requirement that another country provide relief

identical to that available in the United States. And even if conditions in Mexico were relevant, the court erred by "reviewing the conditions" that aliens transiting Mexico or Northern Triangle countries might face, *Omar v. McHugh*, 646 F.3d 13, 21 (D.C. Cir. 2011), and holding that the record could be read only "one way." Op. 38. As even the district court's review shows, Mexico is improving its asylum system, often in conjunction with international partners. *See* Op. 35-37 (citing AR306, 534, 639). Other evidence does indicate concerns regarding access to that system and the treatment of aliens, *see* Op. 35-39, but the Departments weighed the totality of this evidence and determined that it established sufficient capacity in Mexico to address the claims of transiting aliens. 84 Fed. Reg. at 33,839-40. Once the agencies made that finding, the court could not second-guess it: "it is for the political branches, not the judiciary, to assess practices in foreign countries and to determine national policy in light of those assessments." *Munaf v. Geren*, 553 U.S. 674, 700-01 (2008). The district court's decision is particularly improper because it "pass[es] judgment on" Mexico's legal system "and undermine[s]" our "Government's ability to speak with one voice in this area." *Id.* at 702-03.

The court also concluded that the government "failed to provide any reasoned explanation for the Rule's methodology of determining that a third country is safe and asylum is sufficiently available." Op. 33. But the government has no obligation, in promulgating eligibility bars, to provide criteria or a methodology that would

assess these factors. Even if it did, it is "reasonable for" an agency "to rely on its experience" to arrive at its conclusions, even if those conclusions are not supported with "empirical research." *Sacora v. Thomas*, 628 F.3d 1059, 1068-69 (9th Cir. 2010). And the court again faulted the conclusion that "fail[ing] to seek asylum in a third country" warrants a bar on asylum, Op. 33, but as already explained, the rule rested on sound reasoning and evidence. *Supra* 11-12.

Finally, the court held that the rule is flawed because it does not "create an exception for unaccompanied minors." Op. 39. But no statute requires such an exception. When unaccompanied minors are to be treated differently than adults, the INA says so. *E.g.*, 8 U.S.C. § 1158(b)(3)(C). And the Departments did consider the specific issues posed by unaccompanied minors, 84 Fed. Reg. at 33,839 n.7—as even the district court recognized, Op. 39-40. The Departments just determined that no exception was warranted. That was not arbitrary and capricious.

II. The Balance of Harms Favors a Stay

The injunction undermines the Executive Branch's constitutional and statutory authority to secure the Nation's borders, and invites the harms to the public that the Departments sought to address, by "tak[ing] off the table one of the few congressionally authorized measures available to" address the thousands of "migrants who are currently arriving at the Nation's southern border on a daily basis." *Innovation Law Lab v. McAleenan*, 924 F.3d 503, 510 (9th Cir. 2019). And

because the rule aims to address the border crisis and aid international negotiations, *supra* Part I.B, the injunction constitutes a major and "unwarranted judicial interference in the conduct of foreign policy." *Kiobel v. Royal Dutch Petroleum*, 569 U.S. 108, 116 (2013).

In contrast, Plaintiffs have not shown that they face irreparable harm cognizable under the INA or tied to the rule. They allege abstract goals or injuries "in terms of money, time and energy"—but that is not irreparable injury that can outweigh the harms caused by the injunction. *Sampson v. Murray*, 415 U.S. 61, 90 (1974). And even if credited, administrative inconveniences do not outweigh the harm imposed by "injunctive relief [that] deeply intrudes into the core concerns of the executive branch," *Adams v. Vance*, 570 F.2d 950, 954 (D.C. Cir. 1978), and undermines the "efficient administration of the immigration laws at the border," *Innovation Law Lab*, 924 F.3d at 510. Regardless, the government's appeal could be expedited to minimize any prejudice.

III. Nationwide Relief Was Improper

The district court's nationwide injunction is particularly inappropriate because another district court on the same day denied such relief to similar organizations. *CAIR*, 2019 WL 3436501, *1. The government was thus enjoined nationwide from implementing a rule that another court determined should be implemented. This cavalier approach reflects a troubling pattern of single judges

dictating national policy—a trend that takes a "toll on the federal court system," *Trump v. Hawaii*, 138 S. Ct. 2392, 2425 (2018) (Thomas, J., concurring), and that requires the government to prevail in every suit challenging a national policy before implementing it, while plaintiffs need only prevail in one forum-shopped court.

Moreover, any injunction entered should have been narrowed to address Plaintiffs' alleged injuries. To be sure, the government disagrees that Plaintiffs' alleged injuries—alleged "diversion-of-resources" and "funding" harms—satisfy Article III or the zone-of-interests test. Op. 12. But even if they did, such injuries would not warrant *nationwide* relief, particularly where Plaintiffs failed to show that "complete relief" could not be provided by a narrower injunction limited to any bona fide, identified clients subjected to the rule. *California v. Azar*, 911 F.3d 558, 584 (9th Cir. 2018). The injunction is overbroad and should be rejected—or at least stayed for everyone other than the named Plaintiffs' identified clients. *See U.S. Dep't of Def. v. Meinhold*, 510 U.S. 939 (1993).

CONCLUSION

The Court should stay the injunction and expedite this appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2019, I electronically filed the foregoing document with the Clerk of the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system. Counsel in the case are registered CM/ECF users and service will be accomplished by the CM/ECF system.

By: */s/ Erez Reuveni*
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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing motion complies with the type-volume limitation of Fed. R. App. P. 27 because it contains 5,189 words. This motion complies with the typeface and the type style requirements of Fed. R. App. P. 27 because this brief has been prepared in a proportionally spaced typeface using Word 14-point Times New Roman typeface.

Exhibit A

Order Granting Motion for Preliminary Injunction,
East Bay Sanctuary Covenant v. Barr, 3:19-cv-4073 (N.D. Cal. July 24, 2019)

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

EAST BAY SANCTUARY COVENANT, et al.,

Plaintiffs,

v.

WILLIAM BARR, et al.,

Defendants.

Case No. 19-cv-04073-JST

ORDER GRANTING PRELIMINARY INJUNCTION

Re: ECF No. 3

On July 16, 2019, the Department of Justice ("DOJ") and the Department of Homeland Security ("DHS") published a joint interim final rule, entitled "Asylum Eligibility and Procedural Modifications" (the "Rule" or the "third country transit bar"). The effect of the Rule is to categorically deny asylum to almost anyone entering the United States at the southern border if he or she did not first apply for asylum in Mexico or another third country.

Under our laws, the right to determine whether a particular group of applicants is categorically barred from eligibility for asylum is conferred on Congress. Congress has empowered the Attorney General to establish additional limitations and conditions by regulation, but only if such regulations are consistent with the existing immigration laws passed by Congress. This new Rule is likely invalid because it is inconsistent with the existing asylum laws.

First, Congress has already created a bar to asylum for an applicant who may be removed to a "safe third country." The safe third country bar requires a third country's formal agreement to accept refugees and process their claims pursuant to safeguards negotiated with the United States. As part of that process, the United States must determine that (1) the alien's life or freedom would not be threatened on account of a protected characteristic if removed to that third country and (2) the alien would have access to a full and fair procedure for determining a claim to asylum or

equivalent temporary protection there. Thus, Congress has ensured that the United States will remove an asylum applicant to a third country only if that country would be safe for the applicant and the country provides equivalent asylum protections to those offered here. The Rule provides none of these protections.

Congress has also enacted a firm resettlement bar, pursuant to which asylum is unavailable to an alien who was firmly resettled in another country prior to arriving in the United States. Before this bar can be applied, however, the government must make individualized determinations that an asylum applicant received an offer of some type of permanent resettlement in a country where the applicant's stay and ties are not too tenuous, or the conditions of his or her residence too restricted, for him or her to be firmly resettled. Again, the Rule ignores these requirements.

Additionally, there are serious questions about the Rule's validity given the government's failure to comply with the Administrative Procedure Act's notice-and-comment rules. The government made the Rule effective without giving persons affected by the Rule and the general public the chance to submit their views before the Rule took effect. The government contends that it did not need to comply with those procedures because the Rule involves the "foreign affairs" of the United States. But this exception requires the government to show that allowing public comment will provoke "definitely undesirable international consequences," which the government has not done. Indeed, the Rule explicitly *invites* such comment even while it goes into effect. Thus, the government will still suffer the ill consequences of public comment – which, to be clear, are entirely speculative – but without gaining the benefit to good rule-making that public comment would provide.

Next, the Rule is likely invalid because the government's decision to promulgate it was arbitrary and capricious. The Rule purports to offer asylum seekers a safe and effective alternative via other countries' refugee processes. As the Rule expressly contemplates, this alternative forum will most often be Mexico. But the government's own administrative record contains no evidence that the Mexican asylum regime provides a full and fair procedure for determining asylum claims. Rather, it affirmatively demonstrates that asylum claimants removed to Mexico are likely to be (1) exposed to violence and abuse from third parties and government officials; (2) denied their

rights under Mexican and international law, and (3) wrongly returned to countries from which they fled persecution. The Rule also ignores the special difficulties faced by unaccompanied minors. Congress recognized these difficulties by exempting "unaccompanied alien child[ren]" from the safe third country bar. The Rule, which applies to unaccompanied minors just as it does to adults, casts these protections to one side.

Lastly, the balance of equities and the public interest tip strongly in favor of injunctive relief. While the public has a weighty interest in the efficient administration of the immigration laws at the border, it also has a substantial interest in ensuring that the statutes enacted by its representatives are not imperiled by executive fiat. Also, an injunction in this case would not radically change the law – or change it at all. It would merely restore the law to what it has been for many years, up until a few days ago. Finally, an injunction would vindicate the public's interest – which our existing immigration laws clearly articulate – in ensuring that we do not deliver aliens into the hands of their persecutors.

For these reasons, and the additional reasons set forth below, the Court will enjoin the Rule from taking effect.

I. BACKGROUND

A. Asylum Framework

1. Overview

In a related case, the Ninth Circuit has extensively summarized the general framework governing U.S. both immigration law generally and asylum in particular. *See E. Bay Sanctuary Covenant v. Trump (E. Bay II)*, 909 F.3d 1219, 1231-36 (9th Cir. 2018).[1] The Court therefore reviews the relevant law more briefly, focusing on the provisions most relevant here.

The current iteration of U.S. asylum law stems from the Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (1980), which Congress enacted in large part "to bring United States refugee

[1] Because of the overlap between the claims and arguments presented, the Court refers extensively to three decisions from that case: *E. Bay Sanctuary Covenant v. Trump (E. Bay I)*, 349 F. Supp. 3d 838 (N.D. Cal. 2018) (order granting temporary restraining order ("TRO")); *E. Bay Sanctuary Covenant v. Trump (E. Bay II)*, 909 F.3d 1219 (9th Cir. 2018) (order denying stay of TRO); *E. Bay Sanctuary Covenant v. Trump (E. Bay III)*, 354 F. Supp. 3d 1094 (N.D. Cal. 2018) (order granting preliminary injunction).

law into conformance with the 1967 United Nations Protocol Relating to the Status of Refugees, 19 U.S.T. 6223, T.I.A.S. No. 6577 [('1967 Protocol')], to which the United States acceded in 1968." *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 436-37 (1987). The 1967 Protocol, in turn, incorporates articles 2 to 34 of the 1951 Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150 ("1951 Convention"). *See* 1967 Protocol, art. I. Although these international agreements do not independently carry the force of law domestically, *see I.N.S. v. Stevic*, 467 U.S. 407, 428 n.22 (1984), they provide relevant guidance for interpreting the asylum statutes, *see Cardoza-Fonseca*, 480 U.S. at 439-40.

In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (1996) ("IIRIRA"). Under IIRIRA, an immigrant's ability to lawfully reside in the United States ordinarily turns on whether the immigrant has been lawfully "admitted," meaning that there has been a "lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A); *see also E. Bay II*, 909 F.3d at 1232 (explaining that Congress has "established 'admission' as the key concept in immigration law"). U.S. immigration law sets forth numerous reasons why aliens may be "ineligible to receive visas and ineligible to be admitted to the United States." 8 U.S.C. § 1182(a).

But "[a]sylum is a concept distinct from admission." *E. Bay II*, 909 F.3d at 1233. Asylum "permits the executive branch – in its discretion – to provide protection to aliens who meet the international definition of refugees." *Id.* Accordingly, "the decision to grant asylum relief is ultimately left to the Attorney General's discretion," *see I.N.S. v. Aguirre-Aguirre*, 526 U.S. 415, 420 (1999); *Delgado v. Holder*, 648 F.3d 1095, 1101 (9th Cir. 2011), subject to the court of appeals' review for whether the Attorney General's decision was "manifestly contrary to the law and an abuse of discretion," 8 U.S.C. § 1252(b)(4)(D).

The Immigration and Nationality Act ("INA") sets forth the general rule regarding eligibility for asylum:

> Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States

> after having been interdicted in international or United States waters), irrespective of such alien's status, may apply for asylum in accordance with this section or, where applicable, section 1225(b) of this title.

8 U.S.C. § 1158(a)(1). Notwithstanding the grant of discretion to the Attorney General, Congress has established certain categorical bars to asylum. These exceptions to the general rule apply to aliens who (1) may be removed to a safe third country with which the United States has a qualifying agreement, (2) did not apply within one year of arriving in the United States, or (3) have previously been denied asylum. *Id.* § 1158(a)(2)(B)-(C).[2] Neither the safe third country exception nor the one-year rule apply to "an unaccompanied alien child." *Id.* § 1158(a)(2)(E).[3]

Congress also mandated that certain categories of aliens are ineligible for asylum. *Id.* § 1158(b)(2)(A)(i)-(vi). Most relevant here, an alien is ineligible for asylum if she "was firmly resettled in another country prior to arriving in the United States." *Id.* § 1158(b)(2)(A)(vi). Congress further empowered the Attorney General to "by regulation establish additional limitations and conditions, consistent with [§ 1158], under which an alien shall be ineligible for asylum." *Id.* § 1158(b)(2)(C).

In addition to asylum, two other forms of relief from removal are generally available under U.S. immigration law. With some exceptions not relevant here, an alien is entitled to withholding of removal if "the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion." *Id.* § 1231(b)(3)(A). However, "[t]he bar for withholding of removal is higher; an applicant must demonstrate that it is more likely than not that he would be subject to

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[2] An application ordinarily foreclosed by the latter two exceptions may nonetheless be considered if the alien demonstrates either a material change in circumstances or that extraordinary circumstances prevented the alien from filing a timely application. *Id.* § 1158(a)(2)(D).

[3] Congress has further defined an "unaccompanied alien child" as "a child who –

> (A) has no lawful immigration status in the United States;
> (B) has not attained 18 years of age; and
> (C) with respect to whom--
> (i) there is no parent or legal guardian in the United States; or
> (ii) no parent or legal guardian in the United States is available to provide care and physical custody.

6 U.S.C. § 279(g)(2).

persecution on one of the [protected] grounds." *Ling Huang v. Holder*, 744 F.3d 1149, 1152 (9th Cir. 2014).

An alien may also seek protection under the Convention Against Torture ("CAT"), which requires the alien to prove that "it is more likely than not that he or she would be tortured if removed to the proposed country of removal," 8 C.F.R. § 1208.16(c)(2), and that the torture would be "inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity," *id.* § 1208.18(a)(1).

These forms of relief differ in meaningful respects. While an asylum grant is ultimately discretionary, withholding of removal or CAT protection are mandatory if the applicant makes the requisite showing of fear of persecution or torture. *See Nuru v. Gonzales*, 404 F.3d 1207, 1216 (9th Cir. 2005). At the same time, an applicant must meet a higher threshold to be eligible for the latter two forms of relief. *See Ling Huang*, 744 F.3d at 1152; *Nuru*, 404 F.3d at 1216. Moreover, "[u]nlike an application for asylum, . . . a grant of an alien's application for withholding is not a basis for adjustment to legal permanent resident status, family members are not granted derivative status, and [the relief] only prohibits removal of the petitioner to the country of risk, but does not prohibit removal to a non-risk country." *Lanza v. Ashcroft*, 389 F.3d 917, 933 (9th Cir. 2004) (second alteration in original) (citation omitted); *see also E. Bay II*, 909 F.3d at 1236 (describing additional asylum benefits).

2. Procedures for Asylum Determinations

Asylum claims may be raised in three different contexts. First, aliens present in the United States may affirmatively apply for asylum, regardless of their immigration status. *See* 8 U.S.C. § 1158(a)(1); Dep't of Homeland Sec. & Dep't of Justice, *Instructions for Form I-589: Application for Asylum and Withholding of Removal*, at 2 (rev. Apr. 9, 2019), https://www.uscis.gov/system/files_force/files/form/i-589instr.pdf. Affirmative applications are processed by U.S. Citizenship and Immigration Services ("USCIS"). 8 C.F.R. § 208.2(a). A USCIS asylum officer interviews each applicant and renders a decision. *Id.* §§ 208.9, 208.19. The officer may grant asylum based on that interview. *Id.* § 208.14(b). If, however, the officer determines that the applicant is not entitled to asylum *and* that the applicant is otherwise

"removable" – i.e., lacks lawful immigration status – the officer is generally required to refer the applicant to immigration court for the appropriate removal proceeding before an immigration judge ("IJ"). *Id.* § 208.14(c).

Second, an asylum claim may be raised as a defense in removal proceedings conducted pursuant to 8 U.S.C. § 1229(a), sometimes referred to as "full removal proceedings." *Matter of M-S-*, 27 I. & N. Dec. 509, 510 (BIA 2019). An alien in full removal proceedings may renew a previously denied affirmative asylum application or file one with the immigration judge in the first instance. *See* 8 C.F.R. § 1208.4(b)(3)(iii). If the application is denied, the immigration judge must also consider the alien's eligibility for withholding of removal and, if requested by the alien or suggested by the record, protection under CAT. *Id.* § 1208.3(c)(1). An alien who is denied relief in these proceedings has a number of options for obtaining additional review. The alien may file a motion to reconsider or reopen proceedings with the IJ, 8 U.S.C. § 1229(a)(6)-(7), or appeal the decision to the Board of Immigration Appeals ("BIA"), 8 C.F.R. § 1003.1(b)(3). If the BIA denies relief, the alien may likewise file a motion to reconsider or reopen with the BIA, 8 C.F.R. § 1003.2(b)-(c), or petition for review of the BIA's adverse decision with the relevant circuit court of appeals, 8 U.S.C. § 1252(d).

Finally, asylum claims may be raised in expedited removal proceedings. By statute, these proceedings apply "[w]hen a U.S. Customs and Border Protection ('CBP') officer determines that a noncitizen arriving at a port of entry is inadmissible for misrepresenting a material fact or lacking necessary documentation." *Thuraissigiam v. U.S. Dep't of Homeland Sec.*, 917 F.3d 1097, 1100 (9th Cir. 2019) (citing 8 U.S.C. §§ 1182(a)(6)(C), 1182(a)(7), 1225(b)(1)(A)(i)). As a further exercise of its regulatory authority, 8 U.S.C. § 1225(b)(1)(A)(iii), DHS had, at the time this suit was filed, "also applie[d] expedited removal to inadmissible noncitizens arrested within 100 miles of the border and unable to prove that they have been in the United States for more than the prior two weeks." *Thuraissigiam*, 917 F.3d at 1100. On July 23, 2019, however, DHS published a notice that it was expanding the scope of expedited removal to apply "to aliens encountered anywhere in the United States for up to two years after the alien arrived in the United States." Designating Aliens for Expedited Removal, 84 Fed. Reg. 35,409, 35,409 (July 23, 2019); *see also*

8 U.S.C. § 1225(b)(1)(A)(iii). Aliens determined to fall within those categories shall be "removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under [8 U.S.C. § 1158] or a fear of persecution." 8 U.S.C. § 1225(b)(1)(A)(i).

If a noncitizen expresses an intent to seek asylum, the applicant is referred to an asylum officer for a credible fear interview to determine whether the applicant "has a credible fear of persecution." *Id.* § 1225(b)(1)(B)(v). To have a credible fear, "there [must be] a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum." *Id.* Applicants who demonstrate a credible fear of a basis for asylum, withholding of removal, or protection under CAT, are generally placed in full removal proceedings for further adjudication of their claims. *Id.* § 1225(b)(1)(B)(ii); 8 C.F.R. § 208.30(e)(2)-(3), (f). By contrast, if the officer concludes that no credible fear exists, applicants are "removed from the United States without further hearing or review," except for an expedited review by an IJ, which is ordinarily concluded within 24 hours and must be concluded within 7 days. 8 U.S.C. § 1225(b)(1)(B)(iii)(I), (III); *see also* 8 C.F.R. § 1208.30(g).

B. The Challenged Rule

On July 16, 2019, the DOJ and the DHS published a joint interim final rule, entitled "Asylum Eligibility and Procedural Modifications." 84 Fed. Reg. 33,829 (July 16, 2019) (codified at 8 C.F.R. pts. 208, 1003, 1208). In general terms, the Rule imposes "a new mandatory bar for asylum eligibility for aliens who enter or attempt to enter the United States across the southern border after failing to apply for protection from persecution or torture in at least one third country through which they transited en route to the United States." *Id.* at 33,830.

Under the Rule, "any alien who enters, attempts to enter, or arrives in the United States across the southern land border on or after July 16, 2019, after transiting through at least one country outside the alien's country of citizenship, nationality, or last lawful habitual residence en route to the United States, shall be found ineligible for asylum." 8 C.F.R. § 208.13(c)(4). The Rule provides three exceptions. First, the Rule does not apply if the alien "applied for protection

from persecution or torture in at least one country . . . through which the alien transited en route to the United States, and the alien received a final judgment denying the alien protection in such country." *Id.* § 208.13(c)(4)(i). Second, the Rule exempts "victim[s] of a severe form of trafficking in persons," as defined in 8 C.F.R. § 214.11. 8 C.F.R. § 208.13(c)(4)(ii)). Finally, the Rule does not apply if "[t]he only countries through which the alien transited en route to the United States were, at the time of the transit, not parties to [the 1951 Convention, the 1967 Protocol, or CAT]." *Id.* § 208.13(c)(4)(iii). In sum, except for qualifying trafficking victims, the Rule requires any alien transiting through a third country that is a party to one of the above agreements to apply for protection and receive a final denial prior to entering through the southern border and seeking asylum relief in the United States.

The Rule also sets forth special procedures for how the mandatory bar applies in expedited removal proceedings. In general, "if an alien is able to establish a credible fear of persecution but appears to be subject to one or more of the mandatory [statutory] bars to applying for, or being granted, asylum . . . [DHS] shall nonetheless place the alien in proceedings under [8 U.S.C. § 1229a] for full consideration of the alien's claim." 8 C.F.R. § 208.30(e)(5)(i). An alien subject to the Rule's third country bar, however, is automatically determined to lack a credible fear of persecution. *Id.* § 208.30(e)(5)(iii). The asylum officer must then consider whether the alien demonstrates a reasonable fear of persecution or torture (as necessary to support a claim for withholding of removal or CAT protection). *Id.* The alien may then seek review from an IJ, on the expedited timeline described above, of the determination that the Rule's mandatory bar applies and that the alien lacks a reasonable fear of persecution or torture. *Id.* § 1208.30(g)(1)(ii).

In promulgating the Rule, the agencies invoked their authority to establish conditions consistent with 8 U.S.C. § 1158. 84 Fed. Reg. at 33,834. They also claimed exemption from the Administrative Procedure Act's ("APA") notice-and-comment requirements. *See* 5 U.S.C. § 553(b)-(d). As grounds for an exemption, they invoked § 553(a)(1)'s "military or foreign affairs function" exemption and § 553(b)(B)'s "good cause" exemption. 84 Fed. Reg. at 33,840-42. They also invoked § 553(d)(3)'s "good cause" waiver of the thirty-day grace period that is usually required before a newly promulgated rule goes into effect. *Id.* at 33,841. The Court discusses the

proffered reasons for both the Rule and the waiver of § 553 requirements as relevant below.

C. Procedural History

Plaintiffs East Bay Sanctuary Covenant, Al Otro Lado, Innovation Law Lab, and Central American Resource Center (the "Organizations") filed this lawsuit on July 16, 2019, the day the Rule went into effect. Complaint ("Compl."), ECF No. 1.[4] The Organizations filed a motion for temporary restraining order ("TRO") the following day. ECF No. 3. The Court set a scheduling conference for the morning of July 18, 2019. ECF No. 13, 15.[5] At the conference, the government suggested that the parties proceed directly to a hearing on a preliminary injunction on the administrative record but represented that it would likely not be able to produce the record until July 23, 2019. After considering the parties' positions, the Court ordered the government to file its opposition to the TRO on July 19, 2019, and the Organizations to file a reply on July 21, 2019. ECF No. 18 at 1. The Court further ordered the government to file the administrative record by July 23, 2019, stating that the Court "contemplates that the administrative record may be useful in subsequent proceedings but will not be the subject of argument at the July 24 hearing." *Id.* at 1-2.

The government filed the administrative record simultaneously with its opposition to the TRO on July 19, 2019, ECF No. 29, citing extensively to the record throughout its opposition, ECF No. 28. The Court then issued a notice to the parties that it was considering converting the motion to a preliminary injunction, given that both sides would have an opportunity to address the administrative record in their papers. ECF No. 30. The Organizations' reply did, in fact, address the record and the government's citations to it. ECF No. 31. At the hearing, both parties agreed that it would be appropriate to convert the motion to a preliminary injunction. The Court therefore does so. *See* ECF No. 30.

[4] The Organizations named as defendants a number of relevant agencies and agency officials. The Court refers to them collectively as the government.

[5] After considering the parties' briefing on an expedited basis, the Court granted the Organizations' motion to relate this case to another action pending before this Court regarding a different asylum eligibility regulation. *E. Bay Sanctuary Covenant v. Trump*, No. 18-cv-06810-JST (N.D. Cal.), ECF Nos. 115, 117, 118.

The Organizations' motion relies on the three claims advanced in their complaint. First, they claim that the Rule is substantively invalid because it is inconsistent with the statutes governing asylum. Compl. ¶¶ 137-143. Second, they claim that the Rule is procedurally invalid because the agencies violated the APA's notice-and-comment requirements, 5 U.S.C. § 553(b)-(d). Compl. ¶¶ 144-147. Finally, they argue that the Rule is procedurally invalid because the agencies failed to articulate a reasoned explanation for their decision. *Id.* ¶¶ 148-150.

II. MOTION FOR PRELIMINARY INJUNCTION

A. Legal Standard

The Court applies a familiar four-factor test on a motion for a preliminary injunction. *See Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839-40 & n. 7 (9th Cir. 2001). A plaintiff "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Am. Trucking Ass'ns, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009) (quoting *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008)). Injunctive relief is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22.

To grant preliminary injunctive relief, a court must find that "a certain threshold showing [has been] made on each factor." *Leiva-Perez v. Holder*, 640 F.3d 962, 966 (9th Cir. 2011) (per curiam). Assuming that this threshold has been met, "'serious questions going to the merits' and a balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011).

B. Likelihood of Success on the Merits

1. Standing

The government challenges the Organizations' Article III and statutory standing, but only in a footnote. ECF No. 28 at 16 n.1. The government concedes that its positions are generally irreconcilable with the Ninth Circuit's and this Court's rulings in a prior case brought by the

Organizations, challenging a different regulation imposing a mandatory bar on asylum eligibility (the "illegal entry bar"). *Id.*; *see generally E. Bay Sanctuary Covenant v. Trump*, No. 18-cv-06810-JST (N.D. Cal.). While the Court considers these arguments, it does so correspondingly briefly. *Cf. Holley v. Gilead Scis., Inc.*, 379 F. Supp. 3d 809, 834 (N.D. Cal. 2019) ("'Arguments raised only in footnotes, or only on reply, are generally deemed waived' and need not be considered." (quoting *Estate of Saunders v. Comm'r*, 745 F.3d 953, 962 n.8 (9th Cir. 2014)).

First, the Organizations have adequately demonstrated injury-in-fact to support Article III standing. The Ninth Circuit has repeatedly recognized that "'a diversion-of-resources injury is sufficient to establish organizational standing' for purposes of Article III, if the organization shows that, independent of the litigation, the challenged 'policy frustrates the organization's goals and requires the organization to expend resources in representing clients they otherwise would spend in other ways.'" *E. Bay II*, 909 F.3d at 1241 (first quoting *Nat'l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1040 (9th Cir. 2015); then quoting *Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d 936, 943 (9th Cir. 2011) (en banc)). As in *East Bay II*, the Organizations have "offered uncontradicted evidence that enforcement of the Rule has required, and will continue to require, a diversion of resources, independent of expenses for this litigation, from their other initiatives." *Id.* at 1242; *see also* ECF No. 3-2 ¶¶ 14-15, 17, 19; ECF No. 3-3 ¶¶ 12-17, 19; ECF No. 3-4 ¶¶ 16-19; ECF No. 3-5 ¶¶ 10-14. The Ninth Circuit likewise recognized that the Organizations "can demonstrate organizational standing by showing that the Rule will cause them to lose a substantial amount of funding." *E. Bay II*, 909 F.3d at 1243. For similar reasons, three of the four Organizations have shown that the majority of the clients they serve would be rendered "categorically ineligible for asylum," and that they "would lose a significant amount of business and suffer a concomitant loss of funding" as a result. *Id.*; *see also* ECF No. 3-2 ¶¶ 15-16, ECF No. 3-3 ¶ 18; ECF No. 3-5 ¶¶ 6-7.

Second, the Organizations' interests are "arguably within the zone of interests to be protected or regulated by the statute." *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 567 U.S. 209, 224 (2012) (quoting *Ass'n of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150, 153 (1970)). Here, the Ninth Circuit has already determined that the

Organizations' "interests fall within the zone of interests protected by the INA," and these same "asylum provisions" in particular. *E. Bay II*, 909 F.3d at 1244.[6]

Accordingly, the Organizations have standing to prosecute this lawsuit.

2. Substantive Validity: *Chevron*

a. Legal Standard

The Organizations challenge "the validity of the [Rule] under both *Chevron* and *State Farm*, which 'provide for related but distinct standards for reviewing rules promulgated by administrative agencies.'" *Altera Corp. & Subsidiaries v. Comm'r of Internal Revenue*, 926 F.3d 1061, 1075 (9th Cir. 2019) (quoting *Catskill Mountains Chapter of Trout Unlimited, Inc. v. Envtl. Prot. Agency*, 846 F.3d 492, 521 (2d Cir. 2017)). "*State Farm* review for arbitrariness focuses on the rationality of an agency's decisionmaking process – i.e., 'whether a rule is procedurally defective as a result of flaws in the agency's decisionmaking process.'" 33 Charles Alan Wright, Charles H. Koch & Richard Murphy, *Federal Practice and Procedure*, § 8435 at 538 (2d ed. 2018) (footnotes omitted) (quoting *Catskill Mountains*, 846 F.3d at 521). By contrast, the *Chevron* analysis considers "whether the conclusion reached as a result of that process – an agency's interpretation of a statutory provision it administers – is reasonable." *Altera Corp.*, 926 F.3d at 1075 (quoting *Catskills Mountains*, 846 F.3d at 521). Thus, where a plaintiff alleges that, as a result of an erroneous legal interpretation, the agency's action was "not in accordance with the law," 5 U.S.C. § 706(2)(A), or "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right," *id.* § 706(2)(C), courts apply the *Chevron* framework. *See Nw. Envtl.*

[6] The government contends that the Ninth Circuit's legal conclusion is flawed because it failed to consider the judicial review provisions of 8 U.S.C. §§ 1252 and 1329, which the government reads to require that "review may be sought only by the affected alien." ECF No. 28 at 16 n.1. But the government did, in fact, argue to the Ninth Circuit that "the immigration statutes . . . presuppose that only aliens may challenge certain asylum-related decisions and limit when and where aliens may seek judicial review." *E. Bay Sanctuary Covenant v. Trump*, No. 18-17274 (9th Cir.), ECF No. 14 at 9 (citing 8 U.S.C. §§ 1225, 1252); *see also Day v. Apoliona*, 496 F.3d 1027, 1031 (9th Cir. 2007) (district courts are bound by circuit precedent); *cf. Miller v. Gammie*, 335 F.3d 889, 900 (9th Cir. 2003) (en banc) ("As a general rule, the principle of *stare decisis* directs us to adhere not only to the holdings of our prior cases, but also to their explications of the governing rules of law." (quoting *County of Allegheny v. ACLU Greater Pittsburgh Chapter*, 492 U.S. 573, 668 (1989) (Kennedy, J., concurring in part and dissenting in part))).

Advocates v. U.S. E.P.A., 537 F.3d 1006, 1014 (9th Cir. 2008) (citing *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)).[7]

Under *Chevron*, the Court first considers "whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter." *Campos-Hernandez v. Sessions*, 889 F.3d 564, 568 (9th Cir. 2018) (quoting *Chevron*, 467 U.S. at 842). The Court "starts with the plain statutory text and, 'when deciding whether the language is plain, . . . must read the words in their context and with a view to their place in the overall statutory scheme.'" *Altera Corp.*, 926 F.3d at 1075 (quoting *King v. Burwell*, 135 S. Ct. 2480, 2489 (2015)). Consideration of "the legislative history, the statutory structure, and 'other traditional aids of statutory interpretation'" supplements this plain text analysis. *Id.* (quoting *Middlesex Cty. Sewerage Auth. v. Nat'l Sea Clammers Ass'n*, 453 U.S. 1, 13 (1981)). In recent years, the Supreme Court has cautioned that courts may not "engage[] in cursory analysis" of these statutory questions. *Pereira v. Sessions*, 138 S. Ct. 2105, 2120 (2018) (Kennedy, J., concurring) (observing that "reflexive deference" to the agency under *Chevron* "suggests an abdication of the Judiciary's proper role in interpreting federal statutes"). Rather, as it emphasized in an analogous context, "only when that legal toolkit is empty and the interpretive question still has no single right answer can a judge conclude that it is 'more [one] of policy than of law.'" *Kisor v. Wilkie*, 139 S. Ct. 2400, 2415 (2019) (alteration in original) (quoting *Pauley v. BethEnergy Mines, Inc.*, 501 U.S. 680, 696 (1991)).

If, after exhausting those tools, the Court concludes the rule or regulation is ambiguous, it turns to *Chevron* step two. *Id.* There, the Court determines whether the agency's construction is "arbitrary, capricious, or manifestly contrary to the statute," again taking into account "the statute's text, structure and purpose." *Altera Corp.*, 926 F.3d at 1075 (first quoting *Chevron*, 467 U.S. at 843; then quoting *Miguel-Miguel v. Gonzales*, 500 F.3d 941, 949 (9th Cir. 2007)). "Thus, an agency interpretation that is 'inconsisten[t] with the design and structure of the statute as a whole,' does not merit deference." *Util. Air Regulatory Grp. v. E.P.A.*, 573 U.S. 302, 321 (2014)

[7] Despite the government's failure to invoke *Chevron* deference, the Court nonetheless applies the governing standard. *See E. Bay II*, 909 F.3d at 1247-48 (citing *Chevron*).

(alteration in original) (quoting *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 353 (2013)). Ultimately, the regulation "fails if it is 'unmoored from the purposes and concerns' of the underlying statutory regime." *Altera Corp.*, 926 F.3d at 1076 (quoting *Judulang v. Holder*, 565 U.S. 42, 64 (2011)); *see also S.J. Amoroso Const. Co. v. United States*, 981 F.2d 1073, 1075 (9th Cir. 1992) ("If a regulation is fundamentally at odds with the statute, it will not be upheld simply because it is technically consistent with the statute.").

b. Statutory Framework

The Organizations argue that the Rule conflicts with the two statutory provisions that currently disqualify asylum applicants based on third countries: (1) the firm resettlement bar and (2) the safe third country bar. These provisions reflect "[t]he core regulatory purpose of asylum," which "is not to provide [applicants] with a broader choice of safe homelands, but rather, to protect [refugees] with nowhere else to turn." *Matter of B-R-*, 26 I. & N. Dec. 119, 122 (BIA 2013) (quoting *Tchitchui v. Holder*, 657 F.3d 132, 137 (2d Cir. 2011)). To determine whether the Rule is consistent with these statutory bars, the Court reviews their history in greater depth.

i. Firm Resettlement Bar

The concept of firm resettlement has a long history in U.S. immigration law. It was first introduced in a 1948 statute, although the language was later dropped in 1957 legislation and subsequent acts. *Rosenberg v. Yee Chien Woo*, 402 U.S. 49, 53 (1971). Interpreting those later statutes, which limited asylum to those fleeing persecution, the Supreme Court concluded that they nonetheless required the government to take the "the 'resettlement' concept . . . into account to determine whether a refugee seeks asylum in this country as a consequence of his flight to avoid persecution." *Id.* at 56. "[T]he correct legal standard," the *Rosenberg* Court explained, was whether the applicant's presence in the United States was "reasonably proximate to the flight and not . . . following a flight remote in point of time or interrupted by intervening residence in a third country reasonably constituting a termination of the original flight in search of refuge." *Id.* at 57.

In 1980, Congress passed the Refugee Act "to bring the INA into conformity with the United States's obligations under the Convention and Protocol." *E. Bay II*, 909 F.3d at 1233. Congress barred from asylum any alien "convicted of an aggravated felony," 8 U.S.C. § 1158(d)

(1980), but did not impose other categorical restrictions. The agency then charged with administering asylum, the Immigration and Naturalization Service ("INS") adopted additional regulatory bars, including one that required INS district directors to deny asylum to an applicant who had "been firmly resettled in a foreign country." 8 C.F.R. § 208.8(f)(1)(ii) (1981). The regulations went on to define "firm resettlement" in greater detail.[8] In addition, those regulations imposed a discretionary bar, providing that a district director could deny asylum if "there is an outstanding offer of resettlement by a third nation where the applicant will not be subject to persecution and the applicant's resettlement in a third nation is in the public interest." *Id.* § 208.8(f)(2).

Because this regulatory bar applied only to district directors, the BIA subsequently concluded that it did "not prohibit an immigration judge or the Board from granting asylum to an alien deemed to have been firmly resettled." *Matter of Soleimani*, 20 I. & N. Dec. 99, 104 (BIA 1989). Instead, it explained, "firm resettlement is a factor to be evaluated in determining whether asylum should be granted as a matter of discretion under the standards set forth in *Matter of Pula*, 19 I & N Dec. 467 (BIA 1987)." *Matter of Soleimani*, 20 I. & N. Dec. at 103. In *Matter of Pula*, the BIA had rejected a rule that accorded illegal entry so much weight that its "practical effect

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[8] Specifically, the Attorney General defined an alien as "firmly resettled" if:

> [H]e was offered resident status, citizenship, or some other type of permanent resettlement by another nation and traveled to and entered that nation as a consequence of his flight from persecution, unless the refugee establishes . . . that the conditions of his residence in that nation were so substantially and consciously restricted by the authority of the country of asylum/refuge that he was not in fact resettled.

8 C.F.R. § 208.14 (1980). Officers making the firm resettlement determination were instructed to

> [C]onsider, in light of the conditions under which other residents of the country live, the type of housing, whether permanent or temporary, made available to the refugee, the types and extent of employment available to the refugee, and the extent to which the refugee received permission to hold property and to enjoy other rights and privileges (such as travel documentation, education, public relief, or naturalization) available to others resident in the country.

Id.

[was] to deny relief in virtually all cases," instructing instead that "the totality of the circumstances and actions of an alien in his flight from the country where he fears persecution should be examined in determining whether a favorable exercise of discretion is warranted." 19 I. & N. Dec. at 473. And although the BIA included as relevant factors "whether the alien passed through any other countries or arrived in the United States directly from his country, whether orderly refugee procedures were in fact available to help him in any country he passed through, and whether he made any attempts to seek asylum before coming to the United States," 19 I. & N. Dec. at 473-74, those factors were not given dispositive weight, and they were to be considered among a host of other relevant factors in their totality:

> In addition, the length of time the alien remained in a third country, and his living conditions, safety, and potential for long-term residency there are also relevant. For example, an alien who is forced to remain in hiding to elude persecutors, or who faces imminent deportation back to the country where he fears persecution, may not have found a safe haven even though he has escaped to another country. Further, whether the alien has relatives legally in the United States or other personal ties to this country which motivated him to seek asylum here rather than elsewhere is another factor to consider. In this regard, the extent of the alien's ties to any other countries where he does not fear persecution should also be examined.

Id.

In 1990, the Attorney General expanded the mandatory firm resettlement bar to include IJ asylum determinations, thereby superseding *Matter of Soleimani*. *See* 8 C.F.R. § 208.14(c)(2) (1990). The 1990 regulations also amended the firm resettlement definition to permit an applicant to rebut a showing of a firm offer by establishing "[t]hat his entry into that nation was a necessary consequence of his flight from persecution, that he remained in that nation only as long as was necessary to arrange onward travel, and that he did not establish significant ties in that nation." *Id.* § 208.15(a). The Ninth Circuit subsequently upheld this regulatory bar as "a permissible construction of the statute," noting that "[f]irm resettlement has long been a decisive factor in asylum policy," and that "[e]ven before the regulation was promulgated in 1990, firm resettlement seems to have precluded a grant of asylum in practice." *Yang v. I.N.S.*, 79 F.3d 932, 939 (9th Cir. 1996). Moreover, it reasoned, "[b]ecause firmly resettled aliens are by definition no longer

subject to persecution, the regulation create[d] no conflict with" the Refugee Act. *Id.*

Congress revisited the issue of firm resettlement in 1996, when it enacted IIRIRA. In IIRIRA, Congress codified the firm resettlement bar, providing that asylum was unavailable to an alien who "was firmly resettled in another country prior to arriving in the United States." 8 U.S.C. § 1158(b)(2)(A)(vi).

Following IIRIRA, the Attorney General issued interim implementing regulations. In addition to tracking the mandatory firm resettlement bar, 8 C.F.R. §§ 208.13(c)(2)(B), 208.15 (1997), the regulations also included a provision for discretionary denials "if the alien can be removed to a third country which has offered resettlement and in which the alien would not face harm or persecution," *id.* § 208.13(d). In subsequent cases, the Ninth Circuit concluded that these regulations had replaced the factors cited in *Matter of Pula* as a basis for discretionary denial of asylum. *See Mamouzian v. Ashcroft*, 390 F.3d 1129, 1138 (9th Cir. 2004) ("Stays in third countries are now governed by 8 C.F.R. § 208.15, which specifies how and when an opportunity to reside in a third country justifies a denial of asylum."); *Andriasian v. I.N.S.*, 180 F.3d 1033, 1044 (9th Cir. 1999) ("The amended regulations now specify how and when an opportunity to stay in a third country justifies a mandatory or discretionary denial of asylum by an IJ or the BIA."). In *Andriasian*, the Ninth Circuit elaborated on its rationale, explaining that a contrary reading would defeat the regulations' "purpose . . . to ensure that if this country denies a refugee asylum, the refugee will not be forced to return to a land where he would once again become a victim of harm or persecution." 180 F.3d at 1046-47. "[T]he discretionary authority to deny asylum when a refugee has spent a brief period of time in a third country but has no opportunity to return there or, if he does, would be subject to further serious harm, would permit just such a result and would totally undermine the humanitarian policy underlying the regulation." *Id.* at 1047. Thus, "[t]hat a refugee has spent some period of time elsewhere before seeking asylum in this country is relevant only if he can return to that other country. Otherwise, that fact can in no way, consistent with the statute and the regulations, warrant denial of asylum." *Id.* at 1047.

In 2000, the Attorney General finalized the regulations implementing IIRIRA. During the rulemaking process, the government received comments expressing concern that the discretionary

denial regulation was inconsistent with the statutory safe third country bar. Asylum Procedures, 65 Fed. Reg. 76,121-01, 76,126 (Dec. 6, 2000). Although the government maintained that the regulation was a proper exercise of the Attorney General's authority pursuant to 8 U.S.C. § 1158(b)(2)(C), it nonetheless "decided to remove it from the regulations to avoid confusion." *Id.*; *cf.* 8 C.F.R. § 208.13 (2001). Consistent with the Ninth Circuit's recognition that these regulations created a unified scheme "specif[ying] how and when an opportunity to reside in a third country justifies a denial of asylum," *Mamouzian*, 390 F.3d at 1138, some courts have since held that a "stay in a third country before arriving in the United States cannot support a denial of [an] asylum claim" where the IJ finds that applicant "was not firmly resettled," *Tandia v. Gonzales*, 437 F.3d 245, 249 (2d Cir. 2006) (per curiam) (emphasis omitted); *see also Prus v. Mukasey*, 289 F. App'x 973, 976 (9th Cir. 2008); *cf. Shantu v. Lynch*, 654 F. App'x 608, 617 (4th Cir. 2016) (noting the *Tandia* court's decision and inviting the BIA to consider on remand whether a finding that a third country provides a "'safe haven' remains a factor that may properly be considered in a discretionary asylum determination").[9]

Under the current statutory scheme, "[d]etermining whether the firm resettlement rule applies involves a two-step process: First, the government presents 'evidence of an offer of some type of permanent resettlement,' and then, second, 'the burden shifts to the applicant to show that the nature of his [or her] stay and ties was too tenuous, or the conditions of his [or her] residence too restricted, for him [or her] to be firmly resettled.'" *Arrey v. Barr*, 916 F.3d 1149, 1159 (9th Cir. 2019) (alterations in original) (quoting *Maharaj v. Gonzales*, 450 F.3d 961, 976-77 (9th Cir. 2006) (en banc)); *see also* 8 C.F.R. § 208.15. Further, because "firmly resettled aliens are by definition no longer subject to persecution," an applicant may provide evidence of persecution in the third country to "rebut the finding of firm resettlement" there. *Arrey*, 916 F.3d at 1159-60 (first quoting *Yang*, 79 F.3d at 939).

ii. Safe Third Country Bar

Though a more recent innovation, the safe third country bar also provides guidance

[9] Pursuant to Fourth Circuit Rule 36 and Ninth Circuit Rule 36-3, *Shantu* and *Prus* are not binding precedent. The Court nonetheless relies on them as persuasive authority.

regarding the statutory scheme that Congress enacted.

Shortly prior to IIRIRA, the Attorney general promulgated a regulation providing for discretionary denials of asylum where "the alien can and will be deported or returned to a country through which the alien traveled en route to the United States and in which the alien would not face harm or persecution and would have access to a full and fair procedure for determining his or her asylum claim in accordance with a bilateral or multilateral arrangement with the United States governing such matter." 8 C.F.R. § 208.14(e) (1995). At that time, no such agreement existed.

Congress then codified that bar as part of IIRIRA, converting it into a mandatory bar that disqualified aliens from applying for asylum if:

> [T]he Attorney General determines that the alien may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien's nationality or, in the case of an alien having no nationality, the country of the alien's last habitual residence) in which the alien's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection, unless the Attorney General finds that it is in the public interest for the alien to receive asylum in the United States.

8 U.S.C. § 1158(a)(2)(A). Congress further provided that the bar would not apply to "unaccompanied alien child[ren]." *Id.* § 1158(a)(2)(E).

To date, the United States has entered into only one such agreement, with Canada. Agreement for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries, Can.-U.S., Dec. 5, 2002 ("Canada Third Country Agreement"). The agreement generally provides that, between the two nations, the country through which the alien transited (i.e., "the country of last presence") will adjudicate the alien's claim for refugee status. *Id.*, art. IV, ¶ 1. However, the agreement contains exceptions where the "receiving country" will adjudicate the claim, including where the applicant has at least one family member with refugee or other lawful status or a family member who is at least 18 years old and has a pending refugee claim. *Id.*, art. IV, ¶ 2. Notwithstanding that allocation of adjudicatory responsibility, each country reserved the right to examine any claim at its own discretion if it would serve its public interest to do so. *Id.*, art. VI.

c. Discussion

The government represents that, like the firm resettlement and safe third country bars, the Rule provides a means of separating asylum applicants who truly have "nowhere else to turn" to avoid persecution, 84 Fed. Reg. at 33,834 (quoting *Matter of B-R-*, 26 I. & N. Dec. at 122), from "economic migrants seeking to exploit our overburdened immigration system," *id.* at 33,839; *see also* ECF No. 28 at 17 ("[T]he Department heads determined . . . that aliens who fail to apply for protection in at least one third country through which they transited should not be granted the discretionary benefit of asylum, because they are not refugees with nowhere else to turn.").

The Organizations first contend that "Congress spoke directly to the issue of seeking asylum in another country and created two narrow circumstances where asylum can be denied based on a third country." ECF No. 3-1 at 14. Implicit in this argument is that the Rule fails at *Chevron* step one because Congress has articulated the only permissible mandatory bars in this area. *See Chevron*, 467 U.S. at 842.[10] The Organizations' position has some force. As noted above, some courts, including the Ninth Circuit, have treated the regulations based on the firm resettlement bar as establishing the only circumstances under which "an opportunity to stay in a third country justifies a mandatory or discretionary denial of asylum by an IJ or the BIA." *Andriasian*, 180 F.3d at 1044; *see also Prus*, 289 F. App'x at 97; *Tandia*, 437 F.3d at 249; *Mamouzian*, 390 F.3d at 1138. But as the Organizations acknowledged at the hearing, the Court need not decide that question today.

Even assuming that the statute does not prohibit the government from adopting additional mandatory bars based on an applicant's relationship with a third country, any such bar must be consistent "with the design and structure of the statute as a whole" to survive *Chevron* step two. *Util. Air Regulatory Grp.*, 573 U.S. at 321 (citation omitted). The Rule fails this test in at least two respects.

[10] At the outset, the Court rejects the government's reliance on *Lopez v. Davis*, 531 U.S. 230, 243-44 (2001), and *R-S-C- v. Sessions*, 869 F.3d 1176, 1187 n.9 (10th Cir. 2017). Those cases stand for the undisputed principle that the agencies have the authority to adopt additional categorical limitations, but do not shed light on the specific statutory conflicts and arbitrariness arguments raised in this case. *See E. Bay II*, 909 F.3d at 1248 n.13.

First, as the government emphasizes, the two statutory bars "limit an alien's ability to claim asylum in the United States when other safe options are available." *Matter of B-R-*, 26 I. & N. Dec. at 122. But in keeping with that purpose, both provisions incorporate requirements to ensure that the third country in question actually *is* a "safe option[]." *Id.* The safe third country bar requires a third country's formal agreement to accept refugees and process their claims pursuant to safeguards negotiated with the United States. 8 U.S.C. § 1158(a)(2)(A). As part of that process, the United States must determine that (1) "the alien's life or freedom would not be threatened on account of [a protected characteristic]" if removed to that third country and (2) "the alien would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection" there. *Id.*

Similarly, in enacting the firm resettlement bar, Congress left in place the pre-existing regulatory definition, under which the government must make individualized determinations that the applicant received "an offer of some type of permanent resettlement" in a country where the applicant's "stay and ties [were not] too tenuous, or the conditions of his [or her] residence too restricted, for him [or her] to be firmly resettled." *Arrey*, 916 F.3d at 1159 (alterations in original) (quoting *Maharaj*, 450 F3d at 976). As the Ninth Circuit has recognized, the purpose of these requirements "is to ensure that if this country denies a refugee asylum, the refugee will not be forced to return to a land where he would once again become a victim of harm or persecution." *Andriasian*, 180 F.3d at 1046-47; *see also Yang*, 79 F.3d at 939 ("[F]irmly resettled aliens are by definition no longer subject to persecution . . . .").

By contrast, the Rule does virtually nothing to ensure that a third country is a "safe option." The Rule requires only that the third country be a party to the 1951 Convention, the 1967 Protocol, or the CAT. 8 C.F.R. § 208.13(c)(4)(iii). While the firm resettlement bar requires a determination regarding each alien's individual circumstances, and the safe third country bar requires a formalized determination as to the individual country under consideration, the Rule ignores an applicant's individual circumstances and categorically deems most of the world a "safe option" without considering – or, as set forth below, in contravention of – the evidence in its own record. *See* AR 560-62, 581-83, 588. For example, the administrative record demonstrates

abundantly why Mexico is not a safe option for many refugees, despite its party status to all three agreements. AR 561, 582, 588.[11] In short, Congress requires consideration of an applicant's circumstances and those of the third country; the Rule turns its back on those requirements. On its face, this approach fundamentally conflicts with the one Congress took in enacting mandatory bars based on a safe option to resettle or pursue other relief in a third country.

The government's contrary arguments are not persuasive. First, the government contends that there is no conflict with the firm resettlement bar because that bar concerns aliens who have already received an offer of permanent resettlement, while the Rule disqualifies "those who could have applied (but did not apply) for protection in a third country." ECF No. 28 at 18. The government similarly asserts that the Rule need not resemble the safe third country bar because that bar, as implemented by the United States' sole safe third country agreement, (1) requires consideration of withholding of removal in Canada and (2) allows an alien to seek relief in the United States if Canada denies the asylum claim. *Id.* at 21; *see also* 8 C.F.R. § 208.30(e)(6).

The government's focus on the type of conduct that is subject to each bar, or any difference in consequences that flow from its application, is misplaced. ECF No. 28 at 18, 21-22. If a country is not a safe option, there is no reason to infer that an alien's failure to seek protection there undermines her claim. For purposes of the particular question of safety, it makes no difference whether the safe option is one that the alien had or has (in the case of the firm resettlement bar), will have (in the case of the safe third country bar) or forewent (in the case of the Rule).

In sum, when Congress barred asylum to an applicant with an alternative safe option in another country, it required "reasonable assurance that he will not suffer further harm or persecution there," *Andriasian*, 180 F.3d at 1046, in keeping with the long-held understanding that these bars apply to those who have somewhere else to turn, *see Matter of B-R-*, 26 I. & N. Dec. at 122. The Rule's sweeping approach makes no attempt to accommodate this concern, and so is

[11] The Organizations suggest examples of other countries that might support the same conclusion, but do not seek to expand the administrative record to include the relevant information. ECF No. 3-1 at 18. The Court therefore does not rely on those arguments.

antithetical to the statute's structure and "unmoored from the purposes and concerns of the underlying statutory regime." *Altera Corp.*, 926 F.3d at 1076 (quoting *Judulang*, 565 U.S. at 64).

Second, the Rule is based on an unrebuttable categorical inference that is arbitrary and capricious. The Rule's major premise is that "[a]n alien's decision not to apply for protection at the first available opportunity, and instead wait for the more preferred destination of the United States" is sufficiently probative that the alien should be denied asylum. 84 Fed. Reg. at 33,839.

The Ninth Circuit has rejected this assumption as unreasonable as applied *to an individual* on multiple occasions, consistent with the general principle that "[a] valid asylum claim is not undermined by the fact that the applicant had additional reasons (beyond escaping persecution) for coming to or remaining in the United States, including seeking economic opportunity." *Dai v. Sessions*, 884 F.3d 858, 873 (9th Cir. 2018) (citing *Li v. Holder*, 559 F.3d 1096, 1105 (9th Cir. 2009)). In *Melkonian v. Ashcroft*, for instance, the IJ found the applicant ineligible for asylum "because he came to the United States in order to better himself and his family economically, when he could have remained in Russia without facing persecution." 320 F.3d 1061, 1067 (9th Cir. 2003). The Ninth Circuit deemed this reasoning erroneous as a matter of law, stressing "that a refugee need not seek asylum in the first place where he arrives." *Id.* at 1071. Rather, the Ninth Circuit explained, "it is 'quite reasonable' for an individual fleeing persecution 'to seek a new homeland that is insulated from the instability [of his home country] and that offers more promising economic opportunities.'" *Id.* (alteration in original) (quoting *Damaize-Job v. I.N.S.*, 787 F.2d 1332, 1337 (9th Cir. 1986)). The court has similarly rejected the Rule's theory as a basis for finding claims of persecution not credible. *See Damaize-Job*, 787 F.2d at 1337 ("[The applicant's] failure to apply for asylum in any of the countries through which he passed or in which he worked prior to his arrival in the United States does not provide a valid basis for questioning the credibility of his persecution claims."); *Garcia-Ramos v. I.N.S.*, 775 F.2d 1370, 1374-75 (9th Cir. 1985) ("We do not find it inconsistent with a claimed fear of persecution that a refugee, after he flees his homeland, goes to the country where he believes his opportunities will

be best. Nor need fear of persecution be an alien's only motivation for fleeing.").[12] If this inference is unreasonable as applied to *one* asylum applicant, it is manifestly more so when applied to *all* such applicants.

Moreover, the government cites nothing in the administrative record to support the inference.[13] Instead, the government relies on a series of cases of which none supports its position, placing its greatest weight on the BIA's discussion of third country transit in *Matter of Pula*, 19 I. & N. at 473-74. *See* 84 Fed. Reg. at 33,839 n.8; ECF No. 28 at 17. The government notes that *Matter of Pula* includes as adverse factors supporting denial of asylum "whether the alien passed through other countries or arrived in the United States directly from his country, whether orderly refugee procedures were in fact available to help him in any country he passed through, and whether he made any attempts to seek asylum before coming to the United States." *Id.*

As an initial matter, the Court again notes that courts have concluded that *Matter of Pula* was superseded by the mandatory firm resettlement bar on this point. *See, e.g.*, *Andriasian*, 180 F.3d at 1044. Moreover, *Matter of Pula*'s nuanced discussion only highlights the ways in which the Rule fails to account for *other* factors influencing whether the failure to seek official protection in a third country is probative as to "the validity and urgency of the alien's claim." 84 Fed. Reg. at 33,839. There, the BIA instructed that adjudicators should consider "the length of time the alien remained in a third country, and his living conditions, safety, and potential for long-term residency," as well as "whether the alien has relatives legally in the United States or other personal ties to this country which motivated him to seek asylum here rather than elsewhere. *Matter of Pula*, 19 I. & N. Dec. at 473-74. The BIA further emphasized that "an alien who is forced to

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[12] The Rule notes a different category of cases where the lack of economic opportunity in one's home country is asserted as the persecution suffered. 84 Fed. Reg. at 33,839 n.9. In that instance, the applicant must show that she suffered "'substantial economic disadvantage' that interferes with the applicant's livelihood" on account of a protected ground. *He v. Holder*, 749 F.3d 792, 796 (9th Cir. 2014) (citation omitted).

[13] At the hearing, the government suggested that the holdings of these Ninth Circuit cases were factual conclusions that the agencies were free to subsequently overrule. Without reaching the legal merits of this argument, the Court notes that the agencies have cited no facts in support of their conclusion, but only prior agency precedent, which the Court discusses below.

remain in hiding to elude persecutors, or who faces imminent deportation back to the country where he fears persecution, may not have found a safe haven even though he has escaped to another country." *Id.* at 474. Read fairly and completely, *Matter of Pula* does not support the rationale for the Rule's categorical bar.

The government also cites *Kalubi v. Ashcroft*, 364 F.3d 1134 (9th Cir. 2004), but *Kalubi* is not on point. There, the Ninth Circuit suggested in dicta that "[i]n an appropriate case, 'forum shopping' might conceivably be part of the *totality of circumstances* that sheds light on a request for asylum in this country." *Id.* at 1140 (emphasis added). Because that dicta simply restates the *Matter of Pula* analysis, it provides no additional justification for a categorical bar.

Tellingly, the government does not cite a single case where third country transit, short of firm resettlement, played a substantial role in denying asylum. *Cf. Matter of Pula*, 19 I. & N. Dec. at 475 (granting asylum and noting that it did "not appear that [the applicant] was entitled to remain permanently in either [third] country" and reasonably "decided to seek asylum in the United States because he had many relatives legally in the United States to whom he could turn for assistance"). The government's lone citation related to the safe third country bar further underscores the arbitrary and capricious nature of the Rule's failure to account for alternative explanations for failing to apply elsewhere. In *United States v. Malenge*, the Second Circuit noted that a criminal defendant's asylum claim would normally have been barred by the Canada Third Country Agreement. 294 F. App'x 642, 644-45 (2d Cir. 2008). But, "[u]nder an exception created by Article 4 of the Agreement, [the defendant] was entitled to pursue asylum in the United States at the time of her arrival, because her husband was already living here as a refugee with a pending asylum claim." *Id.* at 645.

Finally, as discussed in greater detail below, the administrative record evidence regarding conditions in Mexico abundantly demonstrates alternative reasons why aliens might not seek protection while transiting through third countries.

Accordingly, the Court concludes that the Organizations are likely to succeed on the merits

of their claim that the Rule is substantively invalid.[14]

3. Notice-and-Comment Requirements

The Court next turns to the Organizations' notice-and-comment claims.

a. Legal Standard

The APA requires agencies to publish notice of proposed rules in the Federal Register and then allow "interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation." 5 U.S.C. § 553(c). "These procedures are 'designed to assure due deliberation' of agency regulations and 'foster the fairness and deliberation that should underlie a pronouncement of such force.'" *E. Bay II*, 909 F.3d at 1251 (quoting *United States v. Mead Corp.*, 533 U.S. 218, 230 (2001)); *see also Batterton v. Marshall*, 648 F.2d 694, 703 (D.C. Cir. 1980) ("The essential purpose of according [§] 553 notice and comment opportunities is to reintroduce public participation and fairness to affected parties after governmental authority has been delegated to unrepresentative agencies."). Accordingly, agencies may not treat § 553 as an empty formality. Rather, "[a]n agency must consider and respond to significant comments received during the period for public comment." *Perez v. Mortg. Bankers Ass'n*, 135 S. Ct. 1199, 1203 (2015). It is therefore "antithetical to the structure and purpose of the APA for an agency to implement a rule first, and then seek comment later." *United States v. Valverde*, 628 F.3d 1159, 1164 (9th Cir. 2010) (citation omitted).

These purposes apply with particular force in important cases. As Judge Posner has stated, "[t]he greater the public interest in a rule, the greater reason to allow the public to participate in its formation." *Hoctor v. U.S. Dep't of Agric.*, 82 F.3d 165, 171 (7th Cir. 1996).

Nonetheless, the APA contains some limited exceptions to the notice-and-comment requirements. First, the APA provides that notice-and-comment procedures do not apply to regulations involving "a military or foreign affairs function of the United States." 5 U.S.C.

[14] At the hearing, the government argued for the first time that the Court should deny a preliminary injunction if it found the Rule consistent with the statute but inadequately explained by the agency, because the government would ultimately seek the equitable remedy of remand without vacatur at the final relief stage. *See All. for the Wild Rockies v. U.S. Forest Serv.*, 907 F.3d 1105, 1121 (9th Cir. 2018). Because the Court concludes that the Rule is likely substantively invalid, it does not reach this argument, which the parties did not brief.

§ 553(a)(1). In addition, an agency need not comply with notice and comment when it "for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." *Id.* § 553(b)(B). Section 553(d) also provides that a promulgated final rule shall not go into effect for at least thirty days. Independently of this good-cause exception to notice and comment, an agency may also waive this grace period "for good cause found and published with the rule." *Id.* § 553(d)(3).

b. Foreign Affairs

The Court first considers whether the Rule involves a "foreign affairs function of the United States." To invoke this exception, the government must show that "ordinary application of 'the public rulemaking provisions [will] provoke definitely undesirable international consequences.'" *E. Bay II*, 909 F.3d at 1252 (second alteration in original) (quoting *Yassini v. Crosland*, 618 F.2d 1356, 1360 n.4 (9th Cir. 1980). This standard may be met "where the international consequence is obvious or the Government has explained the need for immediate implementation of a final rule." *Id.* The Ninth Circuit has explained that this showing is required because "[t]he foreign affairs exception would become distended if applied to [an immigration enforcement agency's] actions generally, even though immigration matters typically implicate foreign affairs." *Id.* (alterations in original) (quoting *Yassini*, 618 F.2d at 1360 n.4).[15]

The Court rejects the government's suggestions that the exception is met simply because the Rule involves illegal immigration at the southern border or would facilitate ongoing negotiations regarding that general issue. ECF No. 28 at 26 (citing 84 Fed. Reg. at 33,841-42). These are the same preamble justifications that the Ninth Circuit found insufficient in *East Bay II*. *Cf.* Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for

[15] As a threshold matter, the government disputes whether the APA requires a showing of undesirable international consequences. ECF No. 28 at 28. This argument is foreclosed by the Ninth Circuit's clear guidance. *See East Bay II*, 909 F.3d at 1252-53 (explaining that "courts have approved the Government's use of the foreign affairs exception where the international consequence is obvious or the Government has explained the need for immediate implementation of a final rule" and concluding that the challenged rule's explanation was insufficient); *see also E. Bay III*, 354 F. Supp. 3d at 1113-14.

Protection Claims, 83 Fed. Reg. 55,934, 55,950 (Nov. 9, 2018) ("The flow of aliens across the southern border, unlawfully or without appropriate travel documents, directly implicates the foreign policy interests of the United States. . . . Moreover, this rule would be an integral part of ongoing negotiations with Mexico and Northern Triangle countries . . . ."). Relatedly, pointing to negotiations regarding a different policy does not suffice. *Cf. id.* at 55,951 ("Furthermore, the United States and Mexico have been engaged in ongoing discussions of a safe-third-country agreement, and this rule will strengthen the ability of the United States to address the crisis at the southern border and therefore facilitate the likelihood of success in future negotiations."). The government must articulate some connection between the Rule and these various initatives. *E. Bay II*, 909 F.3d at 1252. It does not.

The government also repeats its argument that the Rule is "linked intimately with the Government's overall political agenda concerning relations with another country." ECF No. 28 at 27 (quoting *Am. Ass'n of Exporters & Importers-Textile & Apparel Grp. v. United States*, 751 F.2d 1239, 1249 (Fed. Cir. 1985)); *see also E. Bay I*, 349 F. Supp. 3d at 861 (same). As the Court previously explained, the fact that a rule is "part of the President's larger coordinated effort in the realm of immigration" is not sufficient to justify the foreign affairs exception. *E. Bay I*, 349 F. Supp. 3d at 861. The Ninth Circuit then confirmed that the government must "explain[] how immediate *publication* of the Rule, instead of *announcement* of a proposed rule followed by a thirty-day period of notice and comment, is necessary for negotiations with Mexico." *E. Bay II*, 909 F.3d at 1252 (emphasis in original). The government does nothing to meet this burden. Nor is the government's citation to *Rajah v. Mukasey* much help, given that the present case involves neither "sensitive foreign intelligence," the government's "ability to collect intelligence," or "a public debate over why some citizens of particular countries [are] a potential danger to our security."[16] 544 F.3d 427, 437 (2d Cir. 2008).

Next, after resisting the need to make the showing, the government asserts that the record

[16] The government's contention that immediate publication is necessary to address illegal immigration levels, ECF No. 28 at 28, is more properly addressed in the context of good cause, which the Court addresses below.

nonetheless demonstrates that "definitively undesirable international consequences" would result from following the APA's procedures. *E. Bay II*, 909 F.3d at 1252 (quoting *Yassini*, 618 F.2d at 1360 n.4); *see also* ECF No. 28 at 28. The Rule asserts for instance, that "[d]uring a notice-and-comment process, public participation and comments may impact and potentially harm the goodwill between the United States and Mexico and the Northern Triangle countries." 84 Fed. Reg. at 33,842. This assertion obviously cannot support the agencies' decision to forego notice and comment, because the Rule actually *invites* public comment for the next 30 days. *Id.* at 33,830. And even if the agencies' actions did not entirely contradict their words, crediting that unexplained speculation would expand the exception to swallow the rule. To the extent the government anticipates that negative comments regarding those other countries will emerge during the comment process, the same could be said any time the government enacts a rule touching on international relations or immigration. As the Ninth Circuit noted, courts have construed the foreign affairs exception narrowly in this context so that it does not "eliminate[] public participation in this entire area of administrative law." *E. Bay II*, 909 F.3d at 1252 (quoting *City of New York v. Permanent Mission of India to United Nations*, 618 F.3d 172, 202 (2d Cir. 2010)).

Finally, the government's unexplained string citations do not show any consequences attributable to the notice-and-comment process, as they largely pertain to the issues discussed above, such as implementation of the Migrant Protocol Policy or the general fact of ongoing negotiations on migration issues. *See, e.g.*, AR 46-50, 537-57, 635-37.

The Court therefore concludes that the Organizations raised serious questions regarding the government's invocation of the foreign affairs exception.

c. Good Cause

An agency "must overcome a high bar if it seeks to invoke the good cause exception to bypass the notice and comment requirement." *Valverde*, 628 F.3d at 1164. In other words, the exception applies "only in those narrow circumstances in which 'delay would do real harm.'" *Id.* at 1165 (quoting *Buschmann v. Schweiker*, 676 F.2d 352, 357 (9th Cir. 1982)). Courts must conduct this analysis on a "case-by-case [basis], sensitive to the totality of the factors at play." *Id.* at 1164 (quoting *Alcaraz v. Block*, 746 F.2d 593, 612 (9th Cir. 1984)). "[T]he good cause

exception should be interpreted narrowly, so that the exception will not swallow the rule." *Buschmann*, 676 F.2d at 357 (citation omitted).

As in the first *East Bay* case, the government asserts that good cause exists to dispense with notice-and-comment and the 30-day grace period because the announcement of the rule before its enactment would encourage a "surge in migrants." 84 Fed. Reg. at 33,841. There, the Court found that an October 2018 newspaper article provided a slender but sufficient reed for the agencies to infer that "smugglers might similarly communicate" the rule's unfavorable terms to potential asylum seekers. *E. Bay III*, 354 F. Supp. 3d at 1115. Once again, the government asks the Court to reach the same conclusion. Indeed, the Court's prior *East Bay* decision and its reliance on the October 2018 article are the only relevant authority cited in the body of the Rule's good cause explanation. *See* 84 Fed. Reg. at 33,841.[17]

Although the government includes that same article in this administrative record, AR 438, the Court is hesitant to give it as much weight as the government requests. A single, progressively more stale article cannot excuse notice-and-comment for every immigration-related regulation *ad infinitum*.[18] Otherwise, as the Organizations point out, every immigration regulation imposing more stringent requirements would pass the good cause threshold – a result that would violate the Ninth Circuit's instruction that "the good cause exception should be interpreted narrowly, so that the exception will not swallow the rule." *Buschmann*, 676 F.2d at 357.

The Court's reluctance is further reinforced by the government's failure to produce more robust evidence. Why is there no objective evidence to link a similar announcement and a spike in border crossings or claims for relief? Seemingly aware of the need to provide such evidence, the government cites to a newspaper documenting "a huge spike in unauthorized migration" in the "past several months" preceding June 2019, AR 676, but does not connect it to any "public

[17] Although the Rule cites past instances where the agencies invoked good cause for immigration rules, 84 Fed. Reg. at 33,841, these "prior invocations of good cause to justify different [rules] – the legality of which are not challenged here – have no relevance." *California v. Azar*, 911 F.3d 558, 575-76 (9th Cir. 2018).

[18] As the government acknowledged at today's hearing, "We don't need to rest on one article and have [it] frozen in time."

announcement[] . . . regarding changes in our immigration laws and procedures," 84 Fed. Reg. at 33,841. The government also cites two articles reporting that Mexico experienced an influx of migrants when it implemented a humanitarian visa program. AR 663-65, 683. While these do provide some additional support for the government's theory, the government makes no effort to address the similarities and differences between the two situations. Accordingly, the government's citation is reduced to a generic rule that immigration-related regulations can never be the subject of notice-and-comment – which, for the reasons just given, is untenable.[19]

The Court therefore concludes that the Organizations have raised serious questions regarding the government's invocation of good cause.

4. Arbitrary and Capricious: *State Farm*

Finally, the Court addresses the Organizations' claim that the agencies' explanation for the Rule itself is inadequate.

a. Legal Standard

"Under *State Farm*, the touchstone of 'arbitrary and capricious' review under the APA is 'reasoned decisionmaking.'" *Altera Corp.*, 926 F.3d at 1080 (quoting *State Farm*, 463 U.S. at 52). Basic principles of administrative law require the agency to "examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'" *State Farm*, 463 U.S. at 43 (quoting *Bowman Transp., Inc. v. Arkansas-Best Freight Sys., Inc.*, 419 U.S. 281, 285 (1974)). In reviewing that explanation, "a court is not to substitute its judgment for that of the agency." *Turtle Island Restoration Network v. U.S. Dep't of Commerce*, 878 F.3d 725, 732 (9th Cir. 2017) (quoting *State Farm*, 463 U.S. at 43). Nonetheless, a court must "strike down agency action as 'arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency,' or if the agency's decision 'is so implausible that it could not be

[19] A similarly generic statement in another article that "[m]igrants generally lack understanding of United States immigration law," but that "they appear to be informed about the basics," provides only ambiguous support for the same untenable argument. AR 768.

ascribed to a difference in view or the product of agency expertise.'" *Id.* at 732-33 (quoting *State Farm*, 463 U.S. at 43).

b. Discussion

A number of the Organizations' critiques under *State Farm* overlap with the reasons why the Rule is substantively invalid under *Chevron*. As previously discussed, the government has failed to provide any reasoned explanation for the Rule's methodology of determining that a third country is safe and asylum relief is sufficiently available, such that the failure to seek asylum there casts doubt on the validity of an applicant's claim. Nor has the government provided any reasoned explanation for the Rule's assumption that the failure to seek asylum in a third country is so damning standing alone that the government can reasonably disregard any alternative reasons why an applicant may have failed to seek asylum in that country. These deficiencies support a finding that the Rule is arbitrary and capricious.

State Farm review, however, also encompasses additional points the Court has not previously addressed, and the Court discusses them in greater detail here. First, the government suggests that its determination that "asylum in Mexico is a feasible alternative to relief in the United States" supports the Rule. ECF No. 28 at 31. The argument appears to run that, even if the Rule *itself* provides inadequate safeguards for identifying third countries where transiting aliens should first seek asylum, it will provide such safeguards *in practice* because applicants subject to the Rule must necessarily transit through Mexico. Putting aside the legal sufficiency of the analysis, the factual premise "runs counter to the evidence before the agency." *State Farm*, 463 U.S. at 43.

The government's explanation on this point falters at the outset because, as the Organizations correctly note, the "feasible alternative" determination is based on a post hoc attempt to rewrite the Rule's supporting findings. "[T]he principle of agency accountability . . . means that 'an agency's action must be upheld, if at all, on the basis articulated by the agency itself.'" *Bowen v. Am. Hosp. Ass'n*, 476 U.S. 610, 643 (1986) (quoting *State Farm*, 463 U.S. at 50). In the Rule's preamble, the agencies noted that "[a]ll seven countries in Central America plus Mexico are parties to both the Refugee Convention and the Refugee Protocol." 84 Fed. Reg. at

33,839. They then found that "Mexico has expanded its capacity to adjudicate asylum claims in recent years, and the number of claims submitted in Mexico has increased," from 8,789 asylum claims filed in 2016, to 12,716 claims filed in the first three months of 2019 alone. *Id.* These facts do not make asylum in Mexico a "feasible alternative."

The statistics regarding the number of claims submitted in Mexico contradict the government's suggestion that Mexico provides an adequate alternative. While the Rule notes that Mexico has expanded its system's capacity, it also projects that, independently of the Rule, Mexico will receive over five times the claims in 2019 that it received in 2016. 84 Fed. Reg. at 33,839. The Rule does not discuss whether Mexico is adequately processing this unprecedented increase, let alone whether Mexico has capacity to handle additional claims. At the same time, the Rule notes that USCIS received 99,035 credible fear claims in 2018, that the immigration courts received over 162,000 asylum applications in 2018, and that "non-Mexican aliens . . . now constitute the overwhelming majority of aliens encountered along the southern border with Mexico, and the overwhelming majority of aliens who assert claims of fear." *Id.* at 33,838. By any reasonable estimation, the Rule anticipates that tens of thousands of additional asylum claimants – i.e., most of the persons who would otherwise seek asylum in the United States – will now seek relief in Mexico. The Rule does not even acknowledge this outcome, much less suggest that Mexico is prepared to accommodate such a massive increase. To the contrary, the record contains reports that Mexico's "increased detentions have overwhelmed capacity at [an] immigration center," AR 698, and that the head of Mexico's refugee agency "was so overwhelmed that he had turned to [the United Nations] for help," AR 700. Again, the administrative record fails to support the conclusion that asylum in Mexico is a "feasible alternative."

In its opposition, the government attempts to declare its way past the issue, arguing "the government determined that Mexico is a signatory to and in compliance with the relevant international instruments governing consideration of refugee claims, that its domestic law and procedures regarding such relief are robust and capable of handling claims made by Central American aliens in transit to the United States, and that the statistics regarding the influx of claims in that country support the conclusion that asylum in Mexico is a feasible alternative to relief in

the United States," followed by a string citation to the administrative record. ECF No. 28 at 31. But nowhere in the Rule do the agencies find that Mexico "is in compliance with the relevant international instruments governing consideration of refugee claims." ECF No. 28 at 31. Nor does the government cite any finding in the Rule that Mexico's "domestic law and procedures regarding such relief are robust and capable of handling claims made by Central American aliens in transit to the United States." *Id.*[20] Because the Court cannot "accept [government] counsel's post hoc rationalizations for agency action," *State Farm*, 463 U.S. at 50, these arguments do not help the Rule survive arbitrary and capricious review. Moreover, the record cites actually weaken the government's position. With limited exceptions that are at best unresponsive to the question,[21] the cited evidence consists simply of an unbroken succession of humanitarian organizations explaining why the government's contention is ungrounded in reality.

First, the government cites a report from the international organization Médecins Sans Frontières, *Forced to Flee Central America's Northern Triangle: A Neglected Humanitarian Crisis* (May 2017). AR 286-317. The report found that, during transit through Mexico, "68.3 percent of people from the [Northern Triangle of Central America ("NTCA")] reported that they were victims of violence," and that "31.4 percent of women and 17.2 percent of men had been sexually abused." AR 296-97. Moreover, Médecins Sans Frontières concluded that "[d]espite the exposure to violence and the deadly risks . . . face[d] in their countries of origin, the non-refoulement principle is systematically violated in Mexico." AR 306.[22] Although the report noted

[20] The Rule contains two ipse dixit references to Mexico's "robust protection regime" and "functioning asylum system." 84 Fed. Reg. at 33,835, 33,838. Even were the Court to construe this as a finding by the agencies, it runs contrary to the evidence, as explained below.

[21] The government cites a State Department press release documenting Mexico's commitment to increase enforcement against migration and human smuggling and trafficking networks, as well as providing temporary protections to asylum seekers whose claims are being processed in the United States. AR 231-32. This does not address, however, the adequacy of Mexico's asylum process. The remaining citations consist of reports explaining why people flees certain Northern Triangle countries, AR 318-433, documents showing Mexico as a party to the three agreements, AR 560-65, 581-83, 588, and a series of appendices explaining how the State Department prepares its Country Reports on Human Rights Practices, AR 728-55.

[22] The non-refoulement principle is "a binding pillar of international law that prohibits the return of people to a real risk of persecution or other serious human rights violations." AR 708.

that Mexico had made some official attempts to improve its system, it observed a significant "gap between rights and reality," citing "[l]ack of access to the asylum and humanitarian visa processes, lack of coordination between different governmental agencies, fear of retaliation in case of official denunciation to a prosecutor, [and] expedited deportation procedures that do not consider individual exposure to violence." *Id.* As a result, "[t]he lack of safe and legal pathways effectively keeps refugees and migrants trapped in areas controlled by criminal organizations." *Id.*

Second, an April 2019 factsheet from the United Nations High Commissioner for Refugees ("UNHCR") lists "strong obstacles to accessing the asylum procedure" in Mexico, including "[t]he absence of proper protection screening protocols for families and adults, the lack of a systematic implementation of existing best interest determination procedures for unaccompanied children and detention of asylum-seekers submitting their claim at border entry points." AR 534. Further, "[t]he abandonment rate of asylum procedures, especially in Southern Mexico is a key protection concern. This situation, compounded by insufficient resources and limited field presence of [Comisíon Mexicana de Ayuda a Refugiados ("COMAR")] in key locations in Northern and Central Mexico, continues to pose challenges to efficient processing of asylum claims." *Id.* The UNCHR also observed that "[p]ersons in need of international protection often take dangerous routes to reach COMAR offices" and that "[w]omen and girls in particular are at risk of sexual and gender-based violence." *Id.* While UNCHR indicated that it was partnering with Mexico on various initiatives, it did not suggest that these problems would be easily solved, let alone consider how a massive influx of claimants might affect the situation.

Third, the government cites to the UNCHR's July 2018 review of Mexico's refugee process. AR 638-57. The report notes two positive developments in response to a prior round of recommendations, AR 639, but documents a host of additional problems. For instance, the UNCHR stated that "concerns persist regarding the rise in crimes and the increased risk towards migrants throughout the country, the high levels of impunity for crimes committed against migrants, and the difficulties that migrants who are victims of crime and asylum-seekers continue to face in accessing justice and obtaining regularization for humanitarian reasons under article 52 of the *2011 Migration Act*." AR 640. In addition, the UNCHR highlighted ongoing problems in

the areas of (1) "[s]exual and gender-based violence against migrants, asylum-seekers, and refugees"; (2) "[d]etention of migrants and asylum seekers, particularly children and other vulnerable persons"; and (3) "[a]ccess to economic, social and cultural rights for asylum-seekers and refugees." AR 640-42.

Fourth, the government relies on a November 2018 factsheet from Human Rights First, which asks: "Is Mexico Safe for Refugees and Asylum Seekers?" AR 702. Answering in the negative, the factsheet explains that "*many refugees face deadly dangers in Mexico. For many, the country is not at all safe.*" *Id.* (emphasis in original). Human Rights First notes that "refugees and migrants face acute risks of kidnapping, disappearance, sexual assault, trafficking, and other grave harms in Mexico," based not just on "their inherent vulnerabilities as refugees but also on account of their race, nationality, gender, sexual orientation, gender identity, and other reasons." AR 703 (emphasis omitted). The factsheet also concludes that "[d]eficiencies, barriers, and flaws in Mexico's asylum system leave many refugees unprotected and Mexican authorities continue to improperly return asylum seekers to their countries of persecution." *Id.* (emphasis omitted). For example, "refugees are blocked from protection under an untenable 30-day filing deadline, denied protection by COMAR officers who claim that refugees targeted by groups with national reach can safely relocate within their countries, and lack an effective appeal process to correct wrongful denials of protection." *Id.* (emphasis omitted).

Fifth, the government cites to a 2018 report from Amnesty International entitled "Overlooked, Under-Protected: Mexico's Deadly *Refoulement* of Central Americans Seeking Asylum." AR 704-27. As its title suggests, the report concludes that "the Mexican government is routinely failing in its obligations under international law to protect those who are in need of international protection, as well as repeatedly violating the *non-refoulement* principle, a binding pillar of international law that prohibits the return of people to a real risk of persecution or other serious human rights violations. These failures by the Mexican government in many cases can cost the lives of those returned to the country from which they fled." AR 708. Among its highlights include testimony that Mexican officials systematically coerced asylum seekers into waiving their right to asylum, including by denying detainees food, AR 718, and "a number of

reports of grave human rights violations committed by . . . officials during the moments of apprehension as well as in detention centres," AR 722.

Sixth, the government points to a New York Times article, *'They Were Abusing Us the Whole Way': A Tough Path for Gay and Trans Migrants* (July 11, 2018). AR 756-66. The article notes that "[t]rans women in particular encounter persistent abuse and harassment in Mexico at the hands of drug traffickers, rogue immigration agents and other migrants." AR 758. It then goes on to recount the story of one migrant who was robbed and sexually exploited in transit. AR 760.

Additional portions of the administrative record not cited by the government bolster the already overwhelming evidence on this point. The Women's Refugee Commission likewise concluded that "Mexico is clearly not a safe, or in many cases viable, alternative for many refugees and vulnerable migrants seeking international protection." AR 771. Another article discusses the detention of unaccompanied minors in Mexico, noting that the country "deported more than 36,000 unaccompanied Central American children, toddlers to 17-year-olds" in a two-year period. AR 784.

In sum, the bulk of the administrative record consists of human rights organizations documenting in exhaustive detail the ways in which those seeking asylum in Mexico are (1) subject to violence and abuse from third parties and government officials, (2) denied their rights under Mexican and international law, and (3) wrongly returned to countries from which they fled persecution. Yet, even though this mountain of evidence points one way, the agencies went the other – *with no explanation*.[23] This flouts "[o]ne of the basic procedural requirements of administrative rulemaking," namely "that an agency must give adequate reasons for its decisions." *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2125 (2016). Its failure to do so here, particularly viewed against the mass of contrary evidence, renders the agencies' conclusion regarding the safety and availability of asylum in Mexico arbitrary and capricious.

[23] To be clear, the Court does not review this evidence de novo. If the government offered a reasoned explanation why it reached a contrary conclusion from respected third-party humanitarian organizations, the Court would give that explanation the deference that it was due. But "[i]t is not the role of the courts to speculate on reasons that might have supported an agency's decision." *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2127 (2016).

Moreover, because every alien subject to the Rule must pass through Mexico, this arbitrary and capricious conclusion fatally infects the whole Rule. And because Mexico is a party to the 1951 Convention, 1967 Protocol, and CAT, almost every alien[24] must apply for asylum in Mexico and receive a final judgment through its system before seeking asylum in the United States.[25] In other words, if the agencies are wrong about Mexico, the Rule is wrong about everyone it covers. The Court notes also that Mexico's example demonstrates for a second time why two of the Rule's critical assumptions are arbitrary, not just as to Mexico, but as a general matter. First, even though Mexico is a party to the agreements listed in the Rule, the unrefuted record establishes that it is categorically not a "safe option[]" for the majority of asylum seekers. *Matter of B-R-*, 26 I. & N. Dec. at 122. Second, the record offers an abundance of reasons besides economic gain why an asylum seeker with a meritorious claim might choose to transit through Mexico without attempting to pursue an asylum claim there. For all these reasons, the Rule "is arbitrary and capricious and so cannot carry the force of law." *Encino Motorcars, LLC*, 136 S. Ct. at 2125.

While the foregoing analysis is sufficient to resolve the Organizations' *State Farm* claim in their favor, the Court briefly addresses their remaining arguments.

The Organizations contend that the agencies "entirely failed to consider an important aspect of the problem," *State Farm*, 463 U.S. at 43, because the Rule does not create an exception for unaccompanied minors, ECF No. 3-1 at 27-28. The government responds that the failure to include such an exception does not conflict with any statutory provisions. ECF No. 28 at 31-32. Regardless whether there is any true statutory conflict, Congress's enactment of special provisions regarding unaccompanied minors, including excepting them from the related safe third country bar, 8 U.S.C. §§ 279, 1158(a)(2)(E), demonstrates that such children are "an important aspect of

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[24] Except for the limited category of aliens who qualify as a "victim of a severe form of trafficking in persons." 8 C.F.R. § 208.13(c)(4)(ii).

[25] Though asylum applicants might also seek protection in a different third country under the Rule, the Rule does not consider the asylum systems of any other countries. For instance, persons fleeing some of the so-called Northern Triangle countries that are the focus of the Rule, 84 Fed. Reg. at 33,831, 33,838, 33,840, 33,842, i.e., El Salvador and Honduras, must pass through Guatemala before reaching Mexico. But whereas the Rule asserts that Mexico has a "robust protection regime," *id.* at 33,835, it makes no conclusions at all regarding Guatemala, and the administrative record contains no information about that country's asylum system.

the problem," *State Farm*, 463 U.S. at 43, when it comes to administering the asylum scheme.

Although not cited by the government, the Rule does contain a brief discussion explaining why it "does not provide for a categorical exception for unaccompanied alien children." 84 Fed. Reg. at 33,839 n.7. First, the Rule notes that Congress did not exempt those children from every statutory bar to asylum eligibility. *Id.* As just explained, however, that does not mean that the agencies need not consider whether such an exception was appropriate. Second, the Rule reasons that an exception is unnecessary because unaccompanied children can still apply for withholding of removal or protection under CAT. *Id.* This explanation suggests that the agencies at least considered the problem of unaccompanied minors. But there are at least serious questions whether this conclusion was supported by the record. For one, the agencies did not expressly consider whether the Rule's rationale applies with full force to those children. Given that children have more difficulty than adults pursuing asylum claims in Mexico, AR 641-42, 778-86, the agencies have not explained why it is rational to assume that an unaccompanied minor's failure to apply has the same probative value on the merits as an adult's – assuming for the moment that an adult's failure has any meaningful value. Also, as the Court has previously explained, the availability of alternative forms of immigration relief, which are subject to a higher bar and different collateral consequences, are not interchangeable substitutes. *See E. Bay I*, 349 F. Supp. 3d at 864-65. Last, the agencies did not address whether placing unaccompanied minors in the more rigorous reasonable fear screening process, combined with the higher standard for withholding of removal and protection under CAT, creates a significantly greater risk that even those alternative claims will be decided wrongly.

Finally, the Organizations assert that the Rule is counterproductive because applicants whose claims have already been denied in third countries are likely to have weaker rather than stronger claims. ECF No. 3-1 at 27. The Organizations' argument is based on a misunderstanding of the Rule's purposes. As the government points out, the Rule's intent is to incentivize putative refugees to seek relief at the first opportunity, preferably elsewhere. ECF No. 28 at 31. The agency's explanation as to how this exhaustion requirement serves its stated aims is adequate.

C. Irreparable Harm

The irreparable harm "analysis focuses on irreparability, 'irrespective of the magnitude of the injury.'" *Azar*, 911 F.3d at 581 (quoting *Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716, 725 (9th Cir. 1999)). "A threat of irreparable harm is sufficiently immediate to warrant preliminary injunctive relief if the plaintiff 'is likely to suffer irreparable harm before a decision on the merits can be rendered.'" *Boardman v. Pac. Seafood Grp.*, 822 F.3d 1011, 1023 (9th Cir. 2016) (quoting *Winter*, 555 U.S. at 22).

The government contends that the Organizations' injuries are not irreparable, again relying on the general rule that "monetary injury is not normally considered irreparable" because it can "be remedied by a damage award." *L.A. Mem'l Coliseum Comm'n v. Nat'l Football League*, 634 F.2d 1197, 1202 (9th Cir. 1980). As the Court has previously explained, controlling precedent establishes that this rule "does not apply where there is no adequate remedy to recover those damages, such as in APA cases." *E. Bay III*, 354 F. Supp. 3d at 1116 (first citing *Azar*, 911 F.3d at 581; then citing *Idaho v. Coeur d'Alene Tribe*, 794 F.3d 1039, 1046 (9th Cir. 2015)); *accord Pennsylvania v. President of the United States*, -- F.3d --, No. 17-3752, 2019 WL 3057657, at *17 (3d Cir. July 12, 2019), *amended in part on other grounds*, 2019 WL 3228336 (3d Cir. July 18, 2019).

Here, the Organizations have again established a sufficient likelihood of irreparable harm through "diversion of resources and the non-speculative loss of substantial funding from other sources." *E. Bay III*, 354 F. Supp. 3d at 1116; *see also* ECF No. 3-2 ¶¶ 14-16; ECF No. 3-3 ¶¶ 12-19; ECF No. 3-4 ¶¶ 16-19; ECF No. 3-5 ¶¶ 6-7, 10-14. "That the [Organizations] promptly filed an action following the issuance of the [Rule] also weighs in their favor." *Azar*, 911 F.3d at 581.

The Court therefore finds that the Organizations have satisfied the irreparable harm factor.

D. Balance of the Equities and the Public Interest

The Court turns to the final two *Winter* factors. "When the government is a party, these last two factors merge." *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014). Given the overlap with the arguments made in this case, the Ninth Circuit's decision in *East Bay II* "provide[s] substantial guidance on the equities involved" and the public interest. *E. Bay III*, 354

F. Supp. 3d at 1116.

Responding there to a similar argument from the government, the Ninth Circuit observed that "aspects of the public interest favor both sides," given that "the public has a 'weighty' interest 'in efficient administration of the immigration laws at the border,'" counterbalanced by an "interest in ensuring that 'statutes enacted by [their] representatives' are not imperiled by executive fiat." *E. Bay II*, 909 F.3d at 1255 (first quoting *Landon v. Plasencia*, 459 U.S. 21, 34 (1982); then quoting *Maryland v. King*, 567 U.S. 1301, 1301 (2012) (Roberts, C.J., in chambers)). Once again, these same factors sit on opposite sides of the scale.[26] But as in the earlier *East Bay* case, additional considerations weigh strongly in favor of injunctive relief.

First, an injunction would "restore[] the law to what it had been for many years prior to" July 16, 2019, *E. Bay II*, 909 F.3d at 1255, by requiring the government to take into account whether an applicant's "life or freedom would . . . be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion" in a third country before denying asylum on that basis, 8 U.S.C. § 1158(a)(2)(A); *see also Andriasian*, 180 F.3d at 1046 ("[T]he circumstances must show that [the applicant] has established, or will be able to establish, residence in another nation, and that he will have a reasonable assurance that he will not suffer further harm or persecution there.").

Next, the Rule implicates to an even greater extent than the illegal entry rule "the public's interest in ensuring that we do not deliver aliens into the hands of their persecutors." *Leiva-Perez*, 640 F.3d at 971. One of the Rule's express purposes is to incentivize all asylum applicants to seek relief in other countries. 84 Fed. Reg. at 33,831. Indeed, by imposing a categorical bar on asylum in the United States, it will force them to seek relief elsewhere. For the reasons explained above, however, the Organizations have made a strong showing that the Rule contains insufficient safeguards to ensure that applicants do not suffer persecution in those third countries or will not be

[26] The Ninth Circuit's analysis in *Innovation Law Lab v. McAleenan*, is not on point here, because the Organizations have shown that the Rule is unlikely to be a "congressionally authorized measure[]." 924 F.3d 503, 510 (9th Cir. 2019). And in *Innovation Law Lab*, the Mexican government had made a specific "commitment to honor its international-law obligations and to grant humanitarian status and work permits to individuals" who would temporarily reside in Mexico while the United States processed their claims. *Id.*

wrongfully returned to their original countries of persecution – as underscored by the unrefuted evidence regarding Mexico in particular. *See* AR 286-317, 534, 638-57, 702-27, 771.

Nor does it change the equities that putative refugees barred by the Rule from seeking asylum may nonetheless pursue withholding of removal and CAT protections. For reasons the Court previously discussed, *E. Bay I*, 349 F. Supp. 3d at 864-65, those other forms of relief are not coextensive in important ways, most notably that they require aliens to meet a higher bar to avoid removal. *See Ling Huang*, 744 F.3d at 1152. The difference between those substantive standards is amplified by the Rule's use of the more stringent "reasonable fear" standard in the screening process. 84 Fed. Reg. at 33,836-37; *compare* 8 C.F.R. § 208.30(e)(2)-(3), *with id.* § 208.30(e)(5)(iii). And channeling those claims into the expedited removal process only increases the risk of error. *See Thuraissigiam*, 917 F.3d at 1118 ("[The expedited screening process's] meager procedural protections are compounded by the fact that § 1252(e)(2) prevents any judicial review of whether DHS *complied* with the procedures in an individual case, or applied the correct legal standards." (emphasis in original)).

The Court notes one additional equitable consideration suggested by the administrative record. The administrative record contains evidence that the government has implemented a metering policy that "force[s] migrants to wait weeks or months before they can step onto US soil and exercise their right to claim asylum." AR 686. At the same time, the record also indicates that Mexico requires refugees seeking protection to file claims within 30 days of entering the country. AR 703. For asylum seekers that forfeited their ability to seek protection in Mexico but fell victim to the government's metering policy, the equities weigh particularly strongly in favor of enjoining a rule that would now disqualify them from asylum on a potentially unlawful basis.

Finally, the government rightly notes that the strains on this country's immigration system have only increased since the fall of 2018. *See* 84 Fed. Reg. at 33,831; AR 119, 121, 208-32. The public undoubtedly has a pressing interest in fairly and promptly addressing both the harms to asylum applicants and the administrative burdens imposed by the influx of persons seeking asylum. But shortcutting the law, or weakening the boundary between Congress and the Executive, are not the solutions to these problems. *See Food & Drug Admin. v. Brown &*

Williamson Tobacco Corp., 529 U.S. 120, 125 (2000) ("Regardless of how serious the problem an administrative agency seeks to address, however, it may not exercise its authority in a manner that is inconsistent with the administrative structure that Congress enacted into law." (internal quotation marks and citation omitted)). As the Ninth Circuit noted, "[t]here surely are enforcement measures that the President and the Attorney General can take to ameliorate the crisis, but continued inaction by Congress is not a sufficient basis under our Constitution for the Executive to rewrite our immigration laws." *E. Bay II*, 909 F.3d at 1250-51.

The Court also acknowledges the government's frustration that its other immigration policies have also been subjected to suit. ECF No. 28 at 10-11. These other cases are largely beyond the scope of the Court's consideration. In any event, the presence of other lawsuits does not absolve the agencies from scrutiny. *Cf. Talk Am., Inc. v. Mich. Bell Tel. Co.*, 564 U.S. 50, 69 (2011) (Scalia, J., dissenting) (explaining in another context that deference is particularly unwarranted where "an agency . . . has repeatedly been rebuked in its attempts to expand the statute beyond its text, and has repeatedly sought new means to the same ends").

For the foregoing reasons, the Court concludes that injunctive relief is appropriate.

E. Scope of Relief

1. Statutory Constraints

The government raises a now-familiar argument that the Court's authority to issue relief is constrained by 8 U.S.C. § 1252(e). ECF No. 28 at 33. The Court again acknowledges that "it lacks the authority to enjoin 'procedures and policies adopted by the Attorney General to *implement the provisions of section 1225(b)(1)* of [Title 8].'" *E. Bay III*, 354 F. Supp. 3d at 1118 (emphasis in original) (quoting 8 U.S.C. § 1252(a)(2)(A)(iv)); *see also* 8 U.S.C. § 1252(e)(3). But, as the Court has twice previously observed, the government has "'provided no authority to support the proposition that any rule of asylum eligibility that may be *applied* in the expedited removal proceedings is swallowed up' by these restrictions." *E. Bay III*, 354 F. Supp. 3d at 1118 (quoting *E. Bay I*, 349 F. Supp. 3d at 867 (emphasis in original)). The government does not attempt to renew the arguments the Court previously rejected or offer new ones in their stead. The Court therefore reaches the same conclusion.

2. Nationwide Injunction

The government's arguments against a nationwide injunction likewise travel well-trod ground. ECF No. 28 at 33-34. But the Ninth Circuit has "consistently recognized the authority of district courts to enjoin unlawful policies on a universal basis." *E. Bay II*, 909 F.3d at 1255 (collecting cases). While the government disagrees with that ruling, it provides no contrary authority from the immigration context and "no grounds on which to distinguish this case from [the Ninth Circuit's] uncontroverted line of precedent." *Id.* at 1256.

CONCLUSION

For the foregoing reasons, the Organizations' motion for preliminary injunction is granted.

Defendants are hereby ORDERED AND ENJOINED, pending final judgment herein or further order of the Court, from taking any action continuing to implement the Rule and ORDERED to return to the pre-Rule practices for processing asylum applications.

The Court sets this matter for a case management conference on October 21, 2019 at 2:00 p.m. A joint case management statement is due by October 11, 2019.

IT IS SO ORDERED.

Dated: July 24, 2019

JON S. TIGAR
United States District Judge

Exhibit B

Transcript of Preliminary Injunction Hearing,
East Bay Sanctuary Covenant v. Barr, 3:19-cv-4073 (July 24, 2019)

Pages 1 - 41

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE JON S. TIGAR

EAST BAY SANCTUARY COVENANT, et al, Plaintiffs, vs. WILLIAM BARR, Attorney General, in his official capacity, et al, Defendants.	No. C 19-4073 JST San Francisco, California Wednesday July 24, 2019 9:30 a.m.

TRANSCRIPT OF PROCEEDINGS

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(APPEARANCES CONTINUED ON FOLLOWING PAGE)

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Wednesday - July 24, 2019 **9:31 a.m.**

P R O C E E D I N G S

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THE CLERK: Now calling 19 CV 4073, East Bay Sanctuary Covenant, et al, versus William Barr, et al.

Counsel, please state your appearances.

MR. STEWART: Good morning, Your Honor. Scott Stewart on behalf of the United States. I'm joined by my colleague Erez Reuveni.

THE COURT: Good morning, gentlemen.

MR. GELERNT: Good morning, Your Honor. Lee Gelernt for plaintiffs from the ACLU.

THE COURT: Let me ask you to each come to the microphone for two reasons.

First, it makes life easier for the court reporter and, also, just to remind everyone that these proceedings are being monitored by CourtCall so that members of the media who are not able to join us this morning can listen in. And if you're not at a microphone, then it's hard for the court reporter or the CourtCall folks to hear you.

MR. GELERNT: I apologize, Your Honor.

Lee Gelernt from ACLU for plaintiffs.

MS. VEROFF: Good morning, Your Honor. Julie Veroff from the ACLU for plaintiffs.

MS. EILAND: Good morning, Your Honor. Katrina

Eiland from ACLU for plaintiffs.

MR. AMDUR: Good morning. Spencer Amdur from the ACLU for plaintiffs.

MS. CROW: Good morning, Your Honor. Melissa Crow from the Southern Poverty Law Center for plaintiffs.

MR. AZMY: Good morning, Your Honor. Bahar Azmy, A-Z-M-Y, from the Center for Constitutional Rights for plaintiffs.

MS. TALLA: Good morning. Vasudha Talla, ACLU Foundation of Northern California, for plaintiffs.

MS. SALCEDA: Good morning, Your Honor. Angelica Salceda, ACLU Foundation of Northern California, for the plaintiffs.

THE COURT: Good morning. Welcome to all of you.

The matter is on calendar this morning for oral argument on plaintiffs' motion for a temporary restraining order. I provided notice on the docket a few days ago when we received the administrative record that I was considering converting this motion into one for a preliminary injunction.

These lawyers have previously had occasion to argue against each other in this courtroom, and so I welcome you back.

Unlike the last time that you were arguing against each other, I don't have that many questions, except the one I just asked, which is: Is there any reason why I shouldn't convert

this into a preliminary injunction given the current state of the record?

You should assume in your arguments this morning that I am deeply familiar with your briefs and, also, have the administrative record, which I read over the weekend.

As we did before, I will allocate 45 minutes to each side. You can reserve time for a rebuttal argument by talking less than 45 minutes the first time you're at the microphone, and whatever time you've not used you will have available for rebuttal.

As I did last time, I will allow each side to make argument, and then I'll take a recess, and then I'll come back and we'll hear rebuttal arguments. If both of you tell me at the microphone that you don't intend to make a rebuttal argument, then I suppose I'll just take a recess and that will be that. But that's not what I'm expecting.

So with that, let me proceed. And I'll allow the moving party to go first. Mr. Gelernt.

MR. GELERNT: Thank you, Your Honor.

Our principal claim, as the Court knows, is that, like the first time around, this rule violates the asylum statute Section 1158. We believe that Congress has spoken clearly to the situation of an immigrant's, an asylum seeker's relationship to a third country.

And I want to start with one framing question because

ultimately we see the Government's argument as consistent needs -- inconsistent needs to be that there is exact language that directly says the administration cannot do a particular thing. We don't think that can possibly be the meaning of consistent. There would be no reason for Congress to say if we say X, you can't do Y.

Obviously, that seems to be what they are arguing because I think it is very difficult to look at Section 1158 and think Congress would have permitted this type of transit ban.

This transit ban will not only virtually eliminate asylum at the southern border, but it will eviscerate the two provisions in which Congress spoke clearly to transiting through a third country. And that's, of course, the firm resettlement provision and the third party provision. There would be no reason for the administration to ever bother with a third party agreement or to evaluate whether someone had been firmly resettled.

And, indeed, as I'm sure Your Honor is aware from news accounts, the administration has been trying to get a third party agreement with Guatemala and Mexico, has been unsuccessful, and now has decided they are going to do the ban anyway in clear contravention of what Congress decided.

I mean, Congress looked at this issue and said: Well, we're going to create two very narrow exceptions, and they are going to both hinge on making sure that the asylum seeker

really has a chance and a safe place to have a full and fair opportunity.

So firm resettlement could not be clearer. You must have permanent rights in that country.

And, indeed, the regulation specifically addresses the situation we have here, where it says if you transit through a country and you're escaping and the only reason you're going through that country is to get to another country, you haven't settled down, then you may seek asylum. You're not firmly resettled. You still may seek asylum in the United States. And the Ninth Circuit in the cases we've spoke, we've cited has addressed that very particularly.

So Congress is well aware that people would transit through when they are fearful and get to another country.

THE COURT: I'm not sure I need to reach this question, but let me ask you: Do you think that by providing these two exceptions, the safe third country bar and the firm resettlement bar, that Congress has in so many words occupied the field so that there could never be -- the Attorney General could never promulgate a regulation or a rule that addressed an asylum applicant who had transited through a third country?

MR. GELERNT: Your Honor, I think that's an important question, and thank you for that question.

Our position is that the Court does not need to go that far in this case. I mean, I can't conceive of a rule that

would address transit and say mere transit through another country might be okay, but I don't know that this Court needs to say definitively there can never be some creative rule dealing with transit that might be okay.

So we are really resting in this case on the fact that it is a very clear conflict; that there is no safety built in; there is no full and fair procedure. None of the sort of formal agreement, firm resettlement.

Whether there is some conceivable way to --

THE COURT: Your argument is really much more about the specific protections that Congress has built into these two bars --

MR. GELERNT: That's right, Your Honor.

THE COURT: -- and whether or not those protections are available in this particular rule.

MR. GELERNT: That's absolutely right, Your Honor.

I think if forced to answer definitively right now, I would say it's probably unlikely that a mere transit rule could survive, any type of mere transit rule, but certainly not this one.

I think that Congress was well aware that people transit through other counties. I mean, as Your Honor noted in the first asylum ban, when you enter between ports, unless you're Mexican, on land you've necessarily come through another country.

So this is not an issue that has escaped Congress's attention. I think they took pains to make sure that if we were going to take that momentous decision to send someone to another country to seek asylum, it would either be where that other country has agreed, through a formal formal agreement, yes, we will receive your asylum seekers, we will provide a full and fair procedure, and it will be safe; or there has been an individualized assessment: This person has permanent rights in that country and, therefore, doesn't really need our protection.

So that's our basic statutory argument. We think there is a clear conflict with 1158. And I think your question is the right one about whether you need to rule in this case that under no conceivable possibility could anybody create a transit rule. I don't think Your Honor would need to go that far.

I want to return to our arbitrary and capricious claim. As Your Honor knows, we didn't make that the first time around, although Judge Bybee in his Ninth Circuit opinion did comment that he thought the first asylum ban was arbitrary and capricious. We think this is a clear-cut case where -- finding that their rules are arbitrary and capricious.

As Your Honor knows, there are two basic bedrock administrative law principles --

THE COURT: I'm going to ask you to slow down a bit for the sake of the court reporter.

MR. GELERNT: Yes. Yes. I'm sorry, Your Honor. Sorry.

On our arbitrary and capricious claim the two basic administrative rules are that the administration must, must -- and this is a real decision in the Ninth Circuit, the *Butte County* and Supreme Court decisions going back -- must address contrary evidence in the rule and explain why that doesn't conflict with the rule they have created. Nowhere in the rule are they addressing the mountainous counter evidence.

And that's -- you can look at the reports from Human Rights First, from Amnesty International. I think the UNHCR report is particularly useful. And the reports go on and on explaining the dangers in Mexico and Guatemala; the fact that although Mexico was attempting to try and build an asylum system that works, it doesn't right now; that Guatemala's certainly doesn't.

And so for that reason --

THE COURT: But the administrative record about the dangers faced by persons transiting through Mexico and the inadequacy of the asylum system there, in the Government's administrative record, is stunning.

MR. GELERNT: Is, I'm sorry?

THE COURT: Stunning. Stunning.

This is what they call a softball question in our trade.

(Laughter.)

MR. GELERNT: That's why I just wanted to make sure I heard what you said.

No, I think that's right, Your Honor. I mean, obviously, we agree with that; that there is a -- and, you know, in fairness to the Government, we think that was fair of them to put in that because, I mean, that's what any expert would tell you; that they put that in. It shows how dangerous it is and, yet, they concluded under the rule that mere transit is okay because if people don't apply for asylum in those countries, it must be because they don't really have an urgent need for asylum in their own record.

So we are not asking you to go outside the record. Your Honor has already made clear from the first case that you would prefer to deal with these claims within the four corners of the record and that's all we're asking for you now. We have declarations, but we think you can do it just from the four corners of the record.

And so what we are saying is, A, they didn't address the counter evidence. That's dispositive right there. It's always arbitrary and capricious not to address the counter evidence. But even if they address the counter evidence, as Your Honor pointed out, we don't see how anybody could read this record and conclude, okay, well, those are safe countries that are going to give you a fair and full asylum procedure. Therefore, it must be that if someone didn't apply for asylum, they must

not have an urgent need.

So that would be our arbitrary and capricious claim.

On the notice and comment, I don't want to dwell on it too long. I think the foreign affairs claim is the same as the first time around, which Your Honor felt it was not sufficient. The standard the Ninth Circuit has set out of absolutely adverse concrete consequences is not met here and the Ninth Circuit had affirmed that.

I do want to address the good cause, because on remand from the Ninth Circuit --

THE COURT: You have to slow down again.

MR. GELERNT: I'm sorry, Your Honor. I apologize.

On the good cause on remand from the Ninth Circuit, Your Honor did find good cause based on an article that smugglers had been communicating with migrants and that could cause a surge. We believe that if that -- that is the only evidence in the administrative record again. We believe that the Government cannot really rely on that. And I think Your Honor noted that it was a fairly thin piece, but it was sufficient at the time to continue in perpetuity to rely on that article. And, indeed, the rule cites Your Honor's decision a couple of times.

And so I think at this point what the Government's argument basically boils down to Your Honor found that that article was sufficient for good cause, so here on in we can

always say there is going to be good cause. We're going to skip notice and comment and we are going to simply say no notice and comment because there could be a surge.

We don't think any -- that article now is sufficient at this point. At this point the Government should have been able to come up with more to document the surge.

There have been repeated immigration policies. In fact, there is a patchwork now. So if there were surges, the Government should be able to document it. Especially when this Court enjoined the last policy, people would have surged knowing that it could have been overturned on appeal.

I think at this point, given how many immigration policies there are -- I mean, it's hard for us to keep track -- it's very difficult, I think, to say everyone overseas will react immediately to each change in each policy. At this point if all the Government has is that one article, we don't think that that -- in this case that would satisfy good cause.

Unless the Court has questions about irreparable harm or the nationwide injunction, I would just say that it's exactly the same --

THE COURT: I was going to say, I don't. I mean, I think that Judge Bybee's opinion for the motions panel -- of all of the things from the first ***East Bay Sanctuary*** case that were addressed either in my prior orders or more particularly in Judge Bybee's order, that one seems to me to be the

absolutely closest fit.

MR. GELERNT: Right. So I will not address that unless the Court has questions.

So I would like to just, if that's okay with the Court, reserve the remainder of my time.

THE COURT: You're welcome to reserve as much as you like. It looks like you have about 34 minutes left.

MR. GELERNT: Okay, very good. Unless the Court has questions, I'll sit down then.

THE COURT: Very good.

MR. GELERNT: Thank you, Your Honor.

THE COURT: Good morning Mr. Stewart.

MR. STEWART: Good morning, Your Honor.

May it please the Court. This rule is lawful and it is an appropriately issued interim final rule.

I'd like to note, Your Honor, to bring to the Court's attention, that this morning Judge Kelly, in the District of Columbia, denied a TRO in a very similar case challenging the same rule by two organizational plaintiffs. Judge Kelly rested that ruling on an absence of showing of irreparable harm. He has asked the parties to move forward with a preliminary injunction proposal scheduled there.

He also offered preliminary thoughts in which he -- and there is -- we asked for an expedited transcript. This happened at 10:00 a.m. eastern this morning, Your Honor. I

don't have that yet, but I wanted to signal to you that he did provide preliminary thoughts on the merits and -- again, preliminary thoughts. And I want to be careful about that, particularly because I don't have a transcript. It was an oral ruling where he expressed strong doubts about the same statutory authority type arguments here and also suggested --

(Interruption in the proceedings.)

THE COURT: Hold on just a moment. A member of the public has just hissed.

Let me just say something. This is a court of law in which we respectfully consider all the arguments made by anybody before the Court, and the dignity of the court is one of the things that gives it its authority.

And so if you're here as a member of the public to observe these proceedings, I welcome you. These proceedings this morning are important to the country. This courtroom belongs to all of you, all of us. It belongs to all of us.

But I have to ask if you're here, that you respect the dignity of the proceedings and the dignity of the person making this argument and that you respect my colleague, Judge Kelly, in Washington D.C., who I'm sure gave this matter just as much thought as I have, and that we not hiss when people are making their arguments. Thank you.

Mr. Stewart, I apologize for the interruption.

MR. STEWART: I appreciate it, Your Honor. Thank you

very much.

He saw the notice and comment issue as a closer call, Your Honor, but did signal that he was inclined to find the good cause exception satisfied. Finally, he saw that the equities weighed against a TRO there.

So I flag those issues. I think I'll come back to them maybe a little later on on the relief question.

THE COURT: Let me say a little something about Judge Kelly, because he posted on the docket of his case last night an indication that he would be providing this ruling at 10:00 a.m. this morning, which is 7:00 a.m. our time.

And so I knew, number one, that the ruling was forthcoming. And I also knew that because he had chosen to give it in open court, it was unlikely that I would have the benefit of much of his reasoning even if I knew, as I now do and as you have said, what the result of his order was.

When I conducted a scheduling call with plaintiffs and the Government last Thursday morning, I suggested that we hold this hearing on Tuesday, which was yesterday, would have been yesterday. I set the hearing today instead at the Government's request because Mr. Reuveni, who is sitting next to you at counsel table, represented that you had another hearing to argue yesterday and I wanted to be respectful of the Government's choice of counsel.

Had we held this hearing yesterday, as I had suggested, I

would already have issued a ruling by now. In that circumstance I would not have expected Judge Kelly simply to terminate his consideration of the Washington D.C. case. I would have expected him to rule on the motion before him.

My ruling is not binding on him, just as his ruling is not binding on me. I would have expected him to rule on the motion before him and to allow a higher court to resolve any conflict, if there was one, which is the course of action that the Government essentially suggests at the very end of its opposition brief in this case.

And now that the shoe is on the other foot, I intend to follow the same course that I just outlined.

MR. STEWART: Correct, Your Honor.

And I made the point to Judge Kelly. I asked that he issue a ruling that was in keeping with and with due respect for Your Honor's own consideration of the merits here. He asked me to pin down what I meant by that, and I explained, look, it's really a question of scope of relief, if he were to get to a point of issuing relief. I said both judges hearing these cases, you know, should be able to consider and meaningfully rule on the issue.

So that's what we were saying, Your Honor.

THE COURT: And Judge Kelly has the benefit of the same luxury I do, which is we have the appellate courts to sort this out for us.

MR. STEWART: The point is taken, Your Honor, but I think, you know, I can hit this more on the relief point.

I think the point we're stressing is that, you know, any judge who this kind of issue is going to come before will, we presume, give full attention, will work as hard as they can to get the ruling right and will think that they have issued the best ruling they can.

Given the system we work in, the fact that we have two different courts and two judges trying to work it out, we're simply suggesting that the scope of any relief should be respectful of that.

There is something problematic about a situation where plaintiffs, organizational plaintiffs can lose in one forum after a fully-considered hearing, going through all their arguments, and can get that relief in a case they are not even a part of.

So that's what we're kind of pressing on the nationwide injunction.

THE COURT: Yes. And this is the argument that -- the argument made in our prior case. And I think Judge Bybee was quite clear in his response to that argument. And he sits on the Ninth Circuit, so I'm going to defer to the Ninth Circuit on that point.

MR. STEWART: Understood, Your Honor.

Getting back to just some of the points on this matter,

Your Honor. The thing that I would emphasize on the key points brought up by my friend with respect to Section 1158 is that Congress has not occupied the field as to how relationships with a third country or actions in a third country or things that could later happen in a third country can be considered in the context of asylum eligibility. The Safe Third Country Agreement simply does not even actually address transit through a country at all.

You can have a situation under that provision where somebody is being -- a safe third country agreement authorizes return -- or not return, removing somebody to a country that they may never have transited. It just requires an agreement with that other country. A safe -- kind of a safe place to apply for asylum, Your Honor. It's not addressing squarely this issue of transit.

So this rule addresses a very different issue. Again, there can be some overlap. You can have a situation where a safe third country involves somebody who transited there, but there is nothing necessary about transit through a safe third -- through that country for a safe third country agreement to be in play. And that, the safe third country context, again, requires removal to that country.

That's not what we have here. It's a situation where somebody would be -- they have their non-resettlement related concerns addressed, if any, and then be removed, presumedly in

most cases, to their country of origin.

So there is no occupy-the-field problem here, Your Honor. There is no impinging on a determination in the safe third country provision with respect to how transit can be weighed and dealt with on a categorical basis in the eligibility context. And I think --

THE COURT: Is the Government not concerned with whether something is a proxy for asylum protection?

I mean, for example, there are three international treaties. If a country is a signatory to any one of them, then that country falls within the rule; correct? The new rule?

MR. STEWART: Say it again, Your Honor?

THE COURT: Well, I'd have to have the language of the rule in front of me. My language is not going to be very precise.

But in order for the rule to be triggered, an asylum applicant has to have passed through a country that is a signatory to one of three international agreements; correct?

MR. STEWART: That's correct, Your Honor.

THE COURT: And isn't that because if the country is a signatory to one of those agreements, it is a signal that that country protects the rights of what in this country would be an asylum seeker. That's the reason for that requirement.

MR. STEWART: I mean, I think that's part of it. I mean, I wouldn't necessarily say "asylum seeker," Your Honor,

but non-established type principles, I think, is what --

THE COURT: Well, the rule bars eligibility for asylum. So that only matters to someone who is seeking asylum; right? In other words, you don't care.

So that's -- so we can agree that we're focused on asylum seekers, can't we?

MR. STEWART: Correct. But the rule is a little broader about protection in a third country and seeking whatever protection or relief may be available, Your Honor. And I think there could be a distinction often drawn between asylum, say, and withholding or removal. I don't mean to split hairs, but --

THE COURT: Your rule doesn't affect withholding or removal.

MR. STEWART: It doesn't. It preserves that.

THE COURT: Okay. So even if you -- I'm just going to go with asylum seeker, because that's what the rule -- that's who is the object of the rule.

So we have this requirement that a third country have signed one of these three international agreements. Can you think of another reason why the rule contains that requirement, other than as a proxy for the kind of protections that go along with asylum?

MR. STEWART: I think it's a consideration that just supports the reasonableness of requiring somebody to apply for

asylum in one of these countries, Your Honor. And it reaffirms the likelihood that there may be more than one country.

The rule requires just the one country. You know, one of those countries to be something that somebody transited through.

THE COURT: Is that a concept of equivalence, do you think?

In other words, we might say it's strong equivalence or weak equivalence, but isn't what the rule is doing is to say: We think there is equivalent protection elsewhere and if there is equivalent protection elsewhere, you need to have applied for asylum there.

MR. STEWART: I think -- I don't know that we need just precise congruence or equivalence, Your Honor. What we're saying is that we --

THE COURT: I'm not saying strong equivalence. Please listen to the question.

I'm asking whether conceptually that's equivalence. It's not perfect. We could say it's weak or it's strong. But we're searching for some kind of equivalence, and that's what -- that's why it's reasonable to require an asylum seeker to have applied somewhere else; isn't it?

MR. STEWART: I'd say -- and I don't mean to fight the hypothetical, Your Honor. I would say that it's -- there is adequate and appropriate protection available or there

should be an effort to seek such adequate and appropriate protection before coming here.

THE COURT: I'll go with adequate and appropriate.

So now coming back to your point about conflict. Assuming we can agree -- I've learned through experience that I might sometimes be surprised when we don't agree. But assuming that we can agree that the new joint interim rule dispenses with some of the protections that Congress has required for the same person -- in other words, a person that might have previously had to consider only the safe third country bar or the firm resettlement bar now might be subject to this new joint interim rule -- that because the rule dispenses with some of these protections, Congress might not have the same view that the administration does of what's adequate and appropriate. That is what I want you to address.

MR. STEWART: Sure. So I think the difference is this, Your Honor. It's one thing to do the exact same -- you know, force the exact same result and dilute prerequisites to getting that result. But we don't have that here.

The safe third country bar, what it allows -- it's very potent. It's unyielding. If you fall within -- if you can be removed somewhere under that provision, you can't even apply for asylum, but you're removed to that country.

And, again, that's through an agreement with that country and all the steps are taken to make sure that that is an

adequate protected place to apply for asylum.

The difference here is you're not removed to that country. You just need to seek protection there. You need to seek relief.

And, again, the safe third country agreement provision isn't even really addressing transit by its terms. It's a matter that's just focused with the fact that, look, this person -- this person came here. We have this agreement with this other country where we can send them, where they can pursue, you know, relief. It could be completely separate. It could be a place they have not been before at all.

THE COURT: So let's -- well, let's tease that out a little bit. Let's say that we have an applicant from Guatemala. That person will have passed through Mexico on the way here. And let's put to one side for a moment whether that person might have qualified for an alternative form of relief, such as withholding or removal, and focus exclusively on asylum.

If that personal previously had been subject to the safe third country bar, you're saying they would have been removed to a safe third country, and that's not what's happening here.

Under the rule what happens to that person if they don't qualify for an alternative form of relief? They appear at the southern border of the United States. They have traveled through Mexico. What happens to them?

MR. STEWART: They presumably would be removed to the country of origin, Your Honor. There are other options sometimes, but --

THE COURT: So they would go back to Guatemala.

MR. STEWART: Right, Your Honor.

THE COURT: Okay.

MR. STEWART: Right. It's not like -- you know, again, it's not the third country, but that's just normally how removal works. It's, you know, likely usually to the country of origin.

THE COURT: Yes. Okay.

MR. STEWART: Firm resettlement bar, Your Honor, the point I'd emphasize here is that similar to the safe third country situation -- we've hit these in our brief, so I won't go too long on the point. This is a situation where, again, we are talking about somebody transiting through the country, but it's almost -- Congress wanted to be sure that somebody who had such a good situation --

THE COURT: Mr. Stewart, the good news is you have something in common with Mr. Gelernt. The bad news is that you both talk too quickly for the court reporter.

MR. STEWART: Understood, Your Honor.

THE COURT: I'll ask you to slow down a little bit.

MR. STEWART: It might not be the last time I need to be reminded, Your Honor. I will do my best.

So, again, it's a provision that says, look, if you have such a strong situation in a third country that you are firmly resettled there, permanent offer of residence, that sort of thing, then, you know, no asylum for you.

That doesn't prohibit consideration of the sort of thing that this rule embodies, which is: Have you applied for relief in another country? And that's something that can be done in light of changed circumstances.

My friend does point out to some Ninth Circuit cases that talk about the reasonableness of expecting someone to apply for asylum in a third country, Your Honor. What I would emphasize there is that what those cases are getting at is they rest on a factual assumption about reasonableness. And it's the Attorney General and Secretary who are in a position to actually assess those assumptions, make policy decisions based on them and --

THE COURT: But the APA -- turning to that point. Doesn't the APA impose some requirement on the agencies to, as you say, actually assess the evidence that they have?

You heard my comment about the administrative record. And there is some pretty tough stuff in there, at very great length about what things are actually like in Mexico.

Do you want to speak to that?

MR. STEWART: Your Honor, the record -- this is at pages such as 231 to 232 about the joint statement. This kind of hits some of our good cause foreign affairs efforts, efforts

to get things here.

It says the Administration has been working through the -- through immigration initiatives and other means to try to improve the situation, to try to make sure that Mexico is considering the claims of migrants and adequately dealing with migration through their territories. There has been a big progress there. Again, that's what the joint declaration recognizes and --

THE COURT: What the administrative record says is that applications are up dramatically, but there is no indication that -- in the record that the Mexican asylum system has grown to be able to process those applications.

MR. STEWART: Your Honor, what the record does say and what the rule does say is that, look, the United States is working with Mexico and it understands that Mexico is committed to and will abide -- it expects it to abide by its obligations. We provide, you know, as much evidence as we have alluded to, at least in our briefing, regarding that.

And I think we fairly considered that there are issues here. We don't -- you know, we don't require somebody to apply in every country. So it reduces some risks, you know, there. It makes a tailored measurement, just apply in one country and get that ruling.

So I think it does consider those points, Your Honor.

THE COURT: The rule identifies as its concern the

so-called northern triangle countries; correct?

I am just telling you there are exactly four references to northern triangle countries in the rule, so I think a fair reading of it is that that's a concern of the rule. Is that wrong?

MR. STEWART: It's a big concern, Your Honor. That's where a big part of the strain comes from here.

THE COURT: Fair enough.

And then there are some conclusions in the rule itself and some in the administrative record about the asylum system in Mexico. But if you look at a map, the other country through which persons might pass if they are leaving northern triangle countries is Guatemala. And I was not able to find in the rule or anywhere in the administrative record a scintilla of evidence about the adequacy of the asylum system in Guatemala.

So I want to know, am I missing anything? There is not even mention of it in the rule.

MR. STEWART: I think -- I mean, I think the evidence that is in the record on that reflects progress in that regard.

Your Honor, if I have additional things, I can maybe flag them on additional time.

THE COURT: I will go ahead. Even though we've not used all that much time, I'm going to go ahead and take the recess to give both sides a chance to go through their materials before rebuttal, so that's fine.

MR. STEWART: Thank you, Your Honor.

A few other points I wanted to make sure to hit. This is quite different in kind, I think, from the Section 1158(a)(1) port of entry, manner of entry situation that the Court found dispositive and important in the first *East Bay* case.

Again, this is not -- this is not something that the Court found -- it's not comparable to what the Court found to run afoul of the may or may not apply regardless of whether -- you know, manner of entry.

THE COURT: I would agree that the analysis here is slightly more complicated.

In our earlier -- in the earlier, it's not our case. In the earlier case, that was sort of the platonic form of conflict and here the analysis is a little more elaborate.

MR. STEWART: We're still contesting that, Your Honor, but we understand -- we'll see how it shakes out, but I understand the point, Your Honor.

THE COURT: That's one I definitely didn't expect you to agree with, so that's fine.

MR. STEWART: Very good, Your Honor.

On arbitrary and capricious points. On the TVPRA I think, you know, our briefs lay that out. I think that falls with the points we've already flagged. That here is more of a -- baked into the arbitrary and capricious challenge, which I'll address more globally now.

The record does a very good job of supporting, Your Honor, this problem of unconstrained migration putting a strain on our system. Your Honor is well familiar with those points from the prior case and things continue on.

It's really aimed quite reasonably at what the UNHCR itself recognized in 1991 as a shared international problem about reducing unfounded claims and different -- different international partners working together to solve these things. I think that's a key thing this rule gets at.

On exceptions and notice and comment, Your Honor, if I can turn back to that briefly. I think this falls well within Your Honor's teaching in its most recent -- in Your Honor's most recent ***East Bay*** ruling.

I would emphasize, Your Honor, we're not resting simply on one newspaper article. There are other -- other articles, as Judge Kelly recognized today. I mean, he said "multiple articles." I'm not -- he didn't identify which ones he was flagging, but I would point out, Your Honor, that we have other more recent material from the ***GlobalPost***, I believe is one.

THE COURT: What would you say -- because I think -- let's say that the Court were to conclude -- because there is more than one article in the record now.

Let's say the Court were to conclude that that one ***Washington Post***, was it? Anyway, that one article. You and I have the same one.

MR. STEWART: I think it's *Washington Post*, Your Honor.

THE COURT: That that was the only one that attempted to actually tie the publication or announcement of an immigration rules change with an uptick in migration activity. Mr. Gelernt's argument is: Well, if that's true, that can't -- that one article can't be carte blanche forever.

Do you want to respond to that argument?

MR. STEWART: Sure, Your Honor.

I think what we're currently dealing with is a crisis that we have identified that's become particularly stark over the last, you know, few years; the spike in family units and the issues that that's put -- the strain that that has put on our asylum system.

We're not suggesting that that would be the situation forever. Again, I mean, migration trends change --

THE COURT: Well, the question is not what if there were a change in the facts at the border, because at that point I think the article just becomes irrelevant.

The question is: If the facts at the border remain similar so that the United States continues to experience very large numbers of migrants and continues to feel great administrative burdens because of that, could the fact that in 2018 a *Washington Post* reporter said something continue to permit the Government as it wheels out new immigration policies

to dispense with notice and comment and just to say: Well, in 2018 this fellow at the *Washington Post* said this. That's, I think, Mr. Gelernt's argument.

MR. STEWART: Right. And we're not saying that, Your Honor. Again, we have more recent -- we have more recent articles.

I can't give a precise timeline for any of these, Your Honor, but what I can tell you is that we have -- I believe when I was here last fall, Your Honor, we had, I think it was -- I can't remember if it was in the 700,000s or it hit 800,000 or what as the immigration backlog. It's now over 900,000 and we have continuing surges.

On Pages 664 to 665 we have documents that indicate, like, look, when you change these policies, you have a big influx, and other information saying that people are really trying to get to the United States.

768 of the record says, look, migrants are informed. They understand the basics of the incentives and they are informed about how changes in the law or changes in policy can affect their options when they get here.

So I think we don't need to rest, I think, on just one article, Your Honor, and have that frozen in time. We're not pressing the need to, you know, say that that would be carte blanche forever. I don't think that Your Honor needs to reach the issue and I would suggest that, look, we have other pieces

that surely under Your Honor's prior ruling are enough on good cause.

With respect to foreign affairs, and I don't want to go too much longer, Your Honor, given the desire to save some time for rebuttal. I would emphasize that the migrant protection protocols which have been in effect for six or seven months and is another, you know, one of these initiatives to put pressure and used to share the burdens with Mexico and other partners, that since those have been in effect, you know, progress has been made on a number of fronts. You know, a few months after those were announced -- a few months after those were announced, we had the U.S.-Mexico joint declaration.

So I think it does show that this kind of an initiative promptly put in effect is important in negotiations and just keeping the pressure on.

I think one thing the record really does hit home very effectively, Your Honor, is that pressure on Mexico works. I mean, as with negotiations more generally, you can't always -- you know, it's not always an ask nicely and hope somebody helps you out. It's keep the pressure on and make sure that everybody is doing their part in this international challenge we're facing. So I think we are very solid on foreign affairs.

Harms, Your Honor. I would -- I would hit some of the points I flagged earlier with respect to Judge Kelly's ruling; that he did really lead with irreparable harm.

And I understand Your Honor's points about --

THE COURT: He's in a different circuit than I am.

MR. STEWART: He is, Your Honor.

THE COURT: I haven't read the cases that he presumably read before he issued his ruling, nor would I need to do that, just as I expect he may not have read the cases that I've read. But one of the cases that I read was the Ninth Circuit's opinion in the prior ***East Bay*** case.

And so as I started by saying, I think to Mr. Gelernt, that on the balance of harms and that part of the analysis, I don't know that there is much new here. If there is, you should tell me.

MR. STEWART: I think, you know, we'll -- we've made the points we want to in our brief.

I take your point about ***East Bay*** and I understand what Your Honor is saying on that.

We think here we have a cognizability of harms problem. We do think there is a lot of speculation given that, for example, none of the irreparable harm declarations that my friends have submitted really acknowledge how things would change if, as the Government expects, this rule will change incentives and bring asylum claims to the country that are more meritorious.

I mean, for all that has been alleged, I mean, this could lead to a situation where it vastly improves the international

approach to refugees; make sure that the people who actually reach our southern border seeking asylum are making credible fear claims, do have strong claims. And when you have that, you know, could go either way sort of thing based on their declarations, I submit -- again, I understand what Your Honor has said about ***East Bay***, but I submit here, given where things are, it's -- there is a different result.

Finally, I just want to say circling back to something mentioned at the beginning, Your Honor, before I try to save remaining time. Just to be clear with respect to the scheduling of the hearings, I was in Boston yesterday and wanted to make sure that I could go to all hearings. Judge Kelly is the one who ordered the hearing on Monday. So I just want to make clear, we -- you know, we did our best to accommodate all of that.

THE COURT: No, no. Now it's my turn to be clear. I fault no one. I don't think the Government was trying to play games with me. That's not -- I don't think that. And I don't think Judge Kelly -- I don't have any issue with Judge Kelly either.

My point was not that I thought that anybody was playing fast and loose with the schedule. My point is just these are two District Courts, both trying to do their best work on an issue of national importance, and they both need to be allowed to do their work in its entirety. That's all.

MR. STEWART: Thank you, Your Honor.

I just wanted to be clear, because we have a lot of balls in the air and we want to make sure that the Court is -- we're keeping it as informed as we can.

THE COURT: Mr. Stewart, you should be flattered. I granted Mr. Reuveni's request so that I could hear your argument once again.

MR. STEWART: It's a great honor. Thank you, Your Honor.

THE COURT: Very good.

MR. STEWART: With that, Your Honor, I'm happy to save additional time for rebuttal.

THE COURT: Very good. I believe, if my eyesight is accurate looking down there, you have about 17 minutes and the plaintiffs have about 34 minutes.

I'm going to honor my promise to the parties and take a recess for 15 minutes. Thank you.

(Whereupon there was a recess in the proceedings from 10:15 a.m. until 10:30 a.m.)

THE COURT: Mr. Gelernt.

MR. GELERNT: Thank you, Your Honor. I just have a few very brief points.

On the administrative record points, whether there are additional articles beyond that one ***Washington Post*** article, I don't know all the articles that the Government was referring

to, but I think that they referenced one GlobalPost article at AR 664-665 and another article at 678. The article at 678 deals with different demographics of asylum seekers and the other one at 664-665 deals with humanitarian visas.

The only thing I would say about that is that those articles do not talk about a direct link between information to migrants and surges. They are about different things.

I think the other point I wanted to make is that obviously the rule is not going to, for all the reasons we've said in our brief, only bring the most meritorious claims. And, in fact, the odd thing is that if you had denied asylum somewhere else, you can then come and apply. So those are presumably the weakest claims.

The final point, I wanted to just address Your Honor's question that you issued over the weekend about whether we would be -- whether we think it's appropriate to treat this as a P.I. Because we did get the record in time to address it in our brief, we think that that is probably -- that is the appropriate way to go, is to treat this as a preliminary injunction given that both sides addressed the record.

Unless there are further questions, I will sit town.

THE COURT: Mr. Gelernt, I don't have any. Thank you.

MR. GELERNT: Okay. Thank you, Your Honor.

THE COURT: Mr. Stewart.

MR. STEWART: Thank you, Your Honor. I'll be brief as well.

With respect to just some of the incentives and the good cause, I would emphasize with respect to the GlobalPost article, Page 665, Your Honor, of the record.

THE COURT: Yes.

MR. STEWART: It talks about an influx of new arrivals following the provision of visas in Mexico. Again, it supports the quite logical understanding that the announcement of a policy has an effect on influx and it can be, you know, a quite prompt effect.

You know, this one, if it's as big an effect as Mr. Gelernt says, it would be quite reasonable to expect a big response to that. That sort of change, which goes -- which very strongly supports our good cause argument.

Two other points, Your Honor. To the extent that Your Honor were inclined to rule on the ground of just the arbitrary and capricious challenge, we would submit that if the Court were to believe to reach the conclusion that the record doesn't support the policy for some reason, we would submit the appropriate remedy in that case would be at most a remand to the agency without *vacatur*, where the Court would say: Look, I think the record does not support the change in policy. Agency, go back and provide support for it.

THE COURT: I'm familiar with that mechanism.

Wouldn't that be appropriate in the situation where I found that the rule was not inconsistent with the existing provisions of 1158, on the one hand, but on the other hand I found that the rule was arbitrary and capricious? In that instance, then, the mechanism that you're describing would be available to me; but if I found that it was inconsistent, it would not be. Isn't that true?

MR. STEWART: If you rule on the statutory authority ground --

THE COURT: Right.

MR. STEWART: Right. It's the arbitrary and capricious ground that we're emphasizing there.

I think a reasonable example, going back to the migrant protection protocols, was the Ninth Circuit stay panel's decision there, where it stayed a nationwide injunction and it did so on the ground that, look, you know, we don't -- we think that the statutory authority is likely there and that's that. And there was also a notice of -- you know, a legislative rule issue there.

You know, those were the grounds that would support a nationwide injunction. Therefore, since those grounds -- the stay panel found wanting, the Court stayed the nationwide injunction.

THE COURT: Is that Judge Seeborg's case in the District Court?

MR. STEWART: It was, Your Honor.

THE COURT: Okay. I have the case in mind.

MR. STEWART: And that's 924 F.3d 503. I believe it's 508 to 509. It's a short opinion and I think provides good support if the Court were to rule on that ground.

Finally, Your Honor, the Government would be amenable, would agree as well that conversion from a TRO to a preliminary injunction would be appropriate.

The point that I would just emphasize, Your Honor, is that as in the prior case and as we've noted in our briefing here, we oppose that -- you know, aside from permitted purposes, we would oppose adding additional points to the record on, say, the arbitrary and capricious challenge. You know, as we've said, if the Court were to want to consider items outside the record --

THE COURT: If I were to enjoin this rule, I do not anticipate that I would speak to anything that's outside the administrative record, first of all.

And secondly, I appreciate the parties agreeing that a preliminary injunction is appropriate. Whoever is unsuccessful today, I'm sure will want immediate appellate review. And if the Court issues a temporary restraining order, it can create questions in the mind of the Ninth Circuit as to whether immediate review is appropriate. And if you jump over the TRO stage, then you just eliminate that question.

MR. STEWART: Okay. And if there's nothing else, Your Honor, I think I would reiterate the points we've made in our briefs.

THE COURT: All right. I don't have any additional questions for you either.

MR. STEWART: Thank you, Your Honor.

THE COURT: Thank you both very much for your arguments, for your thorough and well-written briefs, and for the opportunity once again to work on something of such interest.

This motion is now under submission. I anticipate that an order will issue in writing later today. For now the motion is under submission.

Thank you.

(Proceedings adjourned.)

CERTIFICATE OF OFFICIAL REPORTER

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Debra L. Pas

Debra L. Pas, CSR 11916, CRR, RMR, RPR

Thursday, July 25, 2019

Exhibit C

Appendix of Administrative Record Citations

No. 19-16487

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EAST BAY SANCTUARY COVENANT, et al.
Plaintiffs-Appellees,

v.

WILLIAM P. BARR, Attorney General of the United States, et al.
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

APPENDIX OF ADMINISTRATIVE RECORD CITATIONS IN EMERGENCY MOTION UNDER CIRCUIT RULE 27-3 FOR ADMINISTRATIVE STAY AND MOTION FOR STAY PENDING APPEAL

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INDEX TO APPENDIX

DOCUMENT **PAGE**

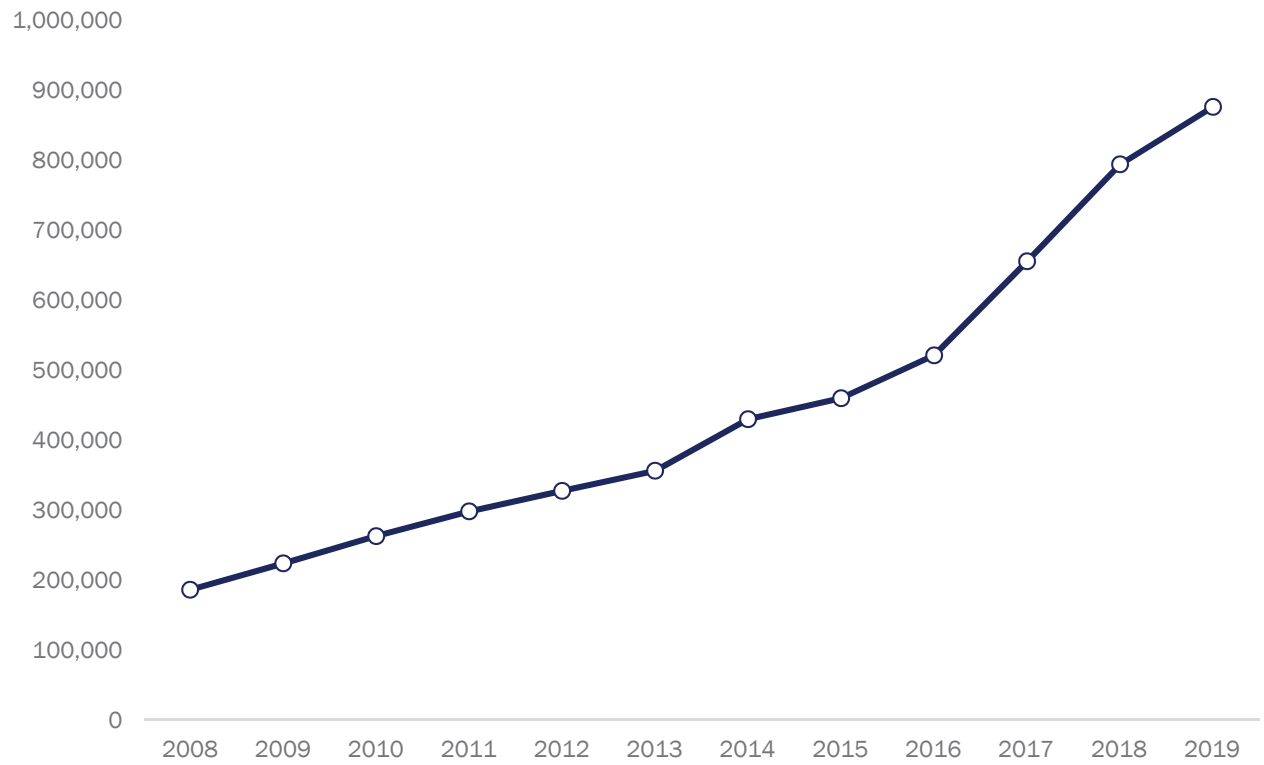
Executive Office for Immigration Review (EOIR)
Pending Cases as of May 30, 2019

Pending Cases shown with I-589 Applications as of May 30, 2019

FY	Pending I-862 and I-863 cases	Pending I-862 and I-863 cases with Asylum Application
2019 (as of May 30, 2019)	904,189	436,382

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
ADJUDICATION STATISTICS

Pending Cases[1]

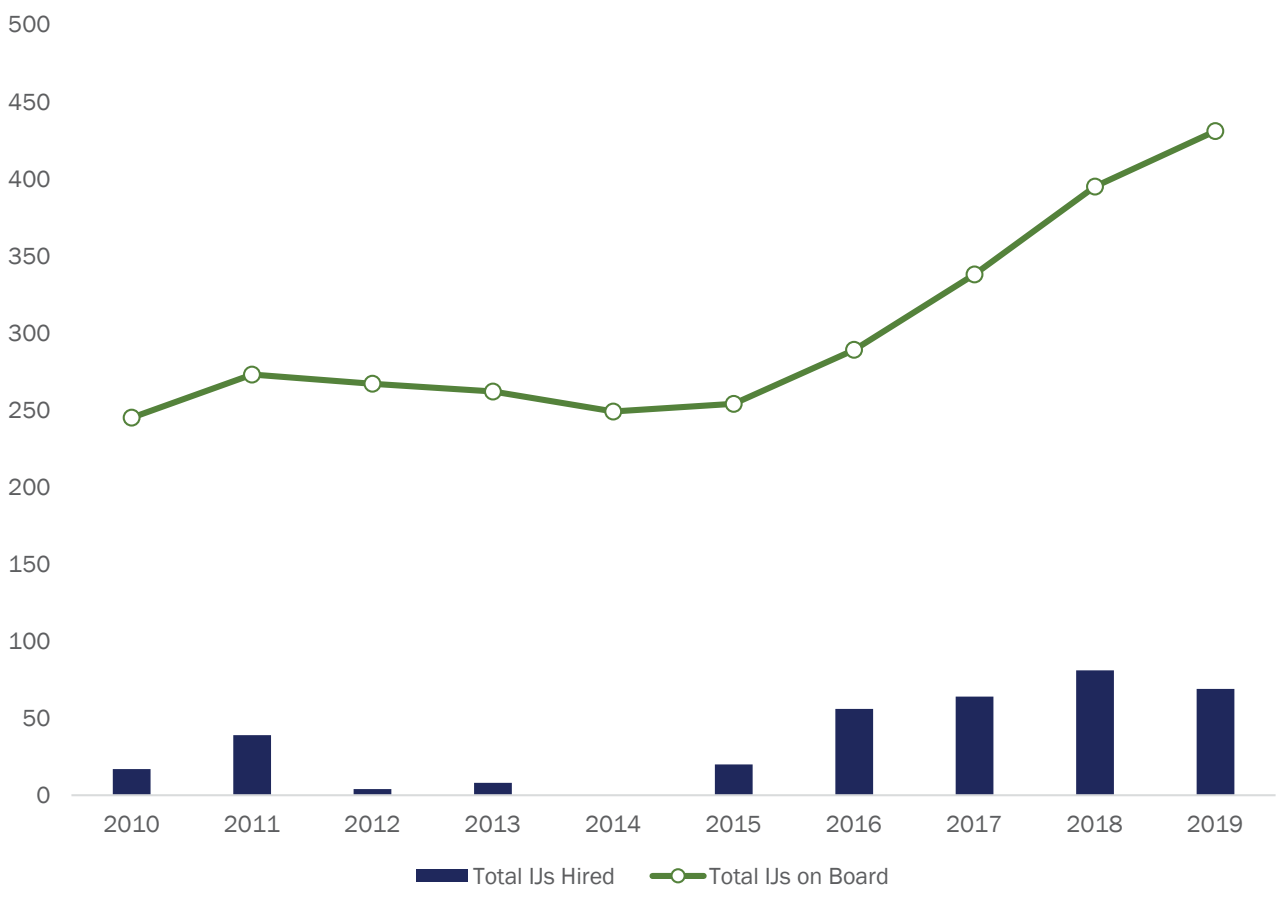


FY	Pending Cases at End of Fiscal Year
2008	186,095
2009	223,761
2010	262,718
2011	298,148
2012	327,527
2013	356,167
2014	430,004
2015	459,915
2016	521,284
2017	655,698
2018	794,316
2019 (Second Quarter)[1]	876,552

Data Generated: April 23, 2019
[1] Pending cases equals removal, deportation, exclusion, asylum-only, and withholding only.
[2] FY 2019 Second Quarter through March 31, 2019.

Executive Office for Immigration Review
Adjudication Statistics

Immigration Judge (IJ) Hiring



FY	Total IJs Hired	Total IJs on Board
2010	17	245
2011	39	273
2012	4	267
2013	8	262
2014	0	249
2015	20	254
2016	56	289
2017	64	338
2018	81	395
2019 (Third Quarter)	69	431

Data Generated: July 2019

Credible Fear Workload Report Summary
FY 2018 Total Caseload

	Totals	Oct-17	Nov-17	Dec-17	Jan-18	Feb-18	Mar-18	Apr-18	May-18	Jun-18	Jul-18	Aug-18	Sep-18
Case Receipts	**99,035**	7,296	7,307	7,462	8,121	6,621	8,266	8,500	9,968	9,742	6,565	10,230	8,957
Interviews Conducted	**85,018**	5,339	6,365	6,265	6,926	5,699	7,280	7,142	8,877	8,941	6,065	8,066	8,053
All Decisions	**97,728**	**6,359**	**7,494**	**7,164**	**8,108**	**6,880**	**8,640**	**7,869**	**10,067**	**10,080**	7,155	8,755	9,157
Fear Established (Y)	**74,677**	4,797	5,781	5,606	6,171	5,134	6,347	6,175	8,079	7,472	5,246	6,639	7,230
Fear Not Established (N)	**9,659**	531	591	669	715	676	767	719	821	1,314	945	1,082	829
Closings	**13,392**	1,031	1,122	889	1,222	1,070	1,526	975	1,167	1,294	964	1,034	1,098

Credible Fear Workload Report by Month Total Caseload

OCT. 2017 (FY 2018)

	Totals	ZAC	ZAR	ZBO	ZCH	ZHN	ZLA	ZMI	ZNK	ZNY	ZOL	ZSF
Case Receipts	**7,296**	859	46	10	152	5,390	244	59	199	13	59	265
Interviews Conducted	**5,339**	625	40	2	89	3,943	199	41	149	16	42	193
All Decisions	**6,359**	**811**	**68**	**2**	**108**	**4,675**	**203**	**50**	**172**	**16**	**49**	**205**
Fear Established (Y)	**4,797**	502	37	2	65	3,604	192	30	127	14	35	189
Fear Not Established (N)	**531**	124	4	0	24	328	7	11	22	2	7	2
Closings	**1,031**	185	27	0	19	743	4	9	23	0	7	14

NOV. 2017 (FY 2018)

	Totals	ZAC	ZAR	ZBO	ZCH	ZHN	ZLA	ZMI	ZNK	ZNY	ZOL	ZSF
Case Receipts	**7,307**	538	167	44	153	5,590	352	71	122	3	65	202
Interviews Conducted	**6,365**	497	46	1	136	4,972	322	21	147	1	20	202
All Decisions	**7,494**	**660**	**75**	**1**	**163**	**5,809**	**346**	**25**	**160**	**2**	**22**	**231**
Fear Established (Y)	**5,781**	411	36	1	124	4,545	302	20	127	1	18	196
Fear Not Established (N)	**591**	94	11	0	13	425	20	1	19	0	2	6
Closings	**1,122**	155	28	0	26	839	24	4	14	1	2	29

DEC. 2017 (FY 2018)

	Totals	ZAC	ZAR	ZBO	ZCH	ZHN	ZLA	ZMI	ZNK	ZNY	ZOL	ZSF
Case Receipts	**7,462**	698	375	28	125	5,135	364	201	191	39	44	262
Interviews Conducted	**6,265**	488	402	18	131	4,412	271	96	181	0	47	219
All Decisions	**7,164**	**632**	**434**	**18**	**152**	**5,043**	**288**	**106**	**196**	**0**	**60**	**235**
Fear Established (Y)	**5,606**	360	367	17	108	4,011	246	84	159	0	41	213
Fear Not Established (N)	**669**	123	37	1	23	411	24	12	25	0	6	7
Closings	**889**	149	30	0	21	621	18	10	12	0	13	15

JAN. 2018 (FY 2018)

	Totals	ZAC	ZAR	ZBO	ZCH	ZHN	ZLA	ZMI	ZNK	ZNY	ZOL	ZSF
Case Receipts	**8,121**	883	400	15	108	5,675	432	73	203	14	127	191
Interviews Conducted	**6,926**	725	283	1	77	5,046	373	33	162	1	61	164
All Decisions	**8,108**	**922**	**357**	**3**	**94**	**5,840**	**406**	**42**	**194**	**1**	**69**	**180**
Fear Established (Y)	**6,171**	559	262	1	67	4,556	337	29	146	1	55	158
Fear Not Established (N)	**715**	175	21	0	9	443	37	4	14	0	6	6
Closings	**1,222**	188	74	2	18	841	32	9	34	0	8	16

FEB. 2018 (FY 2018)

	Totals	ZAC	ZAR	ZBO	ZCH	ZHN	ZLA	ZMI	ZNK	ZNY	ZOL	ZSF
Case Receipts	**6,621**	653	217	5	120	4,878	255	103	155	4	47	184
Interviews Conducted	**5,699**	566	167	7	96	4,061	270	121	140	68	63	140
All Decisions	**6,880**	**757**	**149**	**8**	**106**	**4,926**	**304**	**142**	**156**	**78**	**99**	**155**
Fear Established (Y)	**5,134**	449	114	6	48	3,775	257	104	116	67	76	122
Fear Not Established (N)	**676**	157	20	0	23	411	24	11	7	5	10	8
Closings	**1,070**	151	15	2	35	740	23	27	33	6	13	25

MARCH 2018 (FY 2018)

	Totals	ZAC	ZAR	ZBO	ZCH	ZHN	ZLA	ZMI	ZNK	ZNY	ZOL	ZSF
Case Receipts	**8,266**	787	389	5	82	5,959	270	82	153	5	151	383
Interviews Conducted	**7,280**	609	363	7	57	5,531	166	26	157	0	107	257
All Decisions	**8,640**	**683**	**386**	**8**	**126**	**6,615**	**205**	**40**	**180**	**0**	**100**	**297**
Fear Established (Y)	**6,347**	435	301	8	69	4,884	141	31	140	0	81	257
Fear Not Established (N)	**767**	124	47	0	17	533	19	0	14	0	5	8
Closings	**1,526**	124	38	0	40	1,198	45	9	26	0	14	32

APRIL 2018 (FY 2018)

	Totals	ZAC	ZAR	ZBO	ZCH	ZHN	ZLA	ZMI	ZNK	ZNY	ZOL	ZSF
Case Receipts	**8,500**	812	224	16	138	6,092	474	77	153	14	213	287
Interviews Conducted	**7,142**	753	207	9	93	4,857	482	44	149	1	217	330
All Decisions	**7,869**	**905**	**246**	**9**	**97**	**5,249**	**551**	**52**	**174**	**1**	**249**	**336**
Fear Established (Y)	**6,175**	558	187	7	69	4,209	453	39	160	0	216	277
Fear Not Established (N)	**719**	190	32	0	10	414	34	1	5	1	13	19
Closings	**975**	157	27	2	18	626	64	12	9	0	20	40

MAY 2018 (FY 2018)

	Totals	ZAC	ZAR	ZBO	ZCH	ZHN	ZLA	ZMI	ZNK	ZNY	ZOL	ZSF
Case Receipts	**9,968**	1,106	337	45	103	7,025	654	67	184	4	140	303
Interviews Conducted	**8,877**	924	263	27	91	6,452	556	59	156	0	109	240
All Decisions	**10,067**	**1,107**	**309**	**35**	**119**	**7,279**	**570**	**71**	**170**	**0**	**127**	**280**
Fear Established (Y)	**8,079**	730	212	28	78	6,040	484	51	117	0	97	242
Fear Not Established (N)	**821**	167	48	1	21	485	43	8	23	0	14	11
Closings	**1,167**	210	49	6	20	754	43	12	30	0	16	27

JUNE 2018 (FY 2018)

	Totals	ZAC	ZAR	ZBO	ZCH	ZHN	ZLA	ZMI	ZNK	ZNY	ZOL	ZSF
Case Receipts	**9,742**	939	402	72	76	6,547	532	73	203	12	419	467
Interviews Conducted	**8,941**	878	420	54	40	6,126	521	43	189	2	351	317
All Decisions	**10,080**	**1,034**	**488**	**55**	**37**	**6,988**	**566**	**59**	**225**	**1**	**368**	**259**
Fear Established (Y)	**7,472**	668	316	49	26	5,224	479	34	178	1	281	216
Fear Not Established (N)	**1,314**	176	76	4	3	913	66	5	29	0	30	12
Closings	**1,294**	190	96	2	8	851	21	20	18	0	57	31

JULY 2018 (FY 2018)

	Totals	ZAC	ZAR	ZBO	ZCH	ZHN	ZLA	ZMI	ZNK	ZNY	ZOL	ZSF
Case Receipts	**6,565**	1,126	432	44	117	3,686	394	77	88	2	354	245
Interviews Conducted	**6,065**	840	242	31	106	3,680	375	51	91	0	333	316
All Decisions	**7,155**	**950**	**287**	**37**	**136**	**4,384**	**403**	**72**	**107**	**0**	**395**	**384**
Fear Established (Y)	**5,246**	640	163	27	83	3,231	343	39	77	0	297	346
Fear Not Established (N)	**945**	145	46	5	25	616	32	14	14	0	37	11
Closings	**964**	165	78	5	28	537	28	19	16	0	61	27

AUGUST 2018 (FY 2018)

	Totals	ZAC	ZAR	ZBO	ZCH	ZHN	ZLA	ZMI	ZNK	ZNY	ZOL	ZSF
Case Receipts	**10,230**	1,492	127	42	230	6,986	637	74	156	15	277	194
Interviews Conducted	**8,066**	1,167	167	33	174	5,405	488	63	118	0	277	174
All Decisions	**8,755**	1,249	235	34	223	5,766	503	72	131	0	316	226
Fear Established (Y)	**6,639**	932	179	29	135	4,339	422	64	82	0	260	197
Fear Not Established (N)	**1,082**	179	25	4	45	717	48	3	21	0	38	2
Closings	**1,034**	138	31	1	43	710	33	5	28	0	18	27

SEPTEMBER 2018 (FY 2018)

	Totals	ZAC	ZAR	ZBO	ZCH	ZHN	ZLA	ZMI	ZNK	ZNY	ZOL	ZSF
Case Receipts	**8,957**	1,243	457	45	136	6,054	461	94	111	0	122	234
Interviews Conducted	**8,053**	987	410	13	118	5,577	476	52	116	0	154	150
All Decisions	**9,157**	**1,246**	**470**	**8**	**99**	**6,375**	**497**	**41**	**114**	**0**	**153**	**154**
Fear Established (Y)	**7,230**	916	377	5	62	5,054	425	21	105	0	128	137
Fear Not Established (N)	**829**	142	29	0	21	563	42	8	6	0	11	7
Closings	**1,098**	188	64	3	16	758	30	12	3	0	14	10

U.S. Citizenship and Immigration Services

The Asylum Division of U.S. Citizenship and Immigration Services routinely provides detailed asylum and credible fear data as part of a statistical package made available during regularly scheduled, quarterly stakeholder engagement meetings.

App'x 4
AR037

Reasonable Fear Workload Report Summary
FY 2018 Total Caseload

	Totals	Oct-17	Nov-17	Dec-17	Jan-18	Feb-18	Mar-18	Apr-18	May-18	Jun-18	Jul-18	Aug-18	Sep-18
Case Receipts	**11,101**	862	856	855	922	775	888	915	1,041	979	969	1,125	914
Interviews Conducted	**7,212**	579	528	528	491	480	642	598	737	746	546	751	586
All Decisions	**10,964**	**896**	**839**	**837**	**786**	**785**	**952**	**910**	**1,066**	**1,065**	**883**	**1,079**	**866**
Fear Established (Y)	**3,161**	273	229	221	235	244	313	276	322	308	212	287	241
Fear Not Established (N)	**3,826**	306	283	306	258	249	313	304	373	393	311	435	295
Closings	**3,977**	317	327	310	293	292	326	330	371	364	360	357	330

Reasonable Fear Workload Report Monthly Caseload by Office

OCT. 2017 (FY 2018)

	Totals	ZAC	ZAR	ZBO	ZCH	ZHN	ZLA	ZMI	ZNK	ZNY	ZOL	ZSF
Case Receipts	**862**	142	121	5	48	277	50	18	46	29	39	87
Interviews Conducted	**579**	72	42	0	43	193	37	8	40	78	14	52
All Decisions	**896**	**135**	**107**	**0**	**52**	**274**	**46**	**15**	**44**	**120**	**27**	**76**
Fear Established (Y)	**273**	31	15	0	18	70	24	0	21	53	10	31
Fear Not Established (N)	**306**	42	26	0	25	121	15	8	19	25	4	21
Closings	**317**	62	66	0	9	83	7	7	4	42	13	24

NOV. 2017 (FY 2018)

	Totals	ZAC	ZAR	ZBO	ZCH	ZHN	ZLA	ZMI	ZNK	ZNY	ZOL	ZSF
Case Receipts	**856**	133	99	17	47	370	33	36	22	4	38	57
Interviews Conducted	**528**	83	55	1	37	224	25	12	27	1	23	40
All Decisions	**839**	**147**	**121**	**1**	**53**	**335**	**35**	**19**	**30**	**1**	**39**	**58**
Fear Established (Y)	**229**	40	23	0	15	73	14	4	12	0	18	30
Fear Not Established (N)	**283**	40	31	1	22	138	13	8	14	1	5	10
Closings	**327**	67	67	0	16	124	8	7	4	0	16	18

DEC. 2017 (FY 2018)

	Totals	ZAC	ZAR	ZBO	ZCH	ZHN	ZLA	ZMI	ZNK	ZNY	ZOL	ZSF
Case Receipts	**855**	150	90	11	50	319	44	40	44	16	30	61
Interviews Conducted	**528**	97	51	5	34	214	23	21	31	0	11	41
All Decisions	**837**	**155**	**101**	**6**	**50**	**339**	**31**	**25**	**34**	**1**	**32**	**63**
Fear Established (Y)	**221**	40	20	1	11	63	10	14	20	0	8	34
Fear Not Established (N)	**306**	59	31	4	23	146	13	7	12	0	3	8
Closings	**310**	56	50	1	16	130	8	4	2	1	21	21

JAN. 2018 (FY 2018)

	Totals	ZAC	ZAR	ZBO	ZCH	ZHN	ZLA	ZMI	ZNK	ZNY	ZOL	ZSF
Case Receipts	**922**	161	106	14	66	326	51	28	50	3	36	81
Interviews Conducted	**491**	98	25	6	45	190	21	19	32	0	11	44
All Decisions	**786**	**164**	**80**	**8**	**54**	**302**	**30**	**24**	**36**	**0**	**29**	**59**
Fear Established (Y)	**235**	49	12	2	13	74	7	11	23	0	8	36
Fear Not Established (N)	**258**	49	14	4	31	118	12	9	9	0	3	9
Closings	**293**	66	54	2	10	110	11	4	4	0	18	14

FEB. 2018 (FY 2018)

	Totals	ZAC	ZAR	ZBO	ZCH	ZHN	ZLA	ZMI	ZNK	ZNY	ZOL	ZSF
Case Receipts	**775**	102	102	10	54	315	54	21	21	8	34	54
Interviews Conducted	**480**	83	50	13	38	168	28	13	31	2	23	31
All Decisions	**785**	**141**	**100**	**13**	**52**	**294**	**38**	**19**	**32**	**3**	**41**	**52**
Fear Established (Y)	**244**	52	19	5	17	69	11	5	21	2	19	24
Fear Not Established (N)	**249**	45	23	8	19	109	15	7	10	0	5	8
Closings	**292**	44	58	0	16	116	12	7	1	1	17	20

MARCH 2018 (FY 2018)

	Totals	ZAC	ZAR	ZBO	ZCH	ZHN	ZLA	ZMI	ZNK	ZNY	ZOL	ZSF
Case Receipts	**888**	140	117	8	56	337	62	37	21	3	33	74
Interviews Conducted	**642**	90	54	2	34	276	69	15	27	19	17	39
All Decisions	**952**	**123**	**115**	**2**	**53**	**409**	**76**	**30**	**28**	**27**	**33**	**56**
Fear Established (Y)	**313**	42	28	0	14	122	33	4	17	15	13	25
Fear Not Established (N)	**313**	42	21	2	19	156	28	12	10	4	6	13
Closings	**326**	39	66	0	20	131	15	14	1	8	14	18

APRIL 2018 (FY 2018)

	Totals	ZAC	ZAR	ZBO	ZCH	ZHN	ZLA	ZMI	ZNK	ZNY	ZOL	ZSF
Case Receipts	**915**	167	95	11	44	410	43	32	19	13	53	28
Interviews Conducted	**598**	126	53	8	32	242	44	27	14	8	17	27
All Decisions	**910**	**172**	**95**	**7**	**43**	**377**	**59**	**36**	**21**	**8**	**51**	**41**
Fear Established (Y)	**276**	58	18	3	16	97	33	9	10	8	8	16
Fear Not Established (N)	**304**	53	31	3	20	145	15	13	6	0	6	12
Closings	**330**	61	46	1	7	135	11	14	5	0	37	13

MAY 2018 (FY 2018)

	Totals	ZAC	ZAR	ZBO	ZCH	ZHN	ZLA	ZMI	ZNK	ZNY	ZOL	ZSF
Case Receipts	**1,041**	142	126	12	51	468	47	28	30	9	41	87
Interviews Conducted	**737**	145	83	6	35	306	40	22	25	0	23	52
All Decisions	**1,066**	**222**	**147**	**9**	**47**	**418**	**59**	**35**	**26**	**0**	**39**	**64**
Fear Established (Y)	**322**	79	24	7	12	115	31	5	14	0	12	23
Fear Not Established (N)	**373**	67	38	1	18	173	16	20	10	0	10	20
Closings	**371**	76	85	1	17	130	12	10	2	0	17	21

JUNE 2018 (FY 2018)

	Totals	ZAC	ZAR	ZBO	ZCH	ZHN	ZLA	ZMI	ZNK	ZNY	ZOL	ZSF
Case Receipts	**979**	138	156	9	67	356	55	30	24	1	92	51
Interviews Conducted	**746**	143	120	7	42	272	42	13	23	0	51	33
All Decisions	**1,065**	**164**	**165**	**5**	**57**	**422**	**62**	**17**	**25**	**0**	**91**	**57**
Fear Established (Y)	**308**	57	46	4	17	100	14	3	11	0	31	25
Fear Not Established (N)	**393**	52	55	1	22	180	28	11	11	0	19	14
Closings	**364**	55	64	0	18	142	20	3	3	0	41	18

JULY 2018 (FY 2018)

	Totals	ZAC	ZAR	ZBO	ZCH	ZHN	ZLA	ZMI	ZNK	ZNY	ZOL	ZSF
Case Receipts	**969**	186	153	18	50	346	39	18	36	0	67	56
Interviews Conducted	**546**	89	63	6	39	241	19	14	27	0	31	17
All Decisions	**883**	**158**	**110**	**10**	**49**	**362**	**30**	**23**	**35**	**0**	**61**	**45**
Fear Established (Y)	**212**	40	23	4	6	84	12	1	12	0	20	10
Fear Not Established (N)	**311**	40	38	4	29	143	8	14	14	0	11	10
Closings	**360**	78	49	2	14	135	10	8	9	0	30	25

AUGUST 2018 (FY 2018)

	Totals	ZAC	ZAR	ZBO	ZCH	ZHN	ZLA	ZMI	ZNK	ZNY	ZOL	ZSF
Case Receipts	**1,125**	187	101	12	48	534	57	22	39	0	64	61
Interviews Conducted	**751**	126	84	12	31	329	44	15	36	0	40	34
All Decisions	**1,079**	**185**	**154**	**12**	**48**	**473**	**44**	**18**	**38**	**0**	**63**	**44**
Fear Established (Y)	**287**	45	28	5	8	120	17	4	15	0	26	19
Fear Not Established (N)	**435**	64	44	7	25	220	19	12	21	0	13	10
Closings	**357**	76	82	0	15	133	8	2	2	0	24	15

SEPTEMBER 2018 (FY 2018)

	Totals	ZAC	ZAR	ZBO	ZCH	ZHN	ZLA	ZMI	ZNK	ZNY	ZOL	ZSF
Case Receipts	**914**	149	132	18	56	372	33	24	32	4	45	49
Interviews Conducted	**586**	112	59	6	25	284	27	12	22	0	25	14
All Decisions	**866**	**170**	**102**	**10**	**43**	**391**	**32**	**21**	**24**	**0**	**48**	**25**
Fear Established (Y)	**241**	48	14	1	7	119	12	4	11	0	19	6
Fear Not Established (N)	**295**	43	26	5	14	172	11	8	8	0	2	6
Closings	**330**	79	62	4	22	100	9	9	5	0	27	13

U.S. Citizenship and Immigration Services

The Asylum Division of U.S. Citizenship and Immigration Services routinely provides detailed asylum and credible fear data as part of a statistical package made available during regularly scheduled, quarterly stakeholder engagement meetings.

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Monthly Credible and Reasonable Fear Nationality Reports

Credible Fear Nationality Report October 2017 (FY 2018)

	Nationality	Receipts
1	GUATEMALA	2,126
2	HONDURAS	1,399
3	EL SALVADOR	1,127
4	MEXICO	701
5	INDIA	599

Reasonable Fear Nationality Report October 2017 (FY 2018)

	Nationality	Receipts
1	MEXICO	313
2	HONDURAS	164
3	GUATEMALA	160
4	EL SALVADOR	149
5	UNKNOWN	24

Credible Fear Nationality Report November 2017 (FY 2018)

	Nationality	Receipts
1	GUATEMALA	2,144
2	HONDURAS	1,509
3	EL SALVADOR	1,222
4	INDIA	551
5	MEXICO	533

Reasonable Fear Nationality Report November 2017 (FY 2018)

	Nationality	Receipts
1	MEXICO	302
2	HONDURAS	209
3	GUATEMALA	161
4	EL SALVADOR	134
5	BRAZIL	14

Credible Fear Nationality Report December 2017 (FY 2018)

	Nationality	Receipts
1	GUATEMALA	2,247
2	HONDURAS	1,576
3	EL SALVADOR	1,153
4	INDIA	689
5	MEXICO	467

Reasonable Fear Nationality Report December 2017 (FY 2018)

	Nationality	Receipts
1	MEXICO	292
2	GUATEMALA	200
3	HONDURAS	178
4	EL SALVADOR	124
5	BRAZIL	16

Credible Fear Nationality Report January 2018 (FY 2018)

	Nationality	Receipts
1	GUATEMALA	2,365
2	HONDURAS	1,948
3	EL SALVADOR	1,059
4	INDIA	728
5	MEXICO	630

Reasonable Fear Nationality Report January 2018 (FY 2018)

	Nationality	Receipts
1	MEXICO	286
2	HONDURAS	244
3	GUATEMALA	194
4	EL SALVADOR	146
5	BRAZIL	14

Credible Fear Nationality Report February 2018 (FY 2018)

	Nationality	Receipts
1	GUATEMALA	1,981
2	HONDURAS	1,648
3	EL SALVADOR	755
4	MEXICO	649
5	CUBA	325

Reasonable Fear Nationality Report February 2018 (FY 2018)

	Nationality	Receipts
1	MEXICO	285
2	HONDURAS	175
3	GUATEMALA	146
4	EL SALVADOR	103
5	DOMINICAN REPUBLIC	5

Credible Fear Nationality Report March 2018 (FY 2018)

	Nationality	Receipts
1	GUATEMALA	2,044
2	HONDURAS	1,115
3	EL SALVADOR	705
4	MEXICO	868
5	CUBA	181

Reasonable Fear Nationality Report March 2018 (FY 2018)

	Nationality	Receipts
1	MEXICO	330
2	HONDURAS	212
3	GUATEMALA	175
4	EL SALVADOR	132
5	BRAZIL	12

U.S. Citizenship and Immigration Services

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Credible Fear Nationality Report
April 2018 (FY 2018)

	Nationality	Receipts
1	HONDURAS	2,531
2	GUATEMALA	1,878
3	EL SALVADOR	972
4	MEXICO	613
5	CUBA	546

Reasonable Fear Nationality Report
April 2018 (FY 2018)

	Nationality	Receipts
1	MEXICO	283
2	HONDURAS	231
3	GUATEMALA	178
4	EL SALVADOR	140
5	BRAZIL	12

Credible Fear Nationality Report
May 2018 (FY 2018)

	Nationality	Receipts
1	HONDURAS	2,952
2	GUATEMALA	2,406
3	EL SALVADOR	1,245
4	INDIA	686
5	MEXICO	654

Reasonable Fear Nationality Report
May 2018 (FY 2018)

	Nationality	Receipts
1	MEXICO	317
2	HONDURAS	242
3	GUATEMALA	218
4	EL SALVADOR	166
5	BRAZIL	11

Credible Fear Nationality Report
June 2018 (FY 2018)

	Nationality	Receipts
1	HONDURAS	3,169
2	GUATEMALA	2,348
3	EL SALVADOR	1,416
4	INDIA	691
5	CUBA	621

Reasonable Fear Nationality Report
June 2018 (FY 2018)

	Nationality	Receipts
1	MEXICO	307
2	HONDURAS	269
3	GUATEMALA	198
4	EL SALVADOR	156
5	BRAZIL	14

Credible Fear Nationality Report
July 2018 (FY 2018)

	Nationality	Receipts
1	HONDURAS	1,617
2	GUATEMALA	1,427
3	EL SALVADOR	959
4	INDIA	677
5	CUBA	480

Reasonable Fear Nationality Report
July 2018 (FY 2018)

	Nationality	Receipts
1	MEXICO	328
2	HONDURAS	215
3	GUATEMALA	203
4	EL SALVADOR	151
5	BRAZIL	19

Credible Fear Nationality Report
August 2018 (FY 2018)

	Nationality	Receipts
1	HONDURAS	2,636
2	GUATEMALA	2,035
3	INDIA	1,343
4	EL SALVADOR	1,342
5	CUBA	772

Reasonable Fear Nationality Report
August 2018 (FY 2018)

	Nationality	Receipts
1	MEXICO	322
2	HONDURAS	311
3	GUATEMALA	261
4	EL SALVADOR	144
5	NICARAGUA	31

Credible Fear Nationality Report
September 2018 (FY 2018)

	Nationality	Receipts
1	HONDURAS	2,541
2	GUATEMALA	1,728
3	EL SALVADOR	1,284
4	INDIA	870
5	NICARAGUA	604

Reasonable Fear Nationality Report
September 2018 (FY 2018)

	Nationality	Receipts
1	MEXICO	281
2	HONDURAS	268
3	GUATEMALA	173
4	EL SALVADOR	119
5	NICARAGUA	24

U.S. Citizenship and Immigration Services

The Asylum Division of U.S. Citizenship and Immigration Services routinely provides detailed asylum and credible fear data as part of a statistical package made available during regularly scheduled, quarterly stakeholder engagement meetings.

Credible Fear Workload Report Summary
FY2019 Total Caseload

	Totals	Oct-18	Nov-18	Dec-18	Jan-19	Feb-19	Mar-19	Apr-19	May-19	Jun-19	Jul-19	Aug-19	Sep-19
Case Receipts	**35,310**	9,446	7,918	8,070	9,876								
Interviews Conducted	**28,847**	7,773	7,487	6,933	6,654								
All Decisions	**32,188**	8,593	7,848	8,405	7,342								
Fear Established (Y)	**25,060**	6,902	6,000	6,460	5,698								
Fear Not Established (N)	**3,403**	721	1,028	881	773								
Closings	**3,725**	970	820	1,064	871								

October 2018 (FY 2019)

	Totals	ZAC	ZAR	ZBO	ZCH	ZHN	ZLA	ZMI	ZNK	ZNY	ZOL	ZSF
Case Receipts	**9,446**	1,140	385	18	133	6,509	601	138	131	-	138	253
Interviews Conducted	**7,773**	1,192	273	15	113	5,110	498	111	122	-	120	219
All Decisions	**8,593**	**1,178**	**259**	**25**	**158**	**5,822**	**508**	**149**	**139**	**-**	**151**	**204**
Fear Established (Y)	**6,902**	842	188	20	108	4,782	435	104	120	-	124	179
Fear Not Established (N)	**721**	145	22	3	34	400	56	22	13	-	17	9
Closings	**970**	191	49	2	16	640	17	23	6	-	10	16

November 2018 (FY 2019)

	Totals	ZAC	ZAR	ZBO	ZCH	ZHN	ZLA	ZMI	ZNK	ZNY	ZOL	ZSF
Case Receipts	**7,918**	909	279	23	191	5,486	476	127	81	-	122	224
Interviews Conducted	**7,487**	934	198	20	168	5,266	412	108	84	-	101	196
All Decisions	**7,848**	**1,109**	**231**	**22**	**151**	**5,376**	**436**	**124**	**77**	**-**	**101**	**221**
Fear Established (Y)	**6,000**	803	178	20	120	4,108	352	84	67	-	84	184
Fear Not Established (N)	**1,028**	152	18	-	14	742	49	24	9	-	4	16
Closings	**820**	154	35	2	17	526	35	16	1	-	13	21

December 2018 (FY 2019)

	Totals	ZAC	ZAR	ZBO	ZCH	ZHN	ZLA	ZMI	ZNK	ZNY	ZOL	ZSF
Case Receipts	**8,070**	1,212	277	13	189	5,363	433	215	61	9	133	165
Interviews Conducted	**6,933**	840	246	4	151	4,858	411	150	41	-	109	123
All Decisions	**8,405**	**1,000**	**319**	**7**	**210**	**5,928**	**448**	**180**	**49**	**-**	**122**	**142**
Fear Established (Y)	**6,460**	685	230	3	142	4,670	362	121	41	-	94	112
Fear Not Established (N)	**881**	152	30	1	31	556	53	26	3	-	14	15
Closings	**1,064**	163	59	3	37	702	33	33	5	-	14	15

January 2019 (FY 2019)

	Totals	ZAC	ZAR	ZBO	ZCH	ZHN	ZLA	ZMI	ZNK	ZNY	ZOL	ZSF
Case Receipts	**9,876**	1,434	466	14	164	6,591	498	154	68	81	152	254
Interviews Conducted	**6,654**	796	258	5	144	4,524	350	147	69	33	122	206
All Decisions	**7,342**	**939**	**286**	**5**	**156**	**4,914**	**405**	**164**	**78**	**36**	**125**	**234**
Fear Established (Y)	**5,698**	637	172	5	101	3,984	298	118	60	31	98	194
Fear Not Established (N)	**773**	159	49	-	36	426	46	28	10	2	8	9
Closings	**871**	143	65	-	19	504	61	18	8	3	19	31

February 2018 (FY 2019)

	Totals	ZAC	ZAR	ZBO	ZCH	ZHN	ZLA	ZMI	ZNK	ZNY	ZOL	ZSF
Case Receipts												
Interviews Conducted												
All Decisions												
Fear Established (Y)												
Fear Not Established (N)												
Closings												

March 2018 (FY 2019)

	Totals	ZAC	ZAR	ZBO	ZCH	ZHN	ZLA	ZMI	ZNK	ZNY	ZOL	ZSF
Case Receipts												
Interviews Conducted												
All Decisions												
Fear Established (Y)												
Fear Not Established (N)												
Closings												

U.S. Citizenship and Immigration Services

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April 2019 (FY 2019)												
	Totals	ZAC	ZAR	ZBO	ZCH	ZHN	ZLA	ZMI	ZNK	ZNY	ZOL	ZSF
Case Receipts												
Interviews Conducted												
All Decisions												
Fear Established (Y)												
Fear Not Established (N)												
Closings												

May 2019 (FY 2019)												
	Totals	ZAC	ZAR	ZBO	ZCH	ZHN	ZLA	ZMI	ZNK	ZNY	ZOL	ZSF
Case Receipts												
Interviews Conducted												
All Decisions												
Fear Established (Y)												
Fear Not Established (N)												
Closings												

June 2019 (FY 2019)												
	Totals	ZAC	ZAR	ZBO	ZCH	ZHN	ZLA	ZMI	ZNK	ZNY	ZOL	ZSF
Case Receipts												
Interviews Conducted												
All Decisions												
Fear Established (Y)												
Fear Not Established (N)												
Closings												

July 2019 (FY 2019)												
	Totals	ZAC	ZAR	ZBO	ZCH	ZHN	ZLA	ZMI	ZNK	ZNY	ZOL	ZSF
Case Receipts												
Interviews Conducted												
All Decisions												
Fear Established (Y)												
Fear Not Established (N)												
Closings												

August 2019 (FY 2019)												
	Totals	ZAC	ZAR	ZBO	ZCH	ZHN	ZLA	ZMI	ZNK	ZNY	ZOL	ZSF
Case Receipts												
Interviews Conducted												
All Decisions												
Fear Established (Y)												
Fear Not Established (N)												
Closings												

September 2019 (FY 2019)												
	Totals	ZAC	ZAR	ZBO	ZCH	ZHN	ZLA	ZMI	ZNK	ZNY	ZOL	ZSF
Case Receipts												
Interviews Conducted												
All Decisions												
Fear Established (Y)												
Fear Not Established (N)												
Closings												

U.S. Citizenship and Immigration Services

The Asylum Division of U.S. Citizenship and Immigration Services routinely provides detailed asylum and credible fear data as part of a statistical package made available during regularly scheduled, quarterly stakeholder engagement meetings.

Monthly Credible Fear Top 5 Nationalities Received
Fiscal Year 2019

Monthly Credible Fear Nationality Report
October-18

	Nationality	Receipts
1	HONDURAS	2,507
2	GUATEMALA	1,936
3	EL SALVADOR	1,337
4	INDIA	852
5	CUBA	786

Monthly Credible Fear Nationality Report
November-18

	Nationality	Receipts
1	HONDURAS	1,857
2	GUATEMALA	1,482
3	EL SALVADOR	997
4	CUBA	870
5	INDIA	713

Monthly Credible Fear Nationality Report
December-18

	Nationality	Receipts
1	HONDURAS	1,853
2	GUATEMALA	1,695
3	CUBA	1,091
4	EL SALVADOR	939
5	INDIA	645

Monthly Credible Fear Nationality Report
January-19

	Nationality	Receipts
1	HONDURAS	3,327
2	GUATEMALA	1,747
3	EL SALVADOR	1,145
4	CUBA	1,005
5	INDIA	508

Monthly Credible Fear Nationality Report
February-19

	Nationality	Receipts
1		
2		
3		
4		
5		

Monthly Credible Fear Nationality Report
March-19

	Nationality	Receipts
1		
2		
3		
4		
5		

Monthly Credible Fear Nationality Report
April-19

	Nationality	Receipts
1		
2		
3		
4		
5		

Monthly Credible Fear Nationality Report
May-19

	Nationality	Receipts
1		
2		
3		
4		
5		

Monthly Credible Fear Nationality Report
June-19

	Nationality	Receipts
1		
2		
3		
4		
5		

Monthly Credible Fear Nationality Report
July-19

	Nationality	Receipts
1		
2		
3		
4		
5		

Monthly Credible Fear Nationality Report
August-19

	Nationality	Receipts
1		
2		
3		
4		
5		

Monthly Credible Fear Nationality Report
September-19

	Nationality	Receipts
1		
2		
3		
4		
5		

U.S. Citizenship and Immigration Services

The Asylum Division of U.S. Citizenship and Immigration Services routinely provides detailed asylum and credible fear data as part of a statistical package made available during regularly scheduled, quarterly stakeholder engagement meetings.

Credible Fear Processing Times
FY 2019 through January 2019

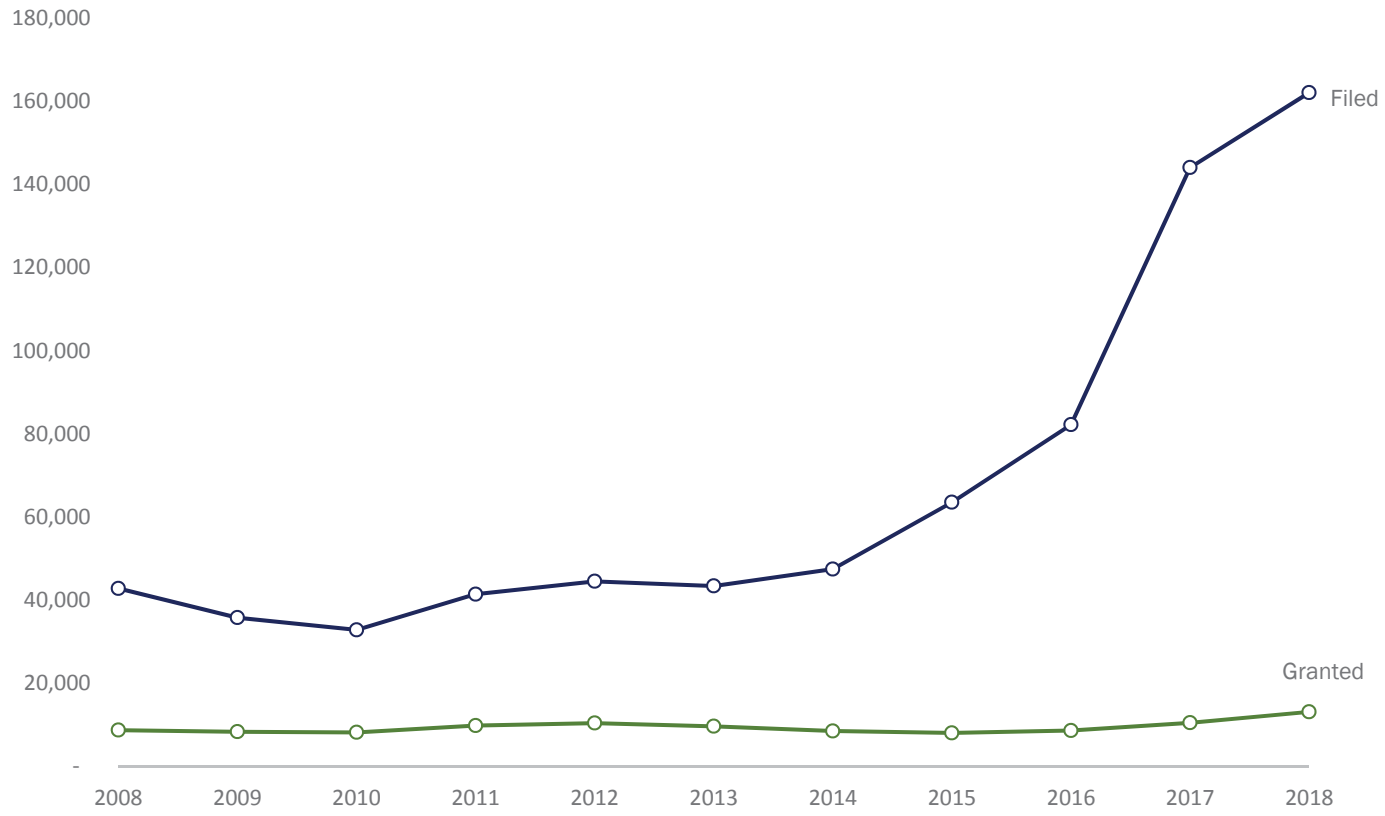
FY2019 - All Credible Fear cases	Totals	%	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUNE	JUL	AUG	SEP
Total Decisions Served (Any Period)	**28,495**		7,633	7,031	7,351	6,480	0	0	0	0	0	0	0	0
Total Completions (Closings + Served)	**32,219**		8,603	7,851	8,414	7,351	0	0	0	0	0	0	0	0
10 Days or Less	**16,775**	**52.1%**	4,934	3,237	4,700	3,904	0	0	0	0	0	0	0	0
Over 10 Days	**15,444**	**47.9%**	3,669	4,614	3,714	3,447	0	0	0	0	0	0	0	0
Percent Timely Completed	**52.1%**		57.4%	41.2%	55.9%	53.1%								

U.S. Citizenship and Immigration Services

The Asylum Division of U.S. Citizenship and Immigration Services routinely provides detailed asylum and credible fear data as part of a statistical package made available during regularly scheduled, quarterly stakeholder engagement meetings.

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
ADJUDICATION STATISTICS

Total Asylum Applications[1]



Fiscal Year	Filed	Granted	Total Receipts : Total Grants Ratio
2008	42,836	8,777	4.88:1
2009	35,811	8,384	4.27:1
2010	32,882	8,234	3.99:1
2011	41,459	9,866	4.2:1
2012	44,562	10,460	4.26:1
2013	43,439	9,690	4.48:1
2014	47,491	8,559	5.54:1
2015	63,562	8,108	7.83:1
2016	82,224	8,684	9.46:1
2017	144,053	10,537	13.67:1
2018	162,060	13,168	12.3:1
2019 (Second Quarter[2])	103,658	7,563	13.7:1

Data Generated: April 23, 2019

[1] Total (affirmative and defensive) asylum applications filed and total asylum applications granted (initial case completions) in removal, deportation, exclusion, and asylum-only proceedings.

[2] FY 2019 Second Quarter through March 31, 2019.

U.S. Department of Homeland Security

Migrant Protection Protocols

Release Date: January 24, 2019

"We have implemented an unprecedented action that will address the urgent humanitarian and security crisis at the Southern border. This humanitarian approach will help to end the exploitation of our generous immigration laws. The Migrant Protection Protocols represent a methodical commonsense approach, exercising long-standing statutory authority to help address the crisis at our Southern border." – Secretary of Homeland Security Kirstjen M. Nielsen

What Are the Migrant Protection Protocols?

The Migrant Protection Protocols (MPP) are a U.S. Government action whereby certain foreign individuals entering or seeking admission to the U.S. from Mexico – illegally or without proper documentation – may be returned to Mexico and wait outside of the U.S. for the duration of their immigration proceedings, where Mexico will provide them with all appropriate humanitarian protections for the duration of their stay.

Why is DHS Instituting MPP?

The U.S. is facing a security and humanitarian crisis on the Southern border. The Department of Homeland Security (DHS) is using all appropriate resources and authorities to address the crisis and execute our missions to secure the borders, enforce immigration and customs laws, facilitate legal trade and travel, counter traffickers, smugglers and transnational criminal organizations, and interdict drugs and illegal contraband.

MPP will help restore a safe and orderly immigration process, decrease the number of those taking advantage of the immigration system, and the ability of smugglers and traffickers to prey on vulnerable populations, and reduce threats to life, national security, and public safety, while ensuring that vulnerable populations receive the protections they need.

Historically, illegal aliens to the U.S. were predominantly single adult males from Mexico who were generally removed within 48 hours if they had no legal right to stay; now over 60% are family units and unaccompanied children and 60% are non-Mexican. In FY17, CBP apprehended 94,285 family units from Honduras, Guatemala, and El Salvador (Northern Triangle) at the Southern border. Of those, 99% remain in the country today.

Misguided court decisions and outdated laws have made it easier for illegal aliens to enter and remain in the U.S. if they are adults who arrive with children, unaccompanied alien children, or individuals who fraudulently claim asylum. As a result, DHS continues to see huge numbers of illegal migrants and a dramatic shift in the demographics of aliens traveling to the border, both in terms of nationality and type of aliens- from a demographic who could be quickly removed when they had no legal right to stay to one that cannot be detained and timely removed.

In October, November, and December of 2018, DHS encountered an average of 2,000 illegal and inadmissible aliens a day at the Southern border. While not an all-time high in terms of overall numbers, record increases in particular types of migrants, such as family units, travelling to the border who require significantly more resources to detain and remove (when our courts and laws even allow that), have overwhelmed the U.S. immigration system, leading to a “system” that enables smugglers and traffickers to flourish and often leaves aliens in limbo for years. This has been a prime cause of our near-800,000 case backlog in immigration courts and delivers no consequences to aliens who have entered illegally.

Smugglers and traffickers are also using outdated laws to entice migrants to undertake the dangerous journey north where on the route migrants report high rates of abuse, violence, and sexual assault. Human smugglers and traffickers exploit migrants and seek to turn human misery into profit. Transnational

criminal organizations and gangs are also deliberately exploiting the situation to bring drugs, violence, and illicit goods into American communities. The activities of these smugglers, traffickers, gangs and criminals endanger the security of the U.S., as well as partner nations in the region.

The situation has had severe impacts on U.S. border security and immigration operations. The dramatic increase in illegal migration, including unprecedented number of families and fraudulent asylum claims is making it harder for the U.S. to devote appropriate resources to individuals who are legitimately fleeing persecution. In fact, approximately 9 out of 10 asylum claims from Northern Triangle countries are ultimately found non-meritorious by federal immigration judges. Because of the court backlog and the impact of outdated laws and misguided court decisions, many of these individuals have disappeared into the country before a judge denies their claim and simply become fugitives.

The MPP will provide a safer and more orderly process that will discourage individuals from attempting illegal entry and making false claims to stay in the U.S., and allow more resources to be dedicated to individuals who legitimately qualify for asylum.

What Gives DHS the Authority to Implement MPP?

Section 235 of the Immigration and Nationality Act (INA) addresses the inspection of aliens seeking to be admitted into the U.S. and provides specific procedures regarding the treatment of those not clearly entitled to admission, including those who apply for asylum. Section 235(b)(2)(C) provides that "in the case of an alien . . . who is arriving on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the U.S.," the Secretary of Homeland Security "may return the alien to that territory pending a [removal] proceeding under § 240" of the INA." The U.S. has notified the Government of Mexico that it is implementing these procedures under U.S. law.

Who is Subject to MPP?

With certain exceptions, MPP applies to aliens arriving in the U.S. on land from Mexico (including those apprehended along the border) who are not clearly

App'x 15
AR048

admissible and who are placed in removal proceedings under INA § 240. This includes aliens who claim a fear of return to Mexico at any point during apprehension, processing, or such proceedings, but who have been assessed not to be more likely than not to face persecution or torture in Mexico. Unaccompanied alien children and aliens in expedited removal proceedings will not be subject to MPP. Other individuals from vulnerable populations may be excluded on a case-by-case basis.

How Will MPP Work Operationally?

Certain aliens attempting to enter the U.S. illegally or without documentation, including those who claim asylum, will no longer be released into the country, where they often fail to file an asylum application and/or disappear before an immigration judge can determine the merits of any claim. Instead, these aliens will be given a "Notice to Appear" for their immigration court hearing and will be returned to Mexico until their hearing date.

While aliens await their hearings in Mexico, the Mexican government has made its own determination to provide such individuals the ability to stay in Mexico, under applicable protection based on the type of status given to them.

Aliens who need to return to the U.S. to attend their immigration court hearings will be allowed to enter and attend those hearings. Aliens whose claims are found meritorious by an immigration judge will be allowed to remain in the U.S. Those determined to be without valid claims will be removed from the U.S. to their country of nationality or citizenship.

DHS is working closely with the U.S. Department of Justice's Executive Office for Immigration Review to streamline the process and conclude removal proceedings as expeditiously as possible.

Will Migrants in MPP Have Access to Counsel?

Consistent with the law, aliens in removal proceedings can use counsel of their choosing at no expense to the U.S. Government. Aliens subject to MPP will be

afforded the same right and provided with a list of legal services providers in the area which offer services at little or no expense to the migrant.

What Are the Anticipated Benefits of MPP?

Every month, tens of thousands of individuals arrive unlawfully at the Southern Border. MPP will reduce the number of aliens taking advantage of U.S. law and discourage false asylum claims. Aliens will not be permitted to disappear into the U.S. before a court issues a final decision on whether they will be admitted and provided protection under U.S. law. Instead, they will await a determination in Mexico and receive appropriate humanitarian protections there. This will allow DHS to more effectively assist legitimate asylum-seekers and individuals fleeing persecution, as migrants with non-meritorious or even fraudulent claims will no longer have an incentive for making the journey. Moreover, MPP will reduce the extraordinary strain on our border security and immigration system, freeing up personnel and resources to better protect our sovereignty and the rule of law by restoring integrity to the American immigration system.

Additional Information

- Secretary Nielsen Implementation Memo (/publication/policy-guidance-implementation-migrant-protection-protocols) (January 25, 2019, PDF)

Topics: Border Security (/topics/border-security), Immigration and Customs Enforcement (/topics/immigration-enforcement)

Keywords: Border Security (/keywords/border-security), immigration enforcement (/keywords/immigration-enforcement), southwest border (/keywords/southwest-border)

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Department of Homeland Security Border Security Metrics Report

May 1, 2018

Homeland Security

Message from Homeland Security

May 1, 2018

The "Department of Homeland Security Border Security Metrics Report" is submitted pursuant to the Fiscal Year (FY) 2017 National Defense Authorization Act (NDAA), which directs that "Not later than 180 days after the date of the enactment of this section, the Secretary (of Homeland Security) shall develop metrics, informed by situational awareness, to measure the effectiveness of security between ports of entry, at ports of entry, in the maritime environment and to measure the effectiveness of the aviation assets and operations of Air and Marine Operations of U.S. Customs and Border Protection." The Act further directs the Secretary to annually assess, report, and implement the specified metrics.

The outcome-based performance measures called for by the Act are the most comprehensive, rigorous set of border security metrics required of the Department of Homeland Security (DHS) to date. Through previous efforts, DHS has established processes and procedures to collect and analyze essential data to meet most, but not all, of the Act's requirements. This initial report identifies which measures are still unavailable; DHS commits to continuing efforts to produce all the measures required by the Act no later than submission of the next annual report.

DHS considers this report to be the beginning of a consequential dialogue with Congress and the American public wherein defensible data create the foundation for discussions of border security policies and strategies. This initial report focuses on providing data and information on DHS methodological approaches. In accordance with the Act, future annual reports will include trend analysis of the measures being reported.

Thank you for your continuing support and commitment to strengthening the operating effectiveness of DHS.

Pursuant to congressional requirements, this notification is being provided to the following Members of Congress:

The Honorable Ron Johnson
Chairman, Senate Committee on Homeland Security and Governmental Affairs

The Honorable Claire McCaskill
Ranking Member, Senate Committee on Homeland Security and Governmental Affairs

The Honorable Michael McCaul
Chairman, House Committee on Homeland Security

The Honorable Bennie Thompson
Ranking Member, House Committee on Homeland Security

Inquiries relating to this report may be directed to the DHS Office of Legislative Affairs at (202) 447-5890.

Sincerely,

James W. McCament
Deputy Under Secretary
Office of Strategy, Policy, and Plans

DHS Border Security Metrics Report

Table of Contents

I. Legislative Language

Section 1092 of the FY 2017 National Defense Authorization Act (NDAA), signed into law December 23, 2016, directs the Secretary of Homeland Security to provide annually to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate specific "Metrics for Securing the Border Between Ports of Entry," "Metrics for Securing the Border At Ports of Entry," "Metrics for Securing the Maritime Border," and "Air and Marine Security Metrics in the Land Domain." The NDAA further directs that the Secretary "in accordance with applicable privacy laws, make data related to apprehensions, inadmissible aliens, drug seizures, and other enforcement actions available to the public, law enforcement communities, and academic research communities."

II. Introduction

As President Donald Trump indicated in Executive Order 13767 "Border Security and Immigration Enforcement Improvements" (January 25, 2017), border security is critically important to the national security of the United States. The Department's ability to measure its border-security inputs, activities, outputs, and outcomes is essential to the effective and efficient management of the Department, including management of the new activities and investments directed by the President's Executive Orders on border security and immigration enforcement.

Comprehensive and rigorous performance management data provide DHS leadership with the foundation to support responsible evidence-based decision-making for resource allocation and investments and for operational and mission management. Further, DHS implementation of this approach provides a pair of unifying border security goals under the Department's mission to secure and manage U.S. borders. As summarized in the DHS Quadrennial Homeland Security Review (QHSR), the Department's first two goals under the border security mission area are to "Secure U.S. Air, Land, and Sea Borders and Approaches" by preventing illegal entry and to "Safeguard and Expedite Lawful Travel and Trade" by safeguarding key nodes, conveyances, and pathways, and by managing the risk of people and goods in transit. Ultimately, the border security metrics described in this report are designed to assess the ability of the Department's border security policies and investments to achieve these outcomes.

For analytic purposes, the metrics included in this report may be divided into four categories:

- Inputs: Resources acquired or expended to secure the border. Examples of border security inputs include the number of U.S. Customs and Border Protection (CBP) Office of Field Operations (OFO) officers and U.S. Border Patrol (USBP) agents deployed, miles of fencing and other border infrastructure, and numbers of aircraft committed to the border security mission.
- Activities: Specific actions taken to secure the border. Examples of border security activities include illegal border crossers apprehended, travelers admitted or denied admission at ports of entry (POE), and pounds of narcotics seized.
- Outputs: Immediate results of enforcement activities as they relate to the border security goals. Examples of border security outputs include the rate at which intending unlawful border crossers are apprehended or interdicted, and the accuracy of screening results for travelers and goods at POEs.
- Outcomes: The ultimate impacts of border security policies. As defined by the QHSR, the most important border security outcomes are the numbers of illegal migrants and quantities of illegal goods entering the United States (Goal 2.1), and the ease with which lawful travelers and goods pass through POEs (Goal 2.2).

In general, border security *inputs* and *activities* are directly observable and can be measured with a high degree of reliability. Policymakers have direct control over resource allocation, and data on inputs are available in budget and acquisitions documents. Operational agencies also track enforcement activities as part of their case management process. In short, the Department knows exactly how many agents it deploys, how many miles of fence it erects, how many aliens it apprehends, and how many travelers it admits. Input and activity measures tend to provide insight into the level and type of enforcement effort undertaken—what the Department is

doing—that are useful for workload management and tactical decision-making; but in and of themselves these metrics typically provide limited insight into the state of border security.

Outcome and *output* measures often provide more insight than inputs and activities when it comes to evaluating border security and may be powerful tools for policy and program evaluation. Yet many output and outcome metrics are difficult to measure directly because illegal border crossers actively seek to evade detection, and some flows are undetected and therefore can never be measured directly. This challenge is nearly universal when measuring illegal activities, which is why law enforcement agencies typically rely on crime *reports* as indicators of *total* criminal activities, for example. Measuring border security outputs and outcomes is also difficult because of the diversity and complexity of the enforcement mission along the United States' 6,000 miles of land borders, 95,471 miles of coastline, and 350 POEs. Moreover, enforcement outcomes only partially depend on border security policies, since immigration flows also reflect numerous factors outside enforcement agencies' control, including the broader set of U.S. immigration policies and numerous economic, demographic, and other structural factors.

Historically, DHS and the legacy Immigration and Naturalization Service addressed these measurement challenges by relying on alien apprehensions (an activity metric) as a proxy measure of illegal immigration between POEs (an outcome metric). More recently, CBP and DHS have initiated a number of new estimation strategies to better model unknown flows. These efforts have focused primarily on border security between POEs in the land domain (NDAA § 1092(b)), a domain that has been identified by Congress and the last several Administrations as a top enforcement priority. Some of this research remains a work in progress as DHS is not yet able to validate certain modeling assumptions or to quantify the uncertainty around its new estimation techniques. In addition, many of the metrics in this report remain limited to the southwest border. The Department's future work on border metrics will continue to refine these new indicators of border security between POEs and expand data collection and methodologies to the northern border, while also developing additional indicators of border security, including those identified as incomplete in this report.

Pursuant to the NDAA, this report covers a mix of input, activity, output, and outcome metrics between POEs, at POEs, in the maritime domain, and with respect to air and marine security in the land domain. While most of these measures involve data the Department has tracked for many years, some remain under development or fall outside the scope of the Department's existing measurement methodologies. This report includes the following information for each border security metric:

- Definition of the metric and brief description of how the metric contributes to the Department's understanding of border security;
- Discussion of the Department's current methodology for producing the metric and related methodological limitations; and
- Available data, including historical data where possible, and brief discussion of implications for the current state of border security.

The following sections of this report provide this information for each metric directed by the NDAA. In addition to the specific metrics identified in sections §1092(b) – (e), this report

includes supplemental measures that inform the Department's assessment of the state of border security between POEs, as directed by NDAA § 1092(g)(3)(D).

III. SEC. 1092 BORDER SECURITY METRICS

§ 1092(b) Metrics for Securing the Border between Ports of Entry

§ 1092(b)(1)(A)(i) Attempted Unlawful Border Crosser Apprehension Rate

Definition

In general, the attempted unlawful border crosser apprehension rate is defined as the proportion of attempted border crossers that is apprehended by USBP:

$$Apprehension\ Rate = \frac{Apprehensions}{Unlawful\ Entry\ Attempts}$$

While USBP has reliable administrative data on apprehensions, the Department does not have an exact count of unlawful entry attempts since an unknown number of illegal border crossers evade detection. As a result of this so-called "denominator problem," the Department must estimate the apprehension rate. Current methodologies allow DHS to produce two apprehension rate estimates:

Model-based Apprehension Rate ($AR_{Model\text{-}based}$) – Based on statistical modeling, the estimated share of all attempted unlawful border crossers between land POEs that is apprehended.

Observational Apprehension Rate ($AR_{Observational}$) – Based on direct (unlawful border crossers observed by USBP) and indirect (residual evidence of a border crosser, i.e. footprints) observations of attempted unlawful border crossers, the estimated share of observed attempted unlawful border crossers that is apprehended.

The apprehension rate is an *output measure* that describes the difficulty of illegally crossing the border successfully.

A conceptual limitation of apprehension rate data is that they include information about border *apprehensions*, but exclude information about *turn backs* (see section 1092 (b)(1)(A)(iv) for definition), which are a key element of USBP's enforcement strategy, with underlying operational implications. In this sense, measures of the apprehension rate understate USBP's overall enforcement success rate. On the other hand, some analysts consider information about turn backs difficult to interpret since an unknown share of turn backs make additional entry attempts.

Methodology and Limitations

Model-based Apprehension Rate

The Model-based Apprehension Rate is based on the repeated trials model (RTM) methodology. As explained in detail in Appendix A, the RTM methodology yields an estimated partial apprehension rate (PAR) for southwest border crossers, which focuses on a relatively small share of attempted unlawful border crossers. Following the calculation of the PAR, the $AR_{Model\text{-}based}$ methodology consists of four additional steps.

First, all attempted unlawful border crossers are divided into two groups, which are labeled "impactable" and "non-impactable" by traditional DHS enforcement policies. Impactable border crossers include adults without children who are not asylum seekers and (prior to 2017) are not from Cuba. Aliens in this group are described as impactable because they are generally subject to the full range of DHS and Department of Justice (DOJ) enforcement consequences, and therefore potentially impacted by existing border enforcement. Non-impactable border crossers include unaccompanied minors, family units, individuals who request asylum, and (prior to 2017) Cubans. Aliens in this group are described as non-impactable because, historically, they have usually been released into the United States with a Notice to Appear in immigration court for legal proceedings on a future date, rather than being subject to immediate DHS enforcement consequences. These aliens are assumed generally to be "non-impactable" by traditional DHS enforcement activities at the border because even if they are apprehended they are typically unlikely to be immediately removed or returned.[1]

Second, the $AR_{Model\text{-}based}$ methodology assumes an apprehension rate for each of these two groups: 1) all attempted unlawful border crossers in the impactable population are assumed to be apprehended at the partial apprehension rate generated by the RTM methodology; and 2) all unlawful border crossers in the non-impactable population are assumed to intentionally present themselves to a USBP agent or OFO officer and therefore to have a 100 percent apprehension rate. Notably, these assumptions do not reflect the actual behavior of all border crossers, as noted below, but they serve to construct a probability model.

Third, the Partial Apprehension Rate is used to calculate the total number of impactable aliens making illegal entry attempts. The methodology assumes (in the previous step) that all impactable aliens are apprehended at the PAR rate generated by the RTM methodology:

$$PAR = \frac{Apprehensions_{Impactable}}{Attempts_{Impactable}}$$

[1] Cubans were considered "non-impactable" between 1995 and January 2017 because they were routinely granted parole into the United States if they reached U.S. soil, under the wet-foot/dry-foot policy. The Obama Administration terminated the special parole component of the wet-foot/dry-foot policy in January 2017.

Mathematically, this equation can be re-arranged to define the total number of impactable aliens making an illegal entry attempt as follows:

$$Attempts_{Impactable} = \frac{Apprehensions_{Impactable}}{PAR}$$

Since non-impactable aliens are assumed to have a 100% apprehension rate, the number of entry attempts of non-impactable aliens is equal to the number of their apprehensions.

Finally, the Total Apprehension Rate is calculated as a weighted average of the total numbers of impactable and non-impactable aliens attempting unlawful entry times their respective apprehension rates:

$$AR_{Model-based} = \frac{(Attempts_{Impactable} * PAR) + (Attempts_{Non-impactable} * 100\%)}{(Attempts_{Impactable} + Attempts_{Non-impactable})}$$

The current $AR_{Model\text{-}based}$ methodology makes a number of assumptions that cannot be fully validated. First, the $AR_{Model\text{-}based}$ methodology builds on the RTM's partial apprehension rate, and so incorporates all of the RTM modeling assumptions and associated limitations discussed in Appendix A. In addition, the current $AR_{Model\text{-}based}$ methodology also assumes: that the entire cohort of border crossers can be divided into impactable and non-impactable groups, that the entire impactable group is apprehended at the same rate as RTM aliens included in the PAR analysis, and that the entire non-impactable group is apprehended 100 percent of the time. Each of these additional assumptions introduces potential biases into the estimated apprehension rate.

The Department has not precisely quantified the impact of these assumptions on the $AR_{Model\text{-}based}$ estimates. For these reasons, DHS considers the $AR_{Model\text{-}based}$ methodology to be a work in progress. DHS is working to refine the $AR_{Model\text{-}based}$ methodology to address these limitations and to more precisely describe their impact on the $AR_{Model\text{-}based}$ estimate. The estimated apprehension rates reported here may be updated in the future as the Department continues to refine the model-based estimation methodology.

Observational Apprehension Rate

The Observational Apprehension Rate is calculated as the ratio of USBP apprehensions to the sum of apprehensions and observed (directly or indirectly) got aways:

$$AR_{Observational} = \frac{Apprehensions}{Apprehensions + Got\ Aways}$$

"Got aways" are defined as subjects at the southwest border who, after making an illegal entry, are not turned back or apprehended, and are no longer being actively pursued by USBP agents.

Since 2014, USBP has implemented a standard, southwest border-wide methodology for determining when to report a subject as a got away. Some subjects are observed directly as evading apprehension or turning back; others are acknowledged as got aways or turn backs after

agents follow evidence that indicate entries have occurred such as foot sign (i.e. tracks), sensor activations, interviews with apprehended subjects, camera views, and communication between and among stations and sectors. The scope of these data includes all areas of the southwest land border at or below the northernmost law enforcement posture (typically a USBP checkpoint) within a given area of responsibility, and those individuals apprehended less than 30 days after entering the United States.

In an effort to maintain reliable best practices, command staff at all southern border stations ensure all agents are aware of and utilize proper definitions for apprehensions, got aways and turn backs at their respective stations. They also ensure the necessary communication takes place between and among sectors and stations to minimize double-counting when subjects cross more than one station's area of responsibility. In addition to station-level safeguards, designated USBP Headquarters components validate data integrity by utilizing various data quality reports.

The primary limitation to $AR_{Observational}$ is that the denominator excludes an unknown number of unobserved got aways. Over the past several years, DHS has invested millions of dollars in technology that has facilitated the ability to see and detect more at the border. Improvements in situational awareness give DHS an ever-increasing, real-time ability to understand how much illegal activity agents are encountering at the immediate border and their ability to respond. As a result, despite the fact that overall border entries are substantially lower today than in any previous fiscal year, agents are currently interdicting slightly *lower* percentages of the total known flow. This observation reflects USBP's increased domain awareness—i.e., that through technological advances, the agency has improved its awareness of illegal entry attempts (known got aways)—rather than experienced a drop in enforcement effectiveness. Increasing situational awareness narrows the gap between the known and unknown flow, and puts DHS in a position to build ever better observational estimates of border security. The Department will continue to refine these observational estimates and is currently working on a methodology to estimate their statistical reliability.

An additional methodological limitation is that the estimated count of got aways aggregates potentially subjective observations from thousands of individual agents. USBP has taken a number of steps to establish reliable turn back and got away methodologies, as discussed above.

Available Data and Discussion

Table 1 provides the estimated model-based apprehensions rate for FY 2003 – FY 2016 and the estimated observational apprehension rate for FYs 2006-2016, the years for which these data are available.

Table 1: Model-Based and Observational Apprehension Rates, FY 2000 – FY 2016

Fiscal Year	Model-based Apprehension Rate	Observational Apprehension Rate
2003	34.1	NA
2004	37.0	NA
2005	39.1	NA
2006	39.2	63.5
2007	40.2	64.1
2008	44.6	67.7
2009	47.2	70.7
2010	46.6	74.4
2011	46.1	79.4
2012	48.0	77.5
2013	51.0	70.8
2014	65.5	74.8
2015	63.5	76.7
2016	64.8	79.4

Since FY 2003, the model-based apprehension rate has climbed from less than 35 percent to nearly 65 percent in FY 2016. These increases reflect a higher apprehension rate for "impactable" border crossers as well as an increase in the share of border crossers who are "non-impactable" and therefore assumed to be apprehended 100 percent of the time.

The observational apprehension rate has also shown improvements since FY 2006. Despite its limitations, the upward trend in $AR_{Observational}$ is noteworthy because it independently reinforces the upward trend observed in the model-based estimate. Moreover, with increasing situational awareness along the border during this period, it is likely that CBP detects an increasing share of total got aways over time. As a result, the upward trend in $AR_{Observational}$ likely under-estimates the actual increase in the total share of attempted border crossers that is apprehended.

§ 1092(b)(1)(A)(ii) Detected unlawful entries

Definition

Detected unlawful entries – The total number of attempted unlawful border crossers between land POEs who are directly or indirectly observed or detected by USBP.

Detected unlawful entries is an *outcome measure* that describes the numbers of migrants detected crossing or attempting to cross the border unlawfully. Detected unlawful entries is not a comprehensive outcome measure since it excludes undetected unlawful entries, as discussed below. The ratio of detected to undetected unlawful entries, also discussed below, is an *output measure* that describes the Department's ability to detect unlawful entries.

Methodology and Limitations

The number of detected unlawful entries is calculated as the sum of turn backs, got aways, and apprehensions. Turn backs are defined as subjects who, after making an illegal entry into the United States, return to the country from which they entered, not resulting in an apprehension or got away. Got aways are defined as subjects who, after making an illegal entry, are not turned back or apprehended, and are no longer being actively pursued by USBP agents. Apprehensions are defined as removable aliens arrested by USBP.

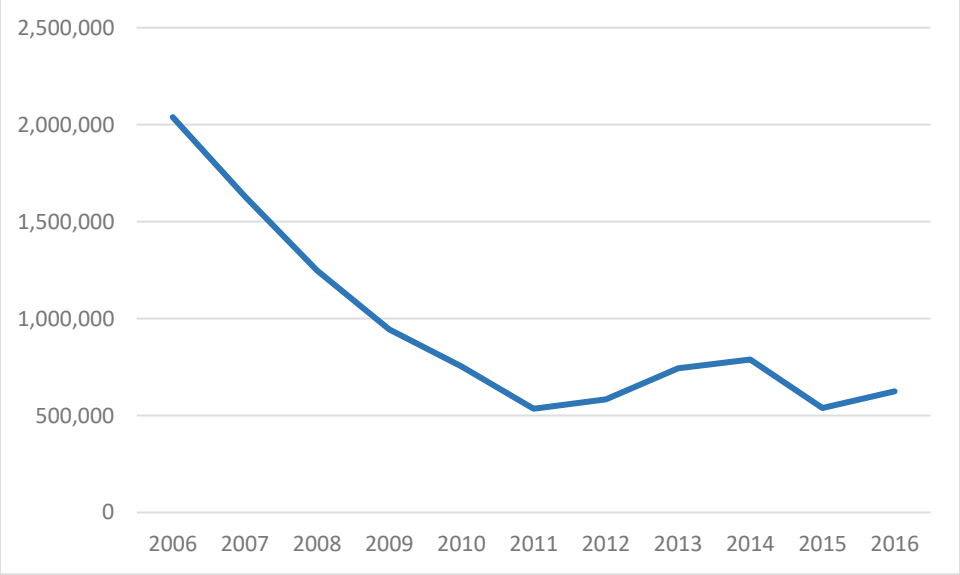
Turn backs and got aways are observational estimates; USBP records total and by-sector estimates of turn backs and got aways based on direct and indirect observations as described above. Apprehensions are calculated based on nationwide DHS administrative data and are not limited to the southwest border; USBP apprehension data are considered a reliable count of apprehensions.

The primary limitation to detected unlawful entries is that this metric incorporates turn back and got away estimates that aggregate potentially subjective observations from thousands of individual agents. USBP has taken a number of steps to address this problem by establishing consistent and reliable turn back and got away methodologies, as discussed above.

Available Data and Discussion

Figure 1 depicts available data on estimated detected unlawful entries for FY 2006 – FY 2016, the years for which data are available. As the figure indicates, estimated detected unlawful entries (the sum of apprehensions, turn backs, and got aways) fell from 2.0 million to 624 thousand during this period, a 69 percent decrease.

Figure 1: Estimated Detected Unlawful Entries Nationwide Between POEs, FY 2006 – FY 2016



§ 1092(b)(1)(A)(iii) Estimated undetected unlawful entries

Definition

Undetected unlawful entries – An estimate of the number of attempted unlawful border crossers between land POEs who are not directly or indirectly observed or detected by USBP. By assumption, undetected unlawful entries evade apprehension and enter the United States unlawfully.

Undetected unlawful entries is an *outcome measure* that describe the numbers of migrants who completely evade detection and successfully enter the United States unlawfully. Undetected unlawful entries is not a comprehensive outcome measure since it excludes detected unlawful entries, discussed above. The ratio of detected to total unlawful entries (i.e., the probability of detection) is an *output measure* that describes the Department's ability to detect unlawful entries, as discussed below. At present, this methodology only exists for the southwest land border between ports of entry. Research is underway on methods to produce this estimate for the northern border.

Methodology and Limitations

Currently, the Department's best available methodology for estimating undetected unlawful entries builds on the repeated trials model (RTM) methodology to produce a model-based estimate of total successful unlawful entries. The estimated number of undetected unlawful entries is calculated as the difference between the model-based estimate of total successful unlawful entries and the estimated number of got aways (i.e., *detected* successful unlawful entries):

$$Undetected\ Unlawful\ Entries = Total\ Successful\ Unlawful\ Entries - Detected\ Got\ Aways$$

As explained in detail in Appendix A, the RTM methodology yields an estimated partial apprehension rate (PAR) for southwest border crossers. Following the calculation of the PAR, the methodology for estimating total successful unlawful entries consists of three additional steps.

First, as in the calculation of the model-based apprehension rate discussed above, all attempted unlawful border crossers are divided into "impactable" and "non-impactable" groups. Second, the PAR is used to estimate the odds of successful entry for aliens within the impactable population group.[2] Third, the number of successful unlawful entries is estimated based on the odds of successful entry among this group times the apprehension count among impactable aliens. Because non-impactable aliens are assumed to be apprehended 100 percent of the time, only impactable aliens contribute to the estimated count of total successful unlawful entries:

[2] Mathematically, $odds\ of\ successful\ entry = \left(\frac{1-PAR}{PAR}\right)$.

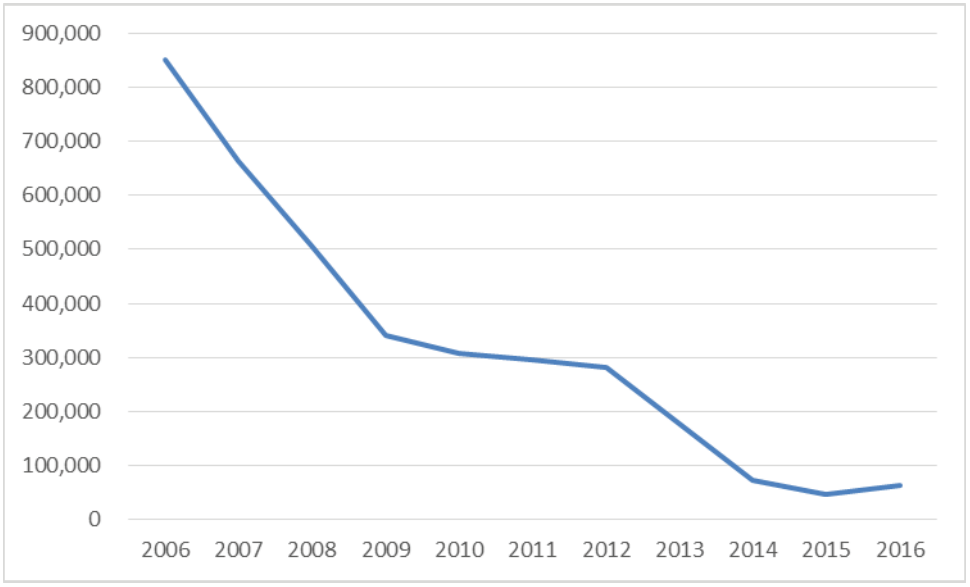
$$Total\ Successful\ Unlawful\ Entries = Odds\ of\ Successful\ Entry * Apprehensions\ of\ Impactable\ Aliens$$

The estimated number of undetected unlawful entries is derived from the observational estimate of detected unlawful entries, with limitations discussed above, and the model-based estimate of total successful unlawful entries, which in turn is derived from the RTM methodology and the model-based apprehension rate, with additional limitations discussed above. DHS is working to refine both the observational and model-based methodologies and to more precisely describe the impact of these limitations on estimates of total and undetected unlawful entries.

Available Data and Discussion

Figure 2 depicts available data on estimated undetected unlawful entries for FY 2006 – FY 2016, the years for which data are available. As the figure indicates, estimated undetected unlawful entries fell from approximately 851,000 to nearly 62,000 during this period, a 93 percent decrease.

Figure 2: Estimated Southwest Border Undetected Unlawful Entries, FY 2006 – FY 2016



§ 1092(b)(1)(A)(iv) Turn backs

Definition

Turn backs –An estimate of the number of subjects who, after making an illegal entry into the United States, return to the country from which they entered, not resulting in an apprehension or got away.

Turn backs are an *activity measure* that USBP uses for tactical decision-making.

Turn backs also contribute to several other border security metrics, including Detected Unlawful Entries, discussed above, and the Unlawful Border Crossing Effectiveness Rate, discussed below.

Methodology and Limitations

Turn backs are a nationwide observational estimate; USBP records total and by-sector estimates of turn backs based on direct and indirect observations as described above.

The primary limitation to detected turn backs is that the estimate aggregates potentially subjective observations from thousands of individual agents. USBP has taken a number of steps to address this problem by establishing consistent and reliable turn back and got away methodologies, as discussed above. In addition, some unlawful border crossers may enter the United States to drop off drug loads or to act as decoys to lure agents away from a certain area and then return to Mexico, and therefore may be misidentified as turn backs.[3]

Available Data and Discussion

Table 2: Southwest Border Turn Backs between POEs, FY 2007 – FY 2016

FY2007	FY2008	FY2009	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016
254,490	204,176	178,566	150,005	121,007	121,079	156,581	147,025	105,670	108,601

The number of turn backs has decreased by more than 57 percent since FY 2007. This decrease is consistent with numerous other between-POE metrics than suggest a decrease in flow over the past 10 years.

§ 1092(b)(1)(A)(v) Got aways

Definition

Got aways – An estimate of the number of subjects who, after making an illegal entry, are not turned back or apprehended, and are no longer being actively pursued by USBP agents.

Total Successful Unlawful Entries – An estimate of the total number of subjects who cross the border unlawfully and who enter the United States without being apprehended.

Methodology and Limitations

Got Aways

[3] U.S. Government Accountability Office, "Border Patrol: Goals and Measures Not Yet in Place to Inform Border Security Status and Resource Needs," GAO-13-330T, February 26, 2013, p. 15.

Got aways are an observational estimate; USBP records total and by-sector estimates of got aways based on direct and indirect observations as described above. While got aways are recorded by USBP at all borders, got aways in this section refer to the southwest border between-ports of entry only.

The primary methodological limitation of got aways is that the estimate aggregates potentially subjective observations from thousands of individual agents. USBP has taken a number of steps to address this problem by establishing consistent and reliable turn back and got away methodologies, as discussed above.

Conceptually, the got aways metric is limited to *observed* (directly or indirectly) flows; it is not a comprehensive measure of successful unlawful entries. USBP's recent work to increase situational awareness, including through the use of Geospatial Intelligence, gives the Department growing confidence in its got away count. As situational awareness continues to improve, observed got aways will become an increasingly comprehensive measure of successful unlawful entries. USBP and DHS are working to refine USBP's observational methodology and to more precisely describe the gap between observed and unobserved got aways.

Total Successful Unlawful Entries

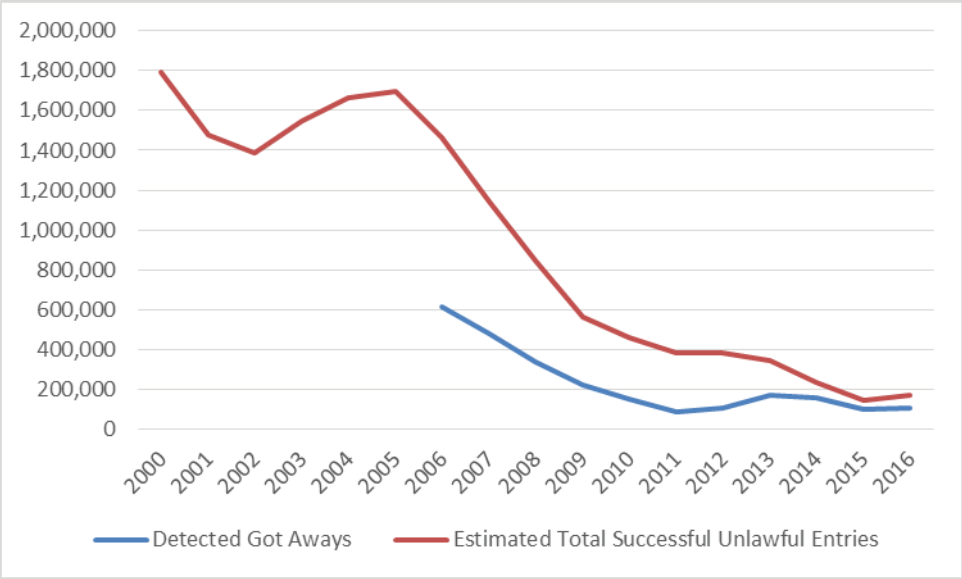
The current methodology for estimating total successful unlawful entries is based on the repeated trials model (RTM) methodology. As explained in detail in Appendix A, the RTM methodology yields an estimated partial apprehension rate (PAR) for southwest border crossings, which focuses on a relatively small share of attempted unlawful border crossers. Following the calculation of the PAR, the methodology for estimating total successful unlawful entries consists of three additional steps, as described above: attempted border crossers are divided into impactable and non-impactable groups; the PAR is used to estimate the odds of successful entry; and the number of successful unlawful entries is estimated based on the odds of successful entry among this group times the number of apprehensions of impactable aliens.

The RTM methodology to estimate the PAR confronts a number of methodological limitations, as discussed in Appendix A. Each of the additional assumptions involved in using the PAR to estimate total successful unlawful entries introduces additional methodological limitations and potential biases. DHS is working to refine the model-based methodology and to more precisely describe the impact of these limitations on estimates of total successful unlawful entries.

Available Data and Discussion

Figure 3 depicts southwest border between-ports of entry detected got aways for FY 2006 – FY 2016 and estimated total successful unlawful entries for FY 2000 – FY 2016, the years for which data are available. As the figure illustrates, estimated total successful unlawful entries declined from 1.8 million to 168,000 between FY 2000 and FY 2016, a 91 percent decrease. Estimated got aways declined from 615,000 to 106,000 between FY 2006 and FY 2016, an 83 percent decrease.

Figure 3: Southwest Border Got Aways and Estimated Total Successful Unlawful Entries between POEs, FY 2000 – FY 2016



Notably, the model-based estimate of total successful unlawful entries declined at a faster rate than observed got aways, with the model based estimate falling 89 percent between FY 2006 and FY 2016 (the period for which both data series are available), versus an 83 percent decrease for detected got aways during this period. Relatedly, the two series have substantially converged over this time period, with observed got aways accounting for 42 percent of total estimated successful unlawful entries in FY 2006 versus 63 percent in FY 2016. These facts suggest that USBP detects an increasingly comprehensive share of all attempted unlawful border crossers.

§ 1092(b)(1)(B) A measurement of situational awareness achieved in each U.S. Border Patrol sector

Definition

Situational awareness – Knowledge and understanding of current unlawful cross-border activity.

Situational awareness is an output measure that describes the Department's awareness of unlawful cross-border activity.

Methodology and Limitations

DHS is in the process of developing a defensible, analytically sound measure for situational awareness for each USBP sector that meets the intent of the NDAA § 1092(b)(1)(B). DHS anticipates this measure will be reported in the annual report due to Congress in November 2020. In the interim, a number of the Department's existing metrics are informed by the Department's

awareness of migrants and other threats in the near border regions (CBP has operational jurisdiction within 100 miles of U.S. borders) and in the approaches [*See* § 1092(b)(1)(A)(ii to v) and § 1092(b)(1)(D)].

§ 1092(b)(1)(C) Unlawful Border Crossing Effectiveness Rate

Definition

Unlawful Border Crossing Effectiveness Rate – The estimated percentage of all attempted unlawful border crossers that is interdicted by USBP, where interdictions include apprehensions and turn backs.

The Unlawful Border Crossing Effectiveness Rate is an *output measure* that describes how difficult it is for unlawful border crossers to enter the United States without being interdicted.

Methodology and Limitations

The Unlawful Border Crossing Effectiveness Rate is calculated by dividing the number of apprehensions and turn backs between land POEs by the sum of the number of apprehensions, turn backs, and total estimated successful unlawful entries:

$$Effectiveness\ Rate = \frac{Apprehensions + Turn\ backs}{Apprehensions + Turn\ backs + Successful\ unlawful\ entries}$$

The NDAA calls for an effectiveness rate that incorporates USBP's observational estimate of turn backs and DHS's current model-based estimate of total estimated successful unlawful entries. This measure would confront all of the methodological challenges associated with each of its component parts, as discussed above.

The Unlawful Border Crossing Effectiveness Rate is conceptually similar to USBP's Interdiction Effectiveness Rate (IER), which USBP reports in its Annual Performance Report pursuant to the Government Performance and Results Modernization Act (GPRMA) of 2010. The Unlawful Border Crossing Effectiveness Rate differs from the IER in that the former includes total estimated successful unlawful entries in its denominator and IER includes known got aways.

The Unlawful Border Crossing Effectiveness Rate is also conceptually similar to the estimated apprehension rate, with the difference being that the Effectiveness Rate includes data on turn backs and apprehensions while the apprehension rate focuses exclusively on apprehensions. An advantage to examining the effectiveness rate, rather than the apprehension rate, is that effectiveness rate more completely captures USBP's actual enforcement practices, which include efforts to turn back border crossers, in addition to efforts to apprehend them. On the other hand, some analysts consider the effectiveness rate (along with IER) to be an ambiguous indicator of enforcement success since an unknown share of turn backs make additional entry attempts.

Despite its shortcomings as an analytic tool, to date, only the IER is available for analysis at the sector level. While a southwest border-wide estimate has been developed, sector-level estimates of unlawful entries and attempts have not yet been produced and validated by DHS. These estimates are projected to be available for the 2019 report.

Available Data and Discussion

Table 3: Interdiction Effectiveness Rate by Southwest Border Sector, FY 2014 – FY 2016

	Big Bend, TX	Del Rio, TX	EL Centro, CA	EL Paso, TX	Laredo, TX	Rio Grande Valley, TX	San Diego, CA	Tucson, AZ	Yuma, AZ
FY2014	72%	76%	85%	92%	74%	80%	89%	75%	91%
FY2015	77%	73%	83%	90%	74%	82%	88%	80%	95%
FY2016	70%	79%	81%	89%	78%	83%	89%	82%	96%

IER often vary from year to year and by sector. One point of note for FY 2016 is the 96 percent IER for Yuma, AZ, which often scores the highest rating. Del Rio reported the largest increase in all sectors, climbing six percentage points in FY 2016 to 79 percent. Big Bend reported the largest loss in FY 2016, decreasing by seven percentage points to 70 percent. Due to the small number of attempted and successful entries along the Northern Border, a Northern Border IER has not been developed.

§ 1092(b)(1)(D) Probability of Detection Rate

Definition

Estimated probability of detection - The estimated probability that DHS detects attempted unlawful border crossers between land POEs.

The estimated probability of detection is an *output measure* that describes the ability of attempted unlawful border crossers to enter without being detected. Because successful unlawful entry estimate is available only for the southwest border between-ports of entry, data in this section refer exclusively to this region.

Methodology and Limitations

The estimated probability of detection is defined as the ratio of detected unlawful entries to estimated total unlawful entries:

$$Probability\ of\ Detection = \frac{Detected\ Unlawful\ Entries}{Estimated\ Total\ Unlawful\ Entries}$$

As described above, the number of detected unlawful entries is calculated as the sum of turn backs, got aways, and apprehensions, a mix of observational estimates and administrative data. The primary limitation to detected unlawful entries is that this metric incorporates turn back and got away estimates that aggregate potentially subjective observations from thousands of individual agents. USBP has taken a number of steps to address this problem by establishing consistent and reliable turn back and got away methodologies, as discussed above.

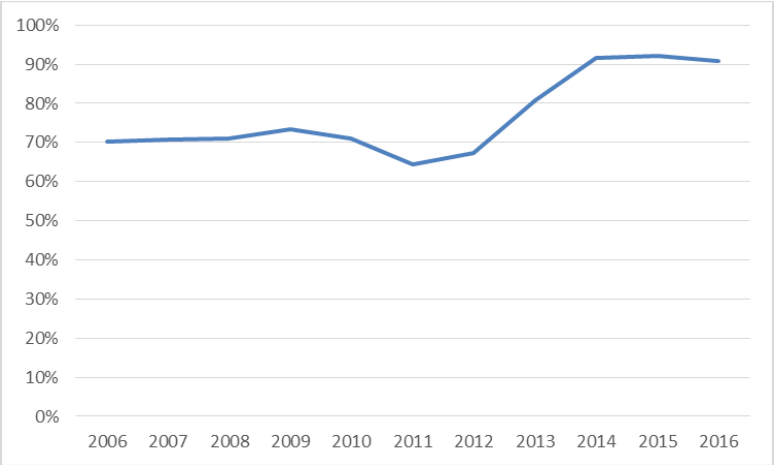
Estimated total unlawful entries is calculated as the sum of turn backs, apprehensions, and the model-based estimate of total successful unlawful entries. As described above, the methodology for estimating total successful unlawful entries begins with the RTM methodology's partial apprehension rate, discussed in detail in Appendix A. Following the calculation of the PAR, the methodology for estimating total successful unlawful entries consists of three additional steps: attempted border crossers are divided into impactable and non-impactable groups; the PAR is used to estimate the odds of successful entry; and the number of successful unlawful entries is estimated based on the odds of successful entry among this group times the apprehension count among impactable aliens.

The RTM methodology to estimate the PAR confronts a number of methodological limitations, as discussed in Appendix A. Each of the additional assumptions involved in using the PAR to estimate total successful unlawful entries introduces additional methodological limitations and potential biases. DHS is working to refine the model-based methodology and to more precisely describe the impact of these limitations on estimates of total successful unlawful entries in future State of the Border reports.

Available Data and Discussion

Figure 4 depicts the estimated probability of detection for FY 2006 – FY 2016, the years for which data are available. As the figure indicates, the estimated probability increased from 70 percent in FY 2006 (when an estimated 2.0 million unlawful border crossers were detected out of an estimated 2.9 million total unlawful border crossers) to 91 percent in FY 2016 (611,000 detected out of 673,000 total estimated unlawful border crossers).

Figure 4: Southwest Border Between-Ports of Entry Estimated Probability of Detection, FY 2006 – FY 2016



§ 1092(b)(1)(E) Apprehensions in Each U.S Border Patrol Sector

Definition

Apprehension - The arrest of a removable alien by DHS USBP.

Apprehensions are *activity measures* that provide information used for program planning and operational purposes, among other uses. Historically, the Department has also used apprehensions as a proxy indicator of illegal entries, an outcome measure.

For many years, DHS and the legacy Immigration and Naturalization Service also used apprehensions as a proxy indicator of successful unlawful border crossings, i.e., an *outcome measure*. Over the long-term and across multiple locations, apprehensions are a problematic indicator of enforcement outcomes since the relationship between apprehensions and successful unlawful entries depends on the apprehension rate, which changes over time and may also differ by location. But in the short-term and in a fixed geographic area, DHS continues to view changes in apprehensions as a useful outcome indicator because short term changes in apprehensions are more likely to be driven by changes in the number of unlawful border crossing attempts than by changes in the apprehension rate.

Methodology and Limitations

Apprehensions are recorded in administrative record systems with a unique identifier created for each apprehension. USBP's count of apprehensions is considered reliable.

Apprehensions displayed below are event counts, meaning each apprehension of the same alien in a fiscal year is counted separately. These data do not represent a count of unique aliens apprehended.

Available Data and Discussion

Table 4: Southwest Border Apprehension by USBP sector, FY 2007 – FY 2016

Sector	FY2007	FY2008	FY2009	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016
Big Bend, TX	5,536	5,391	6,360	5,288	4,036	3,964	3,684	4,096	5,031	6,366
Del Rio, TX	22,920	20,761	17,082	14,694	16,144	21,720	23,510	24,255	19,013	23,078
EL Centro, CA	55,883	40,961	33,521	32,562	30,191	23,916	16,306	14,511	12,820	19,448
EL Paso, TX	75,464	30,312	14,999	12,251	10,345	9,678	11,154	12,339	14,495	25,634
Laredo, TX	56,714	43,668	40,569	35,287	36,053	44,872	50,749	44,049	35,888	36,562
Rio Grande	73,430	75,473	60,989	59,766	59,243	97,762	154,453	256,393	147,257	186,830

Valley, TX										
San Diego, CA	152,460	162,390	118,721	68,565	42,447	28,461	27,496	29,911	26,290	31,891
Tucson, AZ	378,239	317,696	241,673	212,202	123,285	120,000	120,939	87,915	63,397	64,891
Yuma, AZ	37,992	8,363	6,951	7,116	5,833	6,500	6,106	5,902	7,142	14,170
Total	**858,638**	**705,015**	**540,865**	**447,731**	**327,577**	**356,873**	**414,397**	**479,371**	**331,333**	**408,870**

Apprehension numbers often vary considerably from year to year and by sector. Since FY 2013, the Rio Grande Valley (RGV) sector has displaced the Tucson sector as the leader in apprehensions, with over 120,000 more apprehensions than the next leading sector in FY 2016. Apprehensions were up across the board in FY 2016, with each sector reporting increases. The largest numeric increase was seen in RGV with almost 40,000 more apprehensions in FY 2016 than in FY 2015; however, the largest percent increase was seen in Yuma, where the apprehension count roughly doubled. Tucson and San Diego, historically major sectors for apprehensions, continue to report considerably lower numbers than earlier years shown in the chart, with Tucson reporting 64,891 apprehensions in FY 2016, as compared to 378,239 in FY 2007.

§ 1092(b)(1)(F) Apprehensions of Unaccompanied Alien Children

Definition

Unaccompanied alien child (UAC) - one who has no lawful immigration status in the United States; has not attained 18 years of age, and with respect to whom; 1) there is no parent or legal guardian in the United States; or 2) no parent or legal guardian in the United States is available to provide care and physical custody [6 U.S.C. § 279(g)(2)].

UAC apprehensions are an *activity measure* that provide information used for program planning and operational purposes, among other uses. Historically, the Department has also used apprehensions as a proxy indicator of illegal entries, an outcome measure.

Methodology and Limitations

Apprehensions are recorded in administrative record systems with a unique identifier created for each apprehension. Since 2008, USBP systems have included a flag for children who are found to meet the legal definition of a UAC. USBP's count of apprehensions is considered reliable, but some outside analysts have raised questions about agents' ability to reliably distinguish among older children and young adults (e.g., to distinguish between 17 and 18 year-olds) and to confirm whether children are traveling alone or in family groups.[4]

[4] OIG-10-12 Department of Homeland Security Office of Inspector General. *Age Determination Practices for Unaccompanied Alien Children in ICE Custody*. November 2009

USBP began collecting data on UACs in FY 2008; data are unavailable for earlier years.

Data and Discussion

Tables 5a – 5d provide counts of UAC apprehensions by citizenship and by USBP sector for FY 2008 through FY 2016, the years for which data are available.

Table 5a: Total Southwest Border Apprehensions of UACs, FY 2008 – FY 2016

Sector	FY2008	FY2009	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016
Big Bend, TX	84	147	197	189	168	125	256	839	951
Del Rio, TX	834	1,085	1,014	1,113	1,618	2,135	3,268	2,285	2,689
EL Centro, CA	337	673	448	457	498	434	662	668	1,379
EL Paso, TX	1,139	889	1,011	697	659	744	1,029	1,662	3,885
Laredo, TX	799	1,901	1,570	1,608	2,658	3,795	3,800	2,459	2,953
Rio Grande Valley, TX	2,523	3,835	4,977	5,236	10,759	21,553	49,959	23,864	36,714
San Diego, CA	888	3,028	980	549	524	656	954	1,084	1,553
Tucson, AZ	1,271	7,606	7,998	5,878	7,239	9,070	8,262	6,019	6,302
Yuma, AZ	47	276	216	222	280	247	351	1,090	3,266
Total	**7,922**	**19,440**	**18,411**	**15,949**	**24,403**	**38,759**	**68,541**	**39,970**	**59,692**

Table 5b: Southwest Border Apprehensions of UACs from Mexico, FY 2008 – FY 2016

Sector	FY2008	FY2009	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016
Big Bend, TX	59	127	180	183	137	104	102	73	118
Del Rio, TX	396	851	772	801	911	1,082	821	798	867
EL Centro, CA	306	631	404	427	418	328	278	397	610
EL Paso, TX	1,067	841	947	663	616	654	698	823	1,149
Laredo, TX	118	1,308	886	1,022	1,369	1,652	1,354	1,299	1,515
Rio Grande Valley, TX	365	2,401	2,787	3,009	4,361	6,366	7,081	3,243	3,389
San Diego, CA	879	2,990	950	523	480	598	740	823	851
Tucson, AZ	79	6,582	6,485	4,893	5,405	6,241	4,394	3,412	3,293
Yuma, AZ	33	258	204	192	246	194	166	144	134
Total	**3,302**	**15,989**	**13,615**	**11,713**	**13,943**	**17,219**	**15,634**	**11,012**	**11,926**

Table 5c: Southwest Border Apprehensions of UACs from Northern Triangle Countries, FY 2008 – FY 2016

Sector	FY2008	FY2009	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016
Big Bend, TX	23	19	16	6	29	18	151	760	824
Del Rio, TX	423	229	238	307	701	1,044	2,422	1,479	1,806
EL Centro, CA	28	42	42	29	70	104	379	269	641
EL Paso, TX	65	46	58	32	40	80	290	824	2,685
Laredo, TX	627	523	598	528	1,228	2,028	2,329	1,113	1,382
Rio Grande Valley, TX	2,051	1,389	2,057	2,030	6,229	14,696	42,020	20,260	32,935

San Diego, CA	9	37	28	25	44	48	209	255	625
Tucson, AZ	1,091	938	1,326	927	1,753	2,731	3,727	2,497	2,904
Yuma, AZ	14	15	8	28	34	36	178	930	3,091
Total	**4,331**	**3,238**	**4,371**	**3,912**	**10,128**	**20,785**	**51,705**	**28,387**	**46,893**

Note: Northern Triangle Countries refers to El Salvador, Guatemala, and Honduras.

Table 5d: Southwest Border Apprehensions of UACs from All Other Countries, FY 2008 – FY 2016

Sector	FY2008	FY2009	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016
Big Bend, TX	2	1	1	0	2	3	3	6	9
Del Rio, TX	15	5	4	5	6	9	25	8	16
EL Centro, CA	3	0	2	1	10	2	5	2	128
EL Paso, TX	7	2	6	2	5	10	41	15	51
Laredo, TX	54	70	86	58	61	115	117	47	56
Rio Grande Valley, TX	107	45	133	199	169	491	858	361	390
San Diego, CA	0	1	2	1	0	10	5	6	77
Tucson, AZ	101	86	187	58	82	98	141	110	105
Yuma, AZ	0	3	4	2	0	17	7	16	41
Total	**289**	**213**	**425**	**326**	**335**	**755**	**1,202**	**571**	**873**

After averaging 15,000 per year from FY 2008 – FY 2011, UAC apprehensions increased an average of more than 60 percent per year in FY 2012 – FY 2014, peaking at 68,541 in FY 2014. UAC numbers returned to their FY 2013 level in FY 2015, but then climbed to 59,692 in FY 2016. More than half of all UACs were reported in RGV (36,714), most of whom were from the Northern Triangle countries of Honduras, Guatemala, and El Salvador (32,935).

§ 1092(b)(1)(G) Apprehensions of Family Units

Definition

Family unit - the number of individuals apprehended with a family member by the USBP. For example, a mother and child apprehended together are counted as two family units.

Family unit apprehensions (FMUA) are *activity measures* that provide information used for program planning and operational purposes, among other uses. Historically, the Department has also used apprehensions as a proxy indicator of illegal entries, an outcome measure.

Methodology and Limitations

Apprehensions are recorded in administrative record systems with a unique identifier created for each apprehension. USBP's count of apprehensions is considered reliable, but agents may not always be able to reliably identify family units.

USBP began collecting data on family units in FY 2012; data on family unit apprehensions are unavailable for earlier years.

Data and Discussion

Table 6a: Total Southwest Border Apprehensions of FMUAs, FY 2015 – FY 2016

	Big Bend, TX	Del Rio, TX	EL Centro, CA	EL Paso, TX	Laredo, TX	Rio Grande Valley, TX	San Diego, CA	Tucson, AZ	Yuma, AZ	**Total**
FY2012	76	349	1,127	265	1,825	2,625	1,373	3,254	222	**11,116**
FY2013	102	711	365	298	1,688	7,265	1,576	2,630	220	**14,855**
FY2014	176	4,950	630	562	3,591	52,326	1,723	3,812	675	**68,445**
FY2015	807	2,141	675	1,220	1,372	27,409	1,550	2,930	1,734	**39,838**
FY2016	1,051	3,549	1,593	5,664	1,640	52,006	2,863	3,139	6,169	**77,674**

Table 6b: Southwest Border Apprehensions of FMUAs from Mexico, FY 2015 – FY 2016

	Big Bend, TX	Del Rio, TX	EL Centro, CA	EL Paso, TX	Laredo, TX	Rio Grande Valley, TX	San Diego, CA	Tucson, AZ	Yuma, AZ	**Total**
FY2012	56	218	699	241	1,623	1,555	1,325	2,940	194	**8,851**
FY2013	90	177	294	267	1,116	1,690	1,343	2,216	163	**7,356**
FY2014	61	141	260	213	779	1,832	1,213	1,057	83	**5,639**
FY2015	40	174	196	188	713	1,326	854	696	89	**4,276**
FY2016	38	229	163	224	518	1,392	346	487	84	**3,481**

Table 6c: Southwest Border Apprehensions of FMUAs from Northern Triangle Countries, FY 2015 – FY 2016

	Big Bend, TX	Del Rio, TX	EL Centro, CA	EL Paso, TX	Laredo, TX	Rio Grande Valley, TX	San Diego, CA	Tucson, AZ	Yuma, AZ	**Total**
FY2012	10	120	12	19	175	989	31	130	3	**1,489**
FY2013	8	522	40	23	522	5,354	39	254	19	**6,781**
FY2014	100	4,753	337	291	2,767	49,790	351	2,553	392	**61,334**
FY2015	764	1929	470	1,002	602	25,296	617	2,127	1,556	**34,363**
FY2016	1,005	3,233	1,380	4,634	827	49,919	1,615	2,496	5,298	**70,407**

Note: Northern Triangle Countries refers to El Salvador, Guatemala, and Honduras.

Table 6d: Southwest Border Apprehensions of FMUAs from All Other Countries, FY 2015 – FY 2016

	Big Bend, TX	Del Rio, TX	EL Centro, CA	EL Paso, TX	Laredo, TX	Rio Grande Valley, TX	San Diego, CA	Tucson, AZ	Yuma, AZ	**Total**
FY2012	10	11	416	5	27	81	17	184	25	**776**
FY2013	4	12	31	8	50	221	194	160	38	**718**
FY2014	15	56	33	58	45	704	159	202	200	**1,472**
FY2015	3	38	9	30	57	787	79	107	89	**1,199**
FY2016	8	87	50	806	295	695	902	156	787	**3,786**

From 2015 to 2016, FMUA numbers increased considerably across all sectors. Similar to the UAC trend observed in these two years, total FMUAs nearly doubled in 2016, and more than doubled in some sectors. Yuma reported only 1,734 FMUAs in 2015 but 6,169 in 2016; El Paso saw a similar trend. Like the UACs, most FMUAs (70,407 of 77,674) were from Northern Triangle countries. In fact, despite the overall increase in FMUAs, the total count of FMUAs from Mexico decreased by 19 percent in 2016.

§ 1092(b)(1)(H) Between the Ports Illicit Drugs Seizure Rate

Definition

Between the Ports Illicit Drug Seizure Rate – For each type of illicit drug seized by USBP between POEs, the ratio of the amount of illicit drugs seized in any fiscal year relative to the average amount seized in the immediately preceding five FYs.

The Illicit Drug Seizure Rate is an *activity measure*, which compares trends in activity data over time.

Methodology and Limitations

Between-the-ports drug seizure data are obtained from USBP administrative records. These data are considered reliable.

Pursuant to the definition of the Illicit Drug Seizure Rate directed by NDAA § 1092 (b)(1)(H), the drug seizure rate describes the ratio of each year's seizures relative to illicit drugs seizures in the preceding five years; the measure does not describe the rate at which illicit drugs are seized.

Available Data and Discussion

Table 7: Illicit Drugs Seized Relative to Preceding Five Years ("Illicit Drug Seizure Rate") between POEs, FY 2012 – FY 2016

Drug Type		FY2012	FY2013	FY2014	FY2015	FY2016
Marijuana	Rate	101%	100%	83%	81%	72%
	Lbs seized	2,299,864	2,430,123	1,922,545	1,538,307	1,294,052
Cocaine	Rate	117%	53%	57%	206%	71%
	Lbs seized	12,161	4,596	4,554	11,220	5,473
Heroin	Rate	151%	142%	142%	141%	129%
	Oz seized	6,873	9,212	9,691	8,282	9,062
Methamphetamines	Rate	228%	160%	149%	215%	168%
	Lbs seized	3,715	3,580	3,930	6,443	8,224

Drug seizure trends varied in FY 2016 by type of illicit drug. Marijuana and cocaine both saw declines in FY 2016 as compared to the previous five years (72 percent and 71 percent of the previous five year average, respectively). This is a continuous trend for marijuana seizures, which have been on the decline since FY 2014. Cocaine seizures had been declining until FY 2015, in which year a resurgence in seizures was observed. Heroin and methamphetamines seizures continue to increase, as they have in each year at least since FY 2012.

§ 1092(b)(1)(I) Estimates of the Impact of the Consequence Delivery System on Recidivism

Definition

Consequence Delivery System (CDS) – a process implemented by USBP to uniquely evaluate each apprehended subject and to identify the most effective and efficient consequences to deliver to impede and deter further illegal activity.

Recidivist Rate – The share of subjects apprehended by USBP who are apprehended more than once in the same fiscal year.

The annual recidivist rate is an *output measure* that offers insight into what share of deportees are deterred from making additional unlawful entry attempts, though not accounting for unknown attempts/entries. USBP use the annual recidivist rate as one of its 15 metrics of the effectiveness of enforcement consequences under the CDS.

Methodology and Limitations

Since 2007, USBP has collected biometric data (including fingerprints and digital photographs) from most unlawful border crossers it apprehends. These data are used to identify subjects apprehended more than once in a given fiscal year. USBP data on re-apprehensions in the same fiscal year is considered reliable. The annual recidivist rate is defined as the number of unique subjects apprehended multiple times in a fiscal year divided by the total number of unique subjects in the fiscal year:

$$Annual\ Recidivist\ Rate = \frac{Number\ of\ Unique\ Subjects\ Apprehended\ Multiple\ Times}{Total\ Number\ of\ Unique\ Subjects}$$

The annual recidivism rate is a valid indicator of the probability that deportees make subsequent attempts at re-apprehensions in that a drop in the annual recidivism rate very likely reflects a drop in unlawful re-entry attempts. The measure has the further advantages that USBP can calculate annual recidivism based strictly on its own apprehension data and that it can reliably be calculated at the end of each fiscal year. These features make the annual recidivism rate a useful measure for USBP performance management.

Nonetheless, as the U.S. Government Accountability Office (GAO) has argued, if the goal is to accurately describe the share of deportees who make additional unlawful entry attempts, the current measure of recidivism could be strengthened in at least two ways: 1) count re-apprehensions based on the date on which a subject is removed or returned, rather than that the date of apprehension; 2) count re-apprehensions that occur within a fixed period of time defined by the subject's repatriation date, rather than by the fiscal year.[5] When based on a one year window, these refinements yield a more expansive definition of the recidivism rate that DHS refers to as the "Total One-Year Recidivism Rate"; future versions of this report will include estimates of the impact of CDS on both the annual recidivism rate and a longer-term recidivism rate.

Available Data and Discussion

Table 8: CDS Recidivism Rate Change by Sector

Southwest Border Sector	Year CDS Implemented	Average Annual Recidivism Rate in 3 Prior Years[1]	Average Annual Recidivism Rate in 3 Subsequent Years[2]
San Diego	FY 2012	38%	31%
El Centro	FY 2012	42%	36%
Yuma	FY 2012	18%	16%
Tucson	FY 2012	26%	20%
El Paso	FY 2012	10%	10%
Big Bend	FY 2012	11%	7%
Del Rio	FY 2012	8%	6%
Laredo	FY 2012	14%	12%
Rio Grande Valley	FY 2012	15%	12%

[1]Refers to the 3 years prior to CDS being implemented in that sector
[2]Refers to the 3 years after CDS was implemented in that sector

With the exception of the El Paso sector, where rates remained unchanged, the annual recidivism rates dropped across the board following the implementation of CDS. While changes in

[5] U.S. Government Accountability Office, "Border Patrol: Actions Needed to Improve Oversight of Post-Apprehension Consequences," GAO-17-66, January 2017, pp. 13-17.

recidivism should not be interpreted solely as a function of CDS given that border enforcement is a complex, dynamic system, some sectors showed noticeable improvements in recidivism rates, such as the Tucson and El Centro sectors which saw six percent drops after CDS, and San Diego which saw a seven percent drop. Other sectors, which already had the lowest recidivism rates, saw smaller improvements. Recidivism data are not available to calculate the impact of CDS at the Northern Border due to the small number of attempted illegal entries along the Northern Border.

§ 1092(b)(1)(J) Examination of Each Consequence under the CDS

Definition

Consequence – An administrative, programmatic, or criminal justice process imposed on a subject following the subject's apprehension. CDS is designed to identify, for any given subject, the ideal consequences to deliver to impede and deter further illegal activity.

Methodology and Limitations

USBP's current methodology for assessing the CDS involves analyzing the effectiveness and efficiency of each enforcement consequence. One of the key effectiveness metrics is the annual recidivism rate, which is calculated separately for each enforcement consequence.

Under the CDS, USBP specifically targets aliens with more extensive records of unlawful border crossing behavior for consequences that are designed to have a greater deterrent impact. For example, the Target Enforcement Initiative utilizes partnerships with the U.S. Department of Justice to prioritize and prosecute individuals with six or more apprehensions. As a result, differences in recidivism rates by enforcement consequence may reflect differences in the propensity of the targeted population to make further re-entry attempts, in addition to the possible impact of each consequence on recidivism.

An additional limitation of currently-available data is that they are based on apprehension data for a given fiscal year, not repatriation data. Depending on the consequence and the timing of the apprehension, some individuals may not be repatriated to their country of origin during the fiscal year of their apprehension, and therefore may not have an opportunity to attempt re-entry. DHS and CBP are working to refine their analysis of CDS and will seek to address these limitations in the FY 2018 version of this report.

Available Data and Discussion

Table 9: Annual Recidivism Rate by Consequence, FY 2012 – FY 2016

Consequence	FY2012	FY2013	FY2014	FY2015	FY2016
Voluntary Return	27.06%	28.61%	30.50%	27.03%	24.55%
Warrant of Arrest/ Notice to Appear	3.83%	1.44%	0.60%	0.89%	0.41%
Expedited Removal	16.44%	16.66%	17.54%	18.08%	15.46%
Reinstatement of Removal	15.88%	16.42%	15.80%	15.41%	16.62%
Alien Transfer Exit Program	23.82%	25.48%	28.63%	27.17%	28.80%
Criminal Consequence Program	10.30%	9.26%	8.24%	6.67%	8.36%
Standard Prosecution	9.09%	10.17%	9.18%	8.79%	8.16%
Operation Against Smugglers Initiative on Safety and Security	10.24%	18.04%	18.25%	22.97%	30.93%

While these data should be interpreted with caution for the reasons identified above, some trends are noteworthy. For example, the more punitive consequence programs such as CCP and standard prosecution generally showed lower recidivism rates (8.36 percent, 8.16 percent) than less punitive programs like voluntary return (24.55 percent) or expedited removal (15.46 percent). At the same time, recidivism rates are notably high among individuals in the Operation Against Smugglers Initiative on Safety and Security (OASISS) consequence group; this finding likely reflects the fact that the population selected for OASISS—suspected smugglers—routinely make multiple crossing attempts.

§ 1092(c) Metrics for Securing the Border at Ports of Entry

§ 1092(c)(1)(A)(i) Total Inadmissible Travelers at Ports of Entry

Definition

Inadmissible Alien – An alien seeking admission at a POE who does not meet the criteria in the INA for admission.

Known Inadmissible Aliens – Aliens seeking admission at a POE who are found by OFO to be inadmissible.

Total Attempted Inadmissible Aliens – The estimated number of inadmissible aliens who attempt to enter the United States. Total attempted inadmissible aliens include known inadmissible aliens and successful unlawful entries at POEs.

Inadmissible aliens and known inadmissible aliens are *activity measures* that describes OFO officer workload. Known inadmissible aliens may also be used as a proxy indicator of total attempted inadmissible aliens, which is an *outcome measure*.

Methodology and Limitations

Known inadmissible aliens are recorded in OFO administrative records with a unique identifier created for each inadmissibility determination. OFO's count of known inadmissible aliens is considered reliable.

The Department does not currently have a methodology in place to estimate the number of attempted inadmissible aliens. DHS and CBP are working to establish a methodology to produce such an estimate in time to be included in the 2018 State of the Border Report.

Available Data and Discussion

Table 10: Known Inadmissible Aliens at Ports of Entry, FY 2007 - FY2016

FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
203,310	224,770	225,149	231,306	216,355	197,362	205,920	224,927	254,637	292,614

From the recent low in FY 2012, the number of aliens identified as inadmissible at POEs has continue to climb. In FY 2016, 292,614 aliens were deemed inadmissible at POEs, the highest number this decade. The FY 2016 count represents an increase of 48 percent over the 197,362 inadmissible aliens in FY 2012.

§ 1092(c)(1)(A)(ii) Refusal and Interdiction Rates at Ports of Entry

Definition

Refusal Rate – The share of all passengers seeking admission at a port of entry that is found inadmissible. Refusal Rate is an *activity measure* that describes OFO officer workload.

Port of Entry Interdiction Rate – The share of attempted inadmissible aliens that is found inadmissible. POE Interdiction Rate is an *output measure* that describes the difficulty of entering the United States unlawfully through a port of entry.

Methodology and Limitations

The refusal rate is calculated by dividing known inadmissible aliens (i.e., aliens found inadmissible by OFO officers at POEs) by the total number of passengers seeking admission at ports of entry:

$$Refusal\ Rate = \frac{Inadmissibility\ Determinations}{Arivals\ at\ POEs}$$

Data on inadmissibility determinations and total passengers is obtained from OFO administrative records; these data are considered reliable.

The Department does not have a methodology in place to calculate total attempted inadmissible aliens, and therefore currently cannot calculate a POE interdiction rate.

Available Data and Discussion

Table 11: Inadmissible Aliens and Refusal Rate at Ports of Entry FY 2007 - FY2016

	Passengers	Inadmissible	Refusal Rate
FY 2007	407,677,568	203,310	0.05%
FY 2008	401,481,071	224,770	0.06%
FY 2009	361,191,781	225,149	0.06%
FY 2010	352,980,607	231,306	0.07%
FY 2011	340,364,884	216,355	0.06%
FY 2012	351,551,007	197,362	0.06%
FY 2013	362,333,988	205,920	0.06%
FY 2014	374,974,750	224,927	0.06%
FY 2015	383,200,225	254,637	0.07%
FY 2016	390,592,745	292,614	0.07%

Since 2012, the number of passengers at POEs has increased 11 percent (from 352 to 391 million), while the number of known inadmissible passengers has increased 48 percent (from 197,000 to 293,000), resulting in a 33 percent increase in the refusal rate (from under 0.06

percent to over 0.07 percent). This increase may indicate that inadmissible aliens represent an increasingly large share of passengers, that OFO is better able to detect inadmissible aliens, or both. With an FY 2016 refusal rate of .0749 percent, however, the number of known inadmissible aliens is still a very small share of passengers coming through POEs.

§ 1092(c)(1)(A)(iii) Unlawful Entries at Ports of Entry

Definition

Successful Unlawful Entries - The estimated number of inadmissible aliens who unlawfully enter the United States through POEs.

Successful unlawful entries is an *outcome measure*.

Methodology and Limitations

The Department does not currently have a methodology to reliably estimate the number of successful unlawful entries through POEs. DHS and CBP are working to establish a methodology to produce such an estimate in time to be included in the 2018 State of the Border Report.

§ 1092(c)(1)(B) Illicit Drugs Seized at Ports of Entry

Definition

Drug Seizures – Seizures of illicit drugs by CBP officers at POEs.

Drug Seizures are an *activity measure*. Drug seizures may also be interpreted as a proxy indicator of illicit drug inflows through POEs, an *outcome measure*.

Methodology and Limitations

Drugs seizure data are obtained from OFO administrative records, measured in kilograms. These data are considered reliable.

Available Data and Discussion

Drug seizures at POEs is contained in Appendix B. A total of 367,612.58 kilos of illicit drugs were seized at POEs in FY 2016, which represents a nine percent decline from a total of 400,719.44 kilos in FY 2015, but is still higher than the previous five-year average of 352,399.84 kilos.

§ 1092(c)(1)(C) Port of Entry Illicit Drug Seizure Rate

Definition

Port of Entry Illicit Drug Seizure Rate – For each type of illicit drug seized by OFO at POEs, the ratio of the amount of illicit drugs seized in any fiscal year to the average of the amount seized in the immediately preceding five fiscal years.

Methodology and Limitations

At-ports-of-entry drug seizure data are obtained from OFO administrative records. These data are considered reliable.

Pursuant to the definition of the illicit drug seizure rate directed by NDAA § 1092(c)(1)(C), the drug seizure rate describes recent seizure trends (i.e., current year compared to five previous years); the measure does not describe the rate at which illicit drugs are seized.

The Drug Seizure Rate is an *activity measure*, which compares trends in activity data over time. Drug seizures may also be interpreted as a proxy indicator of illicit drug inflows through POEs, an *outcome measure*.

Available Data and Discussion

Table 12: Port of Entry Illicit Drug Seizure Rate, FY 2012 – FY 2016

Drug Type		FY2012	FY2013	FY2014	FY2015	FY2016
Marijuana	Rate	88%	81%	77%	118%	102%
	Kg seized	219,344	195,270	180,686	250,637	219,960
Cocaine	Rate	73%	82%	71%	87%	103%
	Kg seized	7,294	7,413	6,234	7,190	8,209
Heroin	Rate	209%	208%	168%	174%	106%
	Kg seized	1,125	1,475	1,556	1,984	1,483
Methamphetamines	Rate	233%	263%	200%	200%	203%
	Kg seized	4,888	7,503	8,285	10,861	14,279

Unlike recent trends in drug seizures between POEs, marijuana and cocaine seizures at POEs held fairly constant in FY 2016 as compared to the previous five-year average (two percent and three percent increase respectively). Notably, however, seizures of marijuana and cocaine have fallen in recent years, and the volume of seizures in FY 2016 were still relatively low by recent historical standards. Heroin and methamphetamines, however, continued their increases into FY 2016, with heroin increasing six percent over a constantly growing five year average and methamphetamines more than doubling its previous five year average each of the past five years.

§ 1092(c)(1)(D) Major Infractions at Ports of Entry

Definition

Major Infractions – OFO considers major infractions to include all arrests, including arrests related to terrorism, drugs, criminal alien [including zero tolerance (ZT) arrests], currency, merchandise, agriculture products, National Crime Information Center (NCIC) hits, and Terrorist Screening Database (TSDB) hits, among others.

Known Major Infractions – The number of major infractions interdicted by OFO.

Undetected Major Infractions – The estimated number of major infractions not interdicted by OFO.

Known Major Infractions are an *activity measure*. Undetected major infractions are an *outcome measure*.

Methodology and Limitations

These data are recorded in OFO administrative records and are considered reliable.

The Department does not currently have a methodology to estimate the number of undetected major infractions.

Available Data and Discussion

Table 13: Known Major Infractions at Ports of Entry, FY 2007 – FY 2016

	Passengers	Major Infractions	Infraction Rate
FY 2007	407,677,568	90,718	0.02%
FY 2008	401,481,071	96,330	0.02%
FY 2009	361,191,781	108,941	0.03%
FY 2010	352,980,607	112,446	0.03%
FY 2011	340,364,884	120,491	0.04%
FY 2012	351,551,007	111,185	0.03%
FY 2013	362,333,988	112,471	0.03%
FY 2014	374,974,750	106,354	0.03%
FY 2015	383,200,225	112,562	0.03%
FY 2016	390,592,745	113,665	0.03%

OFO officers interdicted 113,665 passengers based on major infractions at ports of entry in FY 2016. The number of major infractions was almost unchanged from FY 2015, and similar to the number each year since FY 2010. With the number of passengers increasing slightly over this period, the infraction rate fell slightly from 0.04 percent in FY 2011 to 0.03 percent in FY 2016. Over the last 10 years (i.e., since FY 2007), both the number of total seizures and the infraction rate both showed modest increases.

§ 1092(c)(1)(E) Cocaine Seizure Effectiveness Rate

Definition

Cocaine seizure effectiveness rate – In consultation with the Office of National Drug Control Policy (ONDCP), the amount of cocaine seized by OFO at land POEs compared to the total estimated flow of cocaine through land POEs.

Cocaine seizures is an *activity measure*. Seizures may also be used as a proxy indicator of total attempts to import cocaine, an *outcome measure*. Seizure effectiveness rate (i.e., cocaine seized as compared to the total estimate cocaine flow) is an *output measure*.

Methodology and Limitations

Seizure data is obtained from OFO administrative records and is considered reliable. Estimates of the total cocaine flow are provided by ONDCP. The U.S. Government does not have an estimate of the share of the total cocaine flow that passes through land POEs, but the U.S. Drug Enforcement Agency's National Drug Threat Assessment states that the southwest border remains the key entry point for the majority of the cocaine entering the Unites States.

Available Data and Discussion

Table 14: Estimates of Cocaine Seizure at Land Ports of Entry FY 2012 – FY 2016

	FY2012	FY2013	FY2014	FY2015	FY2016
Estimated Flow	479	475	479	684	1,142
Seizures	45,260.18	39,074.63	41,311.88	38,145.00	52,900.67
Seizure Effectiveness Rate	4.2%	3.7%	3.9%	2.5%	2.1%

Notes: Estimated flow is measure in metric tons. Cocaine seizure estimates reported in pounds. Estimated cocaine flows are based on the IACM mid-point estimate for 2012-2014 and based on confirmed and substantiated CCDB estimate for 2015-2016.

§ 1092(c)(1)(F)(i) Average Wait Times and Traffic Volume

Definition

Average Wait Time – Average minute wait time for vehicles to pass through a land POE.

Private Vehicle Volume – The number of private vehicles passing through a land POE per year.

Commercial Vehicle Volume – The number of commercial vehicles passing through a land POE per year.

Average wait time is an *output measure* describing the ease of crossing the border. Vehicle volume is an *activity measure*.

Methodology and Limitations

OFO calculates average wait times for each POE by a variety of methods, some automated using Radio Frequency Identification and others manually using either surveying or line of sight determinations. For manual wait time determinations, OFO officers record average minute wait times in the Border Wait Time tool, for automated wait times the time is recorded automatically every 30 minutes. Wait time data is not available for all POEs, particularly small northern border POEs with negligible wait times. OFO leadership directed POEs to provide wait times in March 2014. The policy is currently under review and new guidance will be issued in the near future to account for the improvements in automation and recording.

OFO records counts of Personally Owned Vehicles (POV) as administrative data in its Operations Management Report (OMR); these data are considered reliable.

Available Data and Discussion

Data on Average Wait Times, and counts of private and commercial vehicles for each land POE for which data are available are contained in Appendix C. Appendix C contains law enforcement sensitive information and has been redacted from this public report.

§ 1092(c)(1)(F)(ii) Infrastructure Capacity Utilization Rate

Definition

Infrastructure Capacity Utilization Rate – Average number of vehicles processed per booth, per hour at each land POE.

The Infrastructure Capacity Utilization Rate is an *output measure* that describes OFO's ability to process traffic relative to the physical and staffing capacity.

Methodology and Limitations

Data are obtained from OFO administrative records. The data comes from CBP systems with booth hours and throughput as calculated fields. The hours serve as a proxy measure for the number of CBP officer hours spent processing and are measured on a one-for-one basis. Throughput is then calculated by summing all vehicles that passed through a site in a year and then dividing it by total booth hours.

Available Data and Discussion

Infrastructure capacity utilization rate data is contained in Appendix D. Appendix D contains law enforcement sensitive information and has been redacted from this public report.

Each OFO land POE is unique in terms of staffing authorizations and physical layouts. Land POEs may be physically constrained by the available space around them and so unable to expand to yield greater capacity. Land POEs in the United States are also impacted by the adjoining Canadian and Mexican land POE management decisions on staffing and physical layouts. Both the OFO Mission Support Facilities Division and the CBP Office of Facilities and Asset Management are working on establishing methods to determine resourcing decisions for land POEs.

Infrastructure capacity utilization rate varies by location and year. In general, the southern border reports higher utilization rates because of higher flows through the POEs. The overall utilization rate increased in FY 2016 over the previous year, due to a combination of increased efficiency and increased traffic demand for a fixed number of processing lanes. CBP processed an average of 47.4 vehicles per lane, per hour in FY 2016 (34.6 on the northern border; 54.4 on the southern border).

Table 15: Average infrastructure capacity utilization rate FY 2012 – FY 2016

Border	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Northern Border	36.2	38.2	39	35.7	34.6
Southern Border	47.7	46.8	49.1	53	54.4
Total	43.1	43.5	45.3	46.6	47.4

§ 1092(c)(1)(F)(iii) Secondary Examination Rate

Definition

Secondary Examination Rate – Percentage of passengers subject to secondary inspection at each land POE.

Secondary Examination Rate is an *activity measure* that describes OFO workload and practices.

Methodology and Limitations

Data are obtained from OFO administrative records. Secondary examination rate is determined by the recorded number of passengers sent for secondary inspection versus the total number of recorded passengers.

Available Data and Discussion

Frequency of secondary inspections data is contained in Appendix E. Appendix E contains law enforcement sensitive information and has been redacted from this public report.

Secondary inspection rates vary considerably among the various POEs. Among the northern border POEs, the rate of secondary inspection declined from 8.52 percent in FY 2012 to 7.30 percent in FY 2016. The southern border Secondary Inspection Rate remained stable over the past four years, with 11.88 percent of passengers receiving secondary inspection in FY 2016. This number is down from the prior three year average from FY 2010 to FY 2012, when closer to 15 percent of passengers received secondary inspection. The highest secondary inspection rates were northern border POEs such as St. John (32.30 percent) and Vanceboro (29.83 percent). Certain smaller land POEs have high secondary examination rates due to low volume of traffic that allow officers increased time to thoroughly examine a larger share of passengers.

§ 1092(c)(1)(F)(iv) Secondary Examinations Effectiveness Rate

This measure is under review. OFO does not presently measure the effectiveness of secondary examinations at the enterprise level.

§ 1092(c)(1)(G)(i) Number of Potentially "High-Risk" Cargo Containers

Definition

Potentially High-Risk Cargo Containers – Shipping containers carrying cargo shipments identified as potentially high-risk using National Targeting Center (NTC) security criteria.

Potentially High-Risk Cargo Containers is an *activity measure* that describes OFO workload.

Methodology and Limitations

All international cargo shipments coming to the United States via the sea, land, and air modes of transportation are screened by the NTC using the Automated Targeting System (ATS) to identify those shipments that may be considered potentially high-risk according to NTC security criteria. Any cargo container carrying a shipment identified as potentially high-risk is identified for immediate review and assessed or scanned prior to lading at a Container Security Initiative (CSI) member foreign port of origin or at arrival at a U.S. POE. Assessing, resolving, and when required, scanning and physically inspecting cargo found to be potentially high-risk ensures the safety of the public and minimizes the impact to the trade through the effective use of risk-focused targeting.

The NTC periodically refines, improves, and revises the security criteria applied by the Automated Targeting System, which in turn improves the focus of the risk assessment applied and somewhat reduces the overall number of cargo shipments identified as potentially high-risk. This process of continual review and refinement in the security criteria applied and ATS methodology has led to significant reductions in the total number of cargo containers identified as potentially high-risk year-to-year, even though the total amount of cargo arriving at U.S. POEs has increased over the same time period.

Available Date and Discussion

Table 16: Potentially High-Risk Cargo Containers at Seaports, FY 2013 – FY 2016

FY2013	FY2014	FY2015	FY2016
89,598	74,509	72,974	71,815

The number of potentially high-risk cargo containers declined in 2016 for the third year in a row. Overall, the number of potentially high-risk containers fell from 89,598 in FY 2013 to 71,815 in FY 2016, a 20 percent decrease.

§ 1092(c)(1)(G)(ii) Ratio of Potentially High-Risk Cargo Containers Scanned Relative to High-Risk Containers Entering in Previous Fiscal Year

Definition

Ratio of Potentially High-Risk Containers Scanned – The ratio of potentially high-risk containers scanned relative to the number of potentially high-risk containers entering in the previous fiscal year.

Percentage of Potentially High-Risk Containers Scanned – The percentage of potentially high-risk containers scanned relative to the total number of potentially high-risk containers entering in the same fiscal year.

The ratio of potentially high-risk containers scanned is an *activity measure*, which compares trends in activity data over time. Ratio of High Risk Containers may also be interpreted as a proxy indicator of high risk containers successfully be scanned and entering through ports of entry, an *outcome measure*.

The percentage of potentially high-risk containers scanned is an *output measure*, which describes CBP's ability to scan containers identified as being potentially high-risk.

Methodology and Limitations

Inspection data are obtained from OFO administrative records. These data include potentially high-risk cargo containers reviewed, assessed, or scanned. These three methods of inspection are not currently distinguishable with available data sources.

The ratio compares potentially high-risk containers in one year to the number entering in the previous year and should not be confused with the percentage of potentially high-risk containers scanned relative to the number entering in the current year.

A container is considered "high-risk" if even one shipment within it is designated high-risk. One container may have multiple high-risk shipments within it which could cause the same container to be reviewed or scanned multiple times.

Available Data and Discussion

The ratio of potentially high-risk containers reviewed, assessed, or scanned relative to previous years' entries along with the percentage scanned in the current year are contained in Appendix F. Appendix F contains law enforcement sensitive information and has been redacted from this public report.

With respect to the percentage scanned, nearly all sea POEs reported 100 percent scanning of high-risk cargo containers in FY 2016 or indicated that no high-risk containers passed through the POE. The few POEs that reported lower than a 100 percent scanning rate reported at least a 99 percent rate.

§ 1092(c)(1)(G)(iii) Potentially High-Risk Cargo Containers Scanned Upon Arrival at a U.S. POE

This measure is under review and will be provided in the FY 2018 report.

§ 1092(c)(1)(G)(iv) Potentially High-Risk Cargo Containers Scanned Before Arrival at a U.S. POE

This measure is under review and will be provided in the FY 2018 report.

§ 1092(d) Metrics for Securing the Maritime Border

§ 1092(d)(1)(A) Situational Awareness in the Maritime Environment

Definition

The NDAA calls for DHS to develop a measure for situational awareness based on "knowledge and understanding of current unlawful cross-border activity, including the following: (A) Threats and trends concerning illicit trafficking and unlawful crossings; (B) The ability to forecast future shifts in such threats and trends; (C) The ability to evaluate such threats and trends at a level sufficient to create actionable plans; and (D) The operational capability to conduct persistent and integrated surveillance of the international borders of the United States."

Situational awareness is an *output measure*.

Methodology and Limitations

DHS is in the multi-year process of developing a defensible, analytically sound measure for situational awareness in the maritime domain that meets the intent of the NDAA.

In the interim, the Department reports on the following operational activities contributing to maritime domain situational awareness:

- CBP Aircraft Hours Flown for Situational Awareness or Interdiction Support
- USCG Aircraft Hours Flown for Situational Awareness or Interdiction Support
- USCG Cutter Hours Contributing to Situational Awareness or Interdiction
- CBP Boat Hours Contributing to Situational Awareness or Interdiction
- USCG Boat Hours Contributing to Situational Awareness or Interdiction
- CBP Tethered Aerostat Radar System (TARS) Radar Operating Hours
- Number of Vessel Manifests Screened by Coastwatch

Available Data and Discussion

Table 17a: CBP Aircraft Flight Hours Within/Outside Transit Zone, FY 2016

	FY2016
Inside Transit Zone - CBP	6,420
Outside Transit Zone – CBP	13,188

Table 17b: USCG Aircraft Flight Hours Within/Outside Transit Zone, FY 2012 – FY 2016

	FY2012	FY2013	FY2014	FY2015	FY2016
Inside Transit Zone – USCG	5,082	4,599	4,567	5,426	4,110
Outside Transit Zone – USCG	14,721	14,258	13,896	14,003	13,736

USCG reported a decrease in the number of flight hours both inside and outside the transit zone in FY 2016. Between FY 2012 and FY 2015, an average of 4,919 hours were flown inside the transit zone, while only 4,110 were flown in FY 2016 – the lowest recorded flight hours in the last five years. Similarly, 13,736 hours were flown outside the transit zone in FY 2016, as compared to the FY 2012-2015 average of 14,220. This FY 2016 total was also the lowest number of hours flown outside the transit zone in the last five years.

Table 18: USCG Cutter underway hours within/outside transit zone FY 2012 – FY 2016

	FY2012	FY2013	FY2014	FY2015	FY2016
Inside Transit Zone	37,866	25,388	14,456	16,964	28,205
Outside Transit Zone	127,671	117,114	117,093	112,773	78,462

Table 19a: USCG Boat underway hours within/outside transit zone FY 2012 – FY 2016

	FY2012	FY2013	FY2014	FY2015	FY2016
Inside Transit Zone	0	2,031	0	0	0
Outside Transit Zone	46,326	37,640	30,726	32,701	28,525

Table 19b: CBP Boat underway hours within/outside transit zone FY 2016

	FY2016
Inside Transit Zone	0
Outside Transit Zone	40,241

Note: CBP maritime hours include Air and Marine Operations vessel underway hours.

Table 20: Total operational hours for TARS radars FY 2012 – FY 2016

	FY2012	FY2013	FY2014	FY2015	FY2016
Cudjoe Key, FL	5,752	6,289	6,165	6,306	4,886
Lajas, PR	0[1]	0[1]	1,230[1]	5,049	4,559

[1] TARS site at Lajas, Puerto Rico crashed in 2011; CBP re-established operations in May 2014.
Source: CBP administrative records

CBP's Air and Marine Operations (AMO) uses TARS to provide long-range detection of low-altitude aircraft at the radar's maximum range. The elevated sensor mitigates curvature of the earth and terrain masking limitations. The number of TARS operational hours declined for both locations in FY 2016. Cudjoe Key saw a 1,420 hour decrease in hours (23 percent decrease from FY 2015). Lajas reported a 490 hour decrease (10 percent decrease from FY 2015). FY 2016 saw an increase in severe tropical weather throughout the storm season because of a La Niña effect, which impacted operations. In addition to the weather, AMO switched out the aerostat envelope of the TARS in Cudjoe Key over March and April 2017.

Table 21: Vessel Manifests Screened by Coastwatch for National Security Concerns Prior to Arrival at U.S. POE, FY 2012 – FY 2016

FY2012	FY2013	FY2014	FY2015	FY2016
118,098	126,112	124,661	122,133	117,736

§ 1092(d)(1)(B) Known Maritime Migrant Flow Rate

Definition

Known Maritime Flow - Total maritime migrant flow interdicted, identified directly or indirectly but not interdicted, or otherwise believed to have unlawfully entered the United States

Known Maritime Flow is an *outcome measure*.

Methodology and Limitations

Migrant flow data are obtained from USCG and CBP administrative records. The USCG maintains a robust accounting of USCG, international partner, and domestic partner interdictions and sightings of undocumented maritime migrants. The USCG relies upon its partners to report their interdictions to the USCG for compilation in the database. At times, undocumented maritime migrants are counted by both USCG and CBP (or other partners) when interdicted as agencies often cooperate during these operations. In certain limited cases undocumented maritime migrant interdictions by partners are not reported to the USCG, and these cases are not accounted for in the figures below. Additionally, while partners report cases to the USCG when undocumented maritime migrants are apprehended on shore or evidence is found of their arrival on shore, some migrants arrive without being apprehended and leave no evidence. These cases are never reported and are also excluded from the known maritime migrant flow figures below.

Table 22: Migrants interdicted in the maritime domain by DHS Component FY 2007 – FY 2016

	USCG	CBP	DHS and Partners
FY 2007	5,981	NA	NA
FY 2008	4,565	NA	NA
FY 2009	3,682	NA	NA
FY 2010	2,121	NA	NA
FY 2011	2,458	NA	NA
FY 2012	2,732	NA	NA
FY 2013	2,093	NA	NA
FY 2014	3,587	NA	7,752
FY 2015	3,825	NA	6,028
FY 2016	6,326	2,683	8,167

Note: Some interdictions may be counted by both USCG and CBP as some migrant interdictions involve assets from both agencies. Interdictions by DHS and partners may include international partners.

Table 23: Known maritime migrant flow, FY 2007 – FY 2016

FY2007	FY2008	FY2009	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016
14,682	10,879	9,850	4,443	4,566	5,298	7,631	10,631	8,057	10,319

§ 1092(d)(1)(C) Illicit Drug Removal Rate

Terms
Illicit Drugs Removal Rate –The ratio of illicit drugs removed by DHS maritime security in any fiscal year, including drugs abandoned at sea, relative to the average amount removed or abandoned in the immediately preceding five fiscal years.

The Illicit Drug Removal Rate is an *activity measure*, which compares trends in activity data over time.

Methodology and Limitations
Drug removals are obtained from USCG and CBP administrative records; these data are considered reliable.

Pursuant to the definition of the Illicit Drug Removal Rate directed by NDAA § 1092 (d)(1)(C), the Drug Removal Rate describes recent trends in drugs removed or abandoned at sea (i.e., current year compared to five previous years); the measure does not describe the rate at which illicit drugs are removed.

Non-commercial maritime drug removals includes those seized by the USCG, CBP, other law enforcement agencies, and international partners, as well as those disrupted or abandoned by drug trafficking organizations.

Available Data and Discussion

Table 24: Ratio of Drugs Removed or Abandoned at Sea Relative to Previous Five Fiscal Years ("Illicit Drug Removal Rate"), FY 2012 – FY 2016

Drug Type		FY2012	FY2013	FY2014	FY2015	FY2016
Marijuana	Rate	337%	137%	154%	100%	61%
	Quantity Removed	124,585	81,008	108,535	78,262	52,613
Methamphetamine	Rate	0%	150%	265%	36%	4332%
	Quantity Removed	0	17.4	32.1	4.8	599.5
Heroin	Rate	762%	0%	0%	676%	327%
	Quantity Removed	24	0	0	52.4	44

Note: Marijuana measured in pounds, amphetamines and heroin measured in kilograms.
Data only includes removals by USCG.

§ 1092(d)(1)(D) Cocaine Removal Effectiveness Rate

Definition

Cocaine Removal Effectiveness Rate – In consultation with ONDCP, the amount of cocaine removed by DHS inside and outside the maritime transit zone compared to total estimated flow of cocaine through the maritime domain.
Cocaine Removals is an *activity measure*. Removals may also be used as a proxy indicator of total attempts to import cocaine, an *outcome measure*. Cocaine Removal Effectiveness rate (i.e., cocaine seized as compared to the total estimate cocaine flow) is an *output measure*.

Methodology and Limitations

Drug removal data are obtained from ONDCP, JIATF-S, CBP, and USCG administrative records through the Consolidated Counter Drug Database (CCDB), and are considered reliable. Flow quantities are the best estimates available based on intelligence reporting and case data. Additionally, while other government estimates for production in major cocaine producing countries in South America and consumption of cocaine within America do not align with the estimated non-commercial maritime flow figures inside the transit zone derived from the CCDB, this metric was derived based upon the non-commercial maritime flow estimates.

For the purposes of this metric, based upon where the data was gathered, the transit zone is defined by the Joint Interagency Task Force South area of responsibility. Non-commercial maritime drug removals include those seized by USCG, CBP, other law enforcement agencies, and international partners, as well as those disrupted by anti-drug trafficking operations. The cocaine removal rate is based on estimates of noncommercial maritime cocaine flow from the CCDB. Outside the transit zone data is not considered as robust with regard to intelligence on flow. As a result, the interdiction rate for cocaine outside the transit zone is not considered reliable.

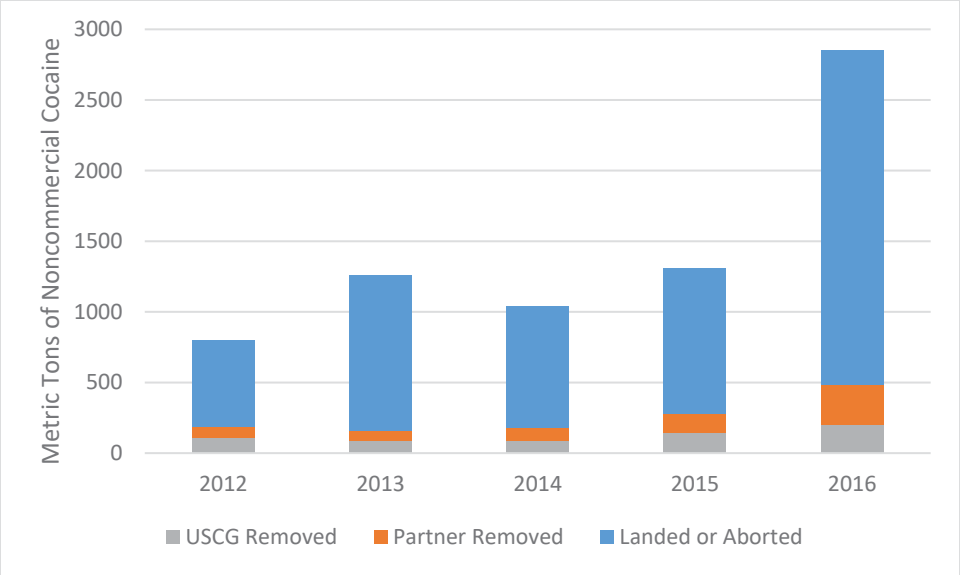
Available Data and Discussion

Table 25: Cocaine Removed by DHS Relative to the Total Estimated Flow in the Maritime Transit Zone, FY 2012 – FY 2016

Location		FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Inside Transit Zone	Rate	23%	12%	17%	21%	17%
	Quantity Removed	186.4	155.4	178.8	277.2	482.7
	Estimated Flow	799.5	1260.4	1042.2	1308.8	2852.6
Outside Transit Zone	Rate	49%	19%	50%	73%	28%
	Quantity Removed	21.3	15.1	13.2	39	17.7
	Estimated Flow	43.8	81.5	26.2	53.2	62.3

Note: Removal and estimated flow quantities measured in metric tons.

Figure 5: Flow and Removal of Cocaine in the Maritime Transit Zone, FY 2012 – FY 2016



The flow of cocaine is estimated to have risen in 2016 to over 2,800 metric tons, based on the decrease in aerial eradication of cocaine crops in Colombia and improved intelligence reporting throughout the Transit Zone.

§ 1092(d)(1)(E) DHS Maritime Threat Response Rate

Definition

DHS Maritime Threat Response Rate – The ability of DHS maritime security components to respond to and resolve known maritime threats, whether inside or outside a transit zone, by placing assets on-scene, relative to the total number of known threats.

Methodology and Limitations

Currently, this data only exists associated with cocaine response activity. Further, DHS data is part of a larger set of interagency data and may not be able to be separated from the larger interagency data set, which is currently assessed and reconciled on a cycle and process outside of DHS that does not support submission at this time. DHS, in cooperation with interagency partners, intends to explore options to collect response data for non-cocaine response events, as well as options to provide the response rate measures data to meet the intent of the Act and hopes to provide an update in the November 2018 report.

§ 1092(d)(1)(F) Intergovernmental Maritime Threat Response Rate

Definition

Intergovernmental Maritime Threat Response Rate – The ability of DHS maritime security components or other U.S. Government entities to respond to and resolve known maritime threats, whether inside or outside a transit zone, by placing assets on-scene, relative to the total number of known threats.

Methodology and Limitations

Currently, this data only exists associated with cocaine response activity. Further, DHS data is part of a larger set of interagency data and may not be able to be separated from the larger interagency data set, which is currently assessed and reconciled on a cycle and process outside of DHS that doesn't support submission at this time. DHS, in cooperation with interagency partners, intends to explore options to collect response data for non-cocaine response events, as well as options to provide the response rate measures data to meet the intent of the Act and hopes to provide an update in the November 2018 report.

§ 1092(e) Air and Marine Security Metrics in the Land Domain

§ 1092(e)(1)(A) Flight Hour Effectiveness Rate

Definition

Flight Hour Effectiveness Rate in the Land Domain – Number of flight hours flown by DHS Air and Marine Operations in the Land Domain as a percentage of AMO's unconstrained and unfunded flight hour requirements.

Flight Hour Effectiveness Rate is an *output measure*.

Methodology and Limitations

This Flight Hour Effectiveness Rate is determined by dividing the total hours flown by the number of flight hours determined during the annual collection process. The flight hour requirements for the subsequent fiscal year are collected by AMO operating locations based on unconstrained requirements collected from USBP, ICE and other partner agencies as well as internal AMO requirements. In FY 2016, AMO collected the following unconstrained flight hour requirements from these partner agencies in the Land Domain: USBP – 209,448 hours; ICE – 54,580 hours; OFO - 6,820 hours; and 24,377 hours for all other enforcement and non-enforcement Land Domain missions (U.S. Secret Service event security, local Law Enforcement coordination, training, maintenance, etc.). In 2016, AMO's unconstrained flight hour requirement in the Land Domain totaled 295,225 hours. However, after incorporating the approved funding for FY 2016, the total funded flight hours in the Land Domain was reduced to 79,774 programmed hours.

Available Data and Discussion

AMO completed 27 percent of the unconstrained flight hour requirement during FY 2016, with 79,872 hours flown against the unconstrained 295,225 hours. Data from previous years are not available for analysis.

§ 1092(e)(1)(B) Funded Flight Hour Effectiveness Rate

Definition

Funded Flight Hour Effectiveness Rate – Number of flight hours flown by Air and Marine Operations as a percentage of the number of flight hours funded by Congress.

Funded Flight Hour Effectiveness Rate is an *output measure*.

Methodology and Limitations

Flight hour data are obtained from AMO administrative records. This rate is determined by dividing the total hours flown by the number of flight hours funded by Congress.

Available Data and Discussion

AMO's Flight Hour Effectiveness Rate was 100 percent in FY 2016, with 79,872 hours flown against 79,774 funded hours. Data from previous years are not available for analysis.

§ 1092(e)(1)(C) AMO Readiness Rate

Definition

AMO Readiness Rate - The percentage of mission requests that AMO was able to fulfill, excluding those requests that could not be fulfilled due to reasons beyond AMO's control.

AMO Readiness Rate is an *activity measure*.

Methodology and Limitations

Missions data are obtained from AMO administrative records. The rate is determined by dividing the missions flown by the total number of mission requests (number of missions flown plus the number of missions cancelled due to causes within AMO control, such as maintenance, personnel, and asset availability).

Table 26: AMO Missions Cancelled and Readiness Rate FY 2016

	FY2016
Total Non-Cancelled Missions	**31,635**
Missions cancelled - asset availability	**4,978**
Missions cancelled - crew availability	**1,738**
Total cancelled missions within AMO control	**6,716**
Readiness rate due to causes within AMO control	**82%**

AMO's readiness rate was 82 percent in FY 2016, with 6,716 out of 38,351 planned missions cancelled due to causes within AMO control. Data from previous years are not available for analysis.

§ 1092(e)(1)(D) AMO Weather-Related Cancelation Rate

Definition

AMO Weather-Related Cancelation Rate - The number of missions cancelled by AMO due to weather as a percentage of total planned AMO missions.

AMO Weather-related cancelation rate is an *activity measure*.

Methodology and Limitations

Mission data are obtained from AMO administrative records. The Weather-Related Cancelation Rate is calculated by dividing the number of missions cancelled due to weather by the total number of missions requested by AMO's partner agencies.

Available Data and Discussion

Table 27: AMO Weather-Related Cancelation Rate, FY 2016

Total Missions Requested by Partner Agencies	42,761
Missions Cancelled – Weather	3,083
Cancellation Rate due to Weather	7%

Data from previous years are not available for analysis.

§ 1092(e)(1)(E) AMO Individuals Detected

Definition

AMO Individuals Detected – Number of individuals detected by CBP AMO through the use of unmanned aerial systems and manned aircraft.

AMO Individuals Detected is an *activity measure*.

Methodology and Limitations

Data are obtained from AMO administrative records. The Department's currently available data on detections by unmanned aircraft are limited to the number of VADER detections, and current data on detections from manned aircraft are limited to detections leading to apprehensions and arrests.

These data exclude certain detections because AMO does not presently track data from all sensors on unmanned and manned aircraft. For this reason, the Department considers the current AMO Individuals Detected measure to be a work in progress, and expects to provide more comprehensive data on AMO detections as part of the FY 2019 State of the Border Report.

Available Data and Discussion

Table 28: Individuals Detected by AMO by Aircraft Type

Aircraft Type	FY2016
Manned	54,879
Unmanned	7,908

Data from previous years are not available for analysis.

§ 1092(e)(1)(F) AMO Apprehensions Assisted

Definition

AMO Apprehensions Assisted – USBP apprehensions assisted by AMO through the use of unmanned aerial systems and manned aircraft.

AMO Apprehensions Assisted is an *activity measure*.

Methodology and Limitations

Data are obtained from AMO administrative records. The metric consists of apprehensions and arrests that are attributed to manned and unmanned aircraft operations. These data are based on Aircraft Enforcement Hours (non-maritime), therefore excluding DHC-8, P-3, and MEA aircraft operations occurring in the maritime domain

Available Data and Discussion

Table 29: Apprehensions Assisted by AMO by Aircraft Type and Flight Hours

	FY2016	
Aircraft Type	Enforcement Flight Hours	Apprehensions
Manned	64,639	50,646
Unmanned	4,857	1,729

Data from previous years are not available for analysis.

§ 1092(e)(1)(G) Illicit Drug Seizures Assisted by AMO

Definition

Illicit Drug Seizures Assisted by AMO - The number and quantity of illicit drug seizures assisted by AMO through the use of unmanned aerial systems and manned aircraft.

Illegal Drug Seizures Assisted is an *activity measure*.

Methodology and Limitations

Drug seizure data are obtained from AMO administrative records. The metric consists of the total number of events and quantity in pounds of drug seizures using manned and unmanned systems. A "drug event" is defined as a single law enforcement action resulting in a drug seizure(s). This is based on Aircraft Enforcement Hours (non-maritime), therefore excluding DHC-8, P-3, and MEA aircraft operations occurring in the maritime domain.

Available Data and Discussion

Table 30: Illicit Drug Seizures and Drug Events by AMO by Aircraft Type and Flight Hours

	FY2016		
Aircraft Type	Enforcement Flight Hours	Drug Events	Drug Seizures (lbs)
Manned	64,639	3,834	651,759
Unmanned	4,857	78	30,033

Data from previous years are not available for analysis.

§ 1092(e)(1)(H) AMO Actionable Intelligence

Definition

AMO Actionable Intelligence - The number of times that actionable intelligence related to border security was obtained through the use of unmanned aerial systems and manned aircraft.

This measure is under review and will be provided in the FY 2019 State of the Border report.

§ 1092(g)(3)(D) Other Appropriate Information

Pursuant to NDAA § 1092(g)(3)(D), this section provides three additional metrics of border security between ports of entry: 1) selected characteristics of USBP apprehensions; 2) the estimated at-the-border deterrence rate; and 3) estimated border crossing costs.

Selected Characteristics of Recent USBP Apprehensions

Definition

Historically, the overwhelming majority of individuals apprehended between POEs along the southwest border have been Mexican adults, and very few of them have sought asylum or other forms of humanitarian relief from removal. The profile of USBP apprehensions has changed in important ways in recent years, as growing shares of individuals apprehended are: a) from countries other than Mexico (primarily the Northern Triangle of Central America countries of El Salvador, Guatemala, and Honduras), b) UACs or children and adults traveling together as FMUAs, and/or c) seeking asylum by claiming credible or reasonable fear of being returned to their countries of citizenship when potentially subject to expedited removal.

These shifting characteristics have an important impact on border security and USBP border enforcement because existing enforcement policies were largely designed with the more traditional alien profile in mind. For example, many consequences under CBP's Consequence Delivery Program such as the Alien Transfer Exit Program and the Mexican Interior Repatriation Program are only applicable to Mexican nationals. And UACs, FMUAs, and aliens making successful credible/reasonable fear claims are generally not subject to expedited removal and have been considered "not impactable" by traditional USBP enforcement efforts because upon apprehension they have typically been released into the United States with a Notice to Appear in immigration court on a future date. More generally, the drivers of migration from countries other than Mexico and for aliens who may seek humanitarian relief from removal may be different from those that motivated earlier generations of unlawful border crossers, potentially causing U.S. policymakers to rethink their policy response.

To monitor these changing dynamics, the Department tracks two main sets of characteristics:

Apprehensions by Citizenship – The share of aliens apprehended by USBP from Mexico, El Salvador, Guatemala, Honduras, and all other countries.

Apprehensions by Potential Humanitarian Equities – The share of aliens apprehended by USBP who are unaccompanied children, are apprehended as part of a family unit, and/or who make successful credible or reasonable fear claims.

Apprehensions is an *activity measure*.

Methodology and Limitations

Apprehensions are recorded in administrative record systems with a unique identifier created for each apprehension. Apprehensions by citizenship, by UAC status, and by family unit status are generally considered reliable, though agents may not always be able to identify UACs or family units.

Available Data and Discussion

Table 31: USBP Southwest Border Apprehensions by Citizenship, FY 2008 – FY 2016

Country	2008	2009	2010	2011	2012	2013	2014	2015	2016
Mexico	653,035	495,582	396,819	280,580	262,341	265,409	226,771	186,017	190,760
El Salvador	12,133	11,181	13,123	10,368	21,903	36,957	66,419	43,392	71,848
Guatemala	15,143	14,125	16,831	17,582	34,453	54,143	80,473	56,691	74,601
Honduras	18,110	13,344	12,231	11,270	30,349	46,448	90,968	33,445	52,952
All Other	6,584	6,633	8,727	7,777	7,827	11,440	14,740	11,788	18,709
Total	**705,005**	**540,865**	**447,731**	**327,577**	**356,873**	**414,397**	**479,371**	**331,333**	**408,870**

In recent years, apprehensions have started to shift from consisting overwhelmingly of Mexican nationals to an equal share of Mexican nationals and border crossers from other areas, mostly Northern Triangle countries. In 2014 and 2016, southwest border apprehensions peaked, most noticeably for Northern Triangle countries. In 2016, only 46 percent of southwest border apprehensions were Mexican nationals while 48 percent were from Northern Triangle countries. Apprehensions of border crossers from all other countries also rose considerably in 2016, increasing by more than 50 percent.

Table 32: USBP Southwest Border Apprehensions by Potential Humanitarian Claim, FY 2008 – FY 2016

	2008	2009	2010	2011	2012	2013	2014	2015	2016
FMUA	NA	NA	NA	NA	11,116	14,855	68,445	39,838	77,674
UAC	7,922	19,440	18,411	15,949	24,403	38,759	68,541	39,970	59,692
Credible/ Reasonable Fear Claim	7,454	8,627	12,499	13,994	22,087	44,380	57,936	47,117	87,585
Total Apprehensions	**705,005**	**540,865**	**447,731**	**327,577**	**356,873**	**414,397**	**479,371**	**331,333**	**408,870**

Note: Table rows are not mutually exclusive categories; some individuals are counted as FMUA and credible/reasonable fear.

Consistent with the surge of apprehensions seen in 2016, the number of family unit apprehensions and UAC apprehensions rose in 2016, with family unit numbers roughly doubling from 2015 and UAC apprehensions increasing 49 percent. Credible fear claims also rose substantially in 2016, with an 86 percent increase over the previous year. All three of these "non-impactable" flows have increased dramatically over the past decade. As compared to 2008, credible fear/reasonable fear claims have increased eleven-fold, while UAC numbers have

increased seven-fold; and FMUA apprehensions have increased seven-fold since 2012 (the first year for which data are available).

At-the-Border Deterrence

Definition
Deterrence - the estimated share of migrants who, following a failed unlawful entry attempt, are deterred from making a subsequent reentry and decide instead to return home or otherwise remain in Mexico.

The deterrence rate is an *output measure* associated with the difficulty of crossing the border unlawfully because it reflects decisions by people who have already decided to migrate illegally to abandon their effort.

Methodology and Limitations

As with the apprehension or interdiction rate, deterrence cannot be observed directly.

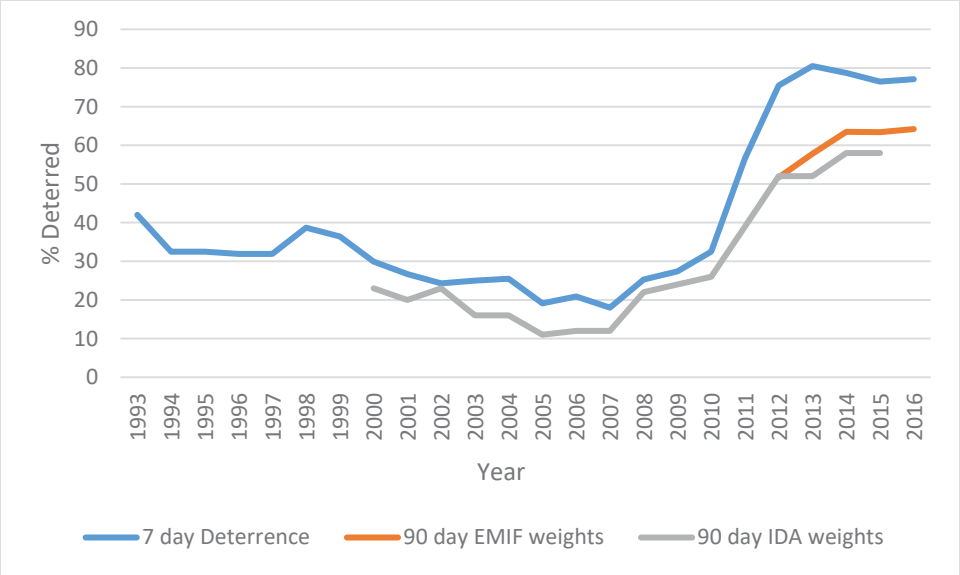
DHS currently estimates deterrence based on migrant surveys; the Department believes surveys or interviews are one of the only ways to directly measure deportees' intentions to make a further illegal entry attempt. The most important survey data on deterrence comes from the Colegio de la Frontera Norte International Border Survey (EMIF), which interviews deportees immediately at repatriation facilities upon their return to Mexico and asks them about their intentions to return to the United States within the next 7-90 days. In work for DHS, the Institute for Defense Analyses (IDA) Corporation used a combination of EMIF and CBP data to build an econometric model of 90-day deterrence for all USBP apprehensions since 2000.[6]

In addition to the standard concerns about the validity of survey samples and survey instruments, questions about deterrence are especially hard to measure accurately given the ever-evolving enforcement environment. A further limitation is that the EMIF data is restricted to Mexican northern border deportees, and cannot be assumed to apply to migrants from other regions/countries because they face different trade-offs and geographic barriers when considering a re-entry attempt.

Available Data and Discussion

Figure 6: At the Border Deterrence for Mexican Border Deportees, FY 1993 – FY 2016

[6] John W. Bailey et al., "Assessing Southern Border Security," Institute for Defense Analyses, IDA Paper NS P-5304, May 2016.



The data describe relatively limited deterrence levels prior to 2007 (20-40 percent in the seven-day survey and 10-30 percent in the 90-day model), and substantial growth in the deterrence rate since that time. Estimated seven-day deterrence rates have exceeded 75 percent every year since 2012, and estimated 90-day deterrence rates hovered around 60 percent in 2014 through 2016.

Border Crossing Costs

Definition

Percent hiring smuggler – the share of migrants who hire a smuggler.

Border crossing costs - the average fees that smugglers charge.

Smuggling usage and average smuggling fees are *output measures* associated with the difficulty of crossing the border unlawfully. Migrants will only tolerate higher fees to the extent that smugglers provide an essential and successful service. Smugglers also compete to attract customers by offering their services at the lowest profitable rate, so higher fees indicate rising costs to smugglers. Rising smuggling fees also reflect an increased risk to smugglers of a criminal conviction; smugglers pass this risk along to customers in the form of higher fees.

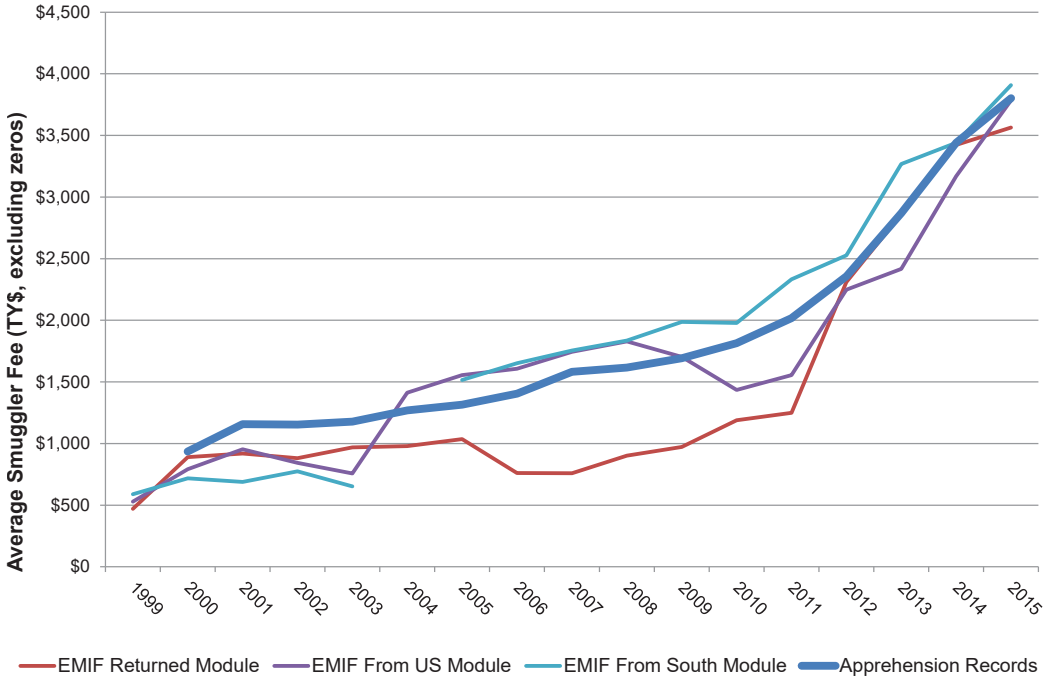
Methodology and Limitations

The only available data on smuggling fees come from migrant surveys and USBP custodial interviews. These data may be subject to response bias if migrants are reluctant to admit to hiring a smuggler, but such bias should be broadly consistent over time, so changes in survey/interview data should reflect changes in the difficulty of crossing the border.

Available Data and Discussion

One finding across multiple surveys is that smuggler usage rates have increased steadily over the last five decades. Previous research by the Office of Immigration Statistics found that smuggler usage rates climbed from 40-50 percent during the 1970s, to 59 percent in the late 1970s and early 1980s, 70-80 percent in the 1980s to 1990s, 80 to 93 percent in the 1990s to 2000s, and 95 percent for first-time crossers surveyed in 2006. Similarly, according to USBP interviews, relatively few illegal border crossers hired a smuggler prior to 2001, but usage rates climbed to 80-95 percent among apprehended border crossers in 2015.

Figure 7: Border Crossing Cost Estimates, FY 1999 – FY 2015



Source: U.S. Border Patrol apprehension records, El Colegio de la Frontera Norte Encuestas sobre Migracion en las Fronteras Norte y Sur de Mexico (EMIF).

Survey results also indicate steady increases in fees paid to migrant smugglers. Averaging across the available sources depicted in Figure X, smuggling fees increased by five percent per year during the 1980s, 12 percent per year during the 1990s, and nine percent per year during the decade ending in 2015.

Custodial interviews conducted by USBP have found that smuggling fees are often paid in stages. Initial fees required to approach staging locations along the border were often lower than $100 prior to the late 2000s, and an additional $1,000-$3,000 in fees were charged upon delivery to the final destination. More recently, smuggling fees for Mexicans and Central Americans reportedly have been as high as $1,200 for the initial staging payment and up to $8,000 at the final destination. Custodial interviews also find evidence of an increase in alternative forms of payment in exchange for passage, including migrants being required to participate in smuggling controlled substances or other illicit items across the border or to work off debts upon arrival in

the United States, as well as reports of harsh negotiations concerning payment plans with family members.

IV. Conclusion

DHS recognizes that its ability to accurately measure its border security outcomes, outputs, activities, and inputs is essential to the effective and efficient management of the Department. The metrics contained in this report will be the baseline that DHS uses to measure its progress towards meeting the goals contained in the Executive Order on *Border Security and Immigration Enforcement Improvement*. As such, the Department will continue to refine these metrics through internal and external engagement and collaboration, including with Congress. DHS looks forward to updating Congress on this progress through periodic briefings and formally with the submission of future State of the Border Reports.

Appendix A – Repeated Trials Model Methodology

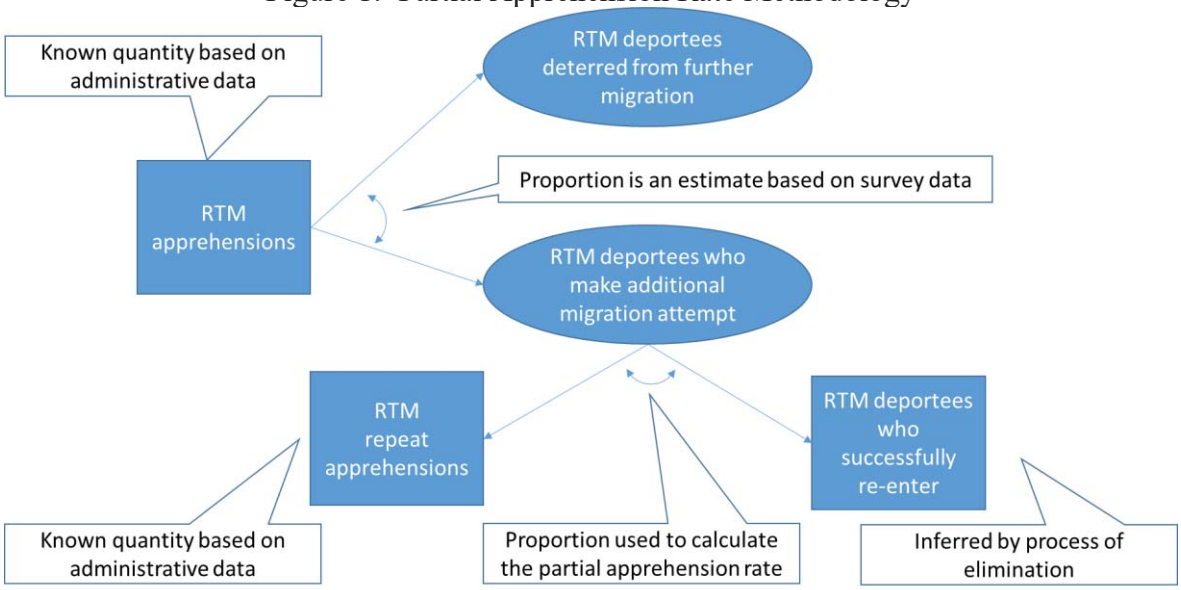
The Department's current model-based estimates of the Apprehension Rate, of the total number of successful unlawful entries, and of related measures such as undetected unlawful entries build on research conducted for DHS by the Institute for Defense Analyses (IDA) based on long-standing social science research on the Repeated Trials Methodology (RTM).[7] The Department views some of IDA's assumptions as problematic and is still working to validate and refine the modeling methodology. For this reason, while this report includes metrics based on IDA's model-based approach, DHS views the model itself as a work in progress, and future reports will update resulting metrics as the Department continues to improve its own modeling ability.

The primary building block for the model-based Apprehension Rate and total estimated successful unlawful entries is an estimated apprehension rate for a particular subset of border crossers that DHS refers to as a partial apprehension rate (PAR). The approach focuses on illegal border crossers who are apprehended and deported to the Mexican border and who make a subsequent re-entry attempt. The logic of the PAR is to use USBP biometric data to assess what share of migrants who make repeated entry attempts is subsequently re-apprehended.

The PAR methodology consists of three main steps (see Figure 2). First, the model identifies a subset of illegal border crossers who are candidates to attempt re-entry, the so-called RTM population. Under IDA's methodology, this group excludes all non-Mexicans, those deported to the Mexican interior or remotely through the Alien Transfer and Exit Program, aliens who have ever requested asylum, those facing criminal charges, and children under 18 years old.

[7] For a full discussion of IDA's model-based estimate, see John W. Bailey et al., "Assessing Southern Border Security," Institute for Defense Analyses, IDA Paper NS P-5304, May 2016. Also see Thomas J. Espenshade, "Using INS Border Apprehension Data to Measure the Flow of Undocumented Migrants Crossing the U.S.-Mexico Frontier," *International Migration Review* (1995): 545-565; Joseph Chang, "CBP Apprehensions at the Border," Homeland Security Studies and Analysis Institute, 2006.

Figure 1: Partial Apprehension Rate Methodology



Source: DHS Office of Immigration Statistics adaptation of Bailey et al. 2016.

The second step in calculating the PAR is to distinguish between deportees who give up and return home or otherwise remain in Mexico versus those who attempt to re-enter the United States. IDA estimates this share based on an analysis of a survey of recent deportees conducted by the College of the Northern Border, the so-called EMIF survey.

Third, by definition, RTM assumes deportees who are not deterred following an apprehension always make a subsequent reentry attempt. Thus, by observing in DHS administrative records how many migrants from the RTM population are re-apprehended, the model infers the number that successfully re-enters. The ratio of re-apprehensions to successful re-entries is used to estimate the partial apprehension rate.

The PAR model confronts important limitations at each point in the modeling process. The most notable and challenging to overcome is the assumption of the RTM that subjects who are not deterred will always attempt re-entry until successful. One problem with this assumption is the lack of reliable data on who is deterred. IDA relies primarily on the EMIF survey to estimate the deterrence rate. And while the EMIF is widely recognized as one of the best migrant surveys available, its results are still dependent on the characteristics of the sample, the quality of the survey instrument, and the honesty of the respondents. More fundamentally, the EMIF survey asks recent deportees about their *intentions* to re-enter the United States, and it therefore does not take account of shifting border enforcement efforts, potential changes in behavior by individuals who have been exposed to consequence programs, or other deterrent factors along the border. The structure of the RTM model means that any resulting undercount in the estimate of the deterred population results in a downward bias in the PAR.

Second, the RTM population represents a shrinking share of southwest border apprehensions. Mexican adults quickly deported to the nearest border accounted for about 95 percent of apprehensions when the RTM methodology was developed in the 1990s. But changes in the composition of border flows (i.e., rising numbers of Central Americans and asylum seekers);

changes in CBPs enforcement strategy to emphasize criminal charges, lateral repatriation, and other enforcement consequences; and IDA's restrictive modeling choices mean that as few as 20 percent of U.S. Border Patrol (USBP) apprehensions in recent years are used to estimate the PAR. In addition, because the RTM sample excludes aliens who are more likely to surrender to USBP (i.e., aliens with a higher apprehension rate), the PAR is biased downwards as an indicator of the overall apprehension rate; this bias may be substantial given the number of aliens excluded from the RTM sample.

Third, IDA makes somewhat restrictive assumptions about which re-apprehensions to include in the final stage of the PAR calculation. In particular, IDA excludes apprehensions occurring at check points and other remote locations and those occurring more than four days after an illegal entry. Given USBP's defense-in-depth strategy, which places resources at and behind the border, these assumptions result in a slight further downward bias in the PAR.

Despite these limitations, the Department views the RTM methodology as a promising approach to estimating an apprehension rate that takes great advantage of USBP's collection of biometric data since 2000. DHS is currently working to relax certain aspects of IDA's modeling assumptions and to more fully describe the impact of each assumption on the PAR and on related model-based metrics reported above.

Appendix B – Drugs Seizures – All Ports of Entry

OFO Drug Seizures at Ports of Entry FY 2007 to FY 2016

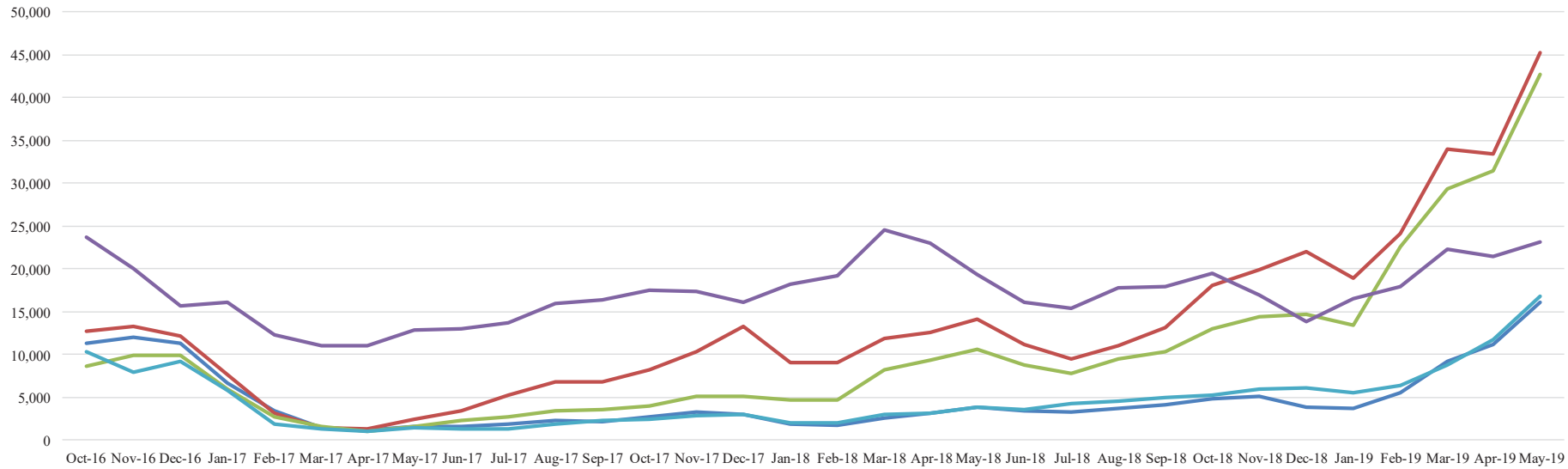
DRUG	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Grand Total	372,493.60	433,037.02	680,417.93	395,390.47	371,813.83
COCA PRODUCTS, TEA BAGS OR LIQUOR					953.62
COCAINE	35,635.13	18,246.01	27,946.47	28,063.88	23,517.88
CRYSTAL METHAMPHETAMINES	235.15	186.25	360.6	544.2	875.61
DIHYDROCODEINONE (HYDROCODONE)			70.92	26.37	8.46
ECSTASY	771.36	700.28	500.83	527.71	264.92
EPHEDRINE	888.58	7,901.41	8,762.73	7,738.18	4,475.71
FENETHYLLINE-(CAPTAGON-AMPHETAMINE)					
GAMMA HYDROXY BUTYRATE	39.28	48.34	26.16	79.86	24.28
HASH,LIQUID (HASH OIL)	0.06	0.1	0.08	0.26	0.04
HASHISH	128.94	105.3	276.83	143.11	104.83
HEROIN	932.08	845.46	827.61	1,316.57	1,594.24
KETAMINE	11.86	100.77	40.85	66.84	112.47
KHAT (CATHA EDULIS)	41,216.88	54,815.24	116,691.90	95,988.98	70,061.23
LSD	0.16	0.85	4.58	0.78	10.09
MARIJUANA	280,387.77	261,611.58	312,264.86	246,546.43	253,771.78
MARIJUANA PLANTS					13.15
MDPV-(METHYLENEDIOXYPYROVALERONE)					
MEPHEDRONE				0.5	
METHAMPHETAMINE	1,164.53	1,155.95	1,970.25	2,900.33	3,824.11
METHYLONE					1.3
METHYLPHENIDATE (RITALIN)	39.95	46.74	38.95	23.79	28.11
MORPHINE	7.4	8.15	1.08	22.86	6.2
N-BENZYLPIPERAZINE (BZP TABLETS)	0.02	9.36	182.79	15.24	12.9
NEXUS/2 CB	0		0.16	0	0.11
OPIUM	529.5	318.74	662.55	825.52	667.96
OTHER DRUGS, PRESCRIPTIONS, CHEMICALS	2,257.77	5,814.91	5,878.10	7,125.77	5,452.89
OXYCODONE (OXYCONTIN)	1.59	2.8	4.86	5.21	6.07
PARAMETHOXYAMPHETAMINE	0.03			0.01	0
PRECURSOR CHEMICALS EXCEPT EPHEDRINE	7,521.86	80,705.40	203,508.22	230.2	4,760.66
PSILOCYN OR PSILOCYBIN MUSHROOMS	24.58	25.81	4.81	4.71	3.74
ROHYPNOL	0.24	0.18	0.05	0.53	0.21
STEROIDS	698.88	386.16	389.02	3,117.40	331.81

SYNTHETIC CANNABINOIDS - ALL TYPES				72.1	929.35
YABA		1.25	2.67	3.14	0.08
DRUG	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Grand Total	344,129.80	336,121.66	309,214.45	400,719.44	367,612.58
COCA PRODUCTS, TEA BAGS OR LIQUOR	270.63	112.31	335.66	370.24	210.93
COCAINE	20,529.67	17,723.96	18,738.75	17,302.28	23,949.98
CRYSTAL METHAMPHETAMINES	1,377.53	1,522.53	1,742.36	1,625.40	2,084.99
DIHYDROCODEINONE (HYDROCODONE)	1.79	4.29	11.24	2.98	14.45
ECSTASY	49.56	104.26	111.04	103.97	704.61
EPHEDRINE	2,350.28	5.1	28.57	42.1	13.5
FENETHYLLINE-(CAPTAGON-AMPHETAMINE)					1.22
FENTANYL					208.25
GAMMA HYDROXY BUTYRATE	218.16	33.09	73.31	48.68	483.76
HASH,LIQUID (HASH OIL)	0.18	0.13	13.98	0.77	0.45
HASHISH	60.96	58.1	117.11	82.43	75.24
HEROIN	1,714.41	1,809.90	1,957.01	2,508.16	1,915.58
KETAMINE	81.31	88.58	77.78	43.69	150.59
KHAT (CATHA EDULIS)	47,972.07	84,023.03	67,478.21	66,953.87	70,087.11
LSD	17.82	3	7.02	3.57	2.41
MARIJUANA	237,053.80	213,186.12	198,650.99	273,423.14	233,774.29
MARIJUANA PLANTS	0.03	7.97	0.66	0.25	1.64
MDPV-(METHYLENEDIOXYPYROVALERONE)	29.22	335.14	225.68	234.05	41.75
MEPHEDRONE	12.4	11.82	9.11	5.72	2.66
METHAMPHETAMINE	5,032.37	7,884.50	8,796.53	11,529.10	15,018.32
METHYLONE	74.63	322.27	829.42	315.68	41.98
METHYLPHENIDATE (RITALIN)	36.63	20.03	15.14	13.69	12.3
MORPHINE	13.1	31.36	213.71	19.29	520.21
N-BENZYLPIPERAZINE (BZP TABLETS)	73.71	87.78	1.61	1.16	0.1
NEXUS/2 CB	0.06	0.09	0.11	1.26	0.06
OPIUM	1,150.49	1,289.80	1,637.34	652.98	905.89
OTHER DRUGS, PRESCRIPTIONS, CHEMICALS	5,719.66	4,135.02	5,117.21	22,330.66	12,987.55
OXYCODONE (OXYCONTIN)	13.72	13.17	11.14	6.46	20.65
PARAMETHOXYAMPHETAMINE	0.15				
PRECURSOR CHEMICALS EXCEPT EPHEDRINE	18,778.76	739.27	748.2	1,293.69	3,377.95
PSILOCYN OR PSILOCYBIN MUSHROOMS	17.98	23.38	24.11	16.18	45.78
ROHYPNOL	0.23	0.74	0.04	0	0.08

STEROIDS	476.53	470.05	554.53	581.16	613.24
SYNTHETIC CANNABINOIDS - ALL TYPES	1,001.97	2,074.37	1,686.67	1,206.82	550.79
YABA		0.47	0.18		2.53

Note: Tea bags included in this table are those used to carry coca products.

U.S. Customs and Border Protection Enforcement Actions - Southwest Border
Total - Apprehensions and Inadmissible Aliens by Country of Citizenship
FY17 - 19TD through May



	Oct-16	Nov-16	Dec-16	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18	Feb-18	Mar-18	Apr-18	May-18	Jun-18	Jul-18	Aug-18	Sep-18	Oct-18	Nov-18	Dec-18	Jan-19	Feb-19	Mar-19	Apr-19	May-19
El Salvador	11,335	12,026	11,359	6,714	3,384	1,452	1,184	1,575	1,629	1,900	2,388	2,156	2,745	3,270	3,034	1,891	1,804	2,643	3,144	3,820	3,492	3,240	3,789	4,170	4,839	5,187	3,928	3,794	5,499	9,285	11,194	16,150
Guatemala	12,694	13,313	12,226	7,684	3,146	1,423	1,372	2,456	3,402	5,250	6,843	6,826	8,192	10,306	13,250	9,060	9,080	11,836	12,624	14,170	11,129	9,486	11,048	13,150	18,030	19,869	22,059	18,897	24,185	33,980	33,499	45,321
Honduras	8,702	9,958	9,876	5,973	2,765	1,558	1,081	1,634	2,257	2,773	3,449	3,604	3,959	5,198	5,105	4,721	4,709	8,247	9,304	10,576	8,858	7,744	9,526	10,325	13,059	14,407	14,717	13,438	22,610	29,389	31,522	42,794
Mexico	23,790	20,011	15,650	16,090	12,331	11,076	11,116	12,858	13,042	13,746	15,955	16,441	17,539	17,395	16,084	18,175	19,169	24,537	22,980	19,385	16,088	15,414	17,830	17,991	19,542	16,983	13,928	16,552	17,893	22,315	21,529	23,127
Other	10,321	7,910	9,268	5,898	1,931	1,285	1,045	1,443	1,343	1,400	1,947	2,253	2,436	2,882	3,046	2,058	1,989	3,084	3,116	3,911	3,613	4,265	4,526	4,932	5,307	6,016	6,142	5,607	6,346	8,760	11,730	16,886

Other Than Mexico Enforcement Actions – CBP Total	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	Total	FYTD (MAY)
FY19	41,235	45,479	46,846	41,736	58,640	81,414	87,945	121,151					**524,446**	**524,446**
FY18	17,332	21,656	24,435	17,730	17,582	25,810	28,188	32,477	27,092	24,735	28,889	32,577	**298,503**	**185,210**
FY17	43,052	43,207	42,729	26,269	11,226	5,718	4,682	7,108	8,631	11,323	14,627	14,839	**233,411**	**183,991**

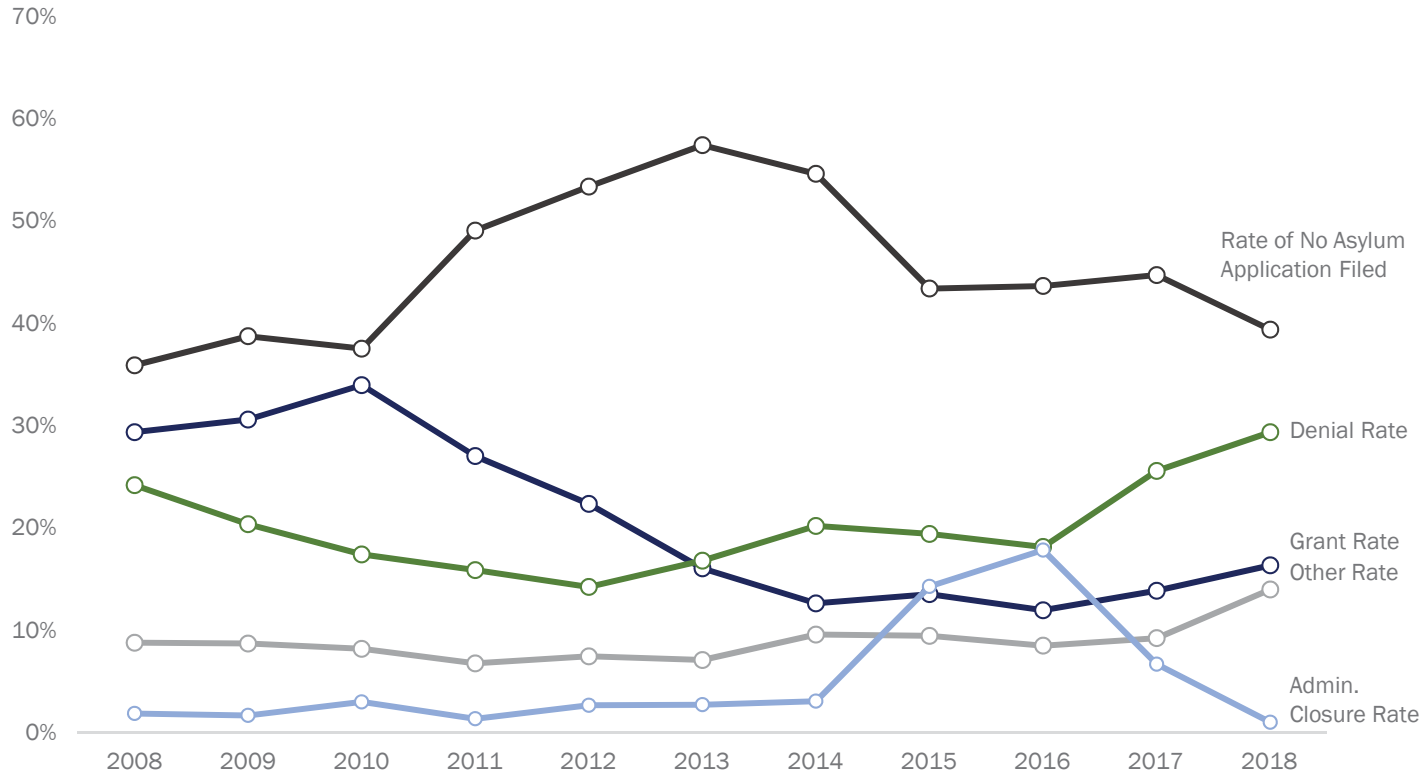
U.S. Customs and Border Protection

Credible Fear Cases	FY-06	FY-07	FY-08	FY-09	FY-10	FY-11	FY-12	FY-13 Q1
Referrals from CBP or ICE	5,338	5,252	4,995	5,369	8,959	11,217	13,880	5,552
Completed	5,241	5,286	4,828	5,222	8,777	11,529	13,579	4,860
CF Found	3,320	3,182	3,097	3,411	6,293	9,423	10,838	3,843
CF Not Found	584	1,062	816	1,004	1,404	1,054	1,187	502
Closed	1,337	1,042	915	807	1,080	1,052	1,554	515
Of cases decided on the merits, % where CF was found	85.04%	74.98%	79.15%	77.26%	81.76%	89.94%	90.13%	87.64%
Of all referred cases, % where CF was found	63.35%	60.20%	64.15%	65.32%	71.70%	81.73%	79.81%	70.07%

Reasonable Fear Cases	FY-06	FY-07	FY-08	FY-09	FY-10	FY-11	FY-12	FY-13 Q1
Referrals	325	550	700	1,109	2,060	3,233	5,070	1,465
Completed	292	504	619	971	1,293	2,756	4,692	1,247
RF Found	55	122	135	163	202	603	938	299
RF Not Found	57	128	172	165	206	270	960	275
Closed	180	254	312	643	885	1,883	2,794	673
Of cases decided on the merits, % where RF was found	49.11%	48.80%	43.97%	49.70%	49.51%	69.07%	49.42%	52.09%
Of all referred cases, % where RF was found	18.84%	24.21%	21.81%	16.79%	15.62%	21.88%	19.99%	23.98%

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
ADJUDICATION STATISTICS

Asylum Decision and Filing Rates in Cases Originating with a Credible Fear Claim[1]



FY	Grants	Grant Rate	Denials	Denial Rate	Other[2]	Other Rate	Admin Closure[3]	Admin Closure Rate	No Asylum Application Filed	Percentage of No Asylum Application Filed	Total
2008	1,014	29.34%	835	24.16%	303	8.77%	64	1.85%	1,240	35.88%	3,456
2009	992	30.58%	660	20.35%	282	8.69%	54	1.66%	1,256	38.72%	3,244
2010	1,001	33.94%	513	17.40%	241	8.17%	88	2.98%	1,106	37.50%	2,949
2011	1,396	27.01%	820	15.86%	349	6.75%	69	1.33%	2,535	49.04%	5,169
2012	1,503	22.33%	957	14.22%	501	7.44%	179	2.66%	3,590	53.34%	6,730
2013	1,400	16.03%	1,466	16.79%	618	7.08%	237	2.71%	5,011	57.39%	8,732
2014	1,690	12.62%	2,703	20.18%	1,281	9.56%	409	3.05%	7,312	54.59%	13,395
2015	1,955	13.52%	2,806	19.40%	1,366	9.44%	2,064	14.27%	6,274	43.37%	14,465
2016	2,481	11.94%	3,765	18.12%	1,762	8.48%	3,703	17.83%	9,063	43.63%	20,774
2017	3,980	13.85%	7,347	25.56%	2,649	9.22%	1,919	6.68%	12,846	44.70%	28,741
2018	5,601	16.33%	10,063	29.34%	4,793	13.97%	342	1.00%	13,499	39.36%	34,298
2019 (Second Quarter[4])	3,544	15.20%	7,035	30.18%	2,545	10.92%	3	0.01%	10,185	43.69%	23,312

Data Generated: April 12, 2019

[1] Asylum decisions subsequent to a credible fear book-in at Department of Homeland Security in completed removal, deportation, exclusion proceedings (initial case completions only) or in proceedings that have been administratively closed.

[2] Asylum Others have a decision of abandonment, not adjudicated, other, or withdrawn.

[3] Administrative Closure decisions that have not been placed back on the docket (redocketing occurs following an immigration judge's grant of a party's motion to recalendar).

[4] FY 2019 Second Quarter through March 31, 2019.

UNHCR Position on Conventions Recently Concluded in Europe (Dublin and Schengen Conventions)

Publisher	UN High Commissioner for Refugees (UNHCR)
Publication Date	16 August 1991
Citation / Document Symbol	3 European Series 2, p. 385
Cite as	UN High Commissioner for Refugees (UNHCR), *UNHCR Position on Conventions Recently Concluded in Europe (Dublin and Schengen Conventions)*, 16 August 1991, 3 European Series 2, p. 385, available at: https://www.refworld.org/docid/3ae6b31b83.html [accessed 16 July 2019]
Comments	The UNHCR comments relate to: the Convention Determining the State Responsible for Examining Applications for Asylum lodged in one of the Member States of the European Communities ("Dublin Convention") of 15 June 1990; and the Convention Implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic, on the Gradual Abolition of Checks at their Common Borders of 19 June 1990.

Europe has traditionally enjoyed a liberal refugee and asylum policy through most of the twentieth century. The large influx of refugees and migrants fleeing to Europe since the 1980s has, however, over-burdened governments, prompted some xenophobia within the European populations and caused governments to resort to, inter alia, immigration measures to stem the flow of those requesting asylum. Against this backdrop and in anticipation of the 1992 establishment of Europe without internal borders, two multi-State conventions have been signed which should become effective in 1992.

The Convention Determining the State Responsible for Examining Applications for Asylum Lodged in One of the Member States of the European Communities, commonly referred to as the "Dublin Convention," addresses which country is responsible for considering an asylum claim. The Convention on the Application of the Schengen Agreement of 14 June 1985 Relating to the Gradual Suppression of Controls at Common Frontiers, commonly referred to as the "Schengen Convention", deals more broadly with border controls in addition to refugee and asylum issues, such as drug trafficking. Both these instruments (together, "Conventions") represent commendable efforts to share and allocate the burden of review of refugee and asylum claims, and to establish effective arrangements by which claims can be heard.

These regional Conventions reflect the parties' recognition that the protection of refugees, the elimination of the problem of "refugees in orbit" and the reduction in multiple or unfounded claims are international concerns which should be addressed among States, particularly those geographically proximate and whose asylum procedures are similar. UNHCR considers such cooperation to be one of

App'x 89
AR138

the very "measures calculated to improve the situation of refugees and to reduce the number requiring protection." UNHCR Stat., para. 8(a),(b).

Large numbers of unfounded claims, compounded by multiple claims of asylum-seekers in several States, have taxed States' immigration resources and contributed to a backlog in the consideration of claims. This is undesirable from the point of view of refugee protection and UNHCR appreciates that one intent of the Conventions is to guarantee prompt review of claims, in accordance with the applicable international instruments, and assign clear responsibility for protection and return of those claimants deemed not to be refugees.

This effort is consistent with recommendations already articulated by the Executive Committee, for example in its 1979 Conclusion No. 15(Refugees without an Asylum Country). In this Conclusion, the Executive Committee called upon States to consider criteria by which States could agree as to which State would be responsible for examining an asylum request, and agreements providing for the return by States of persons who have entered into their territory from another State. Such provisions, was noted, should ensure review of claims, reduce multiple claims, and minimize the creation of "refugees in orbit."

Executive Committee Conclusion No. 15 also called upon States to facilitate, in the interest of family reunification and for humanitarian reasons, the admission to their territory of family members of persons to whom refugee status or asylum has been granted. UNHCR appreciates the inclusion of provisions in the conventions affording States the flexibility to admit family members and, for humanitarian reasons, such other persons as the States deem appropriate. UNHCR hopes that in their implementation of these provisions States take into account the call of the Executive Committee in its 1981 Conclusion No. 24 (Family Reunification) to States "to apply liberal criteria in identifying those family members who can be admitted with a view to promoting a comprehensive reunification of the family." In addition, consistent with the recognition that there will be humanitarian reasons which will cause States to be flexible on entry, UNHCR recommends that these reasons be understood to include considerations of language, education and former association.

UNHCR welcomes the reaffirmation, in both Conventions of the obligations of parties under the, 1951 Convention and the 1967 Protocol, and understands that, these instruments, as expressions of preeminent international law, should provide guidance and direction for the implementation of the regional Conventions. The fundamental protection of the '51 Convention is that of nonrefoulement. States are, "jointly and severally" responsible for the application of this principle so as to do everything in their power to avoid asylum-seekers being, returned to their countries of origin without an exhaustive examination of their claims.

UNHCR also welcomes the recognition in the Dublin Convention of the value and indeed necessity of continued cooperation and coordination with UNHCR. In light of its experience and its charge under its mandate to provide protection to refugees and supervise the application of international agreements, UNHCR believes it can play a valuable role in relation to implementation of these Conventions, including through facilitating dialogue among States and working with States towards harmonization of internal asylum procedures UNHCR could also be of assistance in the exchange and dissemination of legal and country of origin information informed decisions in refugee status determination procedures and effective protection of persons in need depend on clear, accurate and current information, regarding the situations of countries of origin. The dissemination of country of origin information already available in the public domain is an urgent need. UNHCR's role as collector and a potential provider of such information is currently under active consideration. UNHCR

has already been working on an ad hoc basis with States to expand its own information base and that of States in this regard.

This being said, UNHCR emphasizes that the States parties to the conventions, themselves, remain responsible for daily implementation by their own services of the Conventions. Refugee status determination, removal to third countries, securing necessary guarantees of "Safety", and such other obligations contemplated by Articles 11, 13, and 15 of the Dublin Convention are basic State responsibilities.

Against this background, UNHCR hopes that means will be found to associate it appropriately with the mechanisms or committees envisaged in the respective instruments to monitor their implementation.

In addition to the above general comments, UNHCR would like to make the following related observations.

Re: Harmonization of Refugee Status Procedures and Practices

The Conventions provisions setting out criteria by which States assume or deny responsibility for review of refugee status or asylum claims should reduce the multiplicity of claims, ensure that claims are considered promptly and fairly, and provide for the protection of an individual not permitted to remain in a State which does not accept responsibility for determination of refugee status. However, the significant differences among States' procedures governing asylum and refugee status determinations such as initial hearing procedures, appeals, conditions for stay, deportation, border controls and criteria for granting status may perpetuate some of the very problems both Conventions sought to solve.

In the absence of harmonization of procedures, differences both in procedures and in standards for admission may permit exploitation of the current imbalance in the refugee and asylum burden of States. Furthermore, strict assignment of responsibilities on the basis of which State authorized entry could lead to rejection of individual claims which, in another State party, might have been recognized. Presumably, pursuant to Article 3, paragraph 4, each State party is free to examine any, claim, even a claim previously rejected by another State.

UNHCR can assist States in developing and promoting harmonized standards of application (e.g., to whom the standards apply, which are countries of reception or responsibility), standards of treatment (e.g., how the standards apply and when), standards of implementation and supervision (e.g. , definitions, treatment of asylum-seekers, cooperation in the processes of identification, return, country of origin determination, readmission, determination of claims, solutions and repatriation). Through its branch and regional offices, and especially with financial underwriting from recipient States, UNHCR can be an active presence in assisting countries of origin to prepare conditions to permit repatriation, or return of non-refugees.

Harmonization of the interpretation of the Dublin and Schengen Conventions with each other and other international instruments is also an interest of UNHCR. Since the Conventions provisions for informal consultation between States should not be a substitute for adherence to international obligations (non-refoulement, etc.) UNHCR has a role to play in assisting States to achieve consistency and complementarity between the requirements of regional and of international refugee instruments.

Re: Visas-and Carrier Sanctions

Both Conventions take as their starting point for assigning responsibilities the fact of authorization of entry. The State which provided the entry authorization a fact determinable in accordance with a hierarchy of explicit rules is normally the State which must accept responsibility for considering the application. There is clearly a logic in this approach, but UNHCR is concerned where the emphasis on this "authorization principle" has the effect of causing States to strengthen even further both their entry requirements (visa arrangements), and their mechanisms to enforce these requirements (airline sanctions).

Asylum-seekers who are refugees are by definition persons whose flight from their country of origin is typically marked by the unwillingness or inability of their governments to provide them with protection from persecution. Often the persecutor feared is the national authorities from whom a refugee may not safely be able to obtain a valid passport, necessary to obtain a visa to enter another country. Visa prerequisites such as the possession of an address in the country of refuge, monetary sums, a return air ticket or family ties are prerequisites a refugee will very often have, difficulty meeting. For some refugees, the very real dangers attendant in even approaching governmental authorities for visas hinder considerably their search for protection

States are increasingly enacting and enforcing visa requirements through airline personnel. Although carrier sanctions are not necessarily contrary to international law, UNHCR is particularly concerned about the imposition of carrier sanctions and strict visa requirements which do not distinguish asylum seekers from other aliens.

In symbiotic relation to visa requirements are the documentation review obligations States in effect impose upon carriers. Forcing carriers to verify visas and other travel documentation helps to shift the burden of determining the need for protection to those whose motivation is to avoid monetary penalties on their corporate employer, rather than to provide protection to individuals. In so doing, it contributes to placing this very important responsibility in the hands of those (a) unauthorized to make asylum determinations on behalf of States (b) thoroughly untrained in the nuances and procedures of refugee and asylum principles, and (c) motivated by economic rather than humanitarian considerations. Inquiry into whether the absence of valid documentation may evidence the need for immediate protection of the traveller is never reached.

UNHCR believes that the concerns which States attempt to address through carrier sanctions and visas can be better addressed through the careful harmonization of standards of application, treatment and implementation. Timely consideration of claims by trained and authorized personnel who have the authority to exercise humanitarian discretion urged in the Conventions, along with coordinated standards of return and deportation, serve the same ends of preventing unfounded claims, but do not foreclose the chance to request protection t to those in true need of it. As recognized by the Executive Committee in its 1983 Conclusion No. 30¯ (The Problem of Manifestly Unfounded or Abusive Applications for Refugee Status or Asylum), the problem of large numbers of applications for refugee status can be mitigated by the allocation of sufficient resources to the determination of refugee status processes to shorten the appeal time.

Recognizing nonetheless that carrier sanctions are unlikely to be revoked in the immediate future, UNHCR urges States to enforce such sanctions only in the event that carriers demonstrate negligence in checking documents and knowingly and willingly bring into the States aliens who do not possess valid entry documents and who do not leave their countries of origin due to a well-founded the burden of proof falls more fear of persecution. In this posture, the burden of proof falls more appropriately

upon the shoulders of the States in recognition of the fact that States, not carrier personnel, have the training and appropriate motivation to identify those with well-founded claims for refuge and asylum.

This standard is consistent with and underscores the flexibility in the Conventions expressly given to States to admit persons, even in the absence of proper documentation, for humanitarian reasons. Here it should be noted that carrier personnel are neither qualified, nor so inclined in light of penalties, to permit transport of those to whom the State might otherwise extend protection for humanitarian reasons.

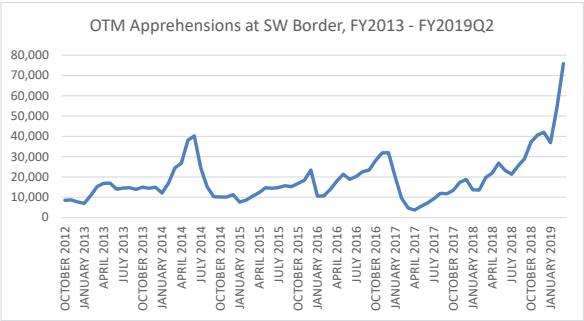
Re: Sharing of Information

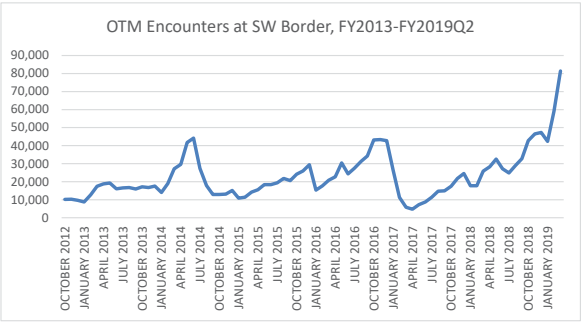
UNHCR welcomes the willingness of States to share with each other and with UNHCR statistical information and data concerning refugee trends, and is appreciative of States' recognition that information concerning specific refugee, and asylum claimants requires confidential treatment. The sharing of such general,information may aid protection in enhancing the capability to foresee refugee trends and issues, as well as assist countries in achieving their burdensharing goals.

However, because of the possibility of misuse of confidential information, for example by countries of origin to engage in retaliatory measures or punitive treatment of refugees, asylum-seekers or their family members, UNHCR hopes that States adopt effective measures by which such information is afforded every safeguard. Current Convention provisions refer to procedures by which an applicant for asylum may be able to have the receiving country correct or erase information he or she believes should not have been forwarded to that country. UNHCR urges the adoption of measures by which potentially damaging transfers of information can also be preempted, not only remedied after the event. In light of the ability by computer to copy or transfer with ease large quantities of information, States should further ensure that access to such information is strictly controlled and that the approval of the transfer of information potentially identifying a claimant or refugee is made by qualified personnel, sensitive to the inherent dangers of information-sharing. UNHCR welcomes the Conventions' requirement that the exchange of information by computer take place only among countries that are party to the 1981 Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.

Table 1. Southwest Border Encounters of non-Mexican Aliens by Month and Year (FY 2013 to FY 2019Q2)

Month	Apprehensions	Inadmissibles	Total Encounters
OCTOBER 2012	8,533	1,597	10,130
NOVEMBER 2012	8,719	1,582	10,301
DECEMBER 2012	7,731	1,903	9,634
JANUARY 2013	6,950	1,818	8,768
FEBRUARY 2013	10,848	1,855	12,703
MARCH 2013	15,328	2,117	17,445
APRIL 2013	16,825	1,915	18,740
MAY 2013	16,994	2,277	19,271
JUNE 2013	13,950	2,134	16,084
JULY 2013	14,507	2,066	16,573
AUGUST 2013	14,709	2,029	16,738
SEPTEMBER 2013	13,894	2,050	15,944
OCTOBER 2013	14,978	2,154	17,132
NOVEMBER 2013	14,391	2,360	16,751
DECEMBER 2013	14,985	2,557	17,542
JANUARY 2014	12,113	1,886	13,999
FEBRUARY 2014	16,895	2,031	18,926
MARCH 2014	24,501	2,654	27,155
APRIL 2014	26,782	2,818	29,600
MAY 2014	38,078	3,640	41,718
JUNE 2014	40,244	3,927	44,171
JULY 2014	24,322	3,014	27,336
AUGUST 2014	15,037	2,832	17,869
SEPTEMBER 2014	10,274	2,579	12,853
OCTOBER 2014	10,153	2,783	12,936
NOVEMBER 2014	10,078	2,987	13,065
DECEMBER 2014	11,260	3,877	15,137
JANUARY 2015	7,591	3,334	10,925
FEBRUARY 2015	8,570	2,824	11,394
MARCH 2015	10,566	3,669	14,235
APRIL 2015	12,245	3,315	15,560
MAY 2015	14,685	3,726	18,411
JUNE 2015	14,444	3,968	18,412
JULY 2015	14,791	4,610	19,401
AUGUST 2015	15,656	6,177	21,833
SEPTEMBER 2015	15,277	5,303	20,580
OCTOBER 2015	16,801	7,309	24,110
NOVEMBER 2015	18,425	7,484	25,909
DECEMBER 2015	23,418	5,940	29,358
JANUARY 2016	10,601	4,706	15,307
FEBRUARY 2016	10,672	7,025	17,697
MARCH 2016	13,854	6,927	20,781
APRIL 2016	17,940	4,741	22,681
MAY 2016	21,329	9,114	30,443
JUNE 2016	18,796	5,498	24,294
JULY 2016	20,296	7,180	27,476
AUGUST 2016	22,572	8,640	31,212
SEPTEMBER 2016	23,406	10,883	34,289
OCTOBER 2016	28,061	15,075	43,136
NOVEMBER 2016	31,904	11,457	43,361
DECEMBER 2016	31,994	10,807	42,801
JANUARY 2017	20,154	6,259	26,413
FEBRUARY 2017	9,632	1,647	11,279
MARCH 2017	4,773	1,040	5,813
APRIL 2017	3,687	1,038	4,725
MAY 2017	5,569	1,638	7,207
JUNE 2017	7,190	1,590	8,780
JULY 2017	9,349	2,068	11,417
AUGUST 2017	11,915	2,800	14,715
SEPTEMBER 2017	11,750	3,179	14,929
OCTOBER 2017	13,435	4,059	17,494
NOVEMBER 2017	17,363	4,406	21,769
DECEMBER 2017	18,739	5,822	24,561
JANUARY 2018	13,752	4,037	17,789
FEBRUARY 2018	13,551	4,162	17,713
MARCH 2018	19,721	6,130	25,851
APRIL 2018	21,873	6,370	28,243
MAY 2018	26,805	5,737	32,542
JUNE 2018	23,282	3,895	27,177
JULY 2018	21,360	3,524	24,884
AUGUST 2018	25,375	3,631	29,006
SEPTEMBER 2018	29,066	3,640	32,706
OCTOBER 2018	37,128	5,675	42,803





NOVEMBER 2018	40,706	5,833	46,539
DECEMBER 2018	42,045	5,236	47,281
JANUARY 2019	36,878	5456	42,334
FEBRUARY 2019	54,008	5027	59,035
MARCH 2019	75,851	5570	81,421

April 1, 2019

Southwest Border Enforcement Actions: March Official Reporting

Key Observations:

- March total enforcement actions increased 35% compared to February. This rate of increase is consistent with previous years for March.
  - Overall, March is 35% higher (103,493) than February (76,535) - last FY, March was 37% higher and from FY12 – FY16 it averaged 28% higher.
  - CBP total enforcement actions this March are 132% higher than the last 7 year March average and 516% higher than March of FY17.
    - UAC increased 30% in March compared to February, last March increased 40%.
    - FMUA increased 41% in March compared to February, last March increased 48%.
- The last time that this March's level was observed (overall) was March FY08 (89,770) and April FY08 (91,566).
  - April of FY08 was the last time USBP apprehensions exceeded 70,000.
- Guatemala remains the highest country of origin/citizenship.
  - Guatemalan total enforcement actions increased 40%.
  - Honduran total enforcement actions increased 30%.
  - El Salvador total enforcement actions increased **68%**.
  - Mexico increased 25%.
- In March, UAC and FMUA are 64% of total CBP Enforcement Actions; FMUA alone are 55%.
  - FYTD, UAC and FMUA are 60% of total CBP Enforcement Actions; FMUA alone are 51%.
- In March, OTM enforcement actions are 75% of the total; 70% Northern Triangle.
  - FYTD, OTM enforcement actions are 71% of the total; 66% Northern Triangle.
- For FY19TD, CBP is on track to exceed 1 million apprehensions and inadmissible aliens along the southwest border – a level not seen since FY06.

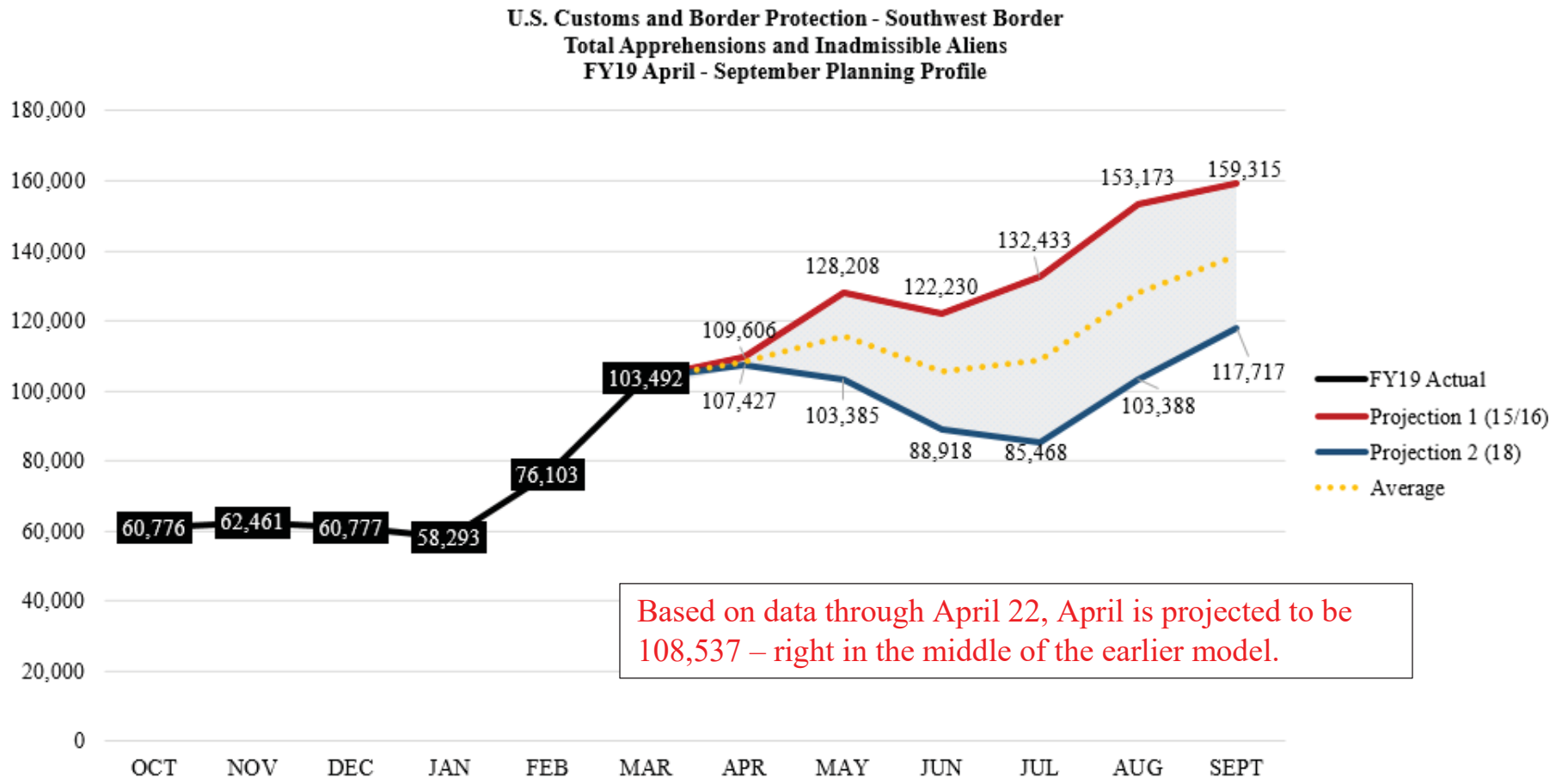
USBP

- USBP Apprehensions through March (361,087) exceed fiscal year totals for FY17, FY15, FY12, and FY11. 4 of the last 10 years.
- USBP FMUA [alone] this March are **42**% higher than USBP Total Apprehensions last March.
- At the end of March (FY mid-point):
  - USBP will have apprehended 91% of the volume of all of last fiscal year in six months' time.
  - FMUA this FY are **77**% higher than all of last FY for USBP FMUA.
- USBP total apprehensions increased 38% in March compared to February. This is the second consecutive month with 38% growth.
- OTM apprehensions account for 82% of March apprehensions.
  - Northern Triangle countries are 76% of total apprehensions.
- For the last month, peak apprehensions have occurred on 3 of the last 4 Tuesdays (5 of last 6).
  - Tuesday appears to be the most common peak day for UAC and FMUA apprehensions.
  - For the last 9 weeks, single adults have peaked on Tuesday, Wednesday or Thursday 3 times each.
- As a percent of total apprehensions, increases are observed in the El Paso Sector. In October, El Paso apprehensions were 14% of the total. In March, they account for 24% of apprehensions.
  - Conversely, in October RGV apprehensions were 41% of the total – in March, they are 36%.

OFO

- Inadmissible apprehensions this FY are tracking just below last FY (61,247 vs 63,845). March is 13% higher than February.
- Inadmissible UAC decreased 1%.
- FMUA at the ports of entry remained nearly the same (4,194) as January and February.
- Single adults at the ports are 25% higher than February.

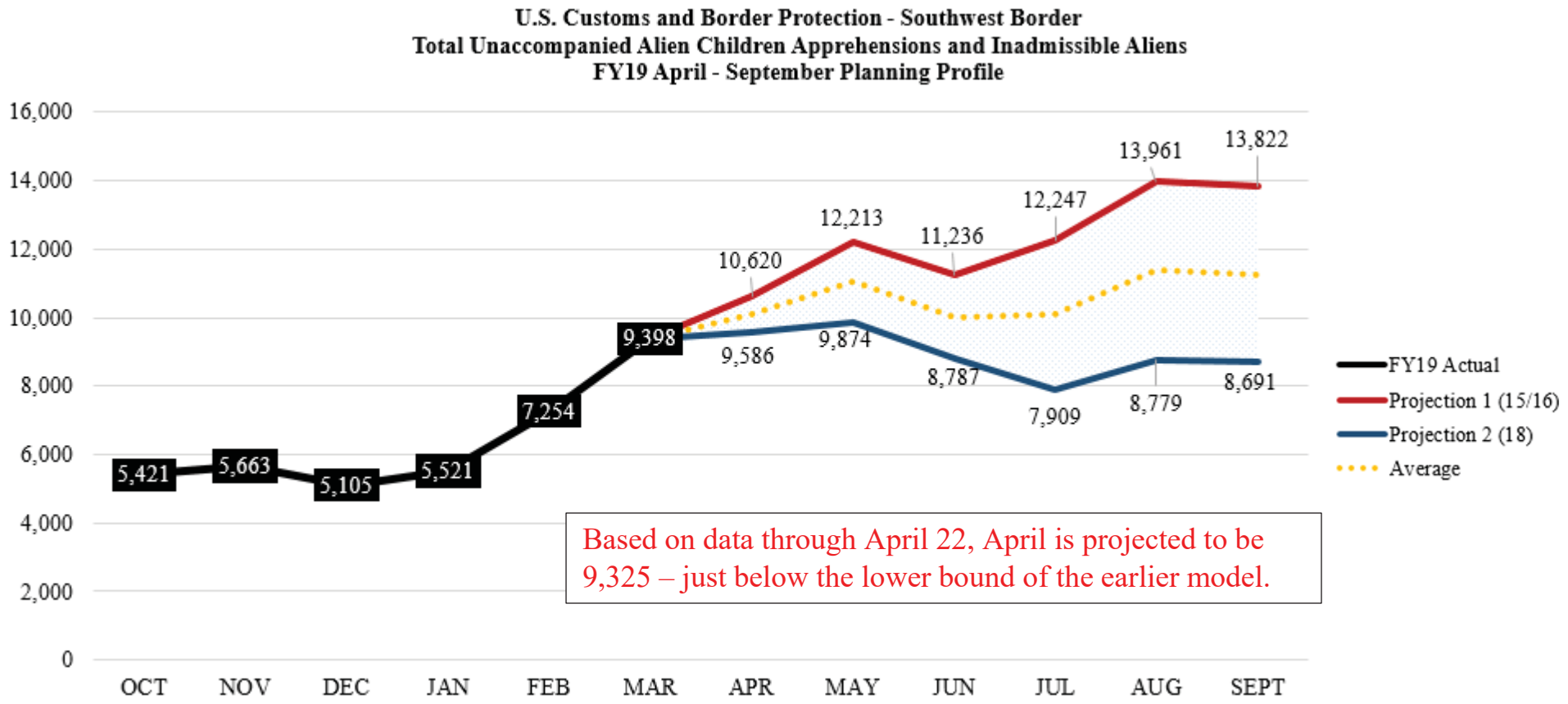
FY19 Planning Profile based on data through April 10, 2019



April is based on April data through the 10th.

Projection 1: April through September are based on the average rate of change occurring during FYs 15/16. Projected total: 1,227,299

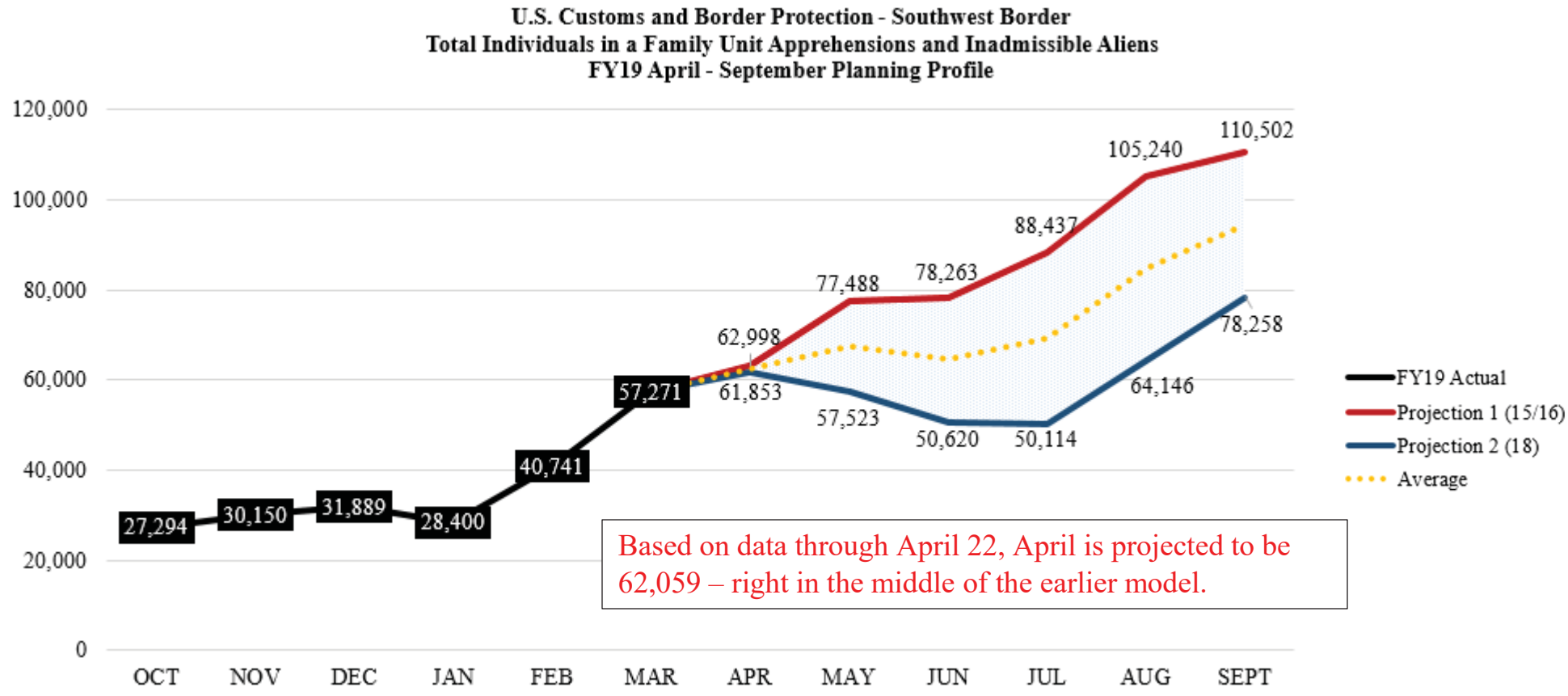
Projection 2: April through September is based on the monthly rate of change observed FY18. Projected total: 1,028,638



April is based on April data through the 10th.

Projection 1: April through September are based on the average rate of change occurring during FYs 15/16. Projected total: 112,460

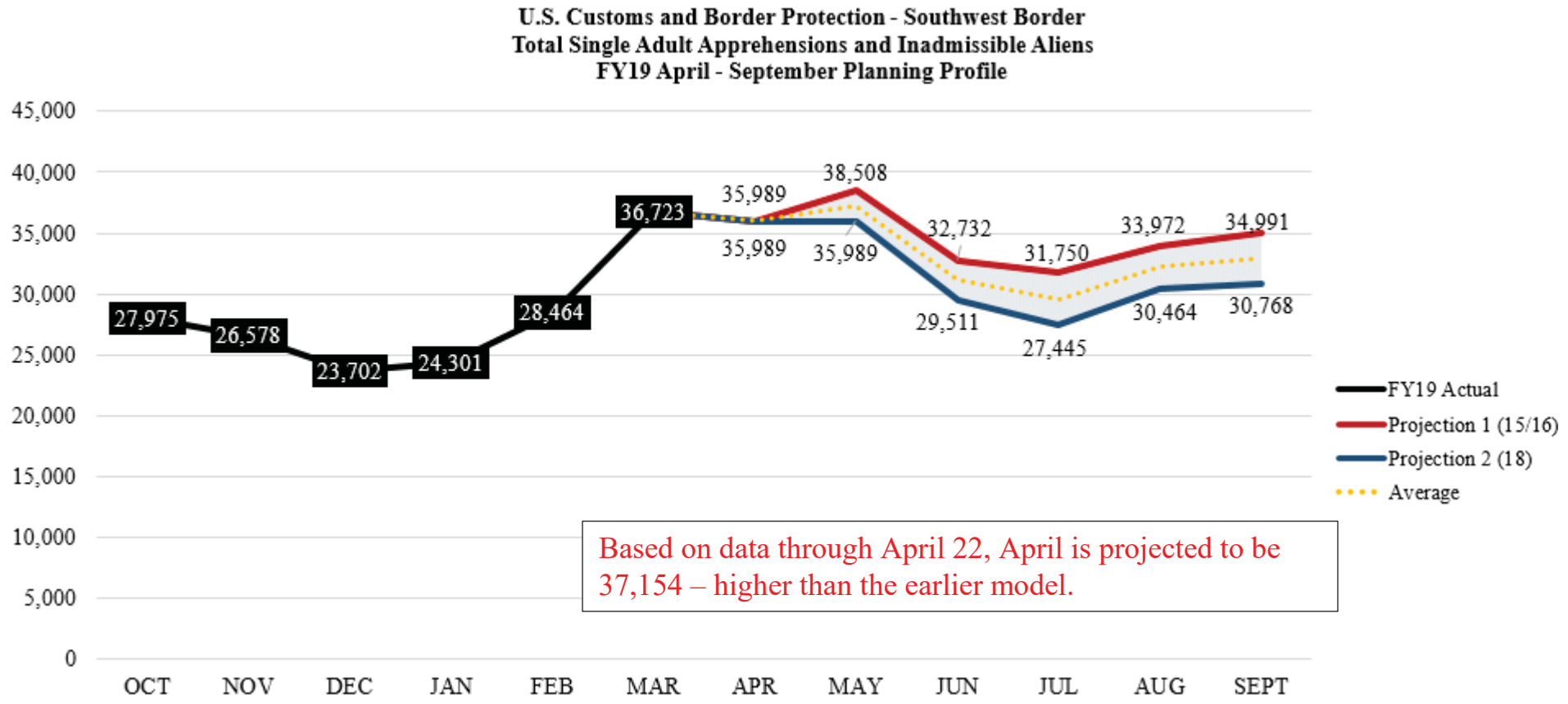
Projection 2: April through September is based on the monthly rate of change observed FY18. Projected total: 91,987



April is based on April data through the 10th.

Projection 1: April through September are based on the average rate of change occurring during FYs 15/16. Projected total: 738,671

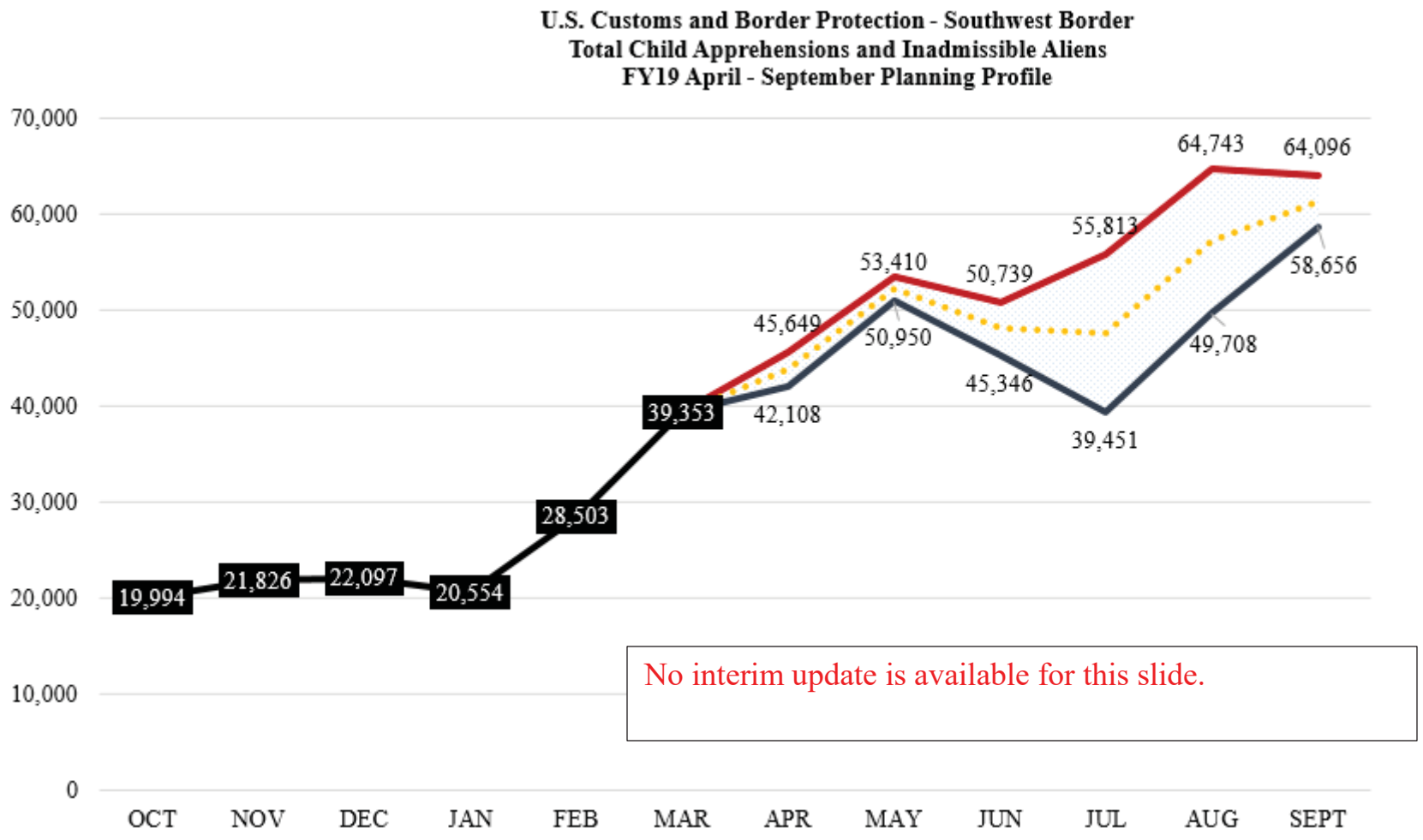
Projection 2: April through September is based on the monthly rate of change observed FY18. Projected total: 578,259



April is based on April data through the 10th.

Projection 1: April through September are based on the average rate of change occurring during FYs 15/16. Projected total: 375,684

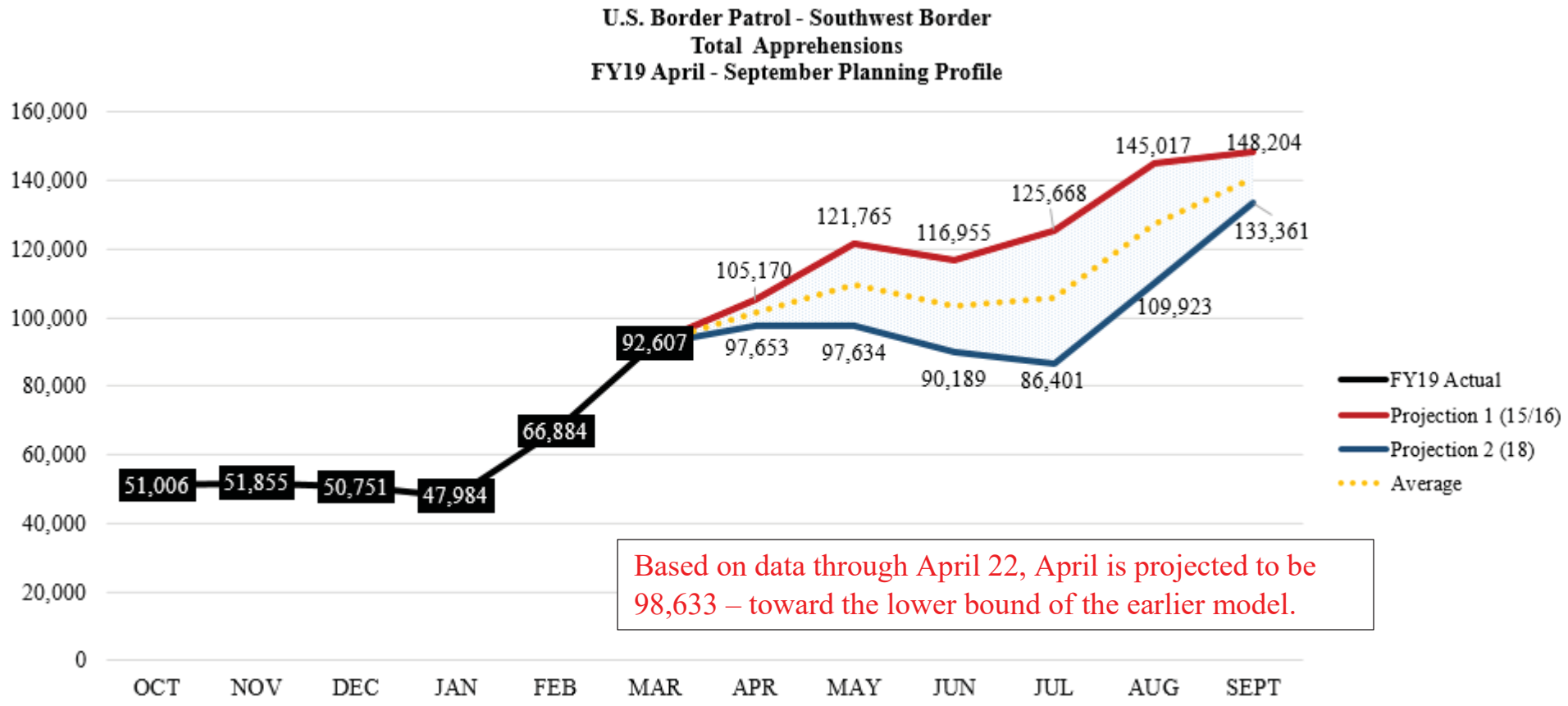
Projection 2: April through September is based on the monthly rate of change observed FY18. Projected total: 357,908



April is based on April data through the 10th.

Projection 1: April through September are based on the average rate of change occurring during FYs 15/16. Projected total: 486,779

Projection 2: April through September is based on the monthly rate of change observed FY18. Projected total: 438,545



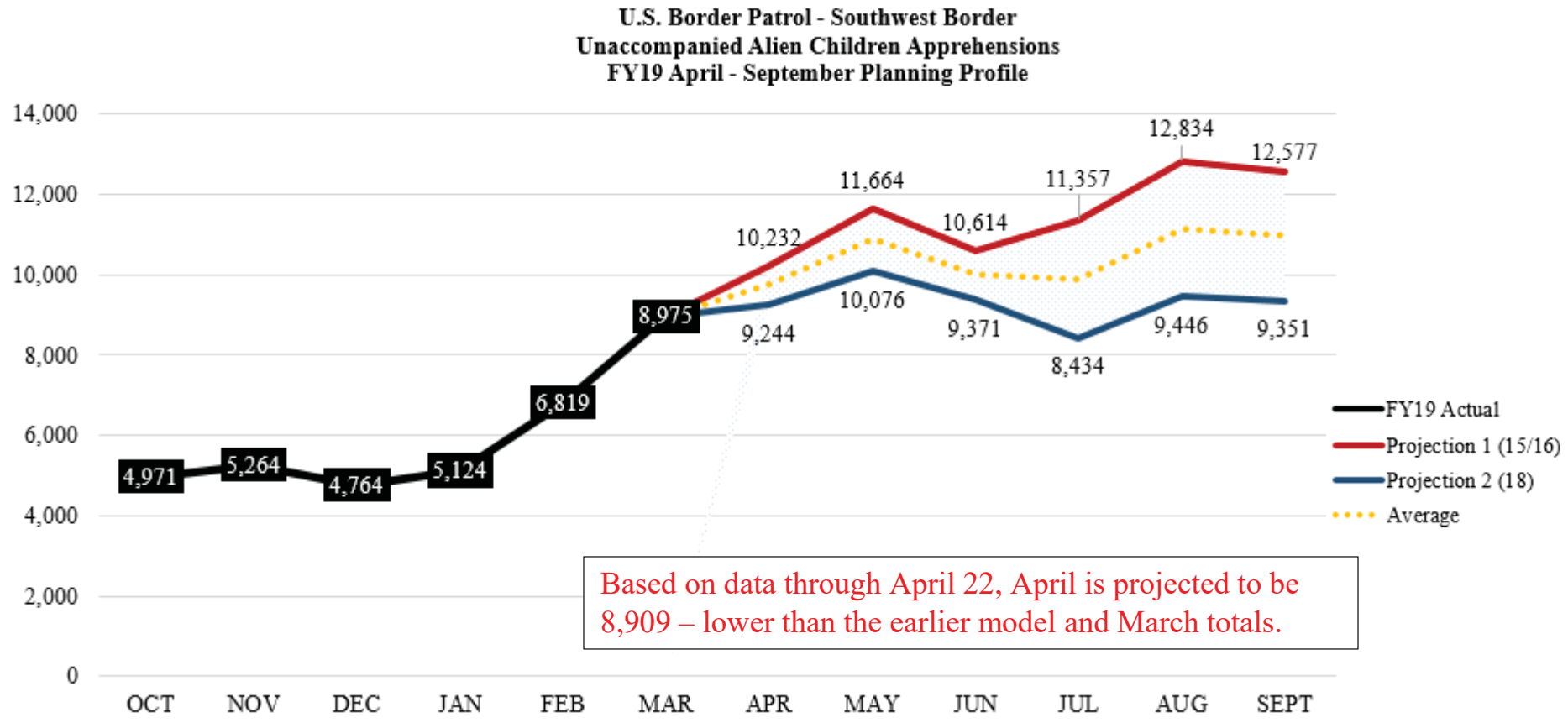
April is based on April data through the 10th.

Projection 1: April through September are based on the average rate of change occurring during FYs 15/16. Projected total: 1,056,983

Projection 2: April through September is based on the monthly rate of change observed FY18. Projected total: 909,365

U.S. Customs and Border Protection

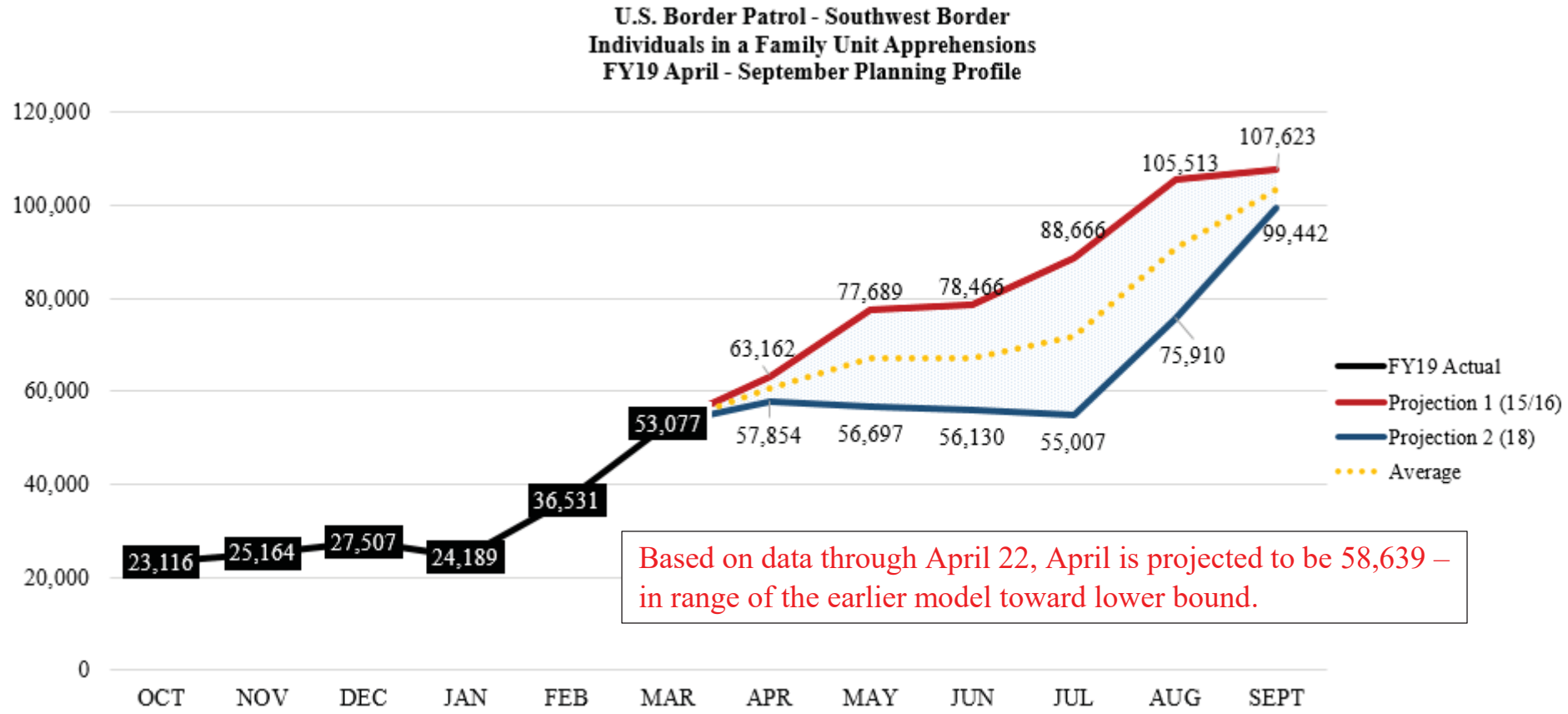
CBP STAT
Statistical Tracking and Analysis Team



April is based on April data through the 10th.

Projection 1: April through September are based on the average rate of change occurring during FYs 15/16. Projected total: 105,175

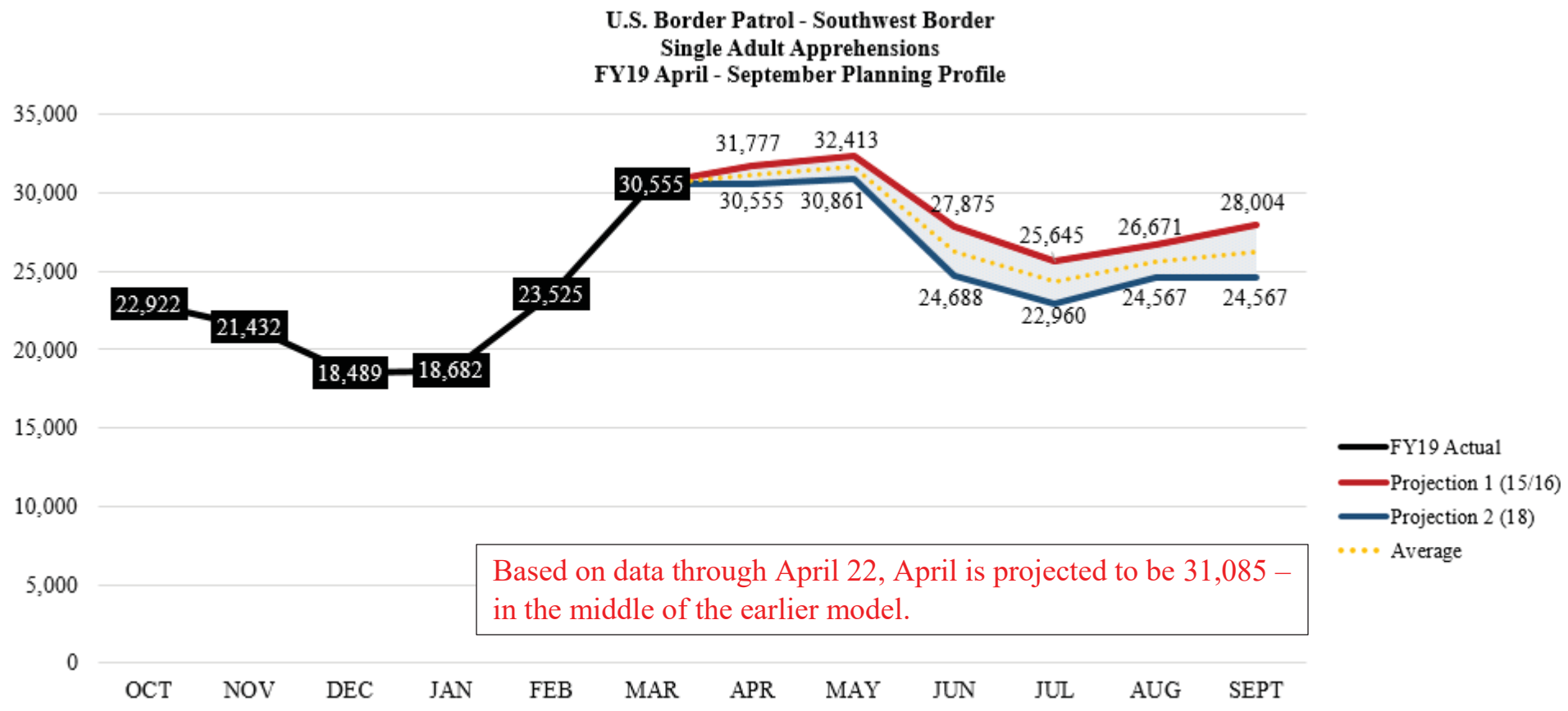
Projection 2: April through September is based on the monthly rate of change observed FY18. Projected total: 91,820



April is based on April data through the 10th.

Projection 1: April through September are based on the average rate of change occurring during FYs 15/16. Projected total: 674,171

Projection 2: April through September is based on the monthly rate of change observed FY18. Projected total: 554,093



April is based on April data through the 10th.

Projection 1: April through September are based on the average rate of change occurring during FYs 15/16. Projected total: 307,990

Projection 2: April through September is based on the monthly rate of change observed FY18. Projected total: 293,804

U.S. Border Patrol Southwest Border Apprehensions by Sector Fiscal Year 2019

https://www.cbp.gov/newsroom/stats/sw-border-migration/usbp-sw-border-apprehensions

Southwest Border Unaccompanied Alien Children (0-17 yr old) Apprehensions

Comparisons below reflect Fiscal Year To Date 2019 compared to Fiscal Year To Date 2018.

Unaccompanied Alien Children Apprehensions by Sector			
Sector	**FY18TD JUN**	**FY19TD JUN**	**% Change FY18TD JUN to FY19TD JUN**
Big Bend	850	581	-32%
Del Rio	998	2,701	171%
El Centro	1,921	2,286	19%
El Paso	3,978	14,593	267%
Laredo	2,137	2,058	-4%
Rio Grande	17,392	27,837	60%
San Diego	1,692	2,861	69%
Tucson	3,983	4,055	2%
Yuma	4,421	6,652	50%
USBP Southwest Border Total	**37,372**	**63,624**	**70%**

Southwest Border Family Unit* Apprehensions

Comparisons below reflect Fiscal Year To Date 2019 compared to Fiscal Year To Date 2018.

Family Unit* Apprehensions by Sector			
Sector	**FY18TD JUN**	**FY19TD JUN**	**% Change FY18TD JUN to FY19TD JUN**
Big Bend	566	1,754	210%
Del Rio	1,829	22,423	1,126%
El Centro	1,976	7,464	278%
El Paso	6,326	117,612	1,759%
Laredo	411	778	89%
Rio Grande	42,188	165,950	293%
San Diego	2,392	14,996	527%
Tucson	3,164	11,614	267%
Yuma	9,689	47,717	392%
USBP Southwest Border Total	**68,541**	**390,308**	**469%**

***Note:** Family Unit represents the number of individuals (either a child under 18 years old, parent or legal guardian) apprehended with a family member by the U.S. Border Patrol.

Southwest Border Single Adult Apprehensions

Comparisons below reflect Fiscal Year To Date 2019 compared to Fiscal Year To Date 2018.

Single Adult Apprehensions by Sector			
Sector	**FY18TD JUN**	**FY19TD JUN**	**% Change FY18TD JUN to FY19TD JUN**
Big Bend	5,043	4,792	-5%
Del Rio	8,772	15,583	78%
El Centro	17,033	18,500	9%
El Paso	10,412	23,595	127%
Laredo	21,953	27,192	24%
Rio Grande	54,958	72,649	32%
San Diego	24,972	29,981	24%
Tucson	33,121	34,715	5%
Yuma	4,793	7,436	55%
USBP Southwest Border Total	**180,357**	**234,443**	**30%**

Southwest Border Unaccompanied Alien Children Apprehensions by Country

Numbers below reflect Fiscal Years 2014 - 2018 and 2019 TD.

Unaccompanied Alien Children Apprehensions by Country						
Country	**FY14**	**FY15**	**FY16**	**FY17**	**FY18**	**FY19TD JUN**
El Salvador	16,404	9,389	17,512	9,143	4,949	**9,810**
Guatemala	17,057	13,589	18,913	14,827	22,327	**27,168**
Honduras	18,244	5,409	10,468	7,784	10,913	**16,892**
Mexico	15,634	11,012	11,926	8,877	10,136	**7,843**

Southwest Border Family Unit* Apprehensions by Country

Numbers below reflect Fiscal Years 2016 - 2018 and 2019 TD

Family Units* Apprehensions by Country				
Country	**FY16**	**FY17**	**FY18**	**FY19TD JUN**
El Salvador	27,114	24,122	13,669	**44,198**
Guatemala	23,067	24,657	50,401	**167,104**
Honduras	20,226	22,366	39,439	**152,019**
Mexico	3,481	2,271	2,261	**3,209**

***Note:** Family Unit represents the number of individuals (either a child under 18 years old, parent or legal guardian) apprehended with a family member by the U.S. Border Patrol.

Southwest Border Single Adult Apprehensions by Country

Numbers below reflect Fiscal Years 2016 - 2018 and 2019 TD

Single Adult Apprehensions by Country				
Country	**FY16**	**FY17**	**FY18**	**FY19TD JUN**
El Salvador	27,222	16,495	12,751	**16,491**
Guatemala	32,621	26,387	42,994	**41,366**
Honduras	22,258	17,110	26,161	**36,128**
Mexico	175,353	116,790	139,860	**113,123**

Southwest Border Family Unit Subject, Unaccompanied Alien Children, and Single Adult Apprehensions Fiscal Year 2019 - By Month

FMUA: Family Unit Apprehensions
UAC: Unaccompanied Alien Children
SA: Single Adult

FY19 October

Sector	FMUA FY 2019 OCT	UAC FY 2019 OCT	SA FY 2019 OCT	TOTAL FY 2019 OCT
Big Bend	17	37	501	555
Del Rio	548	145	1,309	2,002
El Centro	782	256	2,205	3,243
El Paso	5,180	830	1,325	7,335
Laredo	121	265	3,063	3,449
Rio Grande	11,525	2,307	6,923	20,755
San Diego	1,156	227	2,844	4,227
Tucson	1,163	469	4,196	5,828
Yuma	2,623	429	561	3,613
Southwest Border Total	**23,115**	**4,965**	**22,927**	**51,007**

FY19 November

Sector	FMUA FY 2019 NOV	UAC FY 2019 NOV	SA FY 2019 NOV	TOTAL FY 2019 NOV
Big Bend	31	36	381	448
Del Rio	831	146	1,111	2,088
El Centro	914	273	2,002	3,189
El Paso	6,435	1,038	1,395	8,868
Laredo	49	181	2,439	2,669
Rio Grande	11,487	2,310	6,916	20,713
San Diego	1,495	310	2,771	4,576
Tucson	754	465	3,842	5,061
Yuma	3,168	500	575	4,243
Southwest Border Total	**25,164**	**5,259**	**21,433**	**51,855**

FY19 December

Sector	FMUA FY 2019 DEC	UAC FY 2019 DEC	SA FY 2019 DEC	TOTAL FY 2019 DEC
Big Bend	122	74	425	621
Del Rio	919	155	949	2,023
El Centro	1,012	211	1,493	2,716
El Paso	7,336	970	1,144	9,450
Laredo	74	148	1,837	2,059
Rio Grande	10,630	1,881	5,861	18,372
San Diego	2,413	356	3,046	5,815
Tucson	1,310	408	3,193	4,911
Yuma	3,691	550	539	4,780
Southwest Border Total	**27,507**	**4,753**	**18,487**	**50,747**

FY19 January

Sector	FMUA FY 2019 JAN	UAC FY 2019 JAN	SA FY 2019 JAN	TOTAL FY 2019 JAN
Big Bend	91	59	438	588
Del Rio	1,009	192	1,323	2,524
El Centro	808	236	1,417	2,461
El Paso	6,838	1,013	1,287	9,138
Laredo	73	191	2,368	2,632
Rio Grande	9,942	2,183	5,586	17,711
San Diego	1,118	283	2,723	4,124
Tucson	670	357	3,069	4,096
Yuma	3,640	593	473	4,706
Southwest Border Total	**24,189**	**5,107**	**18,684**	**47,980**

FY19 February

Sector	FMUA FY 2019 FEB	UAC FY 2019 FEB	SA FY 2019 FEB	TOTAL FY 2019 FEB
Big Bend	186	61	598	845
Del Rio	2,262	239	1,512	4,013
El Centro	1,189	336	1,794	3,319
El Paso	10,892	1,522	1,759	14,173
Laredo	61	249	2,812	3,122
Rio Grande	14,430	2,910	8,026	25,366
San Diego	2,036	383	3,029	5,448
Tucson	1,024	438	3,449	4,911
Yuma	4,451	679	557	5,687
Southwest Border Total	**36,531**	**6,817**	**23,536**	**66,884**

FY19 March

Sector	FMUA FY 2019 MAR	UAC FY 2019 MAR	SA FY 2019 MAR	TOTAL FY 2019 MAR
Big Bend	197	80	665	942
Del Rio	2,831	435	2,297	5,563
El Centro	1,139	299	2,125	3,563
El Paso	16,966	2,188	3,071	22,225
Laredo	106	300	3,787	4,193
Rio Grande	20,943	3,714	9,106	33,763
San Diego	2,504	429	3,947	6,880
Tucson	1,824	600	4,833	7,257
Yuma	6,696	918	835	8,449
Southwest Border Total	**53,206**	**8,963**	**30,666**	**92,835**

FY19 April

Sector	FMUA FY 2019 APR	UAC FY 2019 APR	SA FY 2019 APR	TOTAL FY 2019 APR
Big Bend	224	61	657	942
Del Rio	3,440	395	2,014	5,849
El Centro	741	256	2,390	3,387
El Paso	20,642	2,465	3,980	27,087
Laredo	101	259	3,612	3,972
Rio Grande	22,895	3,759	10,074	36,728
San Diego	2,106	366	3,726	6,198
Tucson	1,533	396	3,992	5,921
Yuma	7,034	936	1,236	9,206
Southwest Border Total	**58,716**	**8,893**	**31,681**	**99,290**

FY19 May

Sector	FMUA FY 2019 MAY	UAC FY 2019 MAY	SA FY 2019 MAY	TOTAL FY 2019 MAY
Big Bend	732	117	710	1,559
Del Rio	5,272	569	2,721	8,562
El Centro	576	243	2,666	3,485
El Paso	29,815	3,256	5,575	38,646
Laredo	110	266	3,736	4,112
Rio Grande	33,933	4,870	11,028	49,831
San Diego	1,366	308	4,212	5,886
Tucson	1,773	510	4,592	6.875
Yuma	10,914	1,350	1,660	13,924
Southwest Border Total	**84,491**	**11,489**	**36,900**	**132,880**

FY19 June

Sector	FMUA FY 2019 JUN	UAC FY 2019 JUN	SA FY 2019 JUN	TOTAL FY 2019 JUN
Big Bend	154	56	417	627
Del Rio	5,311	425	2,347	8,083
El Centro	303	176	2,408	2,887
El Paso	13,508	1,311	4,059	18,878
Laredo	83	199	3,538	3,820
Rio Grande	30,165	3,903	9,129	43,197
San Diego	802	199	3,683	4,684
Tucson	1,563	412	3,549	5,524
Yuma	5,500	697	1,000	7,197
Southwest Border Total	**57,389**	**7,378**	**30,130**	**94,897**

Last modified: July 10, 2019

U.S. DEPARTMENT OF STATE

Office of the Spokesperson

For Immediate Release

MEDIA NOTE

June 7, 2019

U.S.-Mexico Joint Declaration

The United States and Mexico met this week to address the shared challenges of irregular migration, to include the entry of migrants into the United States in violation of U.S. law. Given the dramatic increase in migrants moving from Central America through Mexico to the United States, both countries recognize the vital importance of rapidly resolving the humanitarian emergency and security situation. The Governments of the United States and Mexico will work together to immediately implement a durable solution.

As a result of these discussions, the United States and Mexico commit to:

Mexican Enforcement Surge

Mexico will take unprecedented steps to increase enforcement to curb irregular migration, to include the deployment of its National Guard throughout Mexico, giving priority to its southern border. Mexico is also taking decisive action to dismantle human smuggling and trafficking organizations as well as their illicit financial and transportation networks. Additionally, the United States and Mexico commit to strengthen bilateral cooperation, including information sharing and coordinated actions to better protect and secure our common border.

Migrant Protection Protocols

The United States will immediately expand the implementation of the existing Migrant Protection Protocols across its entire Southern Border. This means that those crossing the U.S.

Southern Border to seek asylum will be rapidly returned to Mexico where they may await the adjudication of their asylum claims.

In response, Mexico will authorize the entrance of all of those individuals for humanitarian reasons, in compliance with its international obligations, while they await the adjudication of their asylum claims. Mexico will also offer jobs, healthcare and education according to its principles.

The United States commits to work to accelerate the adjudication of asylum claims and to conclude removal proceedings as expeditiously as possible.

Further Actions

Both parties also agree that, in the event the measures adopted do not have the expected results, they will take further actions. Therefore, the United States and Mexico will continue their discussions on the terms of additional understandings to address irregular migrant flows and asylum issues, to be completed and announced within 90 days, if necessary.

Ongoing Regional Strategy

The United States and Mexico reiterate their previous statement of December 18, 2018, that both countries recognize the strong links between promoting development and economic growth in southern Mexico and the success of promoting prosperity, good governance and security in Central America. The United States and Mexico welcome the Comprehensive Development Plan launched by the Government of Mexico in concert with the Governments of El Salvador, Guatemala and Honduras to promote these goals. The United States and Mexico will lead in working with regional and international partners to build a more prosperous and secure Central America to address the underlying causes of migration, so that citizens of the region can build better lives for themselves and their families at home.

MSF MEXICO CITY / NEW YORK / RIO DE JANEIRO / BARCELONA

MAY 2017

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FORCED TO FLEE CENTRAL AMERICA'S NORTHERN TRIANGLE:

A NEGLECTED HUMANITARIAN CRISIS

MEDECINS SANS FRONTIERES

When you have no strength left, when you no longer have anyone around to help you keep going, when you have lost all hope, when fear and distrust are your only travel companions, when you can't take another hit, when you have lost your identity, when you feel that your dignity has been missing since the last time you were assaulted, or the last time they forced you to undress —it is during these moments when you need to take a seat, regain your strength, and build the confidence to talk to people and let them help you.

Carmen Rodríguez
MSF Mental Health Referent in Mexico

Cover: Migrants and refugees cross the Suchiate River to enter Mexico from Guatemala in 2014.

EDITOR'S NOTE: This report was updated on June 14, 2017, to include the following corrections and clarifications: On pp. 5 and 21, we noted the number of people detained and deported based on data from 2016, not 2015 as reported earlier. On p. 6, we corrected the list of places where MSF has worked along the migration route to properly identify the respective states. And on p. 27, we changed the final sentence to clarify that the humanitarian crisis is a regional issue involving countries of origin, transit, and destination.

CONTENT

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Migrants travel through Mexico on a cargo train, known locally as "The Beast."

1

EXECUTIVE SUMMARY

An estimated 500,000 people cross into Mexico every year[1]. The majority making up this massive forced migration flow originate from El Salvador, Honduras, and Guatemala, known as the Northern Triangle of Central America (NTCA), one of the most violent regions in the world today.

Since 2012, the international medical humanitarian organization Doctors Without Borders/Médecins Sans Frontières (MSF) has been providing medical and mental health care to tens of thousands of migrants and refugees fleeing the NTCA's extreme violence and traveling along the world's largest migration corridor in Mexico. Through violence assessment surveys and medical and psychosocial consultations, MSF teams have witnessed and documented a pattern of violent displacement, persecution, sexual violence, and forced repatriation akin to the conditions found in the deadliest armed conflicts in the world today[2].

For millions of people from the NTCA region, trauma, fear and horrific violence are dominant facets of daily life. Yet it is a reality that does not end with their forced flight to Mexico. Along the migration route from the NTCA, migrants and refugees are preyed upon by criminal organizations, sometimes with the tacit approval or complicity of national authorities, and subjected to violence and other abuses —abduction, theft, extortion, torture, and rape— that can leave them injured and traumatized.

1_ Source: UNHCR MEXICO FACTSHEET. February 2017. Last visited 18 April 2017. Data compiled by UNHCR based on SEGOB and INM official sources.

2_The Geneva Declaration on Armed Violence and Development. Global Burden of Armed Violence 2015: Every Body Counts, October 2015, Chapter Two, http://www.genevadeclaration.org/fileadmin/docs/GBAV3/GBAV3_Ch2_pp49-86.pdf

Despite existing legal protections under Mexican law, they are systematically detained and deported--with devastating consequences on their physical and mental health. In 2016, 152,231 people from the NTCA were detained/presented to migration authorities in Mexico, and 141,990 were deported.

The findings of this report, based on surveys and medical programmatic data from the past two years, come against the backdrop of heightened immigration enforcement by Mexico and the United States, including the use of detention and deportation. Such practices threaten to drive more refugees and migrants into the brutal hands of smugglers or criminal organizations.

From January 2013 to December 2016, MSF teams have provided 33,593 consultations to migrants and refugees from the NTCA through direct medical care in several mobile health clinics, migrant centers and hostels —known locally as albergues— across Mexico. Through these activities, MSF has documented the extensive levels of violence against patients treated in these clinics, as well as the mental health impact of trauma experienced prior to fleeing countries of origin and while on the move.

Since the program's inception, MSF teams have expressed concern about the lack of institutional and government support to the people it is treating and supporting along the migration route. In 2015 and 2016, MSF began surveying patients and collecting medical data and testimonies. This was part of an effort by MSF to better understand the factors driving migration from the NTCA, and to assess the medical needs and vulnerabilities specific to the migrant and refugee population MSF is treating in Mexico.

The surveys and medical data were limited to MSF patients and people receiving treatment in MSF-supported clinics. Nevertheless, this is some of the most comprehensive medical data available on migrants and refugees from Central America. This report provides stark evidence of the extreme levels of violence experienced by people fleeing from El Salvador, Honduras, and Guatemala, and underscores the need for adequate health care, support, and protection along the migration route through Mexico.

In 2015, MSF carried out a survey of 467 randomly sampled migrants and refugees in facilities the organization supports in Mexico. We gathered additional data from MSF clinics from 2015 through December 2016. Key findings of the survey include:

Reasons for leaving:

- Of those interviewed, almost 40 percent (39.2%) mentioned direct attacks or threats to themselves or their families, extortion or gang-forced recruitment as the main reason for fleeing their countries.
- Of all NTCA refugees and migrants surveyed, 43.5 percent had a relative who died due to violence in the last two years. More than half of Salvadorans surveyed (56.2 percent) had a relative who died due to violence in this same time span.
- Additionally, 54.8% of Salvadorans had been the victim of blackmail or extortion, significantly higher than respondents from Honduras or Guatemala.

Violence on the Journey:

- 68.3 percent of the migrant and refugee populations entering Mexico reported being victims of violence during their transit toward the United States.
- Nearly one-third of the women surveyed had been sexually abused during their journey.
- MSF patients reported that the perpetrators of violence included members of gangs and other criminal organizations, as well as members of the Mexican security forces responsible for their protection.

According to medical data from MSF clinics from 2015 through December 2016:

- One-fourth of MSF medical consultations in the migrants/refugee program were related to physical injuries and intentional trauma that occurred en route to the United States.
- 60 percent of the 166 people treated for sexual violence were raped, and 40 percent were exposed to sexual assault and other types of humiliation, including forced nudity.
- Of the 1,817 refugees and migrants treated by MSF for mental health issues in 2015 and 2016, close to half (47.3 percent) were victims of direct physical violence en route, while 47.2 percent of this group reported being forced to flee their homes.

The MSF survey and project data from 2015-2016 show a clear pattern of victimization—both as the impetus for many people to flee the NTCA and as part of their experience along the migration route. The pattern of violence documented by MSF plays out in a context where there is an inadequate response from governments, and where immigration and asylum policies disregard the humanitarian needs of migrants and refugees.

Despite the existence of a humanitarian crisis affecting people fleeing violence in the NTCA, the number of related asylum grants in the US and Mexico remains low. Given the tremendous levels of violence against migrants and refugees in their countries of origin and along the migration route in Mexico, the existing legal framework should provide effective protection mechanisms to victimized populations. Yet people forced to flee the NTCA are mostly treated as economic migrants by countries of refuge such as Mexico or the United States. Less than 4,000 people fleeing El Salvador, Honduras, and Guatemala were granted asylum status in 2016[3]. In addition, the government of Mexico deported 141,990 people from the NTCA. Regarding the situation in US, by the end of 2015, 98,923 indiviudals from the NTCA had submitted requests for refugee or asylum status according to UNHCR[4]. Nevertheless, the number of asylums status granted to individuals from the NTCA has been comparatively low, with just 9,401 granted status since FY 2011[5].

As a medical humanitarian organization that works in more than 60 countries, MSF delivers emergency aid to people affected by armed conflict, epidemics, disasters, and exclusion from health care. The violence suffered by people in the NTCA is comparable to the experience in war zones where MSF has been present for decades. Murder, kidnappings, threats, recruitment by non-state armed actors, extortion, sexual violence and forced disappearance are brutal realities in many of the conflict areas where MSF provides support.

The evidence gathered by MSF points to the need to understand that the story of migration from the NTCA is not only about economic migration, but about a broader humanitarian crisis.

While there are certainly people leaving the NTCA for better economic opportunities in the United States, the data presented in this report also paints a dire picture of a story of migration from the NTCA as one of people running for their lives. It is a picture of repeated violence, beginning in NTCA countries and causing people to flee, and extending through Mexico, with a breakdown in people's access to medical care and ability to seek protection in Mexico and the United States.

It is a humanitarian crisis that demands that the governments of Mexico and United States, with the support of countries in the region and international organizations, rapidly scale up the application of legal protection measures —asylum, humanitarian visas, and temporary protected status— for people fleeing violence in the NTCA region; immediately cease the systematic deportation of NTCA citizens; and expand access to medical, mental health, and sexual violence care services for migrants and refugees.

2

INTRODUCTION: **CARING FOR REFUGEES AND MIGRANTS**

MSF has worked with migrants and refugees in Mexico since 2012, offering medical and psychological care to thousands of people fleeing the Northern Triangle of Central America (NTCA). Since the MSF program started, the organization has worked in several locations along the migration route: Ixtepec (Oaxaca State); Arriaga (Chiapas); Tenosique (Tabasco); Bojay (Hidalgo); Tierra Blanca (Veracruz State); Lechería-Tultitlán, Apaxco, Huehuetoca (State of Mexico); San Luis Potosí (San Luis Potosí State); Celaya (Guanajuato State); and Mexico City. Locations have changed based on changes in routes used by migrants and refugees or the presence of other organizations. MSF's services have mainly been provided inside hostels, or albergues, along the route. In some locations, MSF set up mobile clinics close to the rail roads and train stations.

In addition, MSF teams have trained 888 volunteers and staff at 71 shelters and hostels in "psychological first aid"—in which patients are counseled for a short period of time before they continue their journey. Health staff and volunteers in key points along the transit route, at 41 shelters and 166 medical facilities, received training on counseling related to sexual and gender-based violence (SGBV).

From January 2013 to December 2016, MSF teams carried out 28,020 medical consultations and 5,573 mental health consultations. More than 46,000 individuals attended psychosocial activities organized

3_ Source: UNHCR MEXICO FACTSHEET. February 2017.

4_ Regional Response to the Northern Triangle of Central America Situation. UNHCR. Accessed on 01/02/2017 at http://reporting.unhcr.org/sites/default/files/UNHCR%20-%20NTCA%20Situation%20Supplementary%20Appeal%20-%20June%202016.pdf

5_ Source: MSF calculations based on information from US Homeland Security. Yearbook of Immigration Statistics 2015.

Migrant and refugee patients attended by MSF from 2013-2016

by our teams to address the following topics: stress on the road, violence on the road, mental health promotion and prevention, myths and truths about the migration route, and developing tools to deal with anxiety.

Some of the people treated by MSF report extreme pain and suffering due to physical and emotional violence inflicted on them on the migration route. In 2016, MSF, in collaboration with the Scalabrinian Mission for Migrants and Refugees (SMR), opened a rehabilitation center for victims of extreme violence and other cruel, inhuman or degrading treatment. Since then MSF has treated 93 patients who required longer-term mental health and rehabilitation services.

Torture is inflicted by governmental security actors, while criminal organizations inflict extreme degrees of violence on these already vulnerable populations. Migrants and refugees are often easy prey, and they face severe difficulties in making any formal legal complaint. Some patients reported having been kidnapped, repeatedly beaten for days or even weeks for the purposes of extortion and ransom, or sometimes to frighten or intimidate other migrants and refugees. Attacks often include sexual assault and rape.

- Center Route: From Tierra Blanca to Querétaro
- Northeast Route: From Querétaro to Ciudad Acuña
- Northwest Route: From Querétaro to Tijuana
- North Route: From Querétaro to Puerto Palomas
- Southeast Route: From Tenosique to Tierra Blanca
- Southwest Route: From Tapachula to Tierra Blanca

- Capital City
- Transmigrant project, town of interest
- Health facities
- International boundary
- Coastline

App'x 124
AR282

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After disembarking a train, migrants traveling from Central America to the United States walk to a shelter in Ixtepec, Oaxaca, Mexico, in 2014.

3

NORTHERN TRIANGLE OF CENTRAL AMERICA: UNPRECEDENTED LEVELS OF VIOLENCE OUTSIDE A WAR ZONE

The violence experienced by the population of the NTCA is not unlike that of individuals living through war. Citizens are murdered with impunity, kidnappings and extortion are daily occurrences. Non-state actors perpetuate insecurity and forcibly recruit individuals into their ranks, and use sexual violence as a tool of intimidation and control. This generalized and pervasive threat of violence contributes to an increasingly dire reality for the citizens of these countries. It occurs against a backdrop of government institutions that are incapable of meeting the basic needs of the population.

The global study on homicide carried out by the United Nations Office on Drugs and Crime (UNODC) in 2013, placed Honduras and El Salvador first and fourth respectively on the list of countries with the highest murder rates in the world[6]. In the last ten years, approximate 150,000 people have been killed in the NTCA[7]. Since then, the situation has only worsened, with a particularly worrying situation in El Salvador, where 6,650 intentional homicides were reported in 2015, reaching a staggering murder rate of 103 per 100,000 inhabitants in 2015, while Honduras suffered 57 per 100,000 (8,035 homicides) and Guatemala 30 per 100,000 (4,778 homicides).

6_ UNODC, *Global Study on Homicide 2013: Trends, Contexts, Data*, 10 April 2014, https://www.unodc.org/documents/gsh/pdfs/2014_GLOBAL_HOMICIDE_BOOK_web.pdf, p. 126

7_ International Crisis Group calculation of total homicides since 2006 based on data from "Crime and Criminal Justice, Homicides counts and rates (2000-2014)"

Data from the UNODC report shows that homicidal violence in the NTCA resulted in considerably more civilian casualties than in any other countries, including those with armed conflicts or war[8]. Rates of violent death in El Salvador have lately been higher than all countries suffering armed conflict except for Syria[9].

In this context, an estimated 500,000 people from the Northern Triangle of Central America (NTCA) enter Mexico every year fleeing poverty and violence, according to the UN High Commissioner for Refugees (UNHCR). As an organization treating patients in Mexico fleeing these violent contexts, MSF teams witness the harrowing stories that have pushed people to make the urgent decision to flee their homes. Lack of economic opportunities are mentioned by a significant number of individuals interviewed by MSF, however, they systematically describe personal exposure to a violent event that triggered their decision to emigrate. The cycle of poverty and violence creates an untenable setting for many, and drives them toward the treacherous path through Mexico.

Due to MSF's experience treating migrants throughout Mexico, the organization sought to better understand the realities of life for individuals making the journey north, first to assess how to improve services to this marginalized population, and second to raise awareness about the conditions they face. This information is often missing from national statistics or publicly available data. This led to the development and implementation of a survey tool to measure an individual's reasons for fleeing, and the health impacts experienced before and after embarking on the route through Mexico. These findings, along with medical project data from the past two years, illustrate that the insecurity they fled at home and the violence they experience on the route north have significant physical and emotional impact.

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Art adorns the front of the men's dormitory building at a shelter for migrants in Mexico.

The VAT Background & Methodology

As a Victimization Assessment Tool (VAT), a survey was conducted among 467 refugees and migrants in September 2015 in the albergues along the migration route in Mexico where MSF was providing health and mental care at the time: Tenosique, Ixtepec, Huehuetoca, Bojay and San Luis Potosí (see Annex 3 for methodology).

The findings from this survey paint a detailed picture of the violence migrants faced at home and as they made their way through Mexico. This aggregated information allows MSF to identify avenues for further medical programming or to modify existing approaches in reaching this population. Although demonstrative of the harrowing realities faced by many people on the route north, this study is a snapshot in time and included a selective population accessible to MSF. Interviews were conducted in albergues, where migrants seek out food, shelter, information, and health care. These interviews are not necessarily representative of the entire migrant population traveling through Mexico. MSF avoids drawing sweeping conclusions, however the survey provides valuable information about the realities that many people on this route experienced, in a specific time period, as reported to MSF teams.

8_ ACAPS. Other Situations of Violence in the Northern Triangle of Central America. Humanitarian Impact July 2014.

9_ International Crisis Group. Mafia of the Poor: Gang Violence and Extortion in Central America Latin America Report N°62 | 6 April 2017.

Who was interviewed

Most of the people interviewed—88 percent—were male and 12 percent were female. Of those interviewed 4.7 percent were minors, 59 percent of them unaccompanied. Most interviewed, 67.6 percent, were from Honduras, while 15.7 percent were from El Salvador, 10.5 percent from Guatemala and 6.2 percent represented other nationalities. The average person surveyed was 28 years old, with 79 percent under 35.

Nationalities of people surveyed

	Number Surveyed	Percentage of Total
Honduras	315	67.6%
El Salvador	73	15.7%
Guatemala	49	10.5%
Nicaragua	15	3.2%
Mexico	11	2.4%
No Response	1	0.2%
Dominican Republic	1	0.2%
Suriname	1	0.2%

The majority of respondents—65 percent— confirmed that they have children and 52 percent of them lived in large households (with five or more people). A majority said that their family had financially supported them to help them make their way north.

Violence in countries of origin

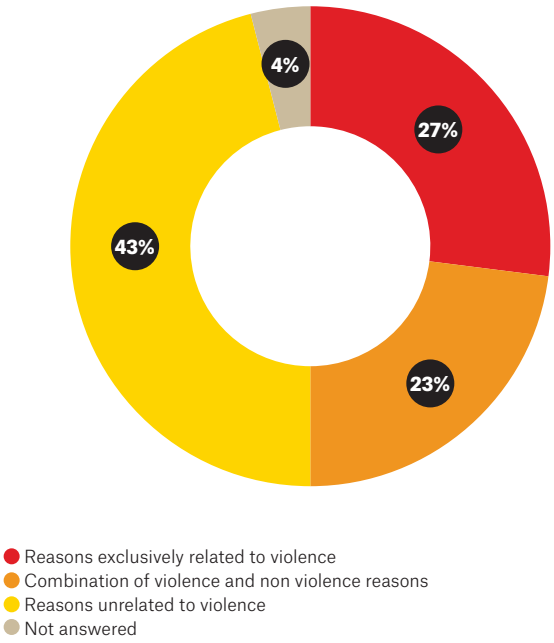
Respondents were asked several questions about their experience with direct and generalized violence in their home countries. Collectively, their individual stories show a population continuously exposed to some degree of violence or targeted threats, and, depending on their nationality, that experience can vary greatly.

- According to the survey, 57 percent of Honduran and 67 percent of Salvadoran migrants reported that they never feel safe at home, whereas only 33 percent of Guatemalans and 12 percent of Nicaraguans felt the same way.
- One third (32.5 percent) of the population from NTCA entering Mexico has been exposed to physical violence perpetrated by a non-family member (mainly members of organized crime) in the previous two years.
- Half of the population (48.4 percent) from NTCA entering Mexico received a direct threat from a non-family member (61.6 percent for Salvadorans alone). Of this group, 78 percent said that the threat seriously affected their social and professional activities.
- 45.4 percent of Hondurans and 56.2 percent of Salvadorans entering Mexico have lost a family member because of violence in the last two years before they migrated. 31 percent of the Central Americans entering Mexico knew someone who was kidnapped and 17 percent know someone who has disappeared and not been found.
- The vast majority —72 percent of Hondurans and 70 percent of Salvadorans interviewed— heard regular gunshots in their neighborhoods. Respectively, 75 percent and 79 percent had witnessed a murder or seen a corpse in the previous two years.

Reasons for leaving country of origin

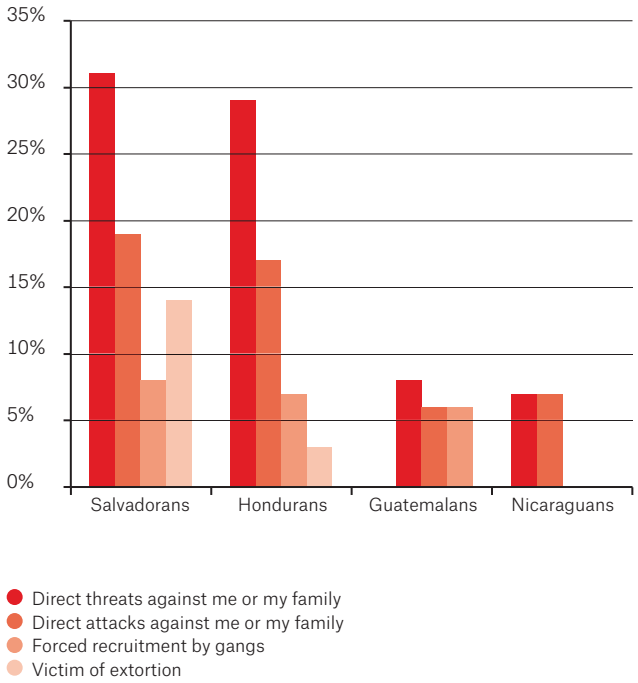
Half (50.3 percent) of those interviewed from the NTCA entering Mexico leave their country of origin for at least one reason related to violence. For those fleeing violence, a significant 34.9 percent declared more than one violence-related reason.

Reasons given for leaving country of origin



Direct attacks, threats, extortion or a forced recruitment attempt by criminal organizations were given as main reasons for survey respondents to flee their countries, with numbers significantly higher in El Salvador and Honduras. Of the surveyed population, 40 percent left the country after an assault, threat, extortion or a forced recruitment attempt.

Migration related to direct violence

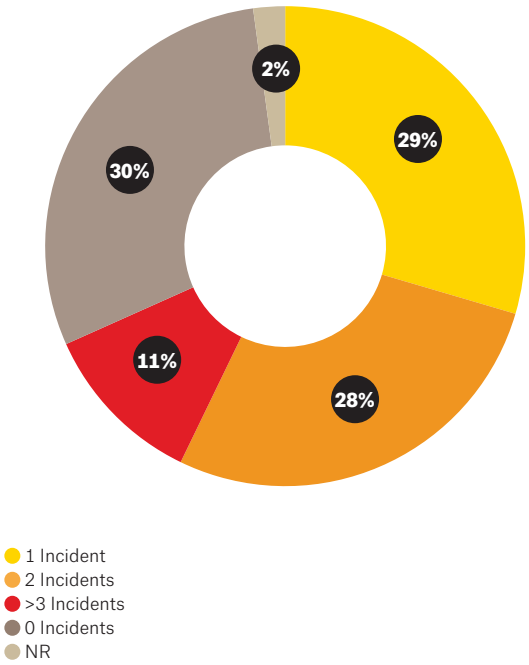


Regarding exposure to violence along the migration route through Mexico

The findings related to violence in the survey are appalling: more than half the sample population had experienced recent violence at the time they were interviewed: 44 percent had been hit, 40 percent had been pushed, grabbed or asphyxiated, and 7 percent had been shot.

Of the migrants and refugees surveyed in Mexico, 68.3 percent of people from the NTCA reported that they were victims of violence during their transit. Repeated exposure to violence is another reality for the population from NTCA crossing Mexico. Of the total surveyed population, 38.7 percent reported more than one violent incident, and 11.3 percent reported more than three incidents.

Number of violent incidents experienced per person during migration



In a migration context marked by high vulnerability like the one in Mexico, sexual violence, unwanted sex, and transactional sex in exchange for shelter, protection or for money was mentioned by a significant number of male and female migrants in the surveys. Considering a comprehensive definition of those categories, out of the 429 migrants and refugees that answered SGBV questions, **31.4 percent of women and 17.2 percent of men had been sexually abused during their transit through Mexico**. Considering only rape and other forms of direct sexual violence, 10.7 percent of women and 4.4 percent of men were affected during their transit through Mexico.

The consequences of violence on the psychological well-being and the capacity to reach out for assistance are striking: 47.1 percent of the interviewed population expressed that the violence they suffered had affected them emotionally.

Honduran—Male—30 years old— "I am from San Pedro Sula, I had a mechanical workshop there. Gangs wanted me to pay them for "protection", but I refused, and then they wanted to kill me. First they threatened me; they told me that if I stayed without paying, they would take my blood and one of my children. In my country, killing is ordinary; it is as easy as to kill an animal with your shoe. Do you think they would have pitied me? They warn you, and then they do it, they don't play, and so they came for me. Last year in September, they shot me three times in the head, you can see the scars. Since then my face is paralyzed, I cannot speak well, I cannot eat. I was in a coma for 2 months. Now I cannot move fingers on this hand. But what hurts most is that I cannot live in my own country, is to be afraid every day that they would kill me or do something to my wife or my children. It hurts to have to live like a criminal, fleeing all the time."

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A woman and her granddaughter attend an MSF support session for women at the Tenosique migrant shelter in Mexico in 2017.

4

MSF PROJECT DATA 2015-2016: EXPOSURE TO VIOLENCE AND ITS IMPACT ON HEALTH

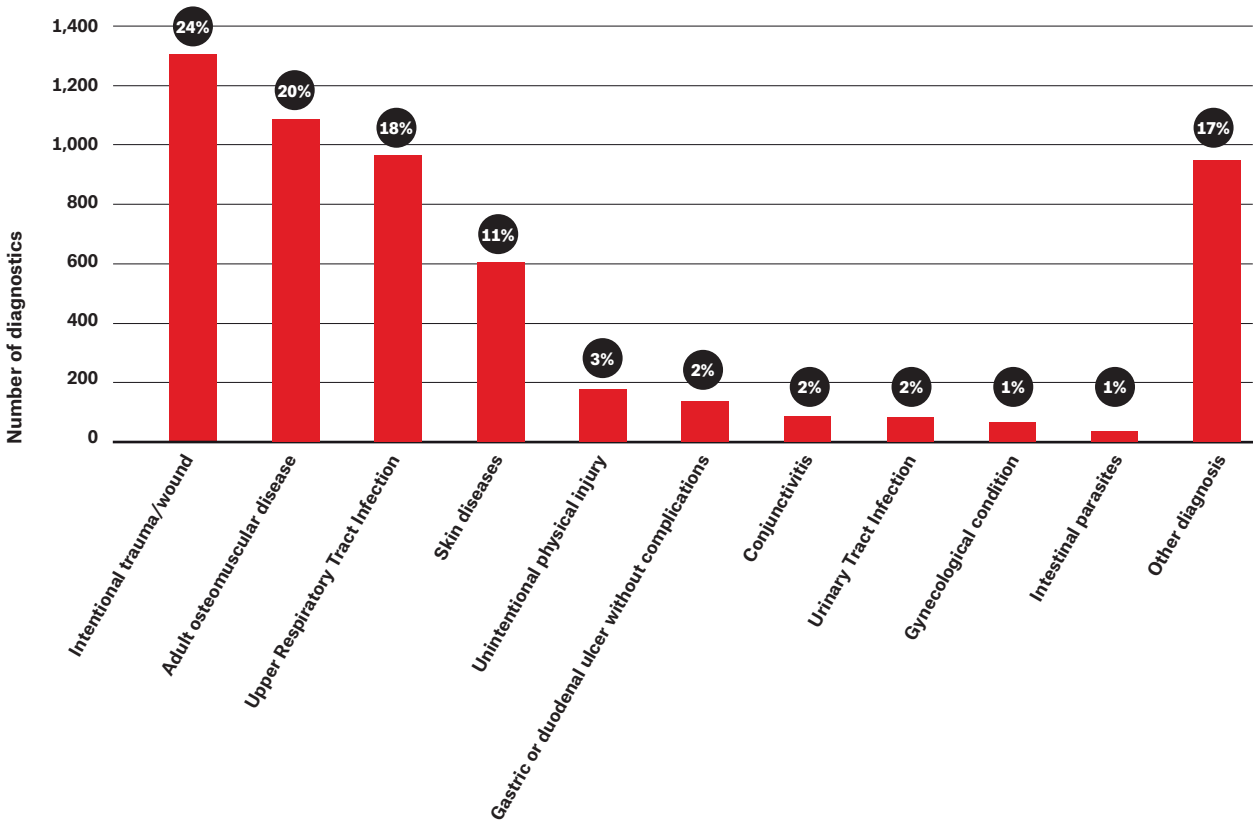
Through MSF project data of more than 4,700 medical consultations in 2015 and 2016, a picture of an often harrowing and traumatic journey emerges. Crossing Mexico from the NTCA is a constant challenge for survival which can take a severe toll both physically and psychologically. Migrants and refugees walk for hours in high temperatures, on unsafe and insecure routes to evade authorities. They risk falling from the cargo trains that transport them along the route, or ride on overcrowded trucks without food, water or ventilation for hours. In addition to these challenges, migrants and refugees do not have access to medical care or safe places to eat and sleep, and must constantly be on guard against the threat of violence or sexual assault by criminal groups or deportation and detention by authorities.

The symptoms managed in MSF clinics inside shelters or in mobile clinics close to railways are directly related to the conditions associated with the route itself: exposure to violence, days spent outdoors in harsh conditions on the train or in the forest, and long walking hours that cause dehydration, foot lesions, muscle pain, and other morbidities. Contaminated and/or scarce food found on the route result in gastro-intestinal problems or diarrheal disorders and parasites.

Main Morbidities Treated by MSF

From 2015 through December 2016, **one fourth of MSF medical consultations in the migrants/ refugee program were related to physical injuries and intentional trauma**. A morbidity analysis based on MSF consultations during 2015 and 2016 showed that most common health issues affecting migrants and refugees were intentional traumas and wounds (24 percent). Other common health issues included acute osteomuscular syndromes affecting 20 percent of respondents, upper respiratory tract infections (18 percent), skin diseases (11 percent) and unintentional physical traumas (3 percent).

10 main morbidities in MSF Clinics in 2015 and 2016



Some patients treated by our teams reported extreme pain and unbearable suffering due to physical and emotional violence inflicted as an extortion strategy. Patients tell of being tortured and abused in order to force migrants and refugees to reveal contact information for family members in order to demand a ransom payment, or as punishment for delay in ransom payment. Others report that violence is used to psychologically terrorize other migrants and refugees to ensure that they not report crimes to authorities or try to escape.

The mental health and physical consequences of this cruel, inhumane and degrading treatment are devastating. Their functionality is severely reduced, making survivors of violence unable to continue their journey or take care of themselves. Secondary and tertiary levels of care (including surgery, psychiatry, and neurology) are often required for patients to make a more complete recovery, and these are not always available in the areas where this violence took place or where albergues are located.

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M. fled domestic and gang violence in Honduras. In early 2017, she and her nine-year-old son were living in a shelter in Mexico, where she is filing for asylum.

Sexual Violence

During 2015 and 2016, a total of 166 sexual violence survivors were treated by MSF. Among them, 60 percent were raped and 40 percent were exposed to sexual assault and other types of humiliation, including forced nudity.

Honduran—Female—35 years old— "I am from Honduras, it's the fourth time that I try to cross through Mexico, but this had never happened before. This time, I came with my neighbor, and we were both seized by a group of delinquents. A federal police officer was their accomplice, and each one of us was handed over to gang members. I was raped. They put a knife on my neck, so I did not resist. I am ashamed to say this, but I think it would have been better if they had killed me."

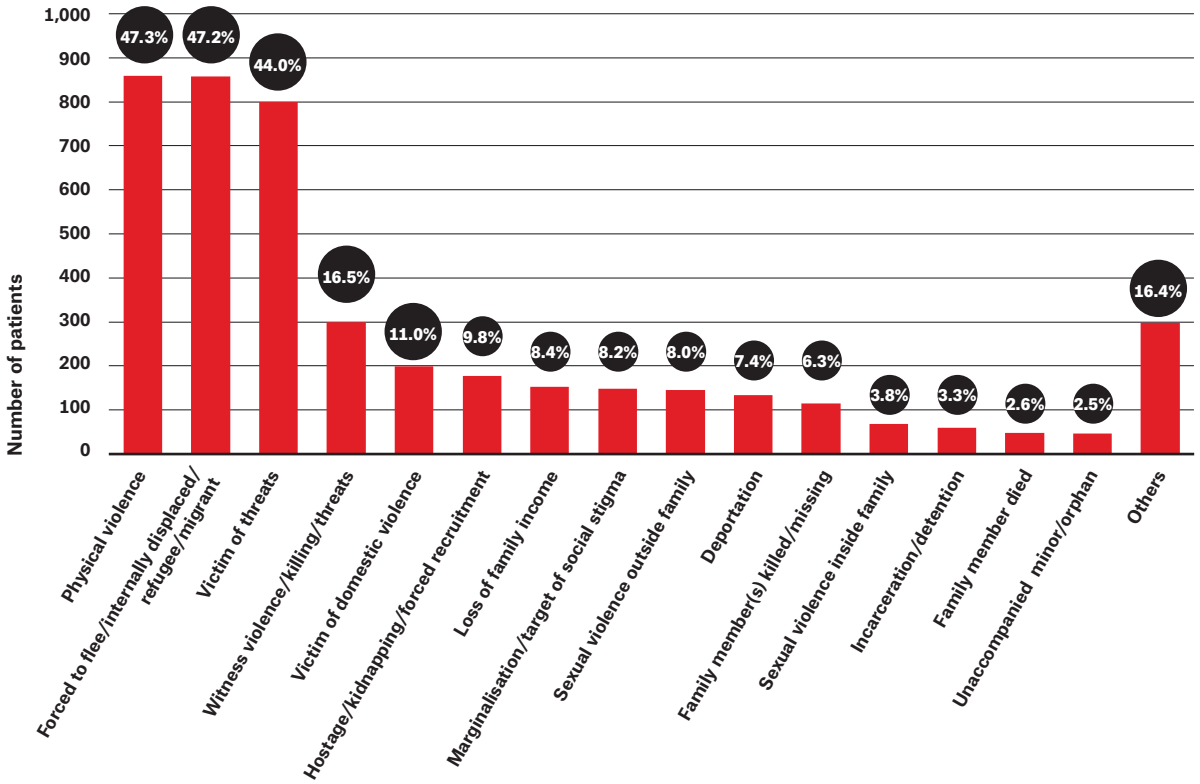
Honduran—Male—19 years old—"Today, in the early morning, hooded men assaulted us. I was traveling with my wife and my son. They beat us, and they hit me with a machete--look at my arm [there are bruises and wounds]. They took my wife to the mountain, took her away. They threatened me and told me not to turn around. They wanted us to give them information about our family to ask for ransom. But I told them we had nothing. I thought they were going to kill us. She says they did not do anything to her, but I know they abused her".

Mental Health

An important facet of MSF's work in Mexico is to provide support for the mental health needs of migrants and refugees. The data collected by the mental health teams of the project during 2015 and 2016 reveals a worrying situation. Out of 1,817 refugees and migrants treated by MSF for mental health issues over the last two years, 92.2 percent have lived through a violent event in their country of origin or during the route that threatens their mental health and well-being. A large number of MSF patients presented more than one risk factor directly linked to their exposure to violence as a precipitating factor for their mental health condition.

The graphic below portrays the fifteen risk factors most commonly identified by our teams. A detailed list of risk factors in 2015-2016 may be found in Annex 1 of the report.

Risk factors identified in mental health consultations during 2015 and 2016



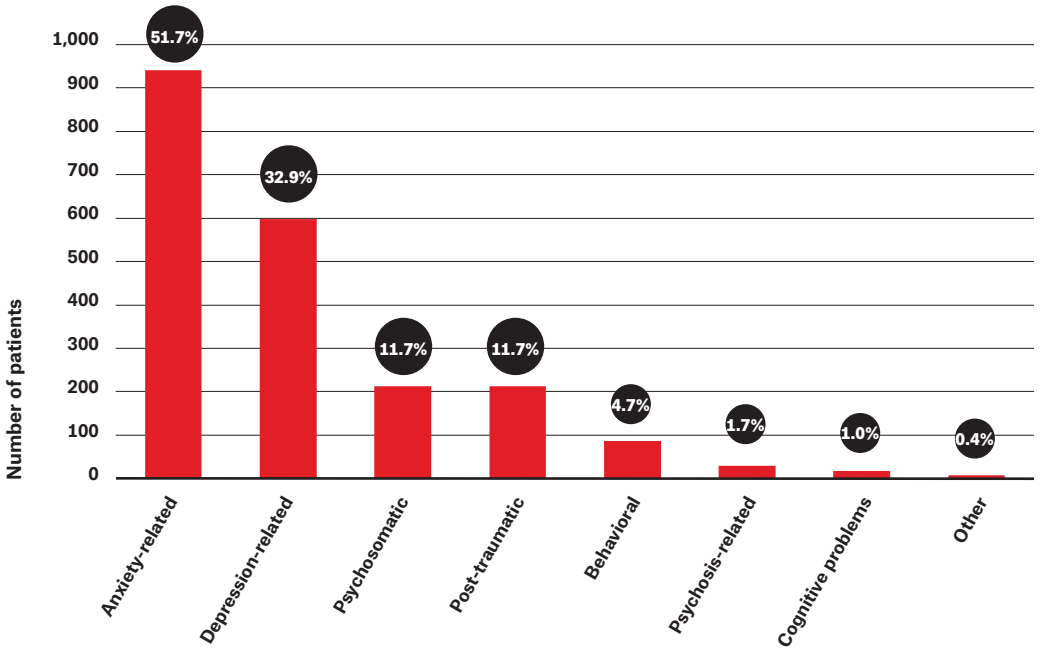
Of the 1,817 refugees and migrants seen by MSF in 2015-2016, 47.3 percent of patients survived "physical violence" as a precipitating event for the mental health consultation. Injuries included gunshot wounds, blunt force trauma from kicks and punches, mutilation of body parts during kidnappings, wounds from machete attacks, breaking of bones by blows from baseball bats, and wounds from being thrown out of a running train. In most cases, incidents registered under "physical violence" by MSF occurred along the migration route in Mexico.

The "precipitating event" most frequently mentioned during consultations was "Forced to flee/internally displaced/refugee/migrant" —registered by 47.2 percent of patients. This covers the period before people made the decision to flee.

Being a "victim of threats" (44.0 percent) and having "witnessed violence or crime against others" (16.5 percent) are the third and fourth most common risk factors. Witnesses to violence included patients forced to watch while others were tortured, mutilated, and/or killed —often in scenarios where they were deprived of their liberty, such as during a kidnapping for extortion.

The anguish and stress that migrants and refugees face both in their home countries and along the migration route make this population particularly vulnerable to anxiety, depression and post-traumatic stress disorder. The following graphic shows the main categories of symptoms presented by the 1,817 MSF patients seen in mental health consultations during 2015 and 2016.

Symptoms identified in mental health consultations during 2015 and 2016



More than half of patients who receive a mental health consultation (51.7 percent) report anxiety-related symptoms. Anxiety is described as an immediate, biological, physiological and psychological alarm reaction when faced with an assault or a threat. Migrants and refugees are under constant threat and risk along the migration route, and a heightened state of alert is an appropriate adaptive response to survive in a legitimately dangerous context. Problems arise when a person's reaction is exaggerated or out of proportion with the risk, making the individual incapable of adapting to new situations.

Nearly one-third (32.9 percent) of the migrants and refugees counseled by MSF in Mexico have symptoms associated with depression. Migration involves situations of psychological and social loss that trigger mourning processes, which begin at the moment of departure, are experienced on the route and continue at the place of destination. These elements represent significant psychological distress and suffering with an impact on a person's life.

In 11.7 percent of the cases, mental health teams are seeing manifestations of post-traumatic stress disorder. This rate documented in MSF programs in 2015 and 2016 are well above rates in the general population, which range from 0.3 percent to 6.1 percent. The PTSD rate among migrants and refugees that MSF is documenting in Mexico is much closer to the rates in populations affected by direct conflict (15.4 percent)[10, 11]. PTSD is a serious form of mental illness, which is usually caused by devastating life events and generally associated with impaired daily functioning in those affected. Individuals suffering from PTSD face greater risks to survival along the migration route, due to the multiple challenges associated with the journey.

Migrant and refugee women deserve special attention when it comes to mental health as data clearly show a particular vulnerability in this population. During migration, 59 percent of the women involved in the MSF study reported symptoms of depression, and 48.3 percent reported symptoms of anxiety. Other vulnerable groups—such as unaccompanied minors and LGBTQ people—are often specifically targeted by criminal groups and need greater support and protection.

The complete and detailed list of reaction symptoms presented by migrants and refugees during the mental health consultation can be found in Annex 2. Although these symptoms might be explained by the violence and the conditions of the route and do not always lead to depression or anxiety, they show how difficult the conditions for the patients can be and the importance of adapted case-detection strategies for mental health. If not addressed properly, these mental health issues can be a significant barrier during migration, interfering with daily functioning and putting their lives at risk.

MSF psychologist tells the story of a 43-year-old Honduran woman—This woman decided to leave Arriaga [Chiapas] out of fear, and walked with a group of Hondurans who would make their way along the train tracks to the town of Chahuites. However, when they slept in the mountains, they attempted to sexually abuse her. She managed to escape and arrived at the Chahuites shelter, where the patient again met her alleged assailants. She decided to flee that night to the city of Ixtepec. She was attended at the Ixtepec shelter by an MSF mental health team. She arrived with a high level of anxiety and presented post-traumatic symptoms such as flashbacks, auditory hallucinations, and sleep problems.

10_ Kessler, R.C. & Üstün, T. B. (eds). (2008). The WHO World Mental Health Surveys: global perspectives on the epidemiology of mental disorders. New York: Cambridge University Press, 1-580.

11_ Steel, Z., Chey, T., Silove, D., Marnane, C., Bryant, R.A., van Ommeren, M. (2009) Association of torture and other potentially traumatic events with mental health outcomes among populations exposed to mass conflict and displacement. Journal of the American Medical Association, 302(5), 537-549.

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A patient receives a medical consultation inside an MSF mobile clinic in Mexico State in 2014.

5

BARRIERS TO HEALTHCARE

Through its constitution and subsequent ratifications of international human rights treaties, Mexico has several legal instruments in place that protect the human rights of its citizens and all people within its borders, including provisions for adequate access to health care. Recently, Mexico has instituted laws that protect the passage of migrants through its country, ensuring that their entry into Mexico is not deemed as a criminal offense, and guaranteeing certain protections, with special attention to minorities, including women, children, indigenous people and the elderly.[12] In December 2014, the federal government instituted the *Seguro Popular* plan, entitling undocumented immigrants to receive health care coverage for a period of three months, without discrimination.[13]

Despite these legal protections, the recognition of basic rights, and programs that are supposed to guarantee access to health care, migrants and refugees have restricted access to health services. Across health structures in the country, there is a lack of clear, standardized regulations regarding the provision of health services to migrants and refugees seeking care. Additionally, there is a lack of training or understanding by the staff at these health facilities regarding the rights of migrants and refugees to receive care and, according to testimonies delivered to MSF, there is persistent discrimination of migrants

12_ Ley de Migración – Op.Cit. – Article 2 - http://cis.org/sites/cis.org/files/Ley-de-Migracion.pdf and Refugee Law.

13_ Presidential Decree December 2014 – National Commission of Social Health Protection Mexico DF 28.12.2014 http://www.gob.mx/salud/prensa/otorgan-seguro-popular-a-migrantes-7519

and refugees who seek out care. The right to be informed of the duties and rights as well as the criteria for admission, request of asylum is clearly stated in the Mexican Law,[14] however in practice, there is a lack of information for migrants and asylum seekers regarding their rights and the means available to them regarding health services at public health facilities. According to some testimonies of MSF patients, those refugees and migrants who do manage to access a health facility are often confronted with additional obstacles —including delays in granting appointments, even for absolute emergencies, resistance to providing care free of charge, or the filing of a complaint before judicial authorities as a prerequisite to the provision of care. There is also a risk at the health facilities that they will be handed over to migration authorities directly. In addition, the three-month limit on access to the Seguro Popular plan might not be enough to cover the current waiting period to get asylum status.

As described above in the findings of the MSF VAT, 59 percent of migrants affected by violence did not seek any assistance during their transit through Mexico despite self-identified needs, mainly due to concerns for their security, fear of retaliation, or deportation.

In providing free health care to migrants along the route north from the border with Guatemala, MSF has itself encountered barriers to providing urgent and effective care to its patients. In Tenosique, for example, MSF teams have encountered several administrative or organizational obstacles when they needed to urgently refer victims of sexual violence for Post-Exposure Prophylaxis (PEP). The lack of knowledge regarding protocols for the treatment of sexual violence by Ministry of Health providers, and the lack of availability of treatment or PEP kits, continues to represent a significant obstacle preventing appropriate treatment of survivors of sexual violence. In areas where sexual violence against migrants is widespread, such as Tenosique, or the corridor between the Guatemalan border and Arriaga, there is limited understanding of the population needs in the area. Furthermore, the needs of marginalized minorities, including migrants and refugees, who are at higher risk of violence and sexual abuse, are ignored.

Accessing mental health support and treatment is even more challenging for refugees and migrants. The scarcity of psychologists led MSF to systematically provide mental health consultations in all the albergues where it works throughout the country.

Survivors of sexual violence (SSV) who can reach medical facilities (including MSF's) to receive comprehensive care are just a tiny part of the total affected population. There are a considerable number of reasons that help explain why many survivors do not access medical care, including stigma and fear of being judged by hospital professionals; lack of knowledge about their medical needs and rights; fear that they will increase their risk of being abandoned or further abused; and a normalization of sexual violence as part of what's expected from men and women in order to reach their destination, in exchange for "payment" or for protection and guidance.

MSF has tried to overcome these barriers using a strategy that combines direct health care provision in migrant and refugee hostels and mobile clinics, sensitization and education of migrant and refugee populations, and additional training and staffing. Over the past two years, MSF has designed and implemented a training program to raise awareness and to provide training to health care workers, volunteers in the migrant hostels and key civil society actors on the right of migrants and refugees to health care, care protocols, mental health first aid and sexual violence case detection and management.

Honduras—Male— "I fell off the train and hit my knee so hard, but, at that moment, I did not [think I] hurt anything. They [doctors] told me it was a sprain. I fell on some very large stones. The backpack I wore was completely destroyed, and that was what saved my back. If I did not have it, I would have killed myself when I fell. I screamed as hard as I could to tell my cousin: 'Run, run, do not stop, faster. They are coming for us.' I could swear I saw them behind us. I was very scared. I felt the most intense fear of my life. Then, we arrived at a street where there was light, and I realized that my cousin was bathed in blood. I stopped a taxi, and asked the driver to take us to the hospital. He said that he could take us, but we would have to pay. I did not think twice. He left us at the hospital door. I asked for help, but no one helped me to get my cousin to the hospital. Nobody wanted to attend to my cousin. I asked for help, and I told everyone who saw that he was dying.

A doctor told us, 'Look, I cannot do anything until I call immigration.' I told him it does not matter if they deport us, if they want. All we want is for them to take care of us, and we do not want to be here anymore. They just sewed him up. We spent a few hours there. Two people came from the ministry. When I tried to explain what happened, one told me: 'Sure, they are thieves and that's why it happened to you. Do not tell me lies. I'm going to speak to immigration and they are going to take you.' A person who was in the adjoining bed got us the address of the migrants shelter and gave us money to get there.

14_ Ley de Migración – Op.Cit. – Article 13 - http://cis.org/sites/cis.org/files/Ley-de-Migracion.pdf

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A group of transgender women pose for a picture in the Tenosique migrant shelter in 2017. LGBTQ people are often at the highest risk of harassment and abuse both in their countries of origin and on their routes as migrants. Some shelters provide separate living spaces for greater security and support.

6

LIMITED ACCESS TO PROTECTION IN MEXICO

Legal framework applicable to the protection of refugees in Mexico

The Americas region already has relatively robust normative legal frameworks to protect refugees: the countries of Central and North America either signed the 1951 convention on refugees or its 1967 protocol and all have asylum systems in place. Furthermore, Mexico has been at the forefront of international efforts to protect refugees: its diplomats promoted the 1984 Cartagena Declaration on Refugees, which expands the definition to those fleeing "generalized violence".

In 2010, UNHCR established a guideline[15] for the consideration of asylum and refugee status for victims of gang violence, inviting concerned countries to apply broader criteria to the refugee definition of the 1951 Convention. In relation to these specific patterns of violence, the UNHCR concluded that direct or indirect threats (harm done to family members) and consequences (forced displacement, forced recruitment, forced "marriage" for women and girls, etc.) constituted "well-founded grounds for fear of persecution" and bases for the recognition of the refugee status or the application of the non-refoulement principle, the practice of not forcing refugees or asylum seekers to be returned to a country where their life is at risk or subject to persecution. Mexico integrated those recommendations and the right to protection stated in Article 11 of Mexico's constitution in its 2011 Refugee Law[16]. This law

15_ UNHCR Guidance Note on Refugee Claims Related to Victims of Organized Gangs – March 2010. Available at:http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=4bb21fa02&skip=0&query=organized%20gangs

16_ Available in spanish at http://www.diputados.gob.mx/LeyesBiblio/pdf/LRPCAP_301014.pdf

considers broad inclusion criteria for refugees —stating, alongside the internationally recognized definition from the 1951 Convention, the eligibility of persons fleeing situations of generalized violence, internal conflict, massive violations of human rights or other circumstances severely impacting public order.

After Brazil Declaration of December 2014 and in line with its 2010 recommendations, the UNHCR established specific guidelines for the access to international protection mechanisms for asylum seekers from El Salvador and Honduras.

Nevertheless, despite the relatively adequate legal framework and the goodwill expressed in regional and international forums, the reality at the field level is extremely worrying: seeking asylum, getting refugee status, or even securing other forms of international protection, such as complementary measures in Mexico and the United States, remains almost impossible for people fleeing violence in the NTCA.

Detentions and deportations from Mexico

The number of undocumented migrants from the NTCA detained[17] in Mexico has been growing exponentially for the last five years, rising from 61,334 in 2011 to 152,231 in 2016. Migrants from NTCA account for 80.7 percent of the total population apprehended in Mexico during 2016. The number of minors apprehended is extremely worrying as it nearly multiplied by 10 in the last five years, from 4,129 in 2011 to 40,542 in 2016[18]. Of children under 11 years old, 12.7 percent were registered as travelling through Mexico as unaccompanied minors (without an adult relative or care taker).

Despite the exposure to violence and the deadly risks these populations face in their countries of origin, the non-refoulement principle is systematically violated in Mexico. In 2016, 152,231 migrants and refugees from the NTCA were detained/presented to migration authorities in Mexico and 141,990 were deported[19].The sometimes swift repatriations (less than 36 hours) do not seem to allow sufficient time for the adequate assessment of individual needs for protection or the determination of a person's best interest, as required by law.

Refugee and asylum recognition in Mexico

In 2016, Mexican authorities processed 8,781 requests for asylum from the NTCA population[20]. Out of the total asylum requests, less than 50 precent were granted. Despite the fact that Mexico appears to be consolidating its position as a destination country for asylum seekers from the NTCA, and that the recognition rate improved from last year's figures, people fleeing violence in the region still have limited access to protection mechanisms. Many asylum seekers have to abandon the process due to the conditions they face during the lengthy waiting period in detention centers.

Protection for refugee and migrant victims of violence while crossing Mexican territory

Foreign undocumented victims or witnesses of crime in Mexico are entitled by law to regularization on humanitarian grounds and to get assistance and access to justice[21]. In 2015, a total of 1,243 humanitarian visas were granted by Mexico for victims or witnesses of crime from the NTCA[22]. These numbers might seem implausible, however the vast majority of patients (68.3 percent) in MSF's small cohort of migrants and refugees report having been victims of violence and crime.

Lack of access to the asylum and humanitarian visa processes, lack of coordination between different governmental agencies, fear of retaliation in case of official denunciation to a prosecutor, expedited deportation procedures that do not consider individual exposure to violence: These are just some of the reasons for the gap between rights and reality.

Failure to provide adequate protection mechanisms has direct consequences on the level of violence to which refugees and migrants are exposed. The lack of safe and legal pathways effectively keeps refugees and migrants trapped in areas controlled by criminal organizations.

17_ SEGOB. Mexico. Boletín Estadístico Mensual 2016. Eventos de extranjeros presentados ante la autoridad migratoria, según continente y país de nacionalidad, 2016. Accessed on 06/09/2017. http://www.politicamigratoria.gob.mx/work/models/SEGOB/CEM/PDF/Estadisticas/Boletines_Estadisticos/2016/Boletin_2016.pdf

18_ Ibíd.

19_ Ibíd.

20_ Source: UNHCR MEXICO FACTSHEET. February 2017.

21_ Ley General de Migración – Article 52 Section V-a. See also Article 4 for a definition of the "victims" covered by the law.

22_ Source: Boletín Mensual de Estadísticas Migratorias 2015. Secretaría de Gobernación. Gobierno de México. Accessed on 01/02/2017.

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At Tenosique migrant shelter in 2017, an MSF psychologist checks on a patient who became pregnant as a result of rape in Honduras. She fled her country out of fear that her attacker would find out about the pregnancy.

7

LIMITED ACCESS TO PROTECTION IN THE UNITED STATES

Legal framework and mechanisms for the recognition of refugees and asylum seekers in the United States

The US Immigration and Nationality Act (INA)[23], the main body of immigration law, does not embrace as broad a criteria for eligibility as the Mexican legal system. The definitions of asylum seeker and refugee reflect the one stated in the 1951 Convention, and, on paper, the law does not take into consideration contextual changes in the NTCA, recommendations formulated through the UNHCR or regional mechanisms such as the Inter American Convention on Torture or the UN Convention against Transnational Organized Crime.

Under the existing procedure, it is extremely difficult for those fleeing violence in the NTCA to obtain asylum or refugee status in the United States. Success depends on many factors, including good

23_ Available at: https://www.uscis.gov/ilink/docView/SLB/HTML/SLB/act.html. Section 101 (a)(42) and Acts 207, 208 and 209 of specific interest for the question of asylum and refuge.

legal representation, something that many asylum and refugee applications simply do not have. NTCA refugees may not be granted recognition on the grounds that they are not fleeing a country at war. Those who are not able to demonstrate physical consequences of violence —for example because they cannot provide forensic or legal documentation to prove specifics of their case, or were not "rescued" by authorities— will face insurmountable obstacles on the road to refuge/protection. According to UNHCR, by the end of 2015, 98,923 individuals from the NTCA had submitted requests for refugee or asylum status in the US[24]. Nevertheless, the number of asylum grants to individuals from the NTCA has been comparatively low, with just 9,401 granted asylum status since FY 2011. Out of the 26,124 individuals granted asylum status in the United States during FY 2015, 21.7 percent came from the NTCA: 2,173 were from El Salvador, 2,082 were from Guatemala, and 1,416 were from Honduras[25].

During FY 2015, out of the 69,920 arrivals to the United States with refugee status, not one was from an NTCA country. The United States does not have an effective system in place to facilitate refugee recognition of individuals from NTCA when they are in their country of origin or during the transit process in Mexico.

The Central American Minors Refugee/Parole Program (CAM[26]) was created in 2014 to reduce the exposure to transnational crime and trafficking, and more generally to the dangers and violence encountered by minors of age while trying to reach the US alone. The program, currently under threat of being dissolved under current US administration, has specific quotas and is reachable through US Embassies in Guatemala, El Salvador and Honduras. The program may also be accessed through a specific request from a child's family in the United States, provided that the eligible minor can prove that she or he is in the process of reuniting with close relatives legally residing in the United States. The program does not ensure adequate protection of these minors pending the analysis of their request (according to the US Department of State, this process can take up to 18 to 24 months). It is therefore not adequate for safeguarding the lives of minors at risk. Individuals who do not have direct family members legally residing in the United States have little option but to try to reach US territory by any means. The CAM program is not accessible through a third country like Mexico, where the US embassy does not have a dedicated office or department. As a result, thousands of unaccompanied minors have no other choice but to continue their journey alone or through organized crime networks, hoping to reach US soil.

24_ Call to Action: Protection Needs in the Northern Triangle of Central America. UNHCR. Discussion Paper A Proposal for a Strategic Regional Response.

25_Source: MSF calculations based on information from US Homeland Security. Yearbook of Immigration Statistics 2015.

26_ https://www.uscis.gov/CAM

Border control, detention, and deportation from the United States to the NTCA

US Customs and Border Protection (CBP) **apprehended** 337,117 people nationwide in FY 2015[27], compared to 486,651 in FY 2014, a 31 percent decrease. Of those, 39,970 were unaccompanied children[28]. From the total apprehended, 134,572 were from the NTCA—43,564 of whom were from El Salvador, 57,160 from Guatemala, and 33,848 from Honduras. Among other factors, the decrease in 2015 could be partly due to the shift of border control from US territory to Mexican territory under the Plan Frontera Sur joint effort. Apprehension of people from the NTCA is declining in the United States in the same proportion as it is climbing in Mexico.

In FY 2015, US Immigration and Customs Enforcement **removed/deported**[29] 21,920 people from El Salvador, 33,249 from Guatemala, and 20,309 from Honduras.

Many returnees who fled violence fear returning to their neighborhood. Upon return, women are often targeted and experience direct threats from gang members, often the same individuals who drove the families to flee. These threats include pressure to join criminal groups, pay money or "rent" to them, or sell drugs. Most of the women interviewed for this report revealed that upon return they were forced to live in hiding as a way to protect themselves from violent groups[30].

According UNHCR, some returnees remain identifiable by gang members near the reception centers and elsewhere, and some returnees have been killed by gangs shortly after return[31].

27_ Fiscal Year 2015 CBP Border Security Report December 22, 2015. https://www.dhs.gov/sites/default/files/publications/CBP%20FY15%20Border%20Security%20Report_12-21_0.pdf

28_ U.S. Custom and border protection. Official website of the Department of Homeland Security. https://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2015

29_ Source: ICE Enforcement and Removal Operations Report. Fiscal Year 2015. U.S. Immigration and Customs Enforcement. https://www.ice.gov/sites/default/files/documents/Report/2016/fy2015removalStats.pdf

30_ American Immigration Council, DETAINED, DECEIVED, AND DEPORTED. Experiences of Recently Deported Central American Families.

31_ Call to Action: Protection Needs in the Northern Triangle of Central America. UNHCR. Discussion Paper A Proposal for a Strategic Regional Response.

Honduran—Male—24 years old—

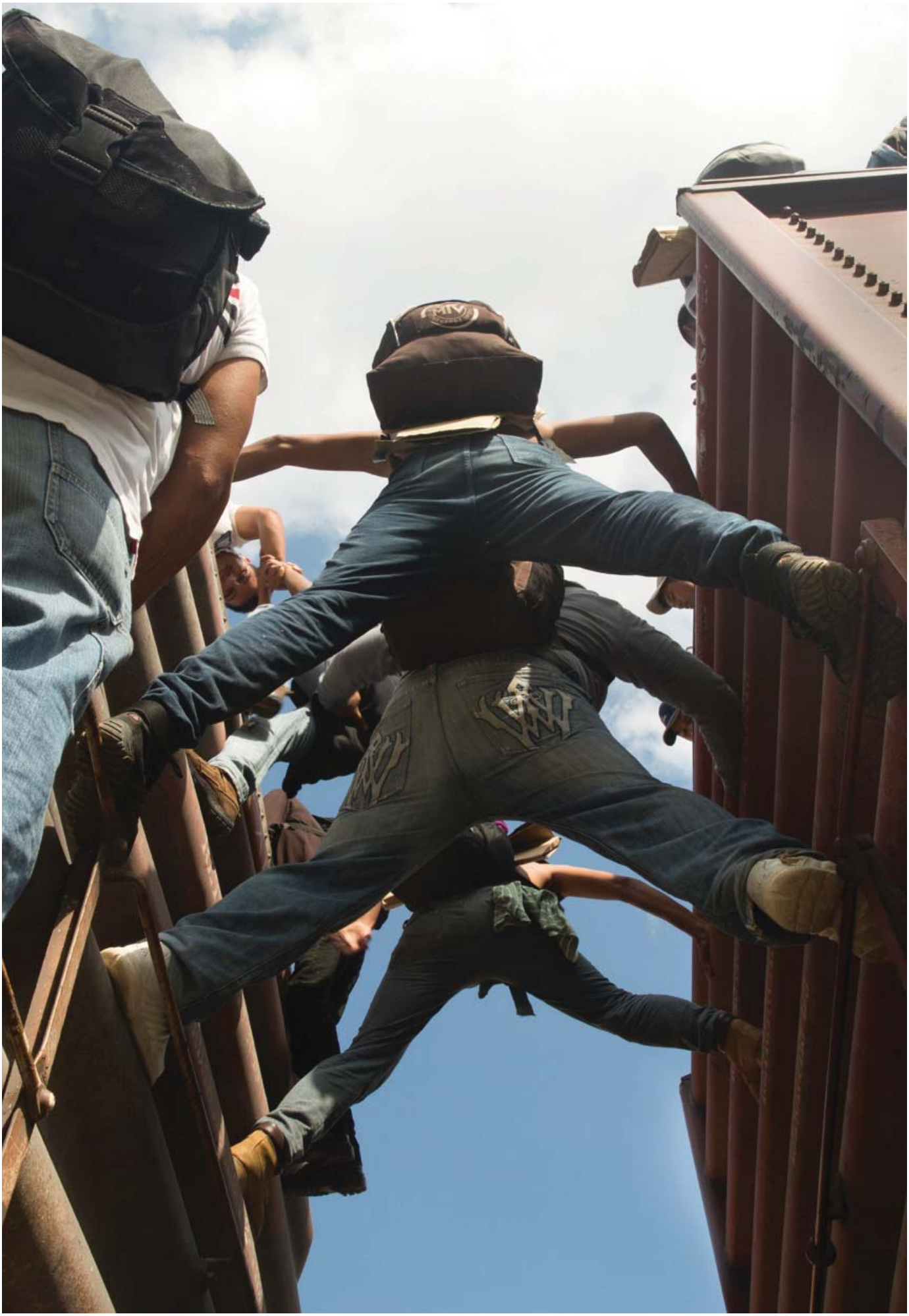
"I decided to leave my country due to threats of death and persecution by criminal groups. I did not know what to do because my family does not support me because of my sexual preference. I made the decision to leave my country because I was afraid and I did not know where to go. We arrived here at Tenosique, where they stopped us. They asked me for my documents and told me that if I did not have papers, I would be deported.

I started to remember [the past] and said that I did not want to go back to Honduras. I started to cry. I felt the world crumbling down over me. Then we arrived at the station, and they interviewed me. I discussed my case with a migration officer and started talking about the shelter, but he told me that I had to be in a migration station for three to four months and asked if I could manage this. This is nothing compared to everything I have lived through in Honduras. He told me to think about it, and I told him that I had nothing to think about--that I want to ask for refuge even if I am at the station for three months. I spent a month in the migration station.

I arrived here [Albergue la 72] and spent two months. The refugee [application] process lasted three months, and then they gave me the answer denying me refuge. So I was very sad, and I did not know what to do. I said I wanted to appeal, because I do not want to return to Honduras."

Salvadoran—Female—36 years old—

"I requested asylum through the US embassy in San Salvador in 2011. My husband was a police officer, and [also] worked with the Mara [criminal gang]. I was threatened several times by the other gangs, because they wanted to retaliate against my husband for being a spy. I survived this, but then they started to threaten my children. I thought I should leave. My sister lives in the USA. I thought I could go there and join her. But I never received an answer to my request. I had no other choice but to stay and try to survive. My husband was killed in 2015. Then they came, they raped my kid and chased me from my house. They said I should leave, or they would take my kids. I had no other choice. The little money I had, I gave to the pollero [smuggler] to help us. I heard there were stories of rape and kidnapping along the road, but I thought: God will help me through it."



Central American migrants travel by train in Mexico in 2014. Many fall victim to violence along the journey.

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A Central American migrant in Tenosique shows the identification card issued by Mexico's National Institute of Migration, which enables him to stay in Mexico with legal protections.

8

CONCLUSION: ADDRESSING THE GAPS

As a medical humanitarian organization providing care in Mexico, in particular to migrants and refugees, since 2012, MSF staff has directly witnessed the medical and humanitarian consequences of the government's failure to implement existing policies meant to protect people fleeing violence and persecution in El Salvador, Guatemala and Honduras, as described in the report.

As of 2016, MSF teams have provided 33,593 consultations through direct assistance to patients from NTCA with physical and mental traumas. People tell our staff that they are fleeing violence, conflict and extreme hardship. Instead of finding assistance and protection, they are confronted with death, different forms of violence, arbitrary detention and deportation. The dangers are exacerbated by the denial of or insufficient medical assistance, and the lack of adequate shelter and protection.

Furthermore, the findings of this report – the extreme levels of violence experienced by refugees and migrants in their countries of origin and in transit through Mexico -- comes against a backdrop of increasing efforts in Mexico and the United States to detain and deport refugees and migrants with little regard for their need for protection.

Medical data, patient surveys, and terrifying testimonies illustrate that NTCA countries are still plagued by extreme levels of crime and violence not dissimilar from the conditions found in the war zones. Many parts of the region are extremely dangerous, especially for vulnerable women, children, young adults, and members of the LGBTQ community. As stated by MSF patients in the report, violence was mentioned as a key factor for 50.3 percent of Central Americans leaving their countries. Those being denied refugee or asylum status or regularization under humanitarian circumstances are left in limbo. Furthermore, being deported can be a death sentence as migrants and refugees are sent back to the very same violence they are fleeing from. The principle of non-refoulement must be respected always, and in particular for people fleeing violence in the NTCA.

A stunning 68.3 percent of migrants and refugees surveyed by MSF reported having been victims of violence on the transit route to the United States.

Mexican authorities should respect and guarantee —in practice and not only in rhetoric— the effective protection and assistance to this population according to existing legal standards and policies.

There is a longstanding need to strengthen the Refugee Status Determination System (RSD). It must ensure that individuals in need of international protection and assistance are recognized as such and are given the support —including comprehensive health care, to which they are all entitled. Access to fair and effective RSD procedures must be granted to all asylum-seekers either in Mexico, the US, Canada and the region.

Governments across the region—mainly El Salvador, Guatemala, Honduras, Mexico, Canada and the United States—should cooperate to ensure that there are better alternatives to detention, and should adhere to the principle of non-refoulement. They should increase their formal resettlement and family reunification quotas, so that people from NTCA in need of protection and asylum can stop risking their lives and health.

Attempts to stem migration by fortifying national borders and increasing detention and deportation, as we have seen in Mexico and the United States, do not curb smuggling and trafficking operations. Instead, these efforts increase levels of violence, extortion and price of trafficking. As described in the report, these strategies have devastating consequences on the lives and health of people on the move.

The impact of forced migration on the physical and mental well-being of people on the move—in particular refugees and migrants, and, among them, the most vulnerable categories represented by women, minors, and LGBTQ individuals—requires immediate action. The response should ensure strict respect of the law and the adequate allocation of resources to provide access to health care and humanitarian assistance, regardless of the administrative status of the patient (as enshrined by Mexican law).

Addressing gaps in mental health care, emergency care for wounded, and strengthening medical and psychological care for victims of sexual violence by ensuring the implementation of adequate protocols, including provision of and access to the PEP kit, is fundamental to treating refugee patients with dignity and humanity.

As witnessed by MSF teams in the field, the plight of an estimated 500,000 people on the move from the NTCA described in this report represents a failure of the governments in charge of providing assitance and protection. Current migration and refugee policies are not meeting the needs and upholding the rights of assistance and international protection of those seeking safety outside their countries of origin in the NTCA. This unrecognized humanitarian crisis is a regional issue that needs immediate attention and coordinated action, involving countries of origin, transit, and destination.

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An MSF psychologist meets with a young patient in Mexico in 2016.

ANNEX 1
RISK FACTORS

Precipitating events identified in mental health consultations during 2015 and 2016

Precipitating Events and percentage of MSF patients affected	2015	2016	TOTAL	%
Violence as precipitating event: Other physical violence	517	342	859	47.2%
Violence as precipitating event: Forced to flee/IDP/refugee/migration	552	305	857	47.1%
Violence as precipitating event: Received threats	516	284	800	44.0%
Violence as precipitating event: Witnessed violence/killing/threats	202	97	299	16.4%
Violence as precipitating event: Domestic violence	96	103	199	10.9%
Violence as precipitating event: Hostage/Kidnapping/Forced recruitment	97	81	178	9.7%
Separation/Loss as precipitating event: Loss of family income	108	45	153	8.4%
Violence as precipitating event: Marginalization/target of social stigma/discrimination	93	56	149	8.2%
Violence as precipitating event: Sexual violence outside family	82	64	146	8.0%
Violence as precipitating event: Deportation	94	40	134	7.3%
Separation/Loss as precipitating event: Family member(s) killed / missing	75	40	115	6.3%
Violence as precipitating event: Sexual violence inside family	28	41	69	3.7%
Violence as precipitating event: Incarceration / Detention	35	25	60	3.3%
Separation/Loss as precipitating event: Family member died	28	20	48	2.6%
Separation/Loss as precipitating event: Unaccompanied minor/orphan	28	19	47	2.5%
Medical condition as precipitating event: Severe medical condition	31	14	45	2.5%
Medical condition as precipitating event: Highly stigmatized diseases	32	13	45	2.5%
Disaster/Catastrophes as precipitating event: Accidents	31	14	44	2.4%
Medical condition as precipitating event: History of psychological or psychiatric disorder	19	10	29	1.6%
Violence as precipitating event: Combat experience	17	9	26	1.4%
Violence as precipitating event: Victim of human trafficking/smuggling	8	16	24	1.3%
Violence as precipitating event: Torture	3	14	17	0.9%
Separation/Loss as precipitating event: Property destroyed or lost	11	5	16	0.9%
Medical condition as precipitating event: Unwanted pregnancy	9	6	15	0.8%
Other event/risk	13	0	13	0.7%
Separation/Loss as precipitating event: Family member(s) arrested/detained	0	12	12	0.7%
Separation/Loss as precipitating event: Caretaker neglected	3	6	9	0.5%
Disaster/Catastrophes as precipitating event: Natural disaster	0	2	2	0.1%
Violence as precipitating event: home incursion	0	1	1	0.1%

ANNEX 2
REACTION SYMPTOMS

Reaction symptoms identified in mental health consultations during 2015 and 2016

Reaction symptoms and percentage of MSF patients affected	2015	2016	TOTAL	%
Anxiety-related reaction: Anxiety / stress	732	295	1027	56.50%
Anxiety-related reaction: Constant worry	666	312	978	53.82%
Depression-related reaction: Sad mood	586	294	880	48.43%
Anxiety-related reaction: Excessive fear/Phobia/Feeling threatened	209	118	327	17.99%
Psychosomatic reaction: Sleeping problems	245	78	323	17.77%
Psychosomatic reaction: General body pain and other psychosomatic complaints	206	75	281	15.46%
Depression-related reaction: Irritability/anger	180	74	254	13.97%
Depression-related reaction: Guilt/Self-blame/Feeling worthless/Low Self-esteem	105	60	165	9.08%
Depression-related reaction: Hopeless	89	68	157	8.64%
Post-traumatic reaction: Intrusive feelings, thoughts	99	56	155	8.53%
Post-traumatic reaction: Hyper vigilance/Exaggerated startle response	87	40	127	6.98%
Post-traumatic reaction: Flashbacks	68	43	111	6.10%
Depression-related reaction: Loss of interest/anhedonia	47	41	88	4.84%
Behavioral problems reaction: Alcohol/substance abuse	62	23	85	4.69%
Post-traumatic reaction: Avoidance	39	37	76	4.18%
Behavioral problems reaction: Impulsiveness	28	23	51	2.80%
Psychosomatic reaction: Eating problems	33	10	43	2.36%
Behavioral problems reaction: Aggressiveness	23	19	42	2.31%
Behavioral problems reaction: Social/inter-personal isolation	23	12	35	1.92%
Behavioral problems reaction: Reduction of family attachment / involvement	25	10	35	1.92%
Depression-related reaction: Suicidal thoughts	19	15	34	1.87%
Cognitive problems reaction	21	10	30	1.65%
Anxiety-related reaction: Compulsive or repetitive behavior	20	10	30	1.65%
Psychosis-related reaction: Disorganized thoughts/speech	20	6	26	1.43%
Psychosis-related reaction: Bizarre behavior	16	8	24	1.32%
Depression-related reaction: Suicidal intention/attempts	14	8	22	1.21%
Psychosis-related reaction: Hallucinations	15	4	19	1.04%
Psychosomatic reaction: Hypo/hyper-activity	14	3	17	0.93%
Post-traumatic reaction: Dissociation	10	5	15	0.82%
Psychosis-related reaction: Delusions	9	2	11	0.60%
Depression-related reaction: Self-harm	5	3	8	0.44%
Behavioral problems reaction: Delinquent behavior	3	5	8	0.44%
Other reaction	1	6	7	0.38%
Psychosomatic reaction: Enuresis and/or encopresis	5	2	7	0.38%
Psychosomatic reaction: Sexual problems	3	3	6	0.33%
Psychosomatic reaction: Psycho-motor changes	5	0	5	0.27%
Behavioral problems reaction: Regression in development	2	3	5	0.27%
Psychosomatic reaction: Verbal expression changes	3	0	3	0.16%

ANNEX 3
SURVEY METHODOLOGY

The victimization survey technique measures violence actually "experienced" by people and not only the violence known through police and other official reports. The survey consists of asking questions directly to people about the acts of violence they have suffered and how they felt about them. The protocol has been adapted for MSF's specific purpose, with a focus on medical/physical health and mental health consequences of violence. It includes three parts:

1) What is the violence actually experienced by people?
2) What did people do about what they experienced (focus on health)?
3) What direct or indirect impacts did violent experiences have on medical/physical health and mental health?

The cluster sampling method was used. Four clusters corresponding to the MSF attention points in the migrants' hostels were selected. Representativeness of the survey population is therefore significantly above the normal statistical level, guaranteeing a margin of error less than the 3 percent generally tolerated in this kind of study. The survey provides an accurate picture, but it is nevertheless a snapshot of the situation for these migrants and refugees at a specific moment in time. By no means are the results representative over the long term, especially given the nomadic nature of the population, the rapid changes in immigration policy, and the volatility of organized crime.

The acceptance rate was a main initial concern, given the subject of the survey (explicit violence) and the population it was applied to (migrants in irregular situations). People were actually quite eager to talk about their situation. The final acceptance rate was a satisfying 74.3 percent. 120 migrants rejected participation, 73 of whom (61 percent) were in Tenosique alone. The rejection rate in Tenosique was 49.6 percent, and fell down to 15 percent in Ixtepec, 9.8 percent in San Luis Potosí, and 22.2 percent in Huehuetoca/Bojay.

The investigators and data manager were trained and controlled during the entire process by a BRAMU survey coordinator. Each questionnaire has been checked and eventually returned to the investigator in the event of incoherence.

The study design and adapted questionnaire was submitted to OCBA medical department for feedback and approval. Approval was solicited by a Mexican ethical review board. The questionnaire was fine-tuned in collaboration with the surveyor's team and members of the project to avoid or rephrase potentially risky questions. Albergues staff and coordination members were previously informed. No smart-phones, cameras, or recording devices were allowed.

Terms of consent were presented to all participants orally (in this context of migration, anonymity was crucial for participation and accuracy, so no signatures were collected). Participants were informed that they were entitled to psychological support during and after the survey. At all survey points and during all working hours, a clinical psychologist was present with the survey teams, along with MSF social workers in two albergues. 12.6 percent of the survey participants were referred to mental health services provided by MSF staff.

A dedicated email was established for participants wanting more information on the survey and results restitution.

No security incident was reported during the survey.

ANNEX 4
LIST OF ACRONYMS

CAM: Central American Minors

COMAR: Comisión Mexicana de Ayuda a Refugiados

CPSB: Comprehensive Plan for the Southern Border (most known in Spanish as "Plan Frontera Sur")

FY 2015: Fiscal Year 2015

INGO: International Non-Governmental Organization

INM: Instituto Nacional de Migración

LGBTQ: Lesbian-Gay-Bisexual-Transgender-Queer

MSF: Médecins Sans Frontières /Doctors Without Borders

NTCA: Northern Triangle of Central America

OC: Organized Crime

PEP: Post-Exposure Prophylaxis

PTSD: Post-Traumatic Stress Disorder

RSD: Refugee Status Determination

SEGOB: Secretaría de Gobernación de México

SSV: Survivors of Sexual Violence

SV: Sexual Violence

TCO: Transnational Criminal Organizations

TPS: Temporary Protected Status

UN: United Nations

UNHCR: United Nations High Commissioner for Refugees

UNODC: United Nations Office on Drugs and Crime

USA: United States of America

VAT: Victimization Assessment Tool

WHO: World Health Organization

The Washington Post

The border is tougher to cross than ever. But there's still one way into America.

By Nick Miroff and
Carolyn Van Houten
October 24

[This story has been optimized for offline reading on our apps. For a richer experience, you can find the full version of this story here. An Internet connection is required.]

HIDALGO COUNTY, Tex. — Crouched low in the brush along the riverbank, Border Patrol agent Robert Rodriguez watched the Mexican side of the Rio Grande, waiting. A norteño ballad drifted from a radio somewhere on a nearby farm, and two pigs cooled themselves at the water's edge, wading to their bellies. For a moment, one of the border's busiest places for illegal crossings looked placid.

Then a raft appeared.

Within seconds it was in the water, a teenage guide steering the current while his boss, an older man, stood watch on the bank. In less than a minute, the teenager delivered a woman and a boy to the U.S. side and they climbed out, shoes sinking in the wet silt.

Rodriguez stepped onto the path to stop them, but the woman and the boy did not run. They wanted to be captured. This is how it works now.

The era of mass migration by Mexican laborers streaming into California and the deserts of Arizona is over. Billions spent on fencing, sensors, agents and drones have hardened the border and made it tougher than ever to sneak into the United States. The migrants coming today are increasingly Central Americans seeking asylum or some form of humanitarian protection, bearing stories of torture, gang recruitment, abusive spouses, extortionists and crooked police.

They know the quickest path to a better life in the United States is now an administrative one — not through mountains or canyons but through the front gates of the country's immigration

bureaucracy.

Last year, U.S. immigration courts received nearly 120,000 asylum claims from migrants facing deportation, a fourfold increase from 2014. Those filings have pushed the number of pending cases before U.S. immigration courts to more than 750,000, collapsing the system and upending President Trump's sweeping promises to lock down the border.

The extraordinary surge of asylum seekers is testing the limits of whom, exactly, the United States is willing to protect, challenging the stone-carved ideal of America as the place that welcomes the tired and poor, "yearning to breathe free."

It has also presented Trump with one of the most vexing policy challenges of his presidency, and virtually every measure taken so far has made the problem worse.

Trump this spring deployed a nuclear option — separating parents from their children — in an attempt to stop families from coming. It backfired. The controversy generated by the policy and its abrupt rollback six weeks later handed smuggling guides across Central America a potent sales pitch. They now tell potential customers the Americans do not jail parents who bring children — and to hurry up before they might start doing so again.

Families asking for mercy constitute a greater-than-ever portion of those taken into custody. More than half of all arrests along the Mexican border last month were migrant family members or unaccompanied minors, up from 13 percent in 2013.

This spring, Trump fixated on a caravan of asylum seekers traveling through Mexico, about 300 of whom eventually crossed into the United States. Now, a much larger procession of as many as 7,000 Central Americans is trekking north toward the border, despite threats from the president to stop them with U.S. troops and sever aid to their countries.

There is a sinking feeling, among Department of Homeland Security officials, that more caravans are yet to come and that they will only get larger.

Families are coming in caravans and on their own because it works. Only 1.4 percent of migrant family members from Guatemala, Honduras and El Salvador who crossed the border illegally in

2017 have been deported to their home countries, according to DHS officials.

The United States has neither the detention space nor the legal authority to hold children long enough to process their parents' claims, so families are typically released from custody to await court hearings that could be months, even years, into the future.

Trump has long derisively referred to this as "catch and release" and used it as an attack line against Democrats. But in the months since ending family separation, Trump has now made it his de facto policy.

The administration has drafted plans to add thousands of detention beds in an attempt to hold parents with children longer. DHS officials have also proposed new rules that would allow the government to withdraw from a 1997 federal court agreement limiting the amount of time children can be held in immigration jails to 20 days.

But in the meantime, so many families are coming through high-volume corridors such as the Rio Grande Valley that Rodriguez and other agents have come to describe them as "non-impactables," because they say there is nothing they can do to stop them.

As Rodriguez radioed another agent to pick up the woman and the boy, she handed him her Honduran identification card. Cecilia Ulloa was 25. Darwin, her son, was 13. The math took a moment to sink in, and Ulloa appeared to recognize a familiar look of confusion.

"My stepfather," she said. "It started when I was 10."

After a decade in prison for rape, her stepfather was free now, stalking them, blaming her for ruining his life, Ulloa said. "He's going to kill us."

Police in Honduras had told her there was nothing they could do, she said, so she and her son left for the United States. They wanted asylum.

Chances were they would be denied. But it could take months, or longer, for the U.S. immigration system to determine whether Ulloa and her son deserve protection. They would probably not be sent back to Honduras anytime soon.

Credible fear

Some migrants' stories of gang threats and police indifference have a rehearsed quality, suggesting they are concocted. The smuggling guides who charge $10,000 or more for the trip provide transportation and meals, but also coaching, including the key words migrants should say to convince U.S. asylum officers that their fears meet credibility standards.

But there are many with no need to make things up. The countries they are running from have some of the highest murder rates in the world. Their criminal justice systems barely function. Some have been victimized already.

Lisa Brodyaga, an immigration lawyer in South Texas who has worked with Central American migrants since the late 1970s, said adult asylum seekers who appear before immigration judges "are almost all being deported."

"I think judges felt freer to follow their gut under Obama than they do now," she said.

Migrants have adapted just as quickly. As asylum officers and immigration judges reject more claims, the number of single adults who arrive claiming fear of persecution is dropping. The fastest-growing portion comprises parents coming with children, preventing their long-term detention and significantly reducing the likelihood they will be deported.

Last month, border agents arrested 16,658 individuals who arrived as members of "family units," an all-time high, up from 9,247 in July.

Migrant advocates have documented cases of rejected asylum applicants being killed after they were sent back. But a full picture is difficult to obtain because U.S. government statistics do not track what happens to deportees once they leave the United States.

DHS officials point to improving public-safety statistics from Central America as evidence that the asylum trend is not driven by worsening violence.

Those fleeing lawlessness and crime are also lured north by job opportunities and the desire to reunite with parents, siblings and other relatives already living here. The United States offers not only safety but also a chance at a dramatically better life.

And with the U.S. unemployment rate at a 50-year low and employers across the Midwest desperate for labor, the Trump-era economy is undermining the Trump-era immigration agenda.

"Migrants from Central America seek asylum in the U.S. to escape gangs, violence and lack of opportunity," said Doris Meissner, who is policy director at the Migration Policy Institute and ran the U.S. immigration system under President Bill Clinton. "This mixture of humanitarian and economic migration is happening in other parts of the world, too."

"However, only some of those in peril are actually eligible for asylum," said Meissner, co-author of the new report "The U.S. Asylum System in Crisis." "Granting them protection but keeping asylum systems from being overwhelmed or misused requires broad solutions, including attacking the reasons people flee."

For people like Ulloa and her son, here's how it works.

Those who cross the border and turn themselves in are interviewed by a U.S. asylum officer to determine whether they have a "credible fear" of facing persecution back home. The Supreme Court has ruled that an asylum-seeker's fear is considered "well-founded" if there is a 10 percent chance they will face persecution, and those who potentially qualify are referred to an immigration judge.

Between Oct. 1, 2017 — the start of the 2018 fiscal year — and June 30, the period for which the most recent statistics are available, the government received more than 73,000 credible-fear claims, up from 5,000 during all of 2009. Of those 73,000 who were interviewed, 76 percent were found to have a credible fear of return.

The finding does not mean that a judge will eventually grant asylum. Justice Department statistics show that fewer than 10 percent of Central American applicants are awarded asylum, but the process of applying offers a shield from deportation and a toehold, however tenuous, in the United States.

Trump officials view this as a too-permissive approach to asylum claims that amounts to a mile-wide loophole in the American immigration system. U.S. generosity is being exploited by smugglers and cheats, they say, and the dysfunction encourages more to make a dangerous journey.

Under Trump, asylum denial rates have reached their highest levels in more than a decade. But

nearly half of those rulings are issued in absentia, because the applicant does not appear in court.

That is the breach Trump officials see: If asylum seekers think their case is likely to be denied, they can drop out of the court system and disappear, remaining in the United States illegally. The latest Justice Department figures show U.S. courts issued more than 40,000 removal orders in absentia during the government's 2017 fiscal year, nearly twice as many as in 2014.

"Saying a few simple words — claiming a fear of return — has transformed a straightforward arrest for illegal entry and immediate return too often into a prolonged legal process, where an alien may be released from custody into the United States and possibly never show up for an immigration hearing," Attorney General Jeff Sessions said in a September speech to a group of 44 newly hired immigration judges that he said was the largest class in history.

"Our system was not designed to handle thousands of new asylum claims every month from individuals who illegally flood across the border," he said. "But that is what has been happening, and it has overwhelmed the system."

'Private' violence

In the absence of a physical wall, the Trump administration is laying down new legal barriers to the asylum process. The U.S. immigration court system is a branch of the Justice Department, not the judiciary, and the attorney general effectively functions as a one-man Supreme Court. In June, Sessions issued a sweeping ruling that overturned the case of a Guatemalan domestic-violence victim who had demonstrated that police failed to protect her from spousal abuse and rape.

Sessions's ruling said asylum laws are meant to shelter those facing persecution for political or religious beliefs, or their membership in a well-defined social group, not those fleeing what he called "private" forms of violence.

"The mere fact that a country may have problems effectively policing certain crimes — such as domestic violence or gang violence — or that certain populations are more likely to be victims of crime, cannot itself establish an asylum claim," Sessions wrote.

Under Sessions, the Justice Department has attempted to reduce the court backlog by adding dozens

of immigration judges and imposing quotas that compel them to process more cases. It has taken steps to prioritize the claims of the most recent arrivals, as a way to discourage asylum seekers from taking advantage of the court backlog. And it has instructed judges and asylum officers to take a more adversarial approach to migrants' claims.

U.S. asylum laws were shaped in the aftermath of World War II, when the United States and other Western nations developed international treaties based on the principle of "non-refoulement" — that those fleeing persecution should not be sent back to places where they are likely to killed or persecuted.

Applicants who reached U.S. soil could prove eligibility for asylum on the basis of past persecution or a fear of future abuse on the basis of their "race, religion, nationality, membership in a particular social group or political opinion."

In practice, historians and immigration scholars say, political considerations have often superseded humanitarian ones. During the Cold War, refugees fleeing communist and left-wing governments in Vietnam, Cuba and Nicaragua were welcomed in large numbers, while those escaping U.S.-friendly military dictatorships in El Salvador and Guatemala were denied.

"The United States has never solely pursued asylum on the basis of humanitarian principles," said Roberto Suro, a migration expert at the University of Southern California and former director of the Pew Hispanic Center. "American approaches have always been ad hoc and driven largely by foreign policy concerns and domestic policy concerns."

Sessions has directed judges and asylum officers to adhere to a narrower definition of "membership in a social group" — the category had been used in recent years to grant protection to victims of domestic violence.

"An alien may suffer threats and violence in a foreign country for any number of reasons relating to her social, economic, family or other personal circumstances," Sessions wrote. "Yet the asylum statute does not provide redress for all misfortune."

The president demonstrated even less patience this spring, when a large group of asylum-seeking Central American families formed a caravan to travel northward. Trump took their journey as a

personal affront.

"We cannot allow all of these people to invade our Country," he wrote on Twitter. "When somebody comes in, we must immediately, with no Judges or Court Cases, bring them back from where they came."

More than 400 caravan members eventually crossed, according to DHS statistics. Among them was Carlos Aldana, who now lives with his partner and young daughters outside Seattle, waiting to see a judge. The monitoring device strapped to his leg has been on so long he barely notices it anymore.

"We go to the park. We go to church and the grocery store," Aldana said. "It's beautiful here."

His family's asylum claim epitomizes the intertwined push-and-pull factors that bring Central Americans to the United States — and that make it unlikely he, his partner and their two daughters will be allowed to stay.

The family had a small farm near the Caribbean coast, on land purchased with money sent home by a brother working in the United States. When traces of gold were found on the property, Aldana said, he and his siblings invested in mining equipment and began digging.

Then a local crime boss found out about their discovery. He showed up at the property with a carload of men, offering to "go into business together," Aldana said. Aldana's family declined, and the man returned and said he had heard others were planning to kill them. He offered protection. Again, Aldana and his siblings refused.

The threats worsened. Then one of Aldana's brothers was killed. Aldana said his family was too scared to go to the police. "They work for him," he said of the gangster.

The family fled to another part of Honduras and attempted to start over, but a year later the man found them and the threats resumed, Aldana said.

This time Aldana and his family fled to southern Mexico. They were arrested by Mexican authorities and sent back to Honduras. They tried to start over again.

Worried that he was putting the whole family in danger, another of Aldana's brothers bid farewell

and left. His body was found a few months later, tortured and mutilated. Aldana reported the crime to police, but they made no arrests, he said.

Aldana fled with his family to Mexico a second time, then found out about the caravan. Like others who joined, they saw it as a safe, affordable way to reach the border.

Along the journey, the caravan's legal advisers warned Aldana he would probably not qualify for asylum because he had been deported from the United States once before, in 2008, when he attempted to come illegally at age 19.

But he crossed anyway, and like so many Central Americans, his urge to flee is hard to separate from the desire for a better life in the United States.

"I feel safe here. I just want to be able to stay, so my girls don't have to grow up in a place like that," he said of Honduras. "I don't ever want to go back."

'The most horrifying stories'

Asylum seekers who make their claims at official border crossings — not on the banks of the Rio Grande — are not breaking the law. But U.S. agents have to let them cross the bridge first.

On a recent morning in South Texas, immigration lawyer Jennifer Harbury walked across the river into Mexico under a blazing sun, waiting for a nun to pick her up. They drove to a Reynosa migrant shelter in a bullet-scarred neighborhood full of cartel lookouts and stash houses used by smugglers to stage illegal crossings.

Harbury is an irritant to U.S. border officials as well as the cartels. She provides free legal advice and assistance to asylum seekers, so the nuns who run the shelter call her often to see whether she can help migrant families desperate for legal advice. Harbury's pro bono work takes profits away from traffickers, because they charge a "tax" of several hundred dollars to those who cross illegally along the river. They earn nothing from the migrants Harbury escorts to the official border crossing.

Harbury is one of the activists who also help asylum seekers stranded in the no man's land on the pedestrian bridge over the river. In recent months, U.S. officers have been turning migrants away,

telling them to come back later. Harbury and others have criticized the practice as unlawful, but DHS officials say that port officers have multiple responsibilities and that busy border crossings have capacity limits.

It was Harbury who provided ProPublica with the surreptitious audio recording of a child screaming for her mother that dealt a severe blow to the family-separation policy. She has absorbed the stories of thousands of asylum seekers over the decades and increasingly views her job with the urgency of an emergency responder. She intends to help as many asylum seekers enter the United States as possible, because she believes she is saving their lives.

"These people have the most horrifying stories I have ever heard," she said. "I don't think people have better claims than those running from the cartels."

The shelter in Reynosa was crowded with newly deported Mexicans, many still carrying their belongings in plastic bags provided by the U.S. government. Immigration and Customs Enforcement had dropped off 85 deportees the previous night, and several complained harshly of bad food and abysmal conditions in U.S. detention.

The nuns had asked Harbury to help a young mother stranded for more than a week, Maria Magdalena Gonzalez, 21, and her son, Emiliano, 3. A gangster in Gonzalez's home state of Guerrero was threatening to kill her for rejecting his advances, she said. But when she and her son tried to approach the U.S. border crossing a few days earlier to seek asylum, they had been turned away.

With more and more Central Americans showing up at the port of entry, U.S. officers had set up an impromptu checkpoint over the middle of the Rio Grande, blocking them from setting foot on the U.S. side to start the asylum process.

Those who fail to cross are put at risk, because cartel lookouts ply the Mexican side of the bridge, watching for Central Americans who have been turned away. The migrants are prime targets for kidnapping because criminal groups assume they have relatives living in the United States with enough money to pay a ransom.

Harbury was there to make sure Gonzalez and her son weren't rejected again.

A nun drove them to the bridge over the river, and Harbury walked alongside them until a Mexican immigration official stood in the way. He had been looking for asylum seekers from Central America, but Gonzalez and her son were Mexican, so there was nothing he could do to detain them.

He told Harbury the U.S. agents had not been letting asylum seekers through, or were making others wait three or four days to be allowed to approach the American side.

Harbury, Gonzalez and the boy continued walking until three American officers blocked them halfway across the bridge. “We want asylum,” Gonzalez said softly, more a question than a demand. An agent told her to stand aside and wait.

Harbury asked how long, and the officers said it could be several hours, perhaps days. She sat down on the pavement with Gonzalez and the boy. “We’ll wait,” she said.

The officers appeared to notice a reporter taking notes and called a supervisor. He arrived and waved everyone through.

Gonzalez reached the inspection booth and pushed her paperwork forward. Harbury gave her a hug and an invitation to dinner. Then the officers directed Gonzalez and her son to an adjacent waiting room.

“They made it,” Harbury said.

She waved goodbye through the glass. The room wasn’t full, not even close. There were more than 60 chairs in the waiting area, and all but two were empty.

‘We’re heading north!’ Migrants nix offer to stay in Mexico

By CHRISTOPHER SHERMAN October 27, 2018

ARRIAGA, Mexico (AP) — Hundreds of Mexican federal officers carrying plastic shields blocked a Central American caravan from advancing toward the United States on Saturday, after a group of several thousand migrants turned down the chance to apply for refugee status and obtain a Mexican offer of benefits.

Mexican President Enrique Pena Nieto has announced what he called the “You are at home” plan, offering shelter, medical attention, schooling and jobs to Central Americans in Chiapas and Oaxaca states if migrants apply, calling it a first step toward permanent refugee status. Authorities said more than 1,700 had already applied for refugee status.

But a standoff unfolded as federal police officers blocked the highway, saying there was an operation underway to stop the caravan. Thousands of migrants waited to advance, vowing to continue their long trek toward the U.S. border.

At a meeting brokered by Mexico’s National Human Rights Commission, police said they would reopen the highway and only wanted an opportunity for federal authorities to explain the proposal to migrants who had rejected it the previous evening. Migrants countered that the middle of a highway was no place to negotiate and said they wanted to at least arrive safely to Mexico City to discuss the topic with authorities and Mexican lawmakers.

They agreed to relay information back to their respective sides and said they would reconvene.

Orbelina Orellana, a migrant from San Pedro Sula, Honduras, said she and her husband left three children behind and had decided to continue north one way or another.

“Our destiny is to get to the border,” Orellana said.

She was suspicious of the government’s proposal and said that some Hondurans who had applied for legal status had already been sent back. Her claims could not be verified, but migrants’ representatives in the talks asked the Mexican government to provide a list of anyone who had been forced to return.

The standoff comes after one of the caravan’s longest days of walking and hanging from passing trucks on a 60-mile (100 kilometer) journey to the city of Arriaga.

The bulk of the migrants were boisterous Friday evening in their refusal to accept anything less than safe passage to the U.S. border.

“Thank you!” they yelled as they voted to reject the offer in a show of hands. They then added: “No, we’re heading north!”

Sitting at the edge of the edge of the town square, 58-year-old Oscar Sosa of San Pedro Sula, Honduras concurred.

“Our goal is not to remain in Mexico,” Sosa said. “Our goal is to make it to the (U.S). We want passage, that’s all.”

Still 1,000 miles (1,600 kilometers) from the nearest U.S. border crossing at McAllen, Texas, the journey could be twice as long if the group of some 4,000 migrants heads for the Tijuana-San Diego frontier, as another caravan did earlier this year. Only about 200 in that group made it to the border.

While such migrant caravans have taken place regularly over the years, passing largely unnoticed, they have received widespread attention this year after fierce opposition from U.S. President Donald Trump.

On Friday, the Pentagon approved a request for additional troops at the southern border, likely to total several hundred, to help the U.S. Border Patrol as Trump seeks to transform concerns about immigration and the caravan into electoral gains in the Nov. 6 midterms.

Defense Secretary Jim Mattis signed off on the request for help from the Department of Homeland Security and authorized the military staff to work out details such as the size, composition and estimated cost of the deployments, according to a U.S. official who spoke on condition of anonymity to discuss planning that has not yet been publicly announced.

Stoking fears about the caravan and illegal immigration to rally his Republican base, the president insinuated that gang members and “Middle Easterners” are mixed in with the group, though he later acknowledged there was no proof of that.

At a church in Arriaga that opened its grounds to women and children Friday, Ana Griselda Hernandez, 44, of Mapala, Honduras, said she and two friends traveling with children had decided to pay for a bus ride from Pijijiapan, because the 4-year-old and 5-year-old would have never covered the 60-mile distance.

“It’s difficult because they walk very slowly,” she said. She pointed out scabbed-over blisters on her feet, a testament to the fact they had walked or hitched rides since leaving their country.

The caravan is now trying to strike out for Tapanatepec, about 29 miles (46 kilometers) away.

Up until now, Mexico’s government has allowed the migrants to make their way on foot, but has not provided them with food, shelter or bathrooms, reserving any aid for those who turn themselves in.

Police have also been ejecting paid migrant passengers off buses, enforcing an obscure road insurance regulation to make it tougher for them to travel that way.

On Friday, authorities were cracking down on smaller groups trying to catch up with the main caravan, detaining about 300 Hondurans and Guatemalans who crossed the Mexico border illegally, said an official with the national immigration authority.

Migrants, who enter Mexico illegally every day, usually ride in smugglers' trucks or buses, or walk at night to avoid detection. The fact that the group of about 300 stragglers was walking in broad daylight suggests they were adopting the tactics of the main caravan, which is large enough to be out in the open without fear of mass detention.

However, it now appears such smaller groups will be picked off by immigration authorities, keeping them from swelling the caravan's ranks.

On Friday evening, Irineo Mujica, whose organization People without Borders is supporting the caravan, accused Mexican immigration agents of harassment and urged migrants to travel closely together.

"They are terrorizing us," he said.

Associated Press writers Mark Stevenson and Peter Orsi in Mexico City contributed to this report.

UNHCR
The UN Refugee Agency

Mexico

April 2019

Key Figures

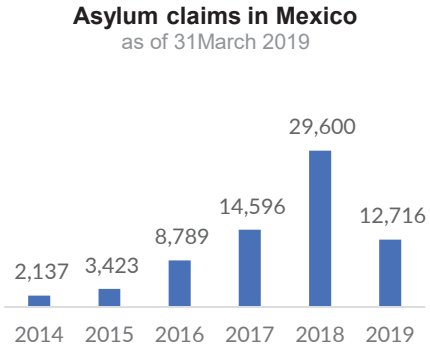
From January to 31 March 2019, **12,716** people applied for **asylum** in Mexico; **3,904** in January, **4,037** in February, and **4,775** in March.*

From January-March 2019, the **increase in claimants** over the same period of 2018 was:

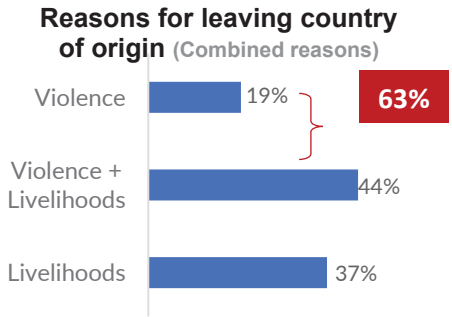
- Honduras: 237%
- El Salvador: 112%
- Venezuela: 71%
- Guatemala: 224%
- Nicaragua: 1,367%

In total, **631 people** have been **relocated** to facilitate local integration from 1 January till 31 March 2019.*
Preliminary COMAR figures (subject to change).

Evolution of asylum claims



Protection Monitoring



Conducted in January 2019 in Ciudad Hidalgo. 988 people interviewed.

OPERATIONAL CONTEXT

- The number of people arriving at Mexico's southern border with Guatemala fleeing criminal violence, political unrest and economic hardship is soaring. The number of asylum claims in Mexico rose by more than 103% in 2018 over the previous year, from 14,596 to 29,623. The upward trend is likely to continue as the drivers of displacement remain in place and because return options in the region are limited.
- Asylum-seekers from Honduras, El Salvador and Venezuela represent 86% of all asylum claimants so far in 2019. The outbreak of violence in Nicaragua and the deterioration of the situation in Venezuela are also driving an increasing number of people from these countries to seek protection in Mexico.
- A significant percentage of people entering Mexico are fleeing persecution and violence, and are in need of international protection.
- The Mexican Government announced a new migration policy which refers to the Global Compact on Migration. It is expected that during Mexico's current presidency of the Comprehensive Regional Protection and Solutions Framework (MIRPS), Mexico will transform its migration policy from a policy guided by security and control, to an approach which places greater emphasis on human rights, protection and regional cooperation.

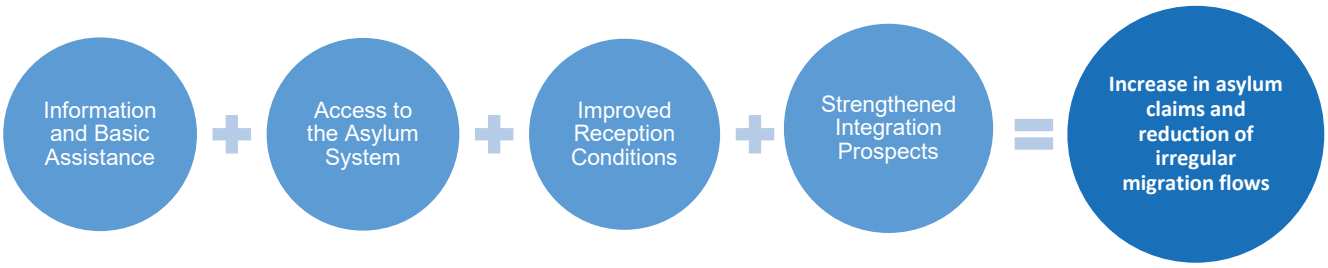
Participatory Assessment in Tapachula, February 2019. © ACNUR/ Rafael Sanchez.

UNHCR Strategy

UNHCR Mexico has made important commitments to significantly increase its staff and activities to support the work of the Mexican authorities in processing an increased number of asylum claims and ensure protection of its Persons of Concern (PoC). This includes the provision of technical support to ensure timely registration of asylum-seekers, setting up identification and referral mechanisms for those with specific vulnerabilities/needs, increasing the capacity and sustainability of shelters and promoting local integration opportunities.

Information and Basic Assistance

- One main challenge associated with protecting persons in need of international protection in Mexico has been the lack of information to access the asylum procedure.
- UNHCR, the UN agencies, COMAR and the National Human Rights Commission set up a platform to provide information on the asylum system in the country of origin, transit, and destination for people fleeing from insecurity and persecution. The platform is unique as it is built on a simple and easy to access Facebook page and hotline under the name "Confiar en el Jaguar" (in English 'trust the jaguar'). Facebook is used because it is the principal means of communication for asylum-seekers. UNHCR is currently sharing information and protection messages with people of concern, in addition to directly answering questions or responding to doubts via Facebook's messenger function.



- UNHCR also strengthens the **sustainability and protection capacity of selected shelters** that provide support and assistance to migrants and refugees along the migratory routes in Mexico. Shelters continue to be key actors in identifying persons in need of international protection, inform about the right to seek asylum and refer people in need of international protection to the Mexican asylum system.
- UNHCR also works with a network of legal partners, the **Mexican Commission for Refugee Assistance (COMAR) and the National Migration Institute (INM)** to assure that persons in need of international protection are adequately informed about the asylum procedure and other forms of legal pathways at the point of entry into Mexico.
- The goal is to provide information to 30,000 persons per year. UNHCR is now assisting COMAR to increase its regional presence through the opening of new offices in key locations.
- UNHCR is providing Humanitarian Assistance in the form of **Multi-Purpose Cash Grants (MPG)** intended to cover basic needs such as food, NFIs, and contribution towards housing/utility bills. UNHCR also issues **Sectoral Top Up-Grants** using a protection-lens and in association with other technical sectors so that response options are tailored to the needs of the most vulnerable population. The expansion of its **Cash-Based Intervention (CBI)** program in 2019 allows UNHCR to engage in a more holistic and forward-looking CBI strategy with a view to transitioning over time to the inclusion of PoCs into government social safety programs, while fostering socio-economic inclusion and self-reliance.

Access to the Asylum System

- UNHCR estimates that the number of people with international protection needs entering Mexico is much higher than those requesting asylum. The absence of proper protection screening protocols for families and adults, the lack of a systematic implementation of existing best interest determination procedures for unaccompanied children and detention of asylum-seekers submitting their claim at border entry points are strong obstacles to accessing the asylum procedure.
- The abandonment rate of asylum procedures, especially in Southern Mexico is a key protection concern. This situation, compounded by insufficient resources and limited field presence of COMAR in key locations in Northern and Central Mexico, continues to pose challenges to efficient processing of asylum claims.
- UNHCR **promotes the capacity and efficiency of Mexico's asylum system**. UNHCR has currently 39 contractors on loan to **COMAR, mainly to support with registration**. Support for additional 63 UNHCR secondments to COMAR is underway. COMAR and UNHCR are discussing additional staffing support. Plans for **additional office expansions** are also being worked on. New COMAR field locations are to include Palenque in Southern Mexico, Monterrey and Tijuana in the North. Through support to COMAR, UNHCR hopes for reduced waiting times for asylum decisions, improved quality of decisions, freedom of movement for asylum-seekers, improved access to documentation and steps to facilitate access to the labour market for asylum-seekers. These steps would reduce the number of people who abandon or withdraw their claims.

Improved Reception Conditions

- Due to limited COMAR presence in the South and absence of opportunities to apply for asylum at the border, many PoC enter Mexico irregularly. While traveling to locations with COMAR presence they face a risk of being detained.
- Persons in need of international protection often take dangerous routes to reach COMAR offices. Women and girls in particular are at risk of sexual and gender-based violence.
- PoC often seek assistance in the network of shelters located along the migrant routes, which currently includes some 140 shelters. UNHCR will continue **strengthening the capacities of the shelters to carry out this outreach and to provide safe conditions for persons seeking asylum, including necessary legal and psycho-social support.** A range of infrastructure improvements are now being implemented in key locations, including Coatzacoalcos (Veracruz), Mexico City and Monterrey.
- UNHCR will continue to provide trainings to shelter management to reinforce their capacity to provide necessary protection and assistance for persons in need of international protection, starting with the necessary follow-up for release from detention (identification of special needs, capacity to refer to relevant institutions and finally facilitating local integration).

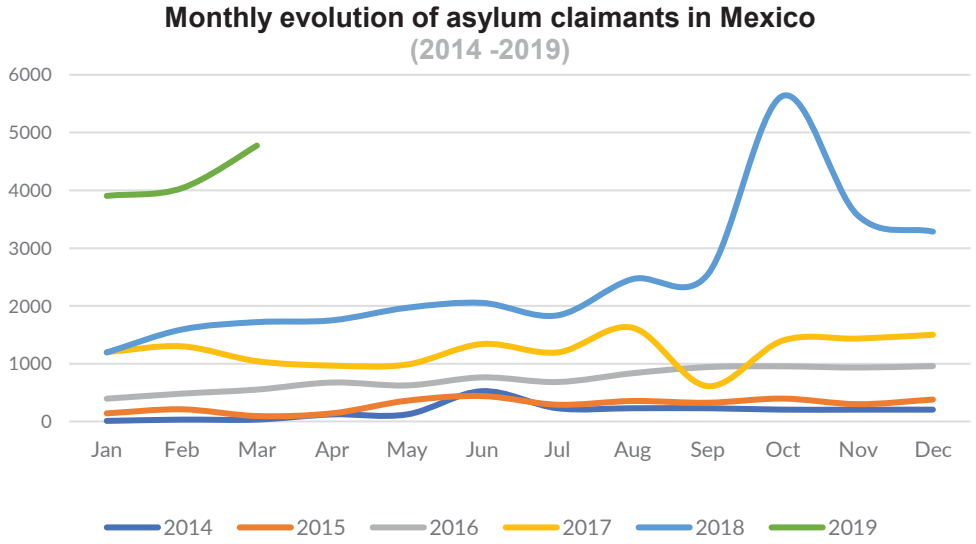
Strengthened Integration Prospects

- An increasing number of persons in need of international protection see **Mexico as a destination country rather than a transit country and this trend is likely to continue.** One reason why Mexico is increasingly viewed as a destination country is that **prospects for formal employment are good in specific parts of the country**.
- Two years ago, UNHCR started its **relocation, job placement and local integration project**, the results are very promising: Within the first month of the integration process, refugee families become independent from assistance. 92% of participants in working age find a suitable job, 100% of school age children and youth are enrolled in school, and 60% of the participants graduate out of poverty within the first year of the integration process, in accordance with national indicators. Relocated refugees can apply for nationality within the first two years of the integration process and generally can purchase their own house within the first three years. A **UNHCR scholarship program** enables children of relocated families to access tertiary education, which further strengthens their long term integration prospects.
- In 2019, UNHCR's local integration programme will further **expand beyond Saltillo and Guadalajara to include also Monterrey,** and **Aguascalientes**, and on a limited basis in **Tijuana**.
- UNHCR also engages with ministries at federal and state level in order to train civil servants to be able to **recognize documentation issued to asylum-seekers and refugees** and thereby facilitate access to public and private services.
- Through **community-based protection projects**, UNHCR works towards increased social interaction between refugees, asylum-seekers and host communities to reduce social tensions.
- The sustainability of UNHCR's interventions will largely depend on the level of the **inclusion of the PoC into national programmes, development of Public Private Partnership's, as well as on the sustainability of shelters** and other interventions.

WORKING WITH PARTNERS

In line with the Global Compact on Refugees and Sustainable Development Goal 16 "Peace, Justice and Strong Institutions", UNH Mexico works closely with the Government of Mexico, namely with COMAR, INM, the National System for Integral Family Developn (DIF), the Foreign Affairs Ministry, and the Public Defender's Office and the Child Protection Authority (Procuraduría). UNHCR continue to support these institutions through targeted and thematic capacity-building sessions, expert support in areas such as Qu Assurance as well as through financial support. UNHCR Mexico currently works with 17 partner organizations and indirectly witl shelters

- UNHCR Mexico works closely with IOM Mexico as part of the coordination for the Venezuela Situation. In 2019, partners of Regional Refugee and Migrant Response Plan in Mexico and Central America are supporting Governments in collecting analyzing data on human mobility and the needs of refugees and migrants from Venezuela.
- IOM and UNHCR also co-lead the Working Group on migration and refugees and UNHCR engages with UN Women, UNICEF UNFPA within the Interagency Group on Gender and Migration.
- Regional cooperation, in particular with Honduras, El Salvador and Guatemala continues to be of utmost importance to improve protecting space for PoC. UNHCR hopes that Mexico's leadership of the MIRPS process, coupled with the Comprehen Development Plan under discussion with the NCA countries, will lead to a more coordinated effort to address the root cause forced displacement from Central America.
- Fostering private sector engagement and diversifying its donor base will remain key priorities in 2019.



UNHCR
The UN Refugee Agency

MEXICO: UNHCR Presence
3 April 2019

UNHCR ACNUR
La Agencia de la ONU para los refugiados

Creation date: 3 April 2019
Sources: UNHCR

Offices

1 Branch Office in Mexico City

1 Sub Office in Tapachula

2 Field Offices in Monterrey and Tenosique

4 Field Units in Saltillo, Tijuana, Aguacalientes, and Acayucan

$59.6 million
UNHCR's financial requirements 2019

Donors

UNHCR Mexico wishes to convey a special thank you to its donors – the United States of America, Nacional Monte Piedad, I.A.P, the European Union, miscellaneous donors in Mexico, and miscellaneous private donors; as well as to the following donors of softly earmarked funds: Iceland, Italy, New Zealand, Sweden, the United States of America and major donors of un-earmarked contributions: Sweden, Norway, Netherlands, United Kingdom, Germany, Denmark, Switzerland, and Private donors in Spain.

Donors, including the United States of America, have projected additional contributions for 2019 which are not yet reflected in the below funding chart. UNHCR is however concerned that it has not been able to secure **sufficient, predictable, flexible and multi-year funding within the coming years** to protect, respond, include, empower, solve and support asylum-seekers and refugees, as well as the Mexican government in its **sustainable shift from a transit to an asylum country. UNHCR strives to broaden its donor basis and mobilize private sector engagement and investment in refugee hosting areas** to enable greater social and economic inclusion and build the resilience of refugees and their host communities alike. We are looking forward to collaborating with you!

Contacts

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Ernesto Diaz, Information Manager, Diaze@unhcr.org

June 14, 2019 / 10:01 AM

U.S. ramps up Mexico asylum returns, Trump confirms 'safe third country' plan

Frank Jack Daniel, Julio-Cesar Chavez

MEXICO CITY/EL PASO, Texas (Reuters) - The United States has doubled the number of asylum seekers it sends back each day to Mexico from El Paso, Texas, a Mexican immigration official said on Friday, in the first sign of action following a deal struck to avert U.S. tariffs last week.

Luis Carlos Cano, a spokesman for Mexico's national immigration agency in Ciudad Juarez, across the border from El Paso, said starting Thursday some 200 asylum seekers per day were being sent back, up from 100 previously.

Under pressure from U.S. President Donald Trump, Mexico agreed on June 7 to expand the program, known as the Migrant Protection Protocols, or 'Remain in Mexico,' which forces mostly Central American asylum seekers arriving at the U.S. southern border to await the outcome of their U.S. asylum claims in Mexico.

Remain in Mexico currently operates in Tijuana, Mexicali and Ciudad Juarez. Close to 12,000 people have been returned to Mexico since it began in January.

However, Mexico has not accepted that the United States send it an unlimited number of asylum seekers, Foreign Minister Marcelo Ebrard said, ahead of planned meetings with U.S. officials on Friday to determine details of the expansion.

"Today there is a meeting with U.S. authorities, to learn, to discuss the ports of entry and how the number will be measured, because Mexico has not accepted that it be undetermined," Ebrard said at a news conference.

The agreement has put Mexican officials under mounting pressure to deliver results. The head of Mexico's National Migration Institute, Tonatiuh Guillen, resigned on Friday for "personal reasons," an interior ministry official said.

'SAFE THIRD COUNTRY'

If enforcement measures are not successful after 45 days, Mexico has also agreed to consider making itself a "safe third country." Asylum seekers who first set foot on Mexican soil would have to apply for refugee status in Mexico instead of in the United States.

Mexico's government on Friday published the section of the joint accord which said Mexico would examine any changes to its legislation necessary to permit a safe third country arrangement to come into force 90 days after June 7.

The document also stated that such an agreement was intended to be "part of a regional approach to burden-sharing" in processing migrants' asylum claims.

Ebrard said this week that if Mexico could not stem the flow of people, a regional system should be established to bind in other countries crossed by migrants en route to the United States, including Guatemala, Panama and Brazil.

A rights group in Guatemala on Friday lashed out at the proposal to make asylum seekers from Honduras and El Salvador seek refuge in Guatemala, when its own citizens were fleeing poverty and violence.

Slideshow (3 Images)

Trump confirmed the deal included the safe third country plan if Mexico did not do enough to cut migration.

Asked in a Fox News interview if that possibility was part of the accord, Trump said, "It's exactly right, and that's what's going to happen."

Trump also named Tom Homan as "Border Czar."

Homan is a veteran of U.S. Immigration and Customs Enforcement and served as the agency's acting head during the first year of Trump's presidency. He retired last year, after increasing arrests of non-criminal immigrants.

Reporting by Frank Jack Daniel in Mexico City and Julio Cesar-Chavez in El Paso; additional reporting by Makini Brice and Susan Heavey in Washington and Dave Graham in Mexico City; Editing by Phil Berlowitz and Rosalba O'Brien.

Executive Office for Immigration Review
Adjudication Statistics

New Cases and Total Completions

Fiscal Year	Initial Receipts[1]	Average Initial Receipts per Month	Total Completions[2]	Average Total Completions per Month
1983	5,754	480	902	75
1984	11,517	960	2,118	177
1985	24,423	2,035	9,459	788
1986	37,911	3,159	27,223	2,269
1987	39,858	3,322	37,841	3,153
1988	67,212	5,601	60,104	5,009
1989	112,282	9,357	72,939	6,078
1990	103,429	8,619	81,678	6,807
1991	93,773	7,814	101,785	8,482
1992	88,998	7,417	87,322	7,277
1993	106,590	8,883	89,762	7,480
1994	125,711	10,476	106,815	8,901
1995	159,300	13,275	140,757	11,730
1996	197,449	16,454	186,002	15,500
1997	211,885	17,657	196,277	16,356
1998	184,076	15,340	191,981	15,998
1999	162,493	13,541	174,553	14,546
2000	159,865	13,322	165,734	13,811
2001	176,111	14,676	160,946	13,412
2002	178,528	14,877	171,413	14,284
2003	193,002	16,084	200,068	16,672
2004	199,485	16,624	212,145	17,679
2005	271,631	22,636	270,446	22,537
2006	246,489	20,541	279,411	23,284
2007	213,379	17,782	223,967	18,664
2008	225,871	18,823	230,595	19,216
2009	255,034	21,253	232,676	19,390
2010	247,178	20,598	223,350	18,613
2011	238,142	19,845	220,016	18,335
2012	212,932	17,744	186,759	15,563
2013	196,620	16,385	156,573	13,048
2014	230,175	19,181	142,121	11,843
2015	192,994	16,083	143,719	11,977
2016	228,442	19,037	143,507	11,959
2017	295,127	24,594	163,171	13,598
2018	314,316	26,193	195,670	16,306
2019 (Second Quarter)[3]	180,400	30,067	111,555	18,593

Data Generated: April 23, 2019

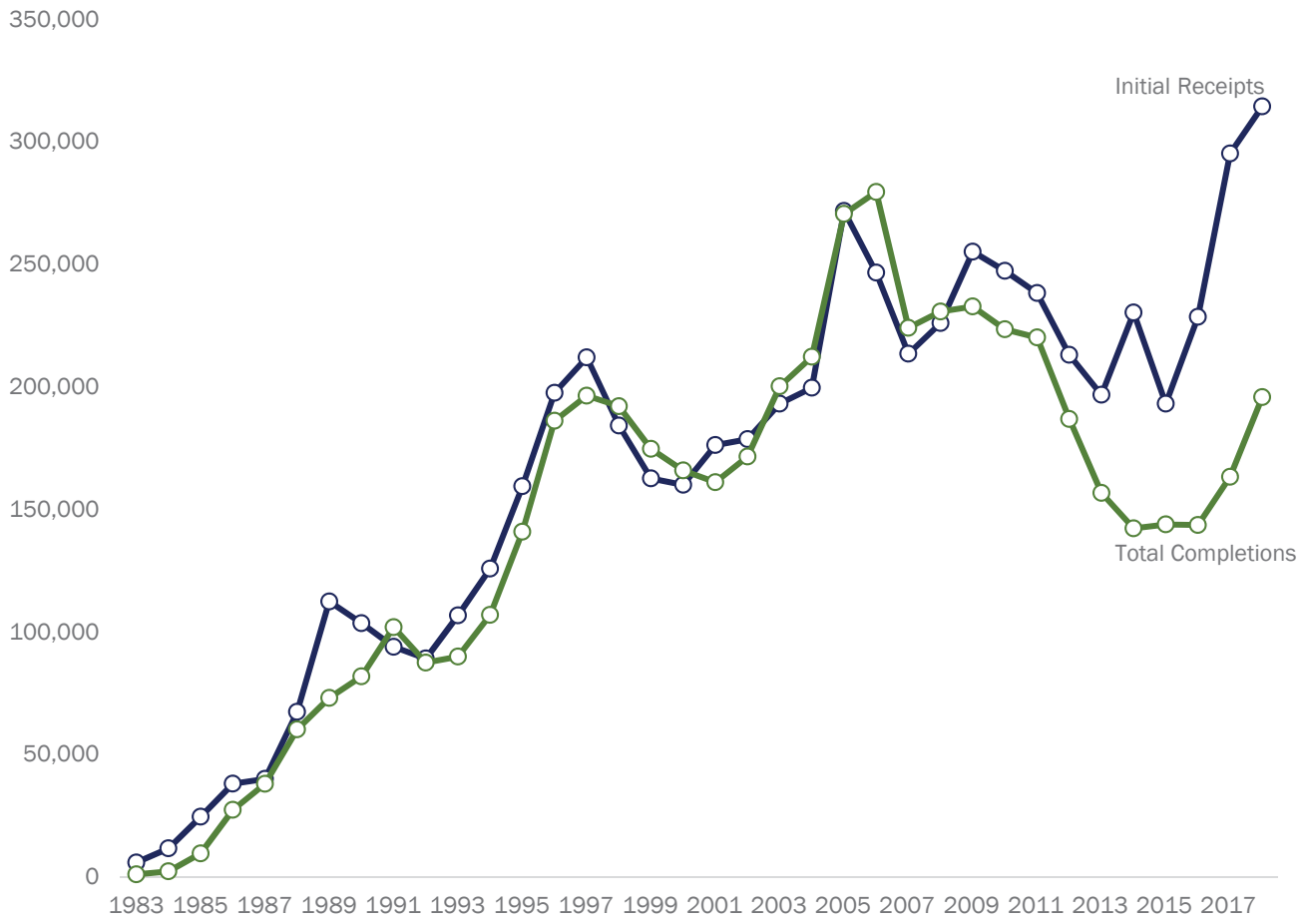
[1] Initial receipts equals removal, deportation, exclusions, asylum-only, and withholding only cases.

[2] Total completions equals initial case completions plus subsequent case completions.

[3] FY 2019 Second Quarter through March 31, 2019.

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
ADJUDICATION STATISTICS

New Cases and Total Completions



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[3] FY 2019 Second Quarter through March 31, 2019.

https://www.wsj.com/articles/trump-says-guatemala-is-set-to-help-stem-migrant-flow-11560833062

LATIN AMERICA

Trump Says Guatemala Is Set to Help Stem Migrant Flow

President also says U.S. will increase deportation efforts

People look through a section of the U.S.-Mexico border barrier on the beach in Tijuana, Mexico, on June 9. On Monday, President Trump said Guatemala was ready to sign a 'Safe-Third Agreement' to accept asylum seekers and prevent them from coming to the U.S. PHOTO: CESAR RODRIGUEZ/BLOOMBERG NEWS

By Louise Radnofsky

June 18, 2019 12:44 am ET

WASHINGTON—President Trump praised Mexico's efforts to intercept Central American asylum seekers and said that Guatemala was getting ready to sign an agreement that would make it a final refuge for people fleeing poverty and violence in the region.

In a pair of tweets Monday night, Mr. Trump said that Guatemala was preparing to sign a "Safe-Third Agreement," in an apparent reference to a legal designation that would require Central American migrants that cross into Guatemala to claim asylum there, blocking those migrants from lodging claims elsewhere.

Officials from Guatemala's Foreign Ministry didn't immediately respond to requests for comment, and the White House declined to immediately provide further details.

Mr. Trump also said Monday night that U.S. Immigration and Customs Enforcement would increase its efforts to remove people in the U.S. without authorization.

"Next week ICE will begin the process of removing the millions of illegal aliens who have illicitly found their way into the United States. They will be removed as fast as they come in," wrote Mr. Trump.

An administration official said there were more than one million immigrants who were subject to final deportation orders but the orders hadn't yet been enforced. The administration official said late Monday that enforcing the orders would be a top priority for ICE.

Many of the families who have been traveling through Mexico to the U.S. border have been coming from Guatemala as well as Honduras and El Salvador. Many say they are fleeing a combination of endemic poverty, violence and corruption in the region.

The issue of "safe third country" status remains a major point of contention between the U.S. and Mexico, even as the two countries have reached a deal to attempt to stem a flow of Central American adults and children that U.S. authorities say have brought the southwest border to a breaking point by arriving each day in the thousands.

Mexico had long resisted U.S. requests that it accept the safe third country status, insisting that it lacked the resources to uphold such a commitment—but as part of its agreement with the U.S., Mexico pledged last week that it would take steps to declare itself a safe third country if its other efforts failed to reduce migrant numbers.

Mexico has said that its ability to uphold its asylum commitments would depend on whether Guatemala and other Central American countries would also agree to grant asylum to migrants.

Mr. Trump's tweets on Monday night suggested that the regional framework that Mexico has been pressing for could be advancing.

"Mexico, using their strong immigration laws, is doing a very good job of stopping people long before they get to our Southern Border," wrote Mr. Trump. "Guatemala is getting ready to sign a Safe-Third Agreement."

But migrant rights groups have raised significant concerns over Guatemala's ability to provide shelter and assistance to asylum seekers crossing into the country from Honduras and El

Salvador. Charities and civic groups currently provide most of the funding and resources for such assistance right now.

U.S. officials say the American immigration system is ill-equipped to receive Central American families seeking asylum, from the moment they turn themselves in to the court adjudication of their claims. which can take years amid heavy backlogs.

Write to Louise Radnofsky at louise.radnofsky@wsj.com

Appeared in the June 18, 2019, print edition as 'Trump Says Guatemala Is Set to Stem Flow.'

UNHCR
United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

Submission by the United Nations High Commissioner for Refugees

For the Office of the High Commissioner for Human Rights' Compilation Report

Universal Periodic Review: *3rd Cycle, 31st Session*

MEXICO

I. BACKGROUND INFORMATION

Mexico acceded to both the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* (hereinafter jointly referred to as the "*1951 Convention*") in 2000, making reservations to articles 17, 26, 31.2 and 32 of the *1951 Convention* as well as an interpretative declaration to article 1 and the *1967 Protocol*; in 2014, Mexico withdrew its reservation to article 32. Mexico also acceded to the *1954 Convention relating to the Status of Stateless persons* (the "*1954 Convention*") in 2000 with reservations to articles 17, 31 and 32. Reservation to article 31 was subsequently withdrawn in 2014. The State is not a party to the *1961 Convention in the Reduction of Statelessness* (the "*1961 Convention*").

The *2011 Refugees, Complementary Protection and Political Asylum Act* and its *Regulatory Framework* together with the *Migration Act* constitute the domestic legal framework governing asylum. Further guarantees related to the principle of *non-refoulement*, upholding the best interests of the child, and due process during migration procedures are enshrined in the *General Law on the Rights of Children and Adolescents* published in 2014, along with its *Regulatory Framework.* The principal government body responsible for refugee issues, including refugee status determination, is the Mexican Commission for Refugees (COMAR), created by Presidential decree in 1980 under the Ministry of Interior. In 2011, Mexico adopted its Migration Law, creating a formal statelessness determination procedure which began functioning in 2012. The statelessness determination procedure (SDP) is mainly regulated by Article 150 of the Regulations to the Migration Law. Applications for statelessness status are received by the National Migration Institute, which requests a legal opinion from COMAR.

Violence and persecution inflicted mostly by criminal actors in the North of Central America (NCA) [1] triggers forced displacement with increasing numbers of unaccompanied children and adolescents, families, as well as persons discriminated against on the basis of sexual orientation and gender identity. While more than 400,000 people were estimated to have crossed Mexico's southern border in 2016, only approximately 2 percent of those applied for asylum, representing nevertheless an increase of 156 per cent from claims submitted in 2015. Out of the total asylum applications in 2016, 5,954 persons completed their process (3,076 persons were recognized as refugees and 641 were given complementary protection). From January to December 2017, 14,596 people applied for asylum (1,907 persons were recognized as refugees, 918 given complementary protection, and 7,719 cases remain pending).[2] Statistics indicate that for the period January-December 2017, 29% asylum-seekers were from Honduras, 25% from El Salvador, 4.6% from Guatemala, and 27% from Venezuela.

Regarding unaccompanied children from North of Central America (El Salvador, Honduras and Guatemala), approximately 35% of them expressed fear of returning to their country of origin due

[1] Mexico is also a country of transit for refugees and migrants from Asia and Africa seeking to reach the United States and Canada.
[2] Government of Mexico, *COMAR Statistics*, available at: https://www.gob.mx/comar/articulos/estadisticas-2013-2017?idiom=es Last visited: 12 March 2018.

to social violence or domestic violence.[3] UNHCR conducted interviews with unaccompanied and separated children (UASC) and determined that violence led more than 48.6% of them to leave their countries of origin, thus meaning they had potential international protection needs.[4] However, in 2016 only 242 UASC applied for asylum (103 were recognized, 28 granted complementary protection, 44 rejected, and 67 formally withdrew or abandoned their claims).

It should be noted that Mexico is playing a key role internationally and in the region with regards to advancing the protection of asylum-seekers and refugees. The Mexican Government is one of the leading States of an initiative to develop a regional application of the Comprehensive Refugee Response Framework, which will contribute to the adoption of the Global Compact on Refugees in 2018. This regional initiative, known as the Comprehensive Regional Protection and Solutions Framework (MIRPS, in Spanish) has been undertaken with the support of UNHCR.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Positive developments linked to the 2nd cycle UPR recommendations

Linked to 2nd cycle UPR recommendation no. 148.173: "Continue to work towards the protection and defence of the rights of migrants (Argentina and Bolivia)."

UNHCR commends Mexico's active participation and leadership in the San José Action Statement, the New York Declaration on Refugees and Migrants, the Leadership Summit on Refugees, and the CRPSF process in October 2017. Mexico undertook a number of laudable commitments in the framework of MIRPS. In particular, Mexico committed to: (a) expand the scope of programmes on alternative measures to detention to asylum-seekers, specifically unaccompanied children and adolescents, persons in situations of vulnerability, families, older persons, and persons with medical needs; (b) expand access to basic services and rights for asylum-seekers and refugees, such as through the incorporation in the public health-care system (Seguro Popular) and in other social programs through the Social Development Ministry (SEDESOL) and, (c) carry out information and awareness-raising campaigns on the asylum procedure for government officials as well as persons with international protection needs.

UNHCR commends Mexico for its undertaking to strengthen the Mexican Refugee Agency (COMAR) and the establishment in 2015 of the Special Unit for the Investigation of Crimes Against Migrant Persons within the Attorney General's Office (PGR).

Linked to 2nd cycle UPR recommendation no. 148.154: "Intensify efforts to guarantee universal access to health services, information and education on health and sexual and reproductive rights, particularly for adolescents (Uruguay)."

UNHCR is pleased to note that Mexico has 76 Ambulatory Centres for the Prevention and Attention of AIDS and Sexually Transmitted Infections (CAPASITS, in Spanish) throughout all 32 states in the country – 15 of those along the migration route - which offer medical attention and psycho-social attention, as well as free antiretroviral treatment. Migrants, asylum-seekers, and refugees can receive medical treatment and HIV and ITS medication at CAPASITS at no cost and regardless of immigration status after persons have registered with the *Seguro Popular*.[5]

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 2nd cycle UPR recommendations

[3] CONAPO, "Características, tendencias y causas de la migración de niñas, niños y adolescentes desde, hacia y en tránsito por México, 2011-2016" en *La situación demográfica de México 2016*, https://www.gob.mx/conapo/documentos/la-situacion-demografica-de-mexico-2016.
[4] ACNUR, "Arrancados de Raíz: Causas que originan el desplazamiento transfronterizo de niños, niñas y adolescentes no acompañados y/o separados de Centroamérica y su necesidad de protección internacional", 2014, http://www.acnur.org/fileadmin/scripts/doc.php?file=fileadmin/Documentos/Publicaciones/2014/9828.
[5] UNHCHR has not received any information indicating that asylum-seekers or refugees have been refused medical attention at CAPASITS, regardless of immigration status or registration with Seguro Popular.

Issue 1: Ratification of international instruments

Linked to 2nd cycle UPR recommendation no. 148.7: "Ratify the *1961 Convention on the Reduction of Statelessness* (Paraguay)."

Mexico is a party to the *1954 Convention Relating to the Status of Stateless Persons* having made reservations to articles 17 and 32, and has not yet acceded to the *1961 Convention on the Reduction on Statelessness*. UNHCR appreciates that Mexico has been a key promoter in international fora of the right of all persons to be registered at birth and to be recognized everywhere as a person before the law. In this regard, efforts should be made to reform national legislation in ways that permit accession to the *1961 Convention* and also to withdraw the reservations made to the *1954 Convention*.

Recommendations:
UNHCR recommends that the Government of Mexico:

(a) Consider acceding to the *1961 Convention on the Reduction of Statelessness*;
(b) Consider withdrawing the reservations made to the *1954 Convention Relating to the Status of Stateless Persons*;
(c) Strengthen the implementation of the statelessness determination procedure; and
(d) Ensure Mexican legislation is in line with the *1961 Convention on the Reduction of Statelessness*.

Issue 2: Protection of human rights of asylum-seekers and refugees

Linked to 2nd cycle UPR recommendation no. 148.175: "Effectively protect and guarantee the safety and human rights of migrants, especially women and children, including those that are in transit in the national territory, ensuring their access to justice, education, health and civil registry, incorporating the principle of the best interest of the child and the family unit (Holy See)."

In addition to ensuring respect for migrants' human rights, the *2011 Migration Act* also has the merit of establishing mechanisms for preventing crimes against migrants and procedures leading to regularization of immigration status, as well as for the issuance of "temporary visitor for humanitarian reasons" cards to migrants who are victims of serious crimes, unaccompanied children and asylum-seekers, which allow freedom of movement and access to formal employment in principle, but in practice individuals also require a Unique Population Code to be hired (CURP, in Spanish) and existing administrative arrangements do not allow for this code to be issued to asylum-seekers (see Issue 5, below).

Additionally, concerns persist regarding the rise in crimes and the increased risk towards migrants throughout the country, the high levels of impunity for crimes committed against migrants, and the difficulties that migrants who are victims of crime and asylum-seekers continue to face in accessing justice and obtaining regularization for humanitarian reasons under article 52 of the *2011 Migration Act*. These concerns were also raised recently by the United Nations Committee on the Rights of Migrant Workers (27 September 2017, CMW/C/MEX/CO/3)

Recommendations:
UNHCR recommends that the Government of Mexico:

(a) Ensure access to justice for migrants, asylum-seekers and refugees by strengthening the Special Unit for the Investigation of Crimes against Migrant Persons within the Attorney General's Office (PGR), and the State-level Special Prosecutor Offices for the Attention of Crimes against Migrants; and
(b) Standardize administrative practices in the National Institute of Migration (INM) to ensure that all migrants who fall within the scope of article 52 of the *2011 Migration Act* and all asylum-seekers are duly granted the "temporary visitor for humanitarian reasons" card.

Issue 3: Sexual and gender-based violence against migrants, asylum-seekers and refugees

Linked to 2nd cycle UPR recommendation no. 148.79: "Continue to take the necessary measures to prevent violence against women, particularly migrant women and penalise those who commit these acts of violence (Nicaragua)."

The *2007 General Act for Access for Women to a Life Without Violence* and its *2008 Regulations* together with the 2014-2018 Comprehensive Programme to Prevent, Punish and Eradicate Violence against Women establish the obligations of the Mexican state to punish and eradicate violence against women under its national framework. The National Human Rights Commission (CNDH) recognized violence against women as an extremely serious problem in Mexico noting that almost 7 out of 10 women in Mexico have suffered violence.[6] In this context, migrant, asylum-seeking, and refugee women are particularly vulnerable due to their national origin and their legal status in Mexico, due to discrimination, lack of generalized knowledge by public officials – particularly at the local level - regarding the rights of migrants, asylum-seekers and refugees, and due to a lack of specialized services. The application of administrative detention measures for persons submitting asylum claims at the border exacerbates the risk of violence for women, girls, and LGBTI persons because to avoid detention almost all enter the country irregularly. Asylum-seekers generally then travel to towns located 20 to 160 km from the border to make asylum claims, but to do so they often travel along remote routes and are exposed to significant risks of assault and sexual and gender-based violence. Additional obstacles hamper migrant, asylum-seeking and refugee women's access to services and justice, such as lack of access to services due to irregular migration status, lack of awareness by justice and public health authorities regarding the rights that asylum-seeking and refugee women and girls are entitled to in Mexico, lack of access to legal representation to file criminal complaints, among others.

Recommendations:
UNHCR recommends that the Government of Mexico:

(a) Implement programmes aimed at the prevention, punishment and eradication of sexual and gender-based violence faced by women migrants, asylum-seekers and refugees, which include adequate training for relevant government and health officials; and
(b) End the administrative detention of asylum-seekers who submit international protection claims at the border.

Additional protection challenges

Issue 4: Detention of migrants and asylum seekers, particularly children and other vulnerable persons

The *2011 Migration Act* provides for the automatic administrative detention of all persons in an irregular immigration situation in the country. This law prescribes a time limit of maximum 15 working days for immigration detention which can be extended up to 60 working days in exceptional cases. However, the *2011 Migration Act* does not specify a time limit for detention for those who initiate an administrative procedure or judicial remedy, with the consequence that in practice there is no maximum period for immigration detention for asylum-seekers who initiate a legal remedy. Furthermore, although national law prohibits the detention of children and the Government of Mexico committed to fully ending the administrative detention of children under 11 years of age during the 2016 Leaders' Summit on Refugees, many children detected by migration authorities are referred to Immigration Stations (detention centers) or to closed-door shelters. During 2016, more than 186,216 detentions for immigration-related purposes took place, including 40,144 children, of whom 17,557 were unaccompanied. Concerns have been expressed by the Inter-American Commission on Human Rights on the deterrent effect that detention has on persons

[6] Comisión Nacional de los Derechos Humanos, *Diagnóstico de la Comisión Nacional de los Derechos Humanos como integrante de los grupos de trabajo que dan seguimiento a los procedimientos de Alerta de Violencia de Género contra las Mujeres (AVGM),* 2017, p. 50

with international protection needs, who may choose not to apply for asylum in detention centres or to make a claim but later abandon or withdraw it.[7]

In 2016, the Government established a program to release asylum-seekers from detention to continue their asylum procedures in civil society shelters. From July 2016 until December 2017, over 1,900 asylum-seekers were released from detention to shelters. However, this release programme has not been regulated through the issuance of an administrative directive or a legal reform, which generates uncertainty and protection gaps.

Recommendations:
UNHCR recommends that the Government of Mexico:

(a) Ensure that the legal framework on migration and asylum is fully harmonized with the *General Law on the Rights of Children and Adolescents* and with relevant international standards on the rights of the child, to ensure that no child is subject to administrative detention and that all children shelters have an adequate comprehensive attention model;
(b) Ensure that the migration authority implements measures to identify international protection needs during the initial appearance at the Immigration Stations, thus facilitating access to the asylum system and the alternatives to administrative detention programs;
(c) Consider amending the *2011 Migration Act* to remove those provisions that authorize the automatic administrative detention of all persons in an irregular migratory situation, particularly asylum-seekers; and
(d) Consider amending relevant legislation or issuing an executive or administrative order to ensure that the alternative to administrative detention program for asylum-seekers is fully enforceable, transparent, and applicable throughout the country.

Issue 5: Access to economic, social and cultural rights for asylum-seekers and refugees

The *2011 Refugees, Complementary Protection and Political Asylum Act* establishes that refugees should have all possible means to access the rights and guarantees established in the Mexican Constitution, including the right to work, housing, health, education, and other relevant economic, social and cultural rights.

Nevertheless, asylum-seekers and refugees continue to face several obstacles in fully enjoying economic, social, and cultural rights due to obstacles in obtaining the Unique Population Code (CURP). The lack of knowledge of asylum-seekers and refugees' rights and related documentation by public service providers constitutes an additional barrier. In some instances, discriminatory patterns further complicate effective access to rights.

Recommendations:
UNHCR recommends that the Government of Mexico:

(a) Continue strengthening efforts to ensure full enjoyment of economic, social, and cultural rights for asylum-seekers and refugees, including by removing administrative barriers or by facilitating access to social programs;
(b) Ensure that asylum-seekers have access to the *Seguro Popular* national health insurance scheme for a period of at least one year;
(c) Ensure that banking and financial institutions fully comply with the CNBV directive so that all identity documents issued by the National Institute of Migration are duly accepted to open bank accounts and access financial services; and
(d) Consider facilitating access to the CURP identification number for asylum-seekers.

UNHCR
March 2018

[7] Inter-American Commission on Human Rights, *Human Rights of Migrants and other Persons in the Context of Human Mobility in Mexico* (2013), available at:
http://www.oas.org/en/iachr/migrants/docs/pdf/Report-Migrants-Mexico-2013.pdf.

ANNEX

Excerpts of relevant Recommendations from the 2nd cycle Universal Periodic Review, Concluding Observations from UN Treaty Bodies and Recommendations of Special Procedures mandate holders

MEXICO

We would like to bring your attention to the following excerpts from the 2nd cycle UPR recommendations, UN Treaty Monitoring Bodies' Concluding Observations, and recommendations from UN Special Procedures mandate holders' reports relating to issues of interest and persons of concern to UNHCR with regards to Mexico.

I. Universal Periodic Review (Second Cycle – 2013)

Recommendation[8]	Recommending State/s	Position[9]
Ratification of international instruments		
148.7. Ratify the 1961 Convention on the Reduction of Statelessness.	Paraguay	Noted[10]
Migrants and refugees		
148.146. Further enhance institutions and infrastructure for human rights, policies and measures toward enhancing the social inclusion, gender equality and non-discrimination, favourable conditions for vulnerable groups of women, children, indigenous people, migrants and refugees.	Viet Nam	Supported
148.58. Create a database of disappeared and missing migrants, and that all authorities cooperate to prevent and punish crimes against this group.	Norway	Supported
148.173. Continue to work towards the protection and defence of the rights of migrants.	Argentina and Bolivia	Supported
148.174. Continue to work with the countries of the region in special programs that address the situation of criminality against migrants.	Nicaragua	Supported
148.175. Effectively protect and guarantee the safety and human rights of migrants, especially women and children, including those that are in transit in the national territory, ensuring their access to justice, education, health and civil registry, incorporating the principle of the best interest of the child and the family unit.	Holy See	Supported
148.176. Maintain the humane policy that ensures the protection of the rights of migrants, and guarantee them access to justice, education and healthcare, regardless of their status.	Nigeria	Supported
Gender Discrimination and SGBV		
148.66. Enact and enforce laws to reduce incidences of violence against women and girls.	Sierra Leone	Supported

[8] All recommendations made to Mexico during its 2nd cycle UPR can be found in: "Report of the Working Group on the Universal Periodic Review of Mexico" (11 December 2013), A/HRC/25/7, available at: http://www.ohchr.org/EN/HRBodies/UPR/Pages/MXindex.aspx.

[9] Mexico's views and replies, in Spanish, can be found in: *Addendum* (14 March 2014), A/HRC/25/7/Add.1, available at: http://www.ohchr.org/EN/HRBodies/UPR/Pages/MXindex.aspx.

[10] ***Addendum***: "Las disposiciones de la Convención no son compatibles con el artículo 37 apartado B, fracción II de la Constitución Política de los Estados Unidos Mexicanos (CPEUM), que indica que la nacionalidad mexicana por naturalización se perderá por residir durante cinco años continuos en el extranjero. Tampoco es compatible con la Ley de Nacionalidad, ya que ésta establece en su artículo 20 que el extranjero que pretenda naturalizarse mexicano deberá acreditar que ha residido en territorio nacional cuando menos durante los últimos cinco años inmediatos anteriores a la fecha de solicitud."

148.67. Implement the designed public policy and launch a comprehensive awareness-raising campaign to end gender-based violence that includes sexual violence and feminicide.	Slovenia	Supported
148.70. Continue to prevent and combat violence against women, guaranteeing women's access to justice and continue to improve support services.	State of Palestine	Supported
148.71. Ensure investigations of violence against women, and establish victim support programmes for affected women.	Maldives	Supported
148.76. Make a priority the prevention and punishment of all forms of violence against women.	France	Supported
148.79. Continue to take the necessary measures to prevent violence against women, particularly migrant women and penalise those who commit these acts of violence.	Nicaragua	Supported
148.102. Reinforce training of police and justice officials on the issue of violence against women in order to improve the response by the Mexican authorities	Portugal	Supported
Children		
148.81. Set up a comprehensive system to protect children's rights and develop a national strategy to prevent and address all forms of violence.	Iran (Islamic Republic of)	Supported
148.82. Ensure a better protection for children and adolescents against violence related to organized crime.	Algeria	Supported
148.83. Enhance the dissemination of information and figures regarding children and young persons who fall victims to the struggle against drug trafficking.	Italy	Supported
148.110. Continue its efforts to ensure the protection of children's rights, including by fully implementing the 2012 federal justice for adolescents act and considering implementing of restorative justice system.	Indonesia	Supported
Access to rights		
148.144. Focus on marginalised groups or disadvantaged sections of society. Of particular relevance would be measures to improve health and education.	India	Supported
148.145. Continue strengthening its social policies with a view of increasing the standard of living of its people, especially the most vulnerable.	Venezuela and Trinidad and Tobago	Supported
148.151. Continue efforts to design housing financing schemes for the care of the population working within the informal market economy.	Ecuador	Supported
148.154. Intensify efforts to guarantee universal access to health services, information and education on health and sexual and reproductive rights, particularly for adolescents.	Uruguay	Supported
148.163. Allocate more resources to education for vulnerable students and the disabled.	South Sudan	Supported
Torture, arbitrary detention and enforced disappearances		
148.52. Pursue efforts to ensure that complaints in cases of torture, arbitrary detention and disappearances are duly investigated.	Turkey	Supported
148.58. Create a database of disappeared and missing migrants, and that all authorities cooperate to prevent and punish crimes against this group.	Norway	Supported
148.103. Further pursue the full investigation of alleged incidents of human rights violations by the police force, especially within detention centres.	Cyprus	Supported
Trafficking		
148.84. Consider establishing mechanisms aimed at early identification, referral, assistance and support for victims of trafficking.	Egypt	Supported
148.85. Increase funding for federal human trafficking prosecutors and take steps to end the impunity for public officials complicit in trafficking.	Norway	Supported
148.86. Continue its policies and efforts to combat human trafficking especially those of women and children.	Bolivia, Singapore and Costa Rica	Supported

148.89. Strengthen measures to combat human trafficking, including violence against migrants.	Algeria and Sri Lanka	Supported

II. Treaty Bodies

Committee on Enforced Disappearances

Concluding Observations, (5 March 2015), CED/C/MEX/CO/1

Disappearances of migrants

23. The Committee is concerned by reports that there have been numerous cases of disappearances of migrants, including migrant children, and that these cases include cases of enforced disappearance. It also notes with concern the challenges that this dramatic situation poses for full observance of the rights to justice and truth embodied in the Convention, particularly since the relatives of the disappeared persons are not normally resident in the State party. In this regard, the Committee notes the information provided by the State party in relation to the investigation of disappearances of migrants and its efforts to locate them and provide support and protection. It also notes that the State party is working on the design of a transnational search and access to justice mechanism for such persons (arts. 1, 3, 12, 15 and 24).

24. **In conjunction with countries of origin and countries of destination, and with input from victims and civil society, the State party should redouble its efforts to prevent and investigate disappearances of migrants, to prosecute those responsible and to provide adequate protection for complainants, experts, witnesses and defence counsels. The transnational search and access to justice mechanism should guarantee: (a) that searches are conducted for disappeared migrants and that, if human remains are found, they are identified and returned; (b) that ante-mortem information is compiled and entered into the ante-mortem/post-mortem database; and (c) that the relatives of the disappeared persons, irrespective of where they reside, have the opportunity to obtain information and take part in the investigations and the search for the disappeared persons.**

Register of persons deprived of their liberty

34. The Committee takes note of the information provided by the State party regarding the information that should be entered in the Detention Registry System and the administrative arrest log. However, the Committee regrets that it has not received detailed information about the records kept in all places in which persons might be deprived of their liberty, such as migrant holding facilities or military detention centres (arts. 17 and 22).

35. **The State party should adopt the necessary measures to guarantee that:**

(a) **All deprivations of liberty are entered in uniform registers and/or records which include, as a minimum, the information required under article 17, paragraph 3, of the Convention;**

(b) **All registers and/or records of persons deprived of liberty are filled out and updated promptly and accurately;**

(c) **All registers and/or records of persons deprived of liberty are subject to periodic checks and, in the event of irregularities, the officers responsible are disciplined.**

Committee on Migrants Workers

Concluding Observations, (27 September 2017), CMW/C/MEX/CO/3

Participación de la sociedad civil

21. El Comité mantiene su especial preocupación ante la vulneración de derechos humanos de los defensores de los migrantes. Observa que son objeto de violencia y amenazas por parte del crimen organizado y redes de tráfico de personas, incluso en connivencia con autoridades, así como de actos de hostigamiento y deslegitimación del trabajo de esas organizaciones por parte de agentes migratorios, distintos cuerpos de seguridad gubernamentales y empresas privadas que

gestionan acciones de control migratorio o prestan servicios de vigilancia de transporte en rutas migratorias.

22. El Comité reitera su recomendación anterior (véase CMW/C/MEX/CO/2, párr. 52), e invita al Estado parte a que adopte medidas efectivas, agiles e integrals para:

(a) **Garantizar la vida, libertad e integridad de defensores de derechos humanos de la población migrante, incluyendo medidas para prevenir, investigar y sancionar adecuadamente las agresiones y abusos en su contra;**

(b) **Reconocer públicamente su labor, incluyendo el establecimiento de un registro de casos de denuncias, investigaciones realizadas y casos resueltos para ser presentados en el siguiente informe periódico; c) Facilitar el ejercicio de su labor, incluyendo su acceso amplio a los centros de detención migratoria, los albergues y otros establecimientos afines.**

No discriminación

25. El Comité toma nota del marco jurídico del Estado parte para asegurar la no discriminación. Sin embargo, le preocupan informes sobre el aumento de la xenofobia a nivel social e institucional y el rol de los medios de comunicación en crear y mantener estereotipos contra los migrantes. También le preocupa la información recibida sobre procedimientos de control y verificación migratoria que se realizan con base en el perfil étnico de las personas.

26. **El Comité reitera su recomendación anterior (véase CMW/C/MEX/CO/2, párr. 24), y asimismo alienta al Estado parte a que establezca medidas de prevención y sanción ante la criminalización de las personas migrantes en mensajes de diferentes actores sociales y políticos. Recomienda la realización de campañas de educación, comunicación e información social, así como que se detecten y eliminen las practices discriminatorias en las instituciones públicas y privadas, incluyendo los procedimientos migratorios de control y verificación**.

27. Preocupan al Comité informes según los cuales los migrantes con estancias por razones humanitarias enfrentan obstáculos para recibir la Clave Única de Registro de Población, que es un requerimiento para acceder a derechos y beneficios sociales.

28. **El Comité recomienda que el Estado parte tome medidas inmediatas para facilitar el acceso de los migrantes y solicitantes del estatuto de refugiado con estancias por razones humanitarias a la Clave Única de Registro de Población, en línea con los artículos 25 y 27 de la Convención.**

Protección de violencia, lesión física, amenaza e intimidación

33. El Comité expresa su profunda preocupación por las graves irregularidades en las investigaciones para identificar a los responsables y las víctimas de las masacres en los estados de Tamaulipas y Nuevo León entre 2010 y 2012, por las que no hay personas sancionadas, por el impacto extremamente grave de la desaparición forzada de personas en los migrantes y mexicanos en tránsito y por los altos niveles de violencia de género, especialmente en la frontera sur. Al Comité le preocupan mucho las alegaciones sobre la participación de autoridades públicas, particularmente policías federales, estatales y municipales, la alta impunidad que suele afectar a estos crímenes y los bajos niveles de denuncias. Asimismo, expresa su preocupación por los obstáculos que enfrentan los sobrevivientes de esos crímenes para la regularización por razones humanitarias.

34. **El Comité reitera su recomendación anterior (véase CMW/C/MEX/CO/2, párr. 30) y asimismo urge al Estado parte a que:**

(a) **Asegure que se investiguen seria y diligentemente esos actos, incluyendo la relación de agentes estatales con estructuras criminales y delitos como la corrupción y la impunidad, y se adopten sanciones proporcionales a la gravedad del delito cometido;**

(b) **Investigue exhaustiva y ágilmente las masacres en los estados de Tamaulipas y Nuevo León bajo la clasificación de graves violaciones a los derechos humanos;**

(c) **Gestione la ampliación del mandato y el financiamiento de la Comisión Forense a efecto de garantizar un cruce gradual de información forense de personas migrantes desaparecidas de otros casos además de las tres masacres;**
(d) **Garantice la implementación del Mecanismo de Apoyo Exterior Mexicano de Búsqueda e Investigación en los diferentes países de América Central, asegurando que las personas migrantes y sus familiares tengan acceso fácil a las instituciones federales estatales e información sobre las investigaciones y participen en el proceso, incluyendo a través de la creación de unidades permanentes en embajadas y consulados del Estado parte;**
(e) **Asegure la cooperación efectiva con comisiones de expertos y grupos multidisciplinarios de los países de origen y destino para asistir a las personas migrantes víctimas de delitos graves, incluyendo desapariciones forzadas, así como en la búsqueda, localización y liberación de las personas desaparecidas y, en caso de fallecimiento, en la exhumación, la identificación y la restitución digna de sus restos;**
(f) **Garantice que las víctimas sean identificadas y remitidas a los servicios apropiados y sensibles a sus circunstancias, incluyendo servicios médicos y psicosociales, y que a petición de las víctimas se solicite la cooperación de las organizaciones sociales;**
(g) **Garantice que los sobrevivientes de esos crímenes tengan acceso a la regularización por razones humanitarias;**
(h) **Sancione a los responsables, con penas adecuadas a la gravedad del delito, incluyendo a los funcionarios del Estado involucrados.**

Gestión de las fronteras y protección de migrantes en tránsito
35. El Comité toma nota del esfuerzo que realiza el Estado parte para enfrentar al crimen organizado y brindar seguridad integral a las personas en su territorio. Observa con preocupación, sin embargo, el aumento significativo de los crímenes contra migrantes y de los riesgos a lo largo del tránsito por el territorio mexicano, en rutas alternativas usadas por los migrantes y sus familiares a fin de evitar los múltiples dispositivos de control migratorio desplegados por el Estado.

36. **El Comité recomienda al Estado parte que evalúe de manera exhaustiva y en diálogo con todos los actores concernidos el impacto de los operativos de verificación migratoria en el aumento de los riesgos del derecho a la vida y la integridad física de la población migrante en tránsito y que se adopten las medidas necesarias para prevenir esos riesgos, proteger a esta población y, en particular, promover que las políticas y prácticas migratorias estén centradas en el enfoque de derechos humanos y de seguridad humana, incluyendo la creación de vías seguras y regulares.**

Privación de la libertad
37. El Comité expresa su profunda preocupación respecto del elevado número de medidas privativas de la libertad de migrantes en las 58 estaciones migratorias desplegadas a lo largo del país. Le preocupan las alegaciones de la delegación de que estas detenciones (llamadas “aseguramiento” o “presentación”) no constituirían una privación de la libertad, o son descritas como una medida de protección o un beneficio. También le preocupa la presencia en esos centros de familias, mujeres embarazadas, víctimas de la trata, solicitantes de asilo y otras personas en situaciones de mayor vulnerabilidad y con necesidades especiales de protección. Asimismo, nota con especial preocupación la detención de niños, niñas y adolescentes —que aumentó en un 900% entre 2011 y 2016—, muchos de ellos no acompañados, así como de muy baja edad. Esa medida constituye, sin excepción, una violación de los derechos del niño y de su interés superior.

38. **El Comité recomienda al Estado parte, con carácter de urgencia, que:**
(a) **Adopte con carácter de urgencia todas las medidas necesarias para poner fin inmediato a la privación de libertad de niños, niñas y adolescentes, así como de familias migrantes, garantizando en la ley y la práctica medidas alternativas adecuadas, centradas exclusivamente en la protección de los derechos bajo la Ley General de los Derechos de Niñas, Niños y Adolescentes;**
(b) **Garantice la aplicación efectiva e inmediata de procesos de identificación y referencia de personas en situaciones de vulnerabilidad y su traslado a alojamientos**

alternativos;

(c) **Elabore un plan de acción dirigido a garantizar que la privación de libertad por razones migratorias de trabajadores migratorios adultos únicamente se aplica como medida de último recurso y por el menor tiempo posible, sobre la base de los principios de excepcionalidad, proporcionalidad, necesidad y razonabilidad;**

(d) **Garantice en la ley y en la práctica la existencia de medidas alternativas a la privación de la libertad para trabajadores migratorios en situación irregular, las cuales deben aplicarse de manera prioritaria y con base en las circunstancias de cada persona, por las autoridades administrativas y/o judiciales correspondientes;**

(e) **Asegure que los trabajadores migrantes sean informados sobre los procedimientos y derechos en un idioma que entienden.**

Garantías procesales en casos de privación de la libertad

39. El Comité nota con preocupación que las detenciones llevadas adelante por el INM se realizan a través de una modalidad automática, sin una adecuada fundamentación individualizada sobre su necesidad y razonabilidad. Observa que la detención sin debidas garantías procesales, como la obligación de remisión inmediata ante un juez independiente e imparcial y el derecho a la asistencia jurídica gratuita, es considerada arbitraria, en línea con la Convención y otros tratados. Le preocupan también los datos sobre la falta de información brindada a migrantes sobre las razones de su detención, los derechos y recursos disponibles, incluyendo el derecho a solicitar asilo, protección complementaria o una estancia por razones humanitarias. Se inquieta asimismo de que el ejercicio de los recursos disponibles puede llevar a una detención sin plazo máximo, y sobre el acceso restringido que tienen los abogados de organizaciones sociales para brindar asistencia y representación legal.

40. **El Comité urge al Estado parte a que:**

(a) **Asegure en los procedimientos de detención migratoria las debidas garantías procesales, incluyendo el derecho a un intérprete;**

(b) **Adopte todas las medidas dirigidas a garantizar el derecho a la asistencia y representación jurídica gratuita en procedimientos de detención migratoria, incluyendo la provisión de recursos y capacitación al Instituto Federal de Defensoría Pública. De forma complementaria, se recomienda la realización de convenios con organizaciones de la sociedad civil especializadas en dicha asistencia;**

(c) **Garantice que la detención migratoria sea una medida excepcional, de último recurso y limitada al menor tiempo posible, que esté fundamentada en el caso concreto, incluyendo las razones por las cuales no pueden ser aplicadas las medidas alternativas, y sea revisada en menos de 24 horas por una autoridad judicial independiente e imparcial; d) Garantice el derecho al acceso a justicia, sin que ello redunde en una extensión de la detención en aplicación del artículo 111.V de la Ley de Migración, para evitar que la persona que accede a una medida alternativa o solicite asilo tenga plazo indefinido de detención mientras se resuelve su petición.**

Condiciones de detención

41. Al Comité le preocupan las condiciones de detención de la población migrante en el Estado parte. Observa con mucha preocupación que, en ocasiones, constituyen un tratamiento cruel, inhumano y degradante.

42. **El Comité reitera su recomendación anterior (véase CMW/C/MEX/CO/2, párr. 34), e insta al Estado parte a garantizar condiciones dignas y adecuadas en los centros de detención migratoria, los cuales no pueden tener similares características y finalidades que un ámbito penitenciario. En particular, el Comité le recomienda que:**

(a) **Brinde servicios adecuados de salud y sensibles al género, incluyendo salud sexual y reproductiva, asistencia psicológica, agua, saneamiento e higiene, alimentación, actividades recreativas y de ocio;**

(b) **Erradique de forma inmediata el uso de celdas de castigo;**

(c) **Ponga fin a cualquier situación de sobrepoblación y hacinamiento;**

(d) **Investigue y sancione adecuadamente a los agentes estatales que violen los derechos**

de migrantes en esos centros;

(e) **Capacite a los agentes estatales en los centros de detención, sobre derechos humanos, igualdad de género, el interés superior de los niños, niñas y adolescentes, y no discriminación;**

(f) **Implemente las recomendaciones de la Comisión Nacional de Derechos Humanos y garantice la plena aplicación del Mecanismo Nacional de Prevención de la Tortura.**

Expulsión

43. El Comité está muy preocupado por el aumento significativo de expulsiones de personas de El Salvador, Guatemala y Honduras. Se inquieta profundamente por que el llamado "retorno voluntario y asistido" se aplica mientras las personas están privadas de libertad, sin asistencia jurídica e información adecuada, y sin alternativas para su regularización. Observa con preocupación el elevado número de personas que desisten de la solicitud del estatuto de refugiado y que las medidas de retorno puedan disponerse sin indagar adecuadamente sobre posibles riesgos para la vida y la integridad física de la persona en el país de origen.

44. **El Comité recomienda al Estado parte que:**

(a) **Vele por que las personas sujetas a una orden administrativa de expulsión o retorno, o que soliciten el estatuto de refugiado, gocen de servicios de asistencia y representación jurídica gratuita, y conozcan y puedan ejercer su derecho a interponer recursos efectivos;**

(b) **Elabore mecanismos para impedir la expulsión de los migrantes hasta tanto se haya evaluado de manera adecuada cada situación individual, a fin, entre otras cosas, de asegurarse de que no se afecte el principio de no devolución ni la prohibición de expulsiones arbitrarias o colectivas;**

(c) **Refuerce la implementación de políticas y mecanismos dirigidos a brindar alternativas a la expulsión o retorno, incluyendo el derecho al asilo, la protección complementaria, la estancia por razones humanitarias y otras formas de regularización.**

Atención médica

49. El Comité toma nota de que el Estado parte permite la afiliación al Seguro Popular de toda persona, sin presentar documentación alguna, pero le preocupa que este seguro sea válido solamente por 90 días. Asimismo, está preocupado porque muchos trabajadores migrantes indocumentados no acceden a los servicios de salud porque temen su detención y deportación.

50. **El Comité recomienda que se reforme el artículo 42 del reglamento de la Ley General de Salud en Materia de Protección Social en Salud, para asegurar la afiliación ilimitada de los trabajadores migrantes y sus familiares al Seguro Popular. Asimismo, recomienda que se adopten medidas para asegurar que los migrantes indocumentados accedan a servicios médicos de atención a la salud y no sean denunciados a las autoridades de inmigración.**

Registro de nacimiento y nacionalidad

51. El Comité toma nota del gran incremento del registro de nacionalidad mexicana de niños nacidos en los Estados Unidos. Sin embargo, le preocupan los problemas que enfrentan los mexicanos indocumentados en ese país para registrar el nacimiento de sus hijos, por los obstáculos que tienen para validar el acta de nacimiento en territorio mexicano debido a la exigencia de traducción y legalización, y por la insuficiente información para que los padres registren en consulados mexicanos el nacimiento de sus hijos. Todo ello deriva en barreras para obtener un documento de identidad y su nacionalidad, así como para acceder a la educación y otros servicios sociales una vez que las familias retornan a México.

52. **El Comité recomienda fomentar la inscripción de nacimiento en los consulados mexicanos y sensibilizar a las madres sobre la importancia del registro oportuno de la doble nacionalidad. Asimismo, recomienda que se brinde información y asistencia a padres indocumentados para que puedan registrar los nacimientos ante autoridades de los Estados Unidos. Sugiere que se establezca en México un procedimiento simplificado de registro de la nacionalidad mexicana de niños con padres mexicanos, evitando requisitos**

inaccesibles como la traducción y notarización del documento en los Estados Unidos cuando la familia ya ha salido de ese país. En cualquier caso, se recomienda garantizar el acceso a la educación y otros servicios sociales a los hijos de mexicanos que retornan, sin perjuicio de su documentación o nacionalidad.

Educación

53. El Comité toma nota de los esfuerzos del Estado parte para eliminar las barreras administrativas para el acceso a la educación de la niñez migrante. También observa que muchos niños, niñas y adolescentes migrantes sin documentos no acceden a los servicios de educación por discriminación o por temor a su detención y deportación.

54. **El Comité urge al Estado parte a que tome medidas legislativas y práctica para asegurar que se adopten e implementen de manera efectiva las nuevas normas al nivel estatal y local, y que se incluyan medidas para asegurar que la niñez migrante sin documentos no sea discriminada ni denunciada a las autoridades de inmigración.**

Niños, niñas y adolescentes en el contexto de migración internacional

55. El Comité observa con mucha preocupación que aún restan numerosos desafíos pendientes para la plena implementación de la Ley General de los Derechos de Niñas, Niños y Adolescentes. Junto a la preocupación por la detención de decenas de miles de niños, niñas y adolescentes en estaciones migratorias, le preocupa especialmente lo siguiente:

(a) La falta de implementación de los procedimientos de determinación del interés superior del niño previstos en la Ley de Migración y la Ley General de los Derechos de Niñas, Niños y Adolescentes;
(b) La insuficiente creación o adecuación a la Ley General de los Derechos de Niñas, Niños y Adolescentes de procuradurías locales de protección de niños, niñas y adolescentes y autoridades competentes;
(c) La ausencia de mecanismos para garantizar la asistencia jurídica a niños, niñas y adolescentes en procedimientos migratorios, así como la falta de un tutor para niños no acompañados;
(d) La ausencia de mecanismos que garanticen la participación efectiva y el derecho a ser oído de los niños, niñas y adolescentes en todos los procedimientos que les afecten, y a ser debidamente tenidos en cuenta;
(e) El impacto grave que tienen la violencia y la persecución a los niños, niñas y adolescentes de El Salvador, Guatemala y Honduras, los abusos que sufren en su tránsito por el territorio mexicano, y las situaciones de explotación laboral de niños, niñas y adolescentes en el sur del país;
(f) El retorno de niños, niñas y adolescentes a sus países de origen sin una previa evaluación y determinación de su interés superior que permita aplicar otras medidas de protección inmediatas y sostenibles;
(g) La escasa proporción de niños, niñas y adolescentes que acceden a los procedimientos de solicitud del estatuto de refugiado, y la alta incidencia del desistimiento de esas solicitudes.

56. **El Comité recomienda al Estado parte que:**

(a) **Implemente a la mayor brevedad posible un procedimiento interinstitucional de determinación del interés superior del niño, coordinado por la Procuraduría Federal de Protección de Niñas, Niños y Adolescentes en el marco del Sistema de Protección Integral de Niños Niñas y Adolescentes y de la Ley General de los Derechos de Niñas, Niños y Adolescentes, asegurando las debidas garantías procesales, incluyendo el derecho a la información y asistencia jurídica gratuita por parte de profesionales especializados en derechos de niños, niñas y adolescentes, y en caso de niños no acompañados, de un tutor, el cual debe velar por el interés superior de los niños, niñas y adolescentes en todo el proceso;**
(b) **Asegure que los sistemas e instituciones de protección de niños, niñas y adolescentes funcionen independientemente del INM y cuenten con las capacidades necesarias para aplicar el principio del interés superior de los niños, niñas y adolescentes, y que esas decisiones tengan prioridad respecto de otras**

consideraciones relativas a la condición migratoria;

(c) **Redoble los esfuerzos para prevenir la violencia, abuso y explotación de los niños, niñas y adolescentes migrantes, protegerlos frente a esos crímenes, e investigue, juzgue y sancione a los responsables, incluyendo agentes estatales;**

(d) **Asegure que los niños, niñas y adolescentes tengan acceso inmediato a procedimientos relacionados a la regularización y protección internacional, y que las políticas migratorias respeten los derechos de los niños, niñas y adolescentes en línea con los instrumentos internacionales, incluyendo el principio de no devolución;**

(e) **Continúe desarrollando y finalice el sistema de datos desglosados sobre la protección de niños, niñas y adolescentes migrantes, refugiados y solicitantes de asilo;**

(f) **Asegure su acceso a la educación y salud;**

(g) **Adopte medidas de protección integral para atender la situación de niños, niñas y adolescentes migrantes que viven en la calle, así como en situaciones de explotación laboral en plantaciones de café, explotación por el crimen organizado y explotación sexual, entre otras;**

(h) **Implemente las recomendaciones de la Comisión Nacional de Derechos Humanos.**

Cooperación internacional con países de tránsito y destino

59. El Comité toma nota de los procesos regionales existentes en materia migratoria, en particular la Conferencia Regional sobre Migración. Le preocupan sin embargo los desafíos existentes en la región en materia de las causas de la migración (violencia, pobreza, entre otros), así como para la protección de los derechos de migrantes y sus familias.

60. **El Comité alienta al Estado parte a promover acuerdos y planes de acción regionales, desde un enfoque de derechos, dirigidos a abordar las causas estructurales de la migración (violencia, pobreza, entre otros) y a garantizar los derechos de toda la población migrante y sus familias, sin perjuicio de su condición migratoria.**

Committee on the Rights of the Child

Concluding Observations, (3 July 2015), CRC/C/MEX/CO/4-5

Non-discrimination

15. While taking note of the National Programme for Equality and Non-Discrimination (2014–2018), the Committee is concerned about the prevalence of discrimination against indigenous, Afro-Mexican and migrant children, children with disabilities, lesbian, gay, bisexual, transgender and intersex children, children in street situations and children living in poverty and in rural areas.

16. **The Committee recommends that the State party:**

(a) **Adopt a road map that includes adequate resources, a timeline and measurable targets requiring authorities at the federal, state and local levels to take measures, including affirmative measures, to prevent and eliminate all forms of de facto discrimination against indigenous, Afro-Mexican and migrant children, children with disabilities, lesbian, gay, bisexual, transgender and intersex children, children in street situations and children living in poverty and in rural areas;**

(b) **Ensure that the authorities, civil servants, the media, teachers, children and the general public are sensitized to the negative impact of stereotypes on children's rights and take all necessary measures to prevent these negative stereotypes, notably by encouraging the media to adopt codes of conduct;**

(c) **Facilitate child-friendly complaint mechanisms in educational establishments, health centres, juvenile detention centres, alternative-care institutions and any other setting and ensure that perpetrators of discrimination are adequately sanctioned.**

17. The Committee expresses deep concern about the persistent patriarchal attitudes and gender stereotypes that discriminate against girls and women, resulting in an extremely high prevalence of violence against women and girls in the State party.

18. **The Committee urges the State party to accord the utmost priority to the elimination of patriarchal attitudes and gender stereotypes that discriminate against girls and women, including through educational and awareness-raising programmes.**

Best interests of the child

19. While noting the constitutional recognition of the right of the child to have his or her best interests taken into account as a primary consideration, the Committee is concerned at reports that this right has not been consistently applied in practice.

20. **In the light of its general comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, the Committee recommends that the State party strengthen its efforts to ensure that this right is appropriately integrated and consistently applied in all legislative, administrative and judicial proceedings and decisions as well as in all policies, programmes and projects that are relevant to and have an impact on children. In this regard, the State party is encouraged to develop procedures and criteria to provide guidance to all relevant persons in authority for determining the best interests of the child in every area and for giving them due weight as a primary consideration.**

Respect for the views of the child

25. While noting the initiatives taken to foster child participation, such as the annual organization of the "parliament of the girls and boys of Mexico", the Committee regrets the lack of permanent forums aimed at promoting child participation. It is also concerned at reports that children's opinions are not consistently heard in judicial and administrative proceedings.

26. **In the light of its general comment No. 12 (2009) on the right of the child to be heard, the Committee recommends that the State party:**

[…]

(b) **Effectively implement legislation recognizing the right of the child to be heard in relevant judicial and administrative proceedings, including by monitoring the implementation of the protocol for the administration of justice in cases involving children.**

Birth registration

27. While welcoming the constitutional reform of 2014 recognizing the right to birth registration, the Committee is concerned that the number of indigenous, Afro-Mexican and migrant children and children living in remote areas who are registered at birth remains low.

28. **The Committee recommends that the State party strengthen efforts to ensure universal birth registration, including by undertaking the necessary legal reforms and adopting the required procedures at the state and municipal levels. Registry offices or mobile units should be available in all maternity units, in the main points of transit or destination of migrants and in communities where children are born with traditional birth attendants.**

Sexual exploitation and abuse

33. While noting the adoption of a protocol to assist child victims of sexual abuse, the Committee is concerned about the high prevalence of sexual violence against children, in particular girls. The Committee is seriously concerned that perpetrators of rape can escape punishment if they marry the victim. It is also concerned that the current proposal to reform the Federal Penal Code with regard to the statute of limitation for crimes of sexual abuse against children does not adequately protect the rights of children. It is also concerned that insufficient efforts are being made to identify, protect and rehabilitate child victims and about the increasing number of cases of sexual violence in education centres.

34. **The Committee urges the State party to:**

(a) **Review legislation at the federal and state levels to ensure that rape is criminalized in line with international standards and remove all legal provisions that can be used to excuse perpetrators of child sexual abuse;**

(b) **Ensure that the reform of the Federal Penal Code provides for no statute of limitation regarding both the sanctions and the criminal action in relation to crimes of sexual abuse against children, and that sanctions cover both the perpetrators and the abettors. Similar provisions should be adopted in all state penal codes;**
(c) **Establish mechanisms, procedures and guidelines to make it mandatory to report cases of child sexual abuse and exploitation and ensure the availability of child-friendly complaints mechanisms, in particular in schools;**
(d) **Prevent, investigate and prosecute all cases of sexual abuse of children and adequately punish those convicted;**
(e) **Provide training for judges, lawyers, prosecutors, the police and other relevant persons on how to deal with child victims of sexual violence and on how gender stereotyping by the judiciary affects girls' right to a fair trial in cases of sexual violence, and closely monitor trials in which children are involved;**
(f) **Effectively implement the protocol to assist child victims of sexual abuse and ensure quality services and resources to protect them, provide them with physical and psychological recovery and social reintegration and compensate them;**
(g) **Raise awareness to prevent child sexual abuse, inform the general public that such abuse is a crime and address victim stigmatization, particularly when the alleged perpetrators are relatives.**

Standard of living

53. The Committee remains deeply concerned about the prevalence of child poverty, which affects more than half of the child population, a higher rate than affects the adult population. It is concerned that indigenous, Afro-Mexican, migrant and displaced children, children in single-parent households and children living in rural areas are particularly affected by poverty and extreme poverty.

54. **The Committee recommends that the State party strengthen its efforts to eliminate child poverty by adopting a public policy developed in consultation with families, children and civil society organizations, including those from indigenous, Afro-Mexican, displaced, migrant and rural communities, and by allocating adequate resources for its implementation. Measures to promote early childhood development and further support families should be part of the policy.**

Education, including vocational training and guidance

55. The Committee notes the educational reform undertaken in 2013 aimed at ensuring quality education from preschool to senior high school. However, it is concerned about:
(a) Millions of children between 3 and 17 years of age who do not attend school;
(b) Persistent challenges for children in vulnerable situations in accessing quality education;
(c) High rates of school dropouts, particularly among students in secondary education, pregnant adolescents and adolescent mothers;
(d) The low coverage of early childhood education and the lack of public policies in this regard.

56. **In the light of its general comment No. 1 (2001) on the aims of education, the Committee reiterates its recommendations (see CRC/C/MEX/CO/3, para. 57 (a–e)) and recommends that the State party:**
(a) **Increase its efforts to improve the quality of education and its availability and accessibility to girls, indigenous, Afro-Mexican and displaced children, children in rural areas, children living in poverty, children in street situations, national and international migrant children and children with disabilities, by substantially increasing the education budget and reviewing relevant policies;**
(b) **Strengthen its efforts to ensure education in Spanish and in indigenous languages for indigenous children and ensure the availability of trained teachers;**
(c) **Strengthen measures to address school dropouts, taking into consideration the particular reasons why boys and girls drop out;**
(d) **Step up its efforts to ensure that pregnant adolescents and adolescent mothers are**

supported and assisted in continuing their education in mainstream schools;

(e) **Develop and expand early childhood education from birth, on the basis of a comprehensive and holistic policy of early childhood care and development.**

Asylum-seeking and refugee children

57. The Committee is concerned about:

(a) The lack of adequate measures to identify, assist and protect asylum-seeking and refugee children, including the lack of legal representation for unaccompanied children;

(b) The prolonged detention of asylum-seeking children;

(c) The lack of data on the number of asylum claims made by children and the information by the State party that only 18 children were granted refugee status in 2014.

58. **The Committee recommends that the State party:**

(a) **Increase its efforts to identify, assist and protect asylum-seeking and refugee children, including by adopting the necessary legislative, administrative and logistical measures. Legal guardians, free legal representation, interpretation and consular assistance should be ensured for them;**

(b) **Take the measures necessary to end the administrative detention of asylum-seeking children and expeditiously place unaccompanied children in community-based shelters, and accompanied children in appropriate facilities that ensure family unity and are compliant with the Convention;**

(c) **Collect disaggregated data on asylum-seeking and refugee children;**

(d) **Complete the withdrawal of the remaining reservations to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.**

Children in situations of migration

59. The Committee welcomes the adoption of a protocol on consular assistance for unaccompanied migrant children as well as the attention given by the State party to the plight of unaccompanied children on its territory, in particular its increasing collaboration with countries in the region to assist those children and protect them from violence. It is nevertheless concerned about:

(a) Migrant children being kept in detention centres for migrants and reports of violence and abuse against children in those centres;

(b) Migrant children being subjected to killings, kidnappings, disappearances, sexual violence, exploitation and abuse, and about the lack of official disaggregated data in this regard;

(c) Reports that many migrant children are deported without a preliminary process to determine their best interests, in spite of the legal recognition of the principle in the law on migration and the General Act on the Rights of Children and Adolescents;

(d) The insufficient measures taken to ensure the rights of national migrants as well as the rights of the many children displaced as a result of armed violence.

60. **The Committee recommends that the State party:**

(a) **Take all measures necessary to end the administrative detention of migrant children and continue to establish community-based shelters for them, in accordance with articles 94 and 95 of the General Act on the Rights of Children and Adolescents, ensuring that these shelters comply with the Convention and are regularly monitored. The protocol for assisting unaccompanied migrant children in shelters should be effectively implemented and regularly evaluated;**

(b) **Increase efforts to prevent killings, kidnappings, disappearances, sexual violence, exploitation and abuse of migrant children, and investigate, prosecute and punish perpetrators, including when the perpetrator is an agent of the State;**

(c) **Establish a best interests determination process for decisions relating to migrant children and always carry out due process with procedural safeguards to determine the individual circumstances, needs and best interests of the child prior to making a decision on his or her deportation. Special attention should be given to family reunification;**

(d) **Ensure that migrant children are informed about their legal status, ensuring that they fully understand their situation, and provide public defence services and/or guardians throughout the process. Children should also be informed that they can contact their consular services;**
(e) **Ensure that all relevant professionals working with or for migrant children, in particular border and immigration personnel, social workers, defence lawyers, guardians and police officers, are adequately trained and speak the native language of the children;**
(f) **Adopt comprehensive measures to provide assistance to national migrant and displaced children and ensure their access to education and health services and their protection from violence;**
(g) **Collect disaggregated data related to cases of violence against migrant and displaced children, including disappearances and enforced disappearances.**

Committee on the Rights of Persons with Disabilities

Concluding Observations, (27 October 2014), CRPD/C/MEX/CO/1

Liberty of movement and nationality (art. 18)
39. The Committee is concerned that migrants with intellectual or psychosocial disabilities are detained in migrant holding centres, that the authorities set stricter requirements for entry into the country for persons with disabilities and that persons injured as a result of falling from the train known as “La Bestia” (“The Beast”) receive inadequate care.

40. **The Committee urges the State party to:**
(a) **Designate appropriate and accessible areas and appoint trained staff to assist persons with disabilities in migrant holding centres;**
(b) **Review and harmonize the operational guidelines under the Migration Act to ensure that persons with disabilities are treated equally in the issuance of visas and entry permits;**
(c) **Review and harmonize care protocols for migrants who are injured while in transit in Mexico, so that they are provided with not only emergency medical care but also sufficient recovery time and basic rehabilitation.**

41. The Committee notes that the steps taken to promote the registration of children with the civil registry have not led to the universal registration of children with disabilities.

42. **The Committee urges the State party to ensure that all children with disabilities are immediately registered at birth and are provided with an identity document.**

III. Special Procedures Mandate Holders

Report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Mexico

Addendum: Mission to Mexico (29 December 2014) A/HRC/28/68/Add.3

Assessment of the situation

Migrants
72. Because of its location, Mexico is one of the main countries of origin, destination, transit and return of migrants. Migrants are extremely vulnerable to acts of violence by private individuals. The Special Rapporteur is concerned about the impunity that usually surrounds such crimes and the information he received that public employees collude in or tolerate such practices. Moreover, migrant arrests by public employees tend to be violent and accompanied by insults, threats and humiliation.

73. The conditions observed at the Siglo XXI migrant holding centre in Tapachula (Chiapas) are generally adequate for short periods of detention. However, detainees who lodge appeals generally spend long periods in detention. The Government should restrict the use of detention to exceptional cases, improve conditions of detention and avoid prolonged periods of detention. Unaccompanied boys are housed in the holding centre, while unaccompanied girls are taken to public and private hostels where conditions are generally poor and there is no proper supervision to detect trafficking and identify needs. The Special Rapporteur notes that, while he received no complaints or ill-treatment or torture at the Siglo XXI centre, he did receive complaints about incidents at several of the country's migrant holding centres, in which migrants were insulted, threatened, humiliated and beaten. The Special Rapporteur is concerned that lawyers and civil society organizations have limited access to holding centres to monitor and assist migrants.

Recommendations

87. **With regard to migrants:**

(a) **Take steps to reduce the violence to which they are exposed, including due investigation and punishment of those responsible;**

(b) **Facilitate access by civil society organizations and lawyers to migrant holding centres and to confidential interviews with migrants.**

Report by the Special Rapporteur on extrajudicial, summary or arbitrary executions on his mission to Mexico,

Addendum: Mission to Mexico (28 April 2014) A/HRC/26/36/Add.1

Vulnerable persons

Migrants

74. Undocumented migrants who transit through Mexico put their lives at serious risk, although it is difficult to obtain reliable figures on the numbers killed.6 Reportedly, there is a direct link between disappearances and killings of migrants, organized crime, and complicity of law enforcement, investigative and other authorities. Migrant shelters have been subject to multiple attacks by organized criminal groups and insufficient preventative and accountability measures have been inadequately mobilized.7 Moreover, migrants are afraid to bring cases to the police. Chronic impunity therefore persists. The Special Rapporteur urges prompt investigation of killings of migrants in order to punish those responsible and provide compensation to victims or families of victims. He also calls for strengthening of the protection framework, including ensuring the safe operation of shelters.

Recommendations

B. Vulnerable Persons

111. **Full, prompt, effective, impartial and diligent investigation of homicides perpetrated against women, migrants, journalists and human rights defenders, children, inmates and detainees and LGBT individuals should be ensured.**

113. **A safe corridor should be created for migrants in transit, including better protection while in transit; a package of protection and accountability measures should be adopted to prevent attacks in migrant shelters; cooperation should be strengthened between state departments and community organizations that provide humanitarian assistance to migrants; adequate redress should be provided to victims of violence committed in the country; consideration should be given to following an approach whereby undocumented migrants can exercise rights such as the right to report crimes to the authorities without fearing arrest; and the dignified repatriation of corpses should be ensured in coordination with the State of origin.**

118. **Conditions for all detainees should be improved in compliance with the Standard Minimum Rules for the Treatment of Prisoners and the right to life of all inmates should be ensured.**

119. **Police and other authorities should be trained on gender-identity and sexual orientation awareness; protective and precautionary measures should be ensured; and societal tolerance should be encouraged.**

Immigration

As United States' 'Remain in Mexico' plan begins, Mexico plans to shut its 'too successful' humanitarian visa program

GlobalPost

January 24, 2019 · 9:45 PM EST

By Sarah Kinosian

Migrants, part of a caravan travelling to the US, make a human chain to pull people from the river between Guatemala to Mexico in Ciudad Hidalgo and continuing to walk in Mexico, in October 2018. Many migrants headed for the border will

As the United States moves to implement a new plan to turn back legal asylum-seekers at the US-Mexico border, tens of thousands of Central American migrants could be stranded in Mexico while their cases are decided, which often takes a year or more.

The policy, officially called the Migrant Protection Protocols and widely known since last fall as “Remain in Mexico,” was first announced by Homeland Security Secretary Kirstjen Nielsen on Dec. 20. The plan goes into effect Friday, according to a Congressional aide. It’s the most drastic measure yet in President Donald Trump’s crackdown on unauthorized immigration and the most sweeping change to the US asylum system in decades. Mexican President Andrés Manuel López Obrador’s administration appeared split on the policy after it was officially announced last month: the foreign ministry reluctantly accepted it as the immigration authority publicly opposed it.

Many details are still unclear. But the policy sends people back to Mexico who are legally exercising their right to seek asylum after they've stepped on US soil — whether crossing at ports of entry or between them — and orders them to return to the US for a first court date within 45 days, Vox reported. It is set to be piloted Friday at the San Ysidro port of entry with an initial group of asylum-seekers being returned to Tijuana, according to news reports. A legal challenge by immigrant rights' groups is virtually guaranteed.

Like several other Mexican officials, Tonatiuh Guillén, head of Mexico's immigration authority, said he was not formally notified of the policy.

> "This could create a crisis, especially in Tijuana, which is already overwhelmed. But it depends on the amount of people we are really talking about. ... This is a US initiative, and I guess we will have to try and implement it in the most civilized way possible and in accordance with Mexican laws."
>
> *- Tonatiuh Guillén, head of Mexico's immigration authority*

"This could create a crisis, especially in Tijuana, which is already overwhelmed," Guillén said. "But it depends on the amount of people we are really talking about. ... This is a US initiative, and I guess we will have to try and implement it in the most civilized way possible and in accordance with Mexican laws."

The policy also comes head-to-head with a recent effort by Mexico to grant renewable, one-year humanitarian visas to many of the roughly 13,000 Central American migrants who have accumulated at the country's southern border.

The visas will allow them to live, work, access services, and travel freely around Mexico. Initially meant to diffuse potential chaos while the Mexican government figured out how

to handle the newest wave of Central Americans, the program would be closed “shortly,” Guillén said — a decision unrelated to the United States’ move but rather because the program was “too successful” and could "overwhelm" Mexico's immigration system. Instead, he said, the government was exploring potential employment options for people, especially in southern Mexico. On Wednesday, Interior Minister Olga Sánchez Cordero extended work permits, previously granted only to Belizeans and Guatemalans, to Salvadorans and Hondurans in seven southern states to incentivize migrants to stay.

But visas will still be given to the more than 12,000 people who have already applied since Jan. 17, Mexican immigration authorities said. Almost 80 percent of applicants are from Honduras, where small groups have continued to depart in recent days as news of the visas spread and seemed to incentivize some of them to migrate.

Most of the migrants intend to head for the US, a fact Mexican officials have acknowledged. The "remain" policy could force asylum-seekers to wait in dangerous, cartel-controlled Mexican border towns, notorious for high homicide rates, for up to a year. The US faces an immigration court backlog of more than 800,000 cases.

Just days before Nielsen announced the policy last month, two Honduran teenagers waiting to seek asylum in the United States were killed in Tijuana. Thousands of migrants from a caravan last fall have waited there as the US has slowed processing at the San Ysidro port of entry to just a few dozen per day, a practice known as “metering.”

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“The irony of this measure is that it is going to drive people

who are trying to apply for asylum at ports of entry and do things the right way into the mountains and deserts. This is another way to try and limit access to US asylum system rather than try to fix it."

- Andrew Selee, president of the Migration Policy Institute

"The irony of this measure is that it is going to drive people who are trying to apply for asylum at ports of entry and do things the right way into the mountains and deserts," said Andrew Selee, president of the Migration Policy Institute in Washington, DC. "This is another way to try and limit access to US asylum system rather than try to fix it."

"A due process disaster"

Migrant advocates in the US have warned for weeks that a "Remain in Mexico" policy would endanger asylum-seekers by forcing them to wait months or years as their cases are decided, Human Rights First on Thursday called it "illegal, immoral and inhumane." The American Immigration Lawyers' Association has called it "a due process disaster."

"This plan will prevent most, if not all, returned asylum seekers from receiving a fair day in court," AILA wrote in a policy brief last month. "Individuals forced to remain outside the US will encounter substantial barriers to accessing US attorneys — representation that can make the difference between life and death."

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Mexico, for its part, has said previously it would not accept the return of asylum-seekers who may face a "credible" threat back home, though there have been few details on how that might be determined. The policy will not be applied to vulnerable groups, such as unaccompanied minors or pregnant women, according to news reports.

In the meantime, Mexican authorities worried about the influx of new arrivals, many of

whom say the visas drew them to migrate from Honduras, El Salvador, Guatemala and other Central American countries in the first place.

“Especially after [Mexico] just gave all those humanitarian visas out, this new policy could create total disorder,” said Cesar Palencia, head of migrant services in Tijuana. “What are we going to do with all the people they just let in?”

During his campaign, López Obrador — who took office Dec. 1 and is known in Mexico by his initials, AMLO — pledged to institute a more humane migration strategy than that of his predecessor, Enrique Peña Nieto, whose administration had come under fire for its treatment of migrants, which included lengthy detention times. Under Peña Nieto, Mexico began to deport more Central Americans than the United States did on a yearly basis. The country also received substantial US funding for border security and was criticized as doing the bidding of its northern neighbor.

The humanitarian visa program had been part of AMLO’s immigration policy shift, as is the rollout of his “Marshall Plan” for Central America, which is supposed to pump an extra $20 billion over five years to create jobs in southern Mexico and the Northern Triangle countries of Honduras, El Salvador and Guatemala. Poverty and unemployment remain top drivers of migration from the region along with high levels of corruption and gang and state violence. AMLO’s administration has yet to specify its logistics and sources of funding. But as seen with Mexico’s acceptance of “Remain in Mexico,” he has signaled willingness to work with the United States to reduce the flow of migrants.

What a "too successful" program looks like

Though Mexico’s humanitarian visa program is not new, authorities scaled it up dramatically to handle the caravan and subsequent influx. In the first three weeks of 2019, the number of visa applications has already surpassed the number granted last year. Of the 118,285 Central Americans apprehended last year, 8,865, or 7.5 percent, received humanitarian visas, according to the Mexican government, and only 0.4 percent, or 500 people, received one in 2014.

So far in 2019, just 1,210 visas have been granted over more than 12,000 applications, creating a bottleneck as throngs of migrants sleep in any space they can find on the Guatemalan side of the border and the no man's land on the bridge between the two countries. The wait time to even register for a visa is more than 24 hours, advocates say. Officials have had to start limiting water and food handouts.

Migrants are finding themselves stuck at the Mexico-Guatemala border awaiting legal paperwork and in Tijuana as the US lets only dozens per day into the country and will soon begin piloting the "remain in Mexico" policy.

Credit: Alex Newman/The World

Jeisen Urbina is just one of an estimated 14,000 Central Americans migrants who arrived at Mexico's southern border in the past week. The 22-year-old Honduran taxi driver was part of a caravan of about 2,000 that set off from the San Pedro Sula bus station in northern Honduras earlier this month.

It was his second time traveling with a caravan. In October, Urbina flung himself into the Suchiate River that divides Guatemala and Mexico as riot police in front of him launched tear gas at thousands of migrants who had pushed through the border fence behind him,

determined to reach the United States. Just three months later, he stood calmly eating a bag of peanuts in the same spot on the bridge.

“Well, this is different,” he said, eyeing the water below. He waited for his brother to arrive before approaching Mexican immigration agents guiding Central Americans through the process of getting a humanitarian visa. There were no riot police, border agents, or closed gates — just an ever-growing mass of people waiting in the hot sun to get legal documents.

He had traveled more than 2,700 miles with the last caravan that arrived in Tijuana, Mexico, in November. But after speaking with immigration attorneys, he decided to return to Honduras to gather more documents that would strengthen his claim for US asylum. Urbina said he was facing threats after gang members killed his 16-year-old brother.

Now, with the US policy, Urbina’s chances to enter the US as a legal asylum-seeker may be even narrower.

Tania Karas contributed to this report.

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A Guatemalan woman and her three daughters at the border fence after crossing into El Paso, Texas, from Ciudad Juarez, Mexico. | David Peinado/NurPhoto via Getty Images

The border is in crisis. Here's how it got this bad.

There really is something unprecedented — and deadly — happening at the US-Mexico border right now. But the threat is to migrants themselves.

By Dara Lind | dara@vox.com | Updated Jun 5, 2019, 1:47pm EDT

President Trump's constant temper tantrums about the US-Mexico border have become the background noise of his administration. Even as he reaches for more and more drastic threats to try to "stop" the flow of unauthorized migrants into the US — like the threat of a 5 percent tariff on all goods coming into the US from Mexico — it seems that the public (including fellow Republican politicians) have an ever harder time taking him seriously.

But as Trump has raged, something genuinely unprecedented has started happening at the border.

The past several months have seen a huge spike in unauthorized migration, especially of families, into the US.

The government's capacity to handle an influx of large groups of children and families was already under serious strain at the end of 2018. By March, politicians of both parties were recognizing it as a humanitarian crisis. And the numbers of people coming just keep rising — with 132,887 migrants apprehended by Border Patrol after crossing the US-Mexico border (committing the misdemeanor of illegal entry) in May 2019.

This isn't a manufactured crisis, or a politically engineered one, as some Democrats and progressives have argued. If it were, it would be easier to solve.

What's happening at the border is the result of a regional crisis in which — if **current rates continue** — close to 1 percent of the entire population of Guatemala and Honduras will attempt to immigrate to the US this year. The Mexican government, meanwhile, is vacillating between humanitarian rhetoric and militarized crackdowns, US border officials are openly begging for help, and Trump himself is throwing the mother of all temper tantrums.

Trump's threats will likely cause massive collateral damage throughout North America and aren't even likely to stop people from arriving at the US-Mexico border, his stated goal. But that doesn't mean there isn't a problem here, or even a crisis. It just means it's not one that's going to be solved anytime soon.

1) Is there an unprecedented surge of unauthorized migration into the US?

Yes — or at least, probably. But of a specific kind.

Three things are simultaneously true:

- The total number of people coming into the US without papers is still lower than it was for most of the 20th century, and substantially lower than its turn-of-the-century peak.
- The total number of people coming into the US without papers is now higher than it's been since early 2007, before the Great Recession.

- The number of people coming into the US without papers who can't simply be detained and deported — children, families, and asylum seekers — is almost certainly unprecedented.

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By this point, it's not just that there are more children and families coming than have in recent years. There is substantial evidence that the raw number of children and families entering the US is higher than it's ever been.

We don't have apples-to-apples data. Right now, DHS separately counts "unaccompanied alien children" who come without their parents, and migrants who come in "family units" of one or more parents with one or more children. Before 2011, though, it combined juveniles who came with parents and juveniles who came without them — and simply counted parents traveling with their children as adults.

We do know, however, that very few of all migrants apprehended were juveniles in the early 2000s compared to today — so even during peak unauthorized migration, rarely more than 100,000 juveniles a year were crossing. And the majority of those were coming without their parents. So if the statistics had been kept in the same way in the early 2000s that they are now, they almost certainly wouldn't have shown more than 150,000 unaccompanied children and family units coming into the US even during peak years.

So far in fiscal year 2019, with four months to go, nearly 390,000 children and parents have been apprehended. Nearly 96,000 unaccompanied children and family members were apprehended in the month of May alone.

2) Why can't all border crossers simply be deported?

The US border enforcement system is built to apprehend people who are trying to sneak into the US, and return them to their home country as quickly as possible.

For most of US history, apprehended migrants were just informally returned to Mexico. In the mid-2000s, the US started formally deporting apprehended migrants instead — using "expedited removal," which allowed people who got caught entering the US to get deported without going before an immigration judge. Typically, a migrant would be apprehended by Border Patrol officials,

transferred to Immigration and Customs Enforcement (ICE) custody within 72 hours, and deported once a deportation order could be signed.

But there are extra legal protections built into US law and policy for asylum seekers — who can't simply be deported — and for vulnerable groups, including children and families, who can't simply be detained.

Asylum seekers — whether they have presented themselves at a port of entry to ask for asylum (breaking no US law) or crossed into the US between ports of entry (committing the misdemeanor of illegal entry) and evoked their right to asylum after being apprehended by a Border Patrol officer — can't be deported until they've been screened by an asylum officer to see if they have a "credible fear" of persecution. Unaccompanied children from non-Mexican countries have to be transferred to the care of the Department of Health and Human Services within 72 hours and are guaranteed immigration court hearings. Families, under a 2015 court ruling, can't be detained indefinitely; generally, the government has to release them after about 20 days.

In all three cases, the "detain, then deport" system doesn't work. The system is overloaded with people it wasn't designed to handle.

3) Why are people coming to the United States to begin with?

The simplest answer is probably the truest: because things are bad enough for them in their home countries of Guatemala, Honduras, and El Salvador that they've decided to risk the journey to the US, and whatever treatment awaits them here, for a chance in America.

App'x 208
AR679

A group of Hondurans sleep as they wait to board a bus that will take them out of Honduras in April 2019. Unless stopped by Mexican authorities — which is plausible — many will likely head to the United States, as previous "caravans" of Honduran migrants have. | Orlando Sierra/AFP/Getty Images

US law slices migrants into categories. People seeking to migrate for economic reasons or to reunite with family might have a way to migrate to the US legally, but they're not allowed legal status if they arrive without papers. People fleeing persecution have the right once on US soil to apply for asylum, whether they have papers or not.

The Trump administration claims that very few of the people coming to the US now are genuine asylum seekers, pointing to the fairly low rate of success of asylum claims in immigration court (10 to 15 percent for Northern Triangle countries) as evidence that these aren't "real" asylees, or even to claim that most of them are outright frauds.

In practice, though, it's often hard to determine a single reason that a given migrant is leaving — much less a group of hundreds of them, or a monthly flow of tens of thousands. The same people facing dire poverty can also be persecuted by their governments for their political views; someone might decide to leave because their crops are failing, but decide *when* to leave based on a threat to their lives.

The most pressing problem in Honduras and El Salvador continues to be violence, specifically gang violence. (El Salvador has reduced its homicide rate substantially, and migration to the US has declined sharply since last summer.) Victimization by gangs isn't as solid a basis for an asylum claim as victimization

by the government, and the Trump administration is trying to make it even harder to claim asylum due to gang violence.

Guatemala, which has seen the biggest increase in migration to the US in the current surge, is generally more beset by crushing poverty than gang violence. (Domestic violence is endemic in all three countries.) Poverty, no matter how dire, isn't grounds to seek asylum. But it's hard to disentangle the poverty of the Guatemalan highlands from concerns about the government's treatment of indigenous peoples, or the poor situation of the region's farmers from oppression of community and environmental activists challenging the government's land use policies.

Many of these migrants are choosing to come to the US rather than staying in Mexico because the US offers them a better opportunity to make money and support their families, in addition to being substantially safer, and US law allows asylum claims from migrants who pass through Mexico. (Asylum seekers who try to enter the US from Canada have to stay in Canada.) Many asylum seekers also have relatives in the US already. That doesn't mean they don't also have valid asylum claims.

Further complicating all of this, migrants themselves don't necessarily know what asylum is or why they might or might not qualify for it. Some migrants I've spoken to believed you could get asylum simply by having a relative in the US — or that if you had no family in the US, you couldn't get asylum. (Neither is the case.) People traveling in the "caravan" last fall often told reporters they were coming to the US to work.

To the US government (and immigration hawks), both of these are indicators that these aren't "real" asylum seekers. To advocates and immigration lawyers, they're evidence that people move between countries for complex reasons, and that some who might qualify for asylum might not even know it without help from a lawyer.

4) Why are more people coming now?

Trump's first few months in office set records for how few people were caught trying to enter the US from Mexico, something he continued to brag about even as apprehension levels began to rise again in summer and fall 2017. (The claim made by Trump critics that unauthorized migration is at "historic lows" is based on the fact that yearly apprehension rates are still low in comparison to the pre-recession era, but apprehensions have been rising pretty much every month since April 2017.) And building on a trend that had become noticeable since the border crisis of summer 2014, the people who were coming were unaccompanied children and, increasingly, families.

By September 2018, DHS officials were raising alarms about the number of children and families coming into the US, and warning that the system was overwhelmed. Apprehensions continued to climb through the fall. Then in February, they skyrocketed.

Large groups, like this group of 100, have become increasingly common at the US/Mexico border — contributing to the rapid spike in apprehensions of migrants in the past few months. | David Peinado/NurPhoto via Getty Images

The rapid increase from the beginning of 2019 to now still isn't fully understood. It appears to stem from a shift in smuggling tactics and capacity. (While human smuggling is illegal, it's used by asylum seekers who feel they have no other choice as well as people migrating for economic reasons.)

The rise of "express route" buses that can take hundreds of migrants at a time through Mexico in five or six days appears to be a factor. Many migrants who might have felt the chance of arriving in the US wasn't worth the risks of a grueling and dangerous journey on foot through Mexico may be changing their calculus now that the risk is lower. Similarly, anecdotal reports indicate that smugglers are offering discounts for migrants who bring their children.

The other factor is Mexico. The government of Andrés Manuel López Obrador (who took office in December) has tried to marry rhetoric about a new humanitarian approach to migration with a desire to stay on the Trump administration's good side. In December, Mexico made it much easier for Central American migrants seeking to travel to the US to get temporary "humanitarian visas" that allowed them 90 days of legal status in Mexico.

The Mexican government wasn't prepared for how many Central Americans would seek the visas, and shut down the program rapidly. But American officials suspect the humanitarian visas made it much easier for Central Americans already in Mexico to come to the US, and may have influenced more to come.

5) Is the US system stretched to the "breaking point"?

It is apparent that the needs of migrants in custody have overwhelmed DHS capacity.

The department is redirecting resources from other things to the border, much like it would in a natural disaster. Customs and Border Protection has detailed a few hundred port officers to help Border Patrol agents care for families and children — slowing down the processing of people and vehicles at ports of entry accordingly, and causing hours-long lines across some international bridges. The department has called for volunteers from other agencies to help.

But they're still swamped. On a call in June, one Customs and Border Protection official said, "when we have 4,000 people in custody, we consider that high. When we have 6,000, we consider it a crisis. Right now, we have 19,000 people in custody. It's just off the charts."

In May, DHS's **inspector general office found** that as many as 900 people were being held in a Border Patrol facility built for 125 people. One cell, with a listed maximum capacity of 12 people, held 76.

In March, CBP agents in El Paso kept some families in a temporary holding pen under a bridge, with some families claiming they were kept there for several days. The holding pen was shut down at the end of March, after pictures of it attracted widespread shock and outrage, but CBP agents encouraged reporters to get pictures of it — pointing to it as an example of what they were forced to do because they had no other choice.

It's difficult to determine whether that's true, because it's really about counterfactuals — what else the Trump administration could have done in the past to prepare for this, or what other things it could be doing now. (A world in which Trump spent as much time and money on processing centers for migrant families as he spent on a wall would look very different.)

CBP has warned for months that it isn't able to house and process the current population coming into the US, and that it has nowhere to put people between when they turn themselves in to Border Patrol agents and when they are released.

The deaths of several children in Border Patrol custody have highlighted the lack of appropriate care in Border Patrol facilities. Congress included funds in its February appropriations bill to help Border Patrol provide food and shelter for migrant families in El Paso, but there are far more families and children coming now than the February bill anticipated.

Releasing asylum seekers from custody isn't as easy as letting them out. Unlike immigrants who are arrested by ICE while living in the United States, many

newly arrived asylum seekers aren't familiar with the US, often speak neither English nor Spanish, and may not have appropriate clothing or funds for bus fare. They are usually released with instructions to check in with an ICE agent at a field office that could be states away. There are nonprofit organizations that can help acclimate families and get them to their destination, but that too requires advance notification and effort. When the government simply dumps people outside bus stations, they end up lost, cold, and confused.

6) Have the Trump administration's actions contributed to the crisis?

Trump and DHS officials say that "legitimate" asylum seekers ought to have no reason to enter illegally, and even attempted to ban people who crossed between ports of entry from seeking asylum. (The ban was quickly struck down in court). But since last summer, the administration has restricted asylum seekers trying to present themselves at ports of entry, allowing in only a fraction each day of the people who are waiting — a policy called "metering" or "queue management."

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This Honduran woman and her children wait in one of the shelters in Tijuana for migrants trying to cross into the United States. Hundreds of migrants are waiting to be allowed to present themselves legally to claim asylum at the port of entry at San Ysidro. Under the Trump administration's "metering" policy, the wait has sometimes taken months. | Mario Tama/Getty Images

Metering varies from port to port (see **this article** to read about the policy in depth), but at the most popular ports of entry, it's forced migrants to wait weeks or months before they can step onto US soil and exercise their right to claim asylum. Faced with such a wait — sometimes in dangerous Mexican border towns — it's logical that a migrant might choose to cross illegally to present their asylum claim instead.

As the number of people caught coming into the US between ports of entry illegally has spiked, the number of "inadmissible" migrants, who come to a port of entry and are found not to have valid legal status, has stayed flat. Many Trump critics point to metering as the root of the discrepancy — and accuse Trump of manufacturing a crisis by forcing people to cross illegally, then panicking when they do.

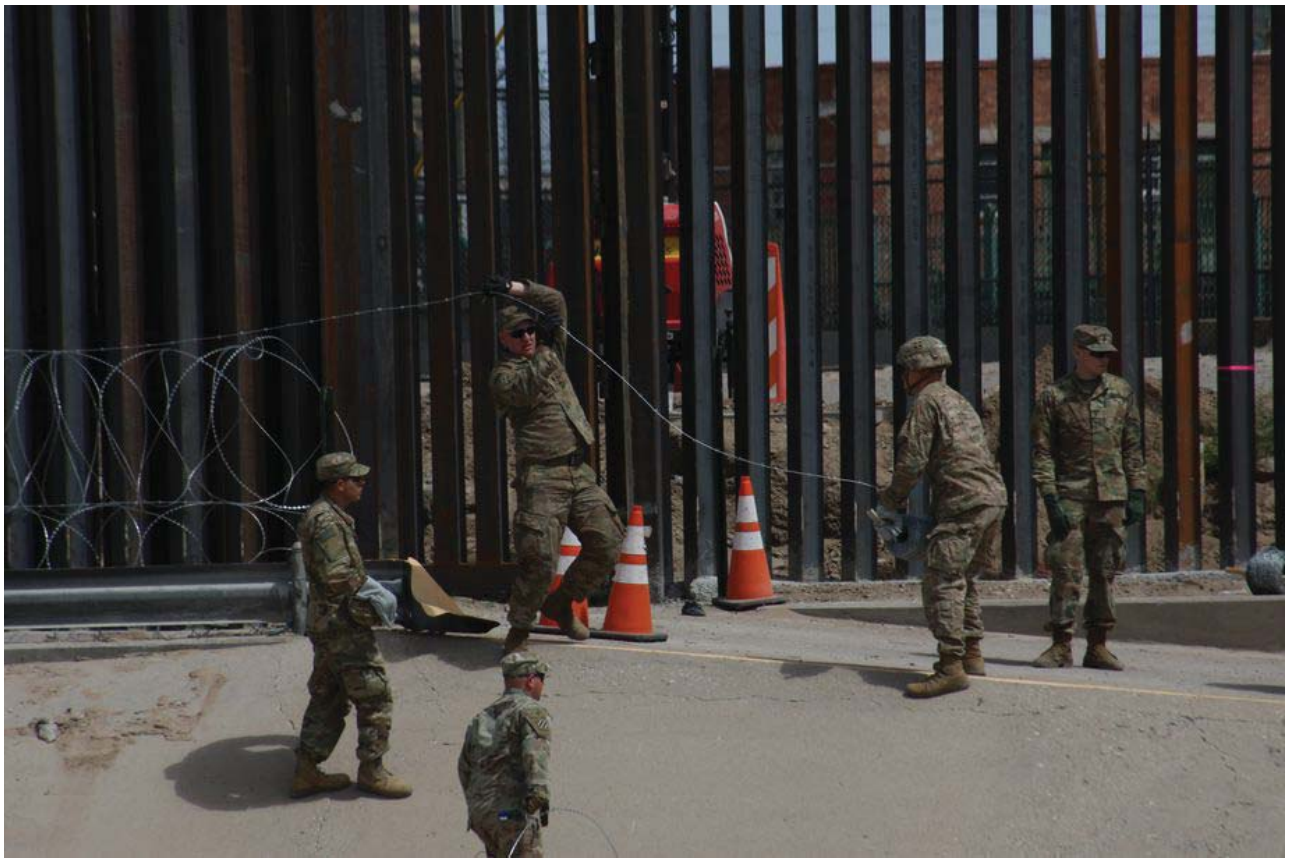
It's clear that at least some migrants are crossing illegally only because they can't cross legally, but it's extremely likely that the number of illegal entries would be climbing even without the metering policy.

There have always been many fewer asylum seekers coming to ports of entry than crossing between them. That's especially true in the Rio Grande Valley, which has been the epicenter of child and family migration for the past decade.

Where migrants cross into the US isn't usually their choice to make; it's the choice of the smuggler facilitating their arrival. The emergence of new drop-off points for large groups of migrants like Antelope Wells, New Mexico, and Lukeville, Arizona, isn't the result of democratic decision-making by migrants — those locations are the endpoints of smuggling routes. And they're between, not at, ports of entry.

7) Is Trump right that Mexico and the Northern Triangle countries aren't doing anything to stop migrants from reaching the US?

No.



Mexican soldiers help string wire across the border fence in Juarez — part of the Mexican government's broader cooperation with the Trump administration in deterring and interdicting migrants. | David Peinado/NurPhoto via Getty Images

Trump appears to be mad that Northern Triangle countries aren't doing more to stop their citizens from leaving, which is not a thing that governments are supposed to do under general human rights principles, and also, more to the point, not a thing that governments can do without a massive investment of time, personnel, and infrastructure. Trump is asking governments that can't even guarantee the safety and well-being of their citizens to monitor those citizens' whereabouts perfectly.

Guatemala, Honduras, and El Salvador have cooperated with the US on security measures; a new "compact" allowing joint policing operations between the four countries was signed by then-Homeland Security Secretary Kirstjen Nielsen and her Central American counterparts in April — shortly before Nielsen was fired.

The Mexican situation is more complicated. The Mexican government's brief expansion of humanitarian visas in December really did make it easier for Central Americans to enter and move through Mexico to the US, so it would make sense for the Trump administration to be mad at them over that.

But the Mexican government reversed its visa policy as soon as it became clear how many migrants were coming in. And since then, it's been extremely cooperative — even deferential — with the US.

Metering only works because of Mexican officials stopping asylum seekers before they can set foot on US soil. Under the "Migrant Protection Protocols," Mexican officials have allowed the US to force nearly 9,000 Central Americans to return to Mexico and wait for their asylum cases to be resolved.

In January, as a large caravan of migrants prepared to cross into a US port in Texas, a group of Mexican law enforcement officials surrounded them and detained them at an empty factory, letting out only a few a day to seek asylum; when unrest broke out at the factory, the asylum seekers were dispersed on buses to towns farther from the border.

On a couple of occasions, Mexican officials have even **deployed the military** to the isthmus connecting Mexico and Guatemala to "contain" migrants.

Trump administration officials not named Donald Trump generally acknowledge Mexico's cooperation, even if they say they'd like Mexico to do more. Trump himself, however, appears to be unshakable in the belief he's held since 2015: that the government of Mexico is at fault for anyone arriving in the US without papers.

8) Will cutting off aid to the Northern Triangle countries help?

Almost certainly not.

It's not exactly clear what the parameters of the State Department's Saturday announcement that it was cutting off aid actually are — in particular, there seems to be confusion about whether it applies to contracts that have already been signed. But because the State Department (reportedly under pressure from the Office of Management and Budget, under Trump's acting Chief of Staff Mick Mulvaney) had been slow-walking aid from 2018, not to mention 2019, that's still hundreds of millions of dollars potentially lost.

Aid is traditionally seen as an important way to curb emigration, under the logic that people will be less likely to leave their countries if they're safer and more able to make a living there. (In practice, improving someone's financial situation can in the short term make them more likely to migrate, but security aid that reduces violence in a country has been shown to decrease emigration.)

Even Trump administration officials have endorsed this point of view — from former Homeland security secretary and Chief of Staff John Kelly, who bragged that the Trump administration was doing more than previous administrations to help the region, to CBP Commissioner Kevin McAleenan — now acting secretary of DHS — who responded to a previous Trump threat to cut off aid by **telling CBS** that the US needed to invest in Central America.

App'x 218
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A father waits with his daughter to board a bus that will take them out of Honduras to Guatemala — and from there to Mexico and (possibly) the United States. According to some estimates, the number of Hondurans and Guatemalans apprehended at the US/Mexico border this year will reach almost 1 percent of those countries' populations. | Orlando Sierra/AFP/Getty Images

If the aid cutoff includes security aid, that would likely be immediately counterproductive, because it would make it much harder for the US to conduct anti-smuggling and anti-trafficking operations in the region — and much harder for the governments of the Northern Triangle countries to do that themselves.

The aid cutoff also threatens to damage the US-Mexico relationship. The López Obrador government has maintained a rhetorical commitment to a "Marshall Plan"-style investment in Central America — and the US's rhetorical agreement that such development was necessary helped justify Mexico's cooperation on immigration crackdowns. With the aid cutoff, the Trump administration is sending the message that it doesn't actually agree with Mexico's vision for the region — just as it ramps up pressure on Mexico to do more to target Central American migrants as a way to help Trump.

9) What are other solutions?

The answer to this question depends on what you see as the problem. Immigration hawks see it as too many people coming into the US without papers whose asylum claims won't ultimately prevail; immigration doves see the problem as the conditions in Central America that migrants are fleeing, and the conditions in which they're held while in the US.

There are plenty of ideas in the former category. The problem is that the ideas are not getting the support they would need to actually happen.

The US would like to get Mexico to sign a "safe third country" agreement that would allow the US to deny asylum to Central Americans, but Mexico has no interest in that. The Trump administration wants to get Congress to deport Central American children without hearings and override the court settlement that prevents long-term family detention, but House Democrats aren't biting. The White House wants to change the intentionally generous "credible fear" standard in asylum screening interviews so that fewer people are allowed to stay and apply for asylum (increasing the risk that legitimate asylum claimants will get returned to danger), but the legal concerns about that are so intense that it might have to purge generally like-minded officials from the Department of Homeland Security to carry out the plan.

In the latter category, it's easy to point to things that the administration should *stop* doing, like keeping families outdoors in cage-like holding pens. A humanitarian agenda could also include more case management outside of detention, to increase the odds that families show up to hearings, or even broader access to counsel in immigration proceedings (which isn't guaranteed under current law).

But it's not clear how much money the administration would need to invest in order to take proper care of the families coming in now, or how quickly that could be done — and it's not clear how many more families are going to come in the coming months.

The old consensus that the US needed to help address the "root causes" of migration, by investing in the Northern Triangle countries and making it more appealing for people to stay, was never supposed to be an immediate solution to anything. Of course, Trump's view of migration makes it less likely that anyone will be able to *start* work on long-term solutions that might bear fruit down the road. It is almost certainly, in the meantime, going to get worse before it gets better.

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