



One Year Later: Where are the refugee mothers and children? June 22, 2015

One year ago, in June 2014, President Obama referred to the [unprecedented numbers](#) of children and families [fleeing violence](#) in Central America and arriving at the southern border as an "[urgent humanitarian situation](#)." However, the Administration's response has been anything but humanitarian. Instead, over the past year, the U.S. government has detained those who arrive, and forced them to have their claims for asylum heard in prison-like detention facilities. They have used expedited processing to remove mothers and children from the country as quickly as possible—with most, including children as young as toddlers, lacking access to counsel during deportation proceedings—and pursued policies designed to ensure that future asylum seekers are stopped before they make it to the U.S. border.

Today, the life threatening dangers these refugees face in the Northern Triangle countries of Central America have not diminished. In fact, recent United Nations High Commissioner for Refugees (UNHCR) statistics show that violence has led to a staggering [1,185 percent increase](#) since 2008 in asylum applications by Central Americans to countries in the region other than the U.S. What has changed is that their ability to access protection has declined significantly.

It doesn't have to be this way: The U.S. can respond to the situation facing these children and families and address the root causes of violence in Central America while still living up to our nation's long history as a nation that welcomes and protects refugees and other vulnerable populations.

This memo reviews the Administration's response to children and families over the past year and suggests a better path forward:

Rolling back protections for refugees

The Obama Administration and members of Congress have consistently refused to accept these children and families for what they are: Potential refugees with viable claims to U.S. protection. Under domestic and international law, the U.S. is required to protect—not punish—anyone expressing a credible fear of return. The government's own statistics show that [88 percent](#) of mothers and children in family detention centers currently have been found by U.S. officials to be bona fide asylum seekers. And yet the government has operated as if these refugees were instead unauthorized migrants who need to be deported as quickly as possible.

According to the U.S. Homeland Security Office of Inspector General, Customs and Border Protection [routinely refer individuals](#) requesting asylum for prosecution, in direct violation of the law. And instead of strengthening protection mechanisms and supporting immigration court procedures, the [Administration](#) and many members of [Congress](#) responded to the arrival of these vulnerable mothers and children in 2014 with efforts to roll back critical safeguards for unaccompanied children in the

Trafficking Victims Protection Reauthorization Act that ensure that children alone (from countries other than Mexico) are given full and fair access to the protections available to them in U.S. law, and basic due process protections. If enacted, these changes would have returned children to their home countries quickly, without a full screening to hear their claims and determine if they would face harm if sent back. Thanks to enormous efforts by advocates and House and Senate Democrats last year, the Administration and Congress did not roll back these protections, but the threat that it could do so in the future remains, particularly if the numbers of children rise significantly again. Republicans have already introduced a number of [bills and amendments](#) in 2015 that would roll back these important protections.

Fast track hearings and deportations

Our nation's immigration court system is adversarial, meaning that in deportation proceedings, a trained government attorney argues against the person in question. And yet, nearly [70 percent](#) of unaccompanied children in these proceedings do not have attorneys in immigration court. Imagine a child as young as 3 or 4 attempting to make their case for protection without help, and with a government attorney fighting to have them deported. Not surprisingly, children without counsel are [far more likely](#) to be deported, regardless of the merits of their case or the dangers to which they would return. While the Administration has made [limited efforts](#) to improve representation for these children, far more must be done to provide attorneys and facilitate pro bono representation by the private sector to cover the historic number of children and mothers in need.

The Administration has compounded the problem by placing all unaccompanied children's cases on a fast-track through "[rocket dockets](#)" that give children a very limited time to find attorneys and to prepare their cases. The driving principle has been to return these children as quickly as possible.

Finally, the U.S. immigration court system has been [significantly underfunded](#) for many years, while funding for enforcement has increased dramatically, leading to historic backlogs that pre-date the increase in numbers of children and families arriving in the U.S. As a result, adjudications of cases are long delayed, which is beneficial to no one.

Detention as a Deterrent

Despite [having ended large-scale family detention](#) in 2009 due to public pressure and a lawsuit, and after a review of the detention system overall, the Administration announced in June 2014 that it would expand the detention of parents arriving with children as a deterrent for further migration. Family detention in the U.S. has now expanded by over 3,000 percent. Asylum seeking women and children are held often without bond, in remote facilities, with limited access to attorneys. In addition to initially converting a training facility in Artesia, New Mexico that it later closed, the Administration has doubled capacity at the existing family facility in Berks County, PA, converted the Karnes County facility in Texas to house families (with plans to double its capacity), and has built the largest immigration detention center in the country: the 2,400-bed Dilley, Texas facility. The latter facilities were built in remote locations, far away from the public and public oversight.

Numerous [reports have documented](#) that family detention in any form is inhumane and damaging to children's health and development. Detention breaks down family structures, creates and exacerbates irreparable [trauma](#) for children and their parents, and their inability to access attorneys inhibits access to due process and the ability to make their asylum case. Furthermore, detention as a deterrent is a [violation of international and U.S. law](#), and is not an effective deterrent for refugees, as evidenced by

regional asylum application statistics. Families are still coming even though they know they may be detained for an indefinite period of time because they fear for their and their children's lives.

In addition, detaining families is extremely costly—[\\$343 per person per day](#) as per the President's fiscal year 2016 budget—and unnecessary, as existing alternative to detention programs have been proven to be effective, and cost only [\\$5.50 per day](#).

No concerted plan to address the root causes

While the administration requested [\\$1 billion](#) for Central America, essential assistance to a region that the U.S. has long neglected, it remains to be seen if Congress will fund it. Additionally, it is still questionable whether a significant portion of this funding will support development and humanitarian projects that protect children and families, rather than prioritizing security and economic development above all. Until these issues are addressed at home, unaccompanied children and families will continue to seek protection in neighboring countries and in the U.S.

The U.S. has also not acted in significant ways to address the short term humanitarian needs for those fleeing or to develop and implement reintegration programs for children returning to their home countries from the U.S. through deportation or voluntary return. Without projects that help with family reunification, skills training, school enrollment, and other basic needs, children returned to the same situations they left will feel they have no choice but to re-migrate. Ensuring that return is safe and sustainable will help break the dangerous cycle of migration.

Externalizing border security at the cost of protection

While the number of unaccompanied children and families arriving at our borders this year has decreased, the situation in the home countries has not changed. Migrants continue to flee the Northern Triangle countries of Guatemala, Honduras, and El Salvador in record numbers. However, fewer are arriving at the U.S. border because they are being intercepted along the way. The U.S. government has pressured and [encouraged governments](#) in Mexico and Central America to [tighten their borders](#) to ensure that children and families do not leave in the first place, and cannot transit through countries along the way. U.S. aid has been tied to the extent to which these countries are able to prevent their citizens from leaving.

As the number of apprehensions on the southern U.S. border has decreased, the number of apprehensions and deportations at the [southern border of Mexico](#) has increased proportionately. These children and families are being apprehended at Mexico's southern border and returned in [increasing numbers, without the screening](#) required under both international and Mexican law to determine if they have potential international protection claims, and are at risk if they are returned. As a result, thousands of children are prevented from accessing protection and are being returned to potentially life threatening situations.

In other words, the Administration has not dealt with these issues, it has simply pushed the problem south, where Americans cannot see it. These actions are a violation of the framework that was created and agreed to by the international community to protect those who are fleeing their countries to save their lives.

A better way forward

Solutions exist to deal with unaccompanied children and families fleeing violence in Central America in a humane and protective way. The U.S. has a long and proud tradition of welcoming refugees and the

Obama Administration and Congress must not destroy this legacy. The first step is to recognize the challenge at hand: This is about refugees.

To address the needs of refugees, the U.S. must:

- Maintain and support the international refugee protection framework, by recognizing that many of these children and families are potential refugees, and treating them as such.
- Properly identify and allow each person to tell his or her story to a judge or asylum officer.
- Provide access to attorneys, and meaningfully facilitate pro bono representation of these children by the private sector, and end the use of rocket docket.
- End family detention, and use low cost, effective alternatives when deemed necessary.
- Fully fund and resource the U.S. immigration courts to ensure that claims can be heard in a fair and timely manner.
- Prioritize efforts for long-term development and protection in foreign assistance to the region that will stem the tide of violence and help ensure the safety of children and families at home.
- Address current humanitarian needs by ensuring that any foreign assistance to governments in the region that includes support for, or references, border enforcement, be conditioned on adequate screening for asylum claims and full implementation of these governments' shared obligations under the Refugee Convention.
- Develop and implement a reintegration program in Central America to ensure that children returning can do so safely and in a way that is sustainable.

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