



## **The Border, Trafficking, and Risks to Unaccompanied Children— Understanding the Impact of U.S. Policy on Children’s Safety**

In the last decade, children and young families have become the face of migration at the U.S.-Mexico border. Tens of thousands of children have made the life-threatening journey from their countries alone; families have often come with small children—all to escape the violence from which they have no protection. No one wants these children to make this dangerous trip, or to see children torn from their mother or father’s arms. We want these children to be safe. More and more children and their families from Central America are making the trek to the United States, however, risking grave danger, as their desperation for a chance to be safe grows. Smugglers, traffickers, and other criminals often take advantage of this desperation among migrants, particularly unaccompanied children.

What can we do to protect children and minimize their risks? Current laws provide a strong framework for protection, but there is a movement to thwart these laws, as some people argue, without evidence, that the laws designed to protect children create incentives for exploitation by migrants. This briefing paper takes a closer look at that claim, examining how current policies that seek to block the entry of children and asylum seekers contribute far more to the humanitarian crisis at the border than existing laws designed to protect children. If anything, those laws need to be strengthened, and our humanitarian commitment to children renewed—just the opposite of what is happening today.

### **A Snapshot of Immigration Along the U.S.-Mexico Border**

Each year, millions of people cross back and forth between Mexico and the United States; the six busiest ports of entry along the U.S.-Mexico border recorded more than 328,000 entries a day in 2018,<sup>1</sup> which included people who work on either side of the border, visitors, business travelers, students, and many other immigrant and nonimmigrant border crossers. Of the roughly 125,000 people who presented themselves at the border who were found inadmissible (meaning people who did not have prior authorization to enter the country before arriving), nearly 50 percent were families and children who indicated fear and a desire to seek asylum. Although apprehensions between ports of entry have increased significantly in 2019, the numbers are still low in comparison to the past 20 years.

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<sup>1</sup> U.S. Department of Transportation, Bureau of Transportation Statistics, “Border Crossing Table Dashboard,” <https://explore.dot.gov/t/BTS/views/BTSBorderCrossingAnnualData/BorderCrossingTableDashboard?:isGuestRedirectFromVizportal=y&embed=y>, and Los Angeles Times, “5 Misconceptions About the U.S.-Mexico Border,” April 5, 2019. <https://www.latimes.com/projects/la-na-us-mexico-border-misconceptions/>

In short, millions of people cross the border legally each day; of the small percentage who are found “inadmissible,” many of them are seeking asylum.

Despite the historically overall low number of apprehensions at the border, the numbers of unaccompanied minors and families who present themselves at ports of entry or attempt to cross the border elsewhere continue to grow. Since 2014, more than 300,000 unaccompanied immigrant and refugee children have sought to enter the United States.<sup>2</sup>

These numbers are increasing rapidly because the Northern Triangle of Central America—Guatemala, El Salvador, and Honduras—remains a violent and dangerous place where people feel unsafe. Many people describe threats to their life or their children’s lives, fears of gang violence, extortion, forced recruitment into gangs, or murder when explaining why they chose to leave. Others face violence even closer to home—high incidents of domestic and child abuse plague these countries, and in many cases the governments are unable or unwilling to arrest or prosecute the abuser. Gender and sexual violence in the region, including violence against LGBTI individuals, is at an epidemic rate, with few prosecutions for such crimes. Many feel that they have no choice but to leave their countries.

## Understanding Trafficking at the Border

Recently, government officials have begun to raise the unproven specter of dangerous trafficking cartels dragging women and children across the border. Supporters of the proposed changes to immigration law argue that only harsh responses will stop people from reaching the border and that, in turn, will protect them from the dangers and risks of trafficking and other violence on the journey and at the border. While no one disputes that the journey north is dangerous, the causes of the increased risks of trafficking have been misstated.

Trafficking is the use of coercion or violence to force a person to work as a slave laborer, including, but not limited to sexual acts. It is hard to estimate how many victims of trafficking may be present in the United States, as trafficking is a crime that hides in the shadows, but [national agencies](#) fighting trafficking estimate that there are several hundred thousand cases of trafficking of all kinds each year taking place in the United States. However, relatively few of these victims are taken across an international border into the United States; most are U.S. citizens victimized inside the country.

Trafficking and smuggling are frequently confused, and the terms unfortunately are sometimes used interchangeably by the media or government officials. But under immigration law, smuggling is defined as a crime in which one party pays another to assist an individual in crossing the border. Smuggling involves a business transaction in which an individual agrees to pay for the smugglers’ services. The more dangerous the border crossing, the higher the fees smugglers charge, but many people may feel it is safer to use smugglers rather than to try to travel on their own. Failure to recognize the difference

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<sup>2</sup> The number first peaked in Fiscal Year (FY) 2014, with more than 68,000 child arrivals, and then declined for several years, but has increased each year since 2017, when 41,000 unaccompanied children entered, to 50,000 in FY 2018, to approximately 72,873 in FY 2019. Family groups, often including children under the age of 12, have also been on the rise, and have increased significantly within the last few years. In FY 2012, for example, U.S. Customs and Border Patrol apprehended 11,116 people who were traveling within family units (rather than alone or with unrelated people), a number which rose dramatically to 68,445 in FY 2014. By FY 2017, that number had increased to 75,622 people traveling with families, and by the end of FY 2019, the number had reached over 457,871 people who traveled as family members to the United States.

between smuggling and trafficking can lead to exaggerated and misleading claims about the prevalence of trafficking at the border and unhelpful policy responses.

About 50 percent of all trafficking victims in the United States are U.S. citizens or permanent residents. A study of human trafficking in [San Diego County](#)—hosting one of the busiest ports of entry in the country—found that 80 percent of the 450 victims surveyed were born in the U.S. And of those foreign born, very few had come across the border as trafficking victims. Most foreign trafficking victims arrive in the U.S. at ports of entry, including airports, with apparently valid visas or visas obtained by the traffickers through fraud. Kidnapping is not the most common tactic used by traffickers to procure victims. Psychological pressure and false promises are often used to lure victims—many victims believe they are coming to the U.S. for a legitimate job only to be forced into prostitution or other illegal activity. Traffickers thrive where people are desperate and face uncertain situations. In the U.S., many child trafficking victims are targeted because they are in the [foster care system](#).

### **Impact of U.S. Policies on Risks at Border**

Over the past decade, as the refugee flow at the U.S. southern border has increased, the government has mainly responded by trying to deter people from making the dangerous journey. Unfortunately, deterrence will not stop a refugee crisis. The U.S. has recently implemented policies that have left roughly 60,000 people, including large numbers of very young children, living on the streets on the Mexican side of the border, waiting for a

## **U.S. LAWS PROTECTING MIGRANT CHILDREN**

The Refugee Act of 1980 established that anyone present in the United States may apply for asylum, a humanitarian protection that offers a permanent home and a path to citizenship for people who have been persecuted based on religion, political opinion, race, nationality, or membership in a particular social group. Other laws and regulations ensure that even if someone does not qualify for asylum, they cannot be returned to their country if they are likely to be persecuted or tortured. Victims of trafficking and other serious crimes may be eligible for special visas based on the nature of the crime or when they have assisted law enforcement officials. None of these protections are automatic and many of the applications and adjudications needed to determine eligibility can be complex and time-consuming. U.S. laws have very high standards of proof, and many people who are legitimately afraid may not qualify for asylum. In the long run, the processes the U.S. uses to let people tell their stories, make their claims and get a fair day in court are as important as the protections themselves.

Unaccompanied and separated children often have unique protection needs. As with adults, determining the exact nature of a child's claim can be complicated, and it can be even more difficult because a young child may not have the capacity to fully explain or understand what has happened, or may find it difficult to trust adults, or may be too traumatized to remember events. Because children face unique challenges, policies and laws have developed over the years to provide them with further protections. Children are exempt from some restrictions on asylum eligibility, such as the one-year filing deadline, and their cases may be heard in an interview setting rather than an adversarial court process. Special laws also govern their care and custody. They may also be eligible for special immigrant juvenile status, if they have been abused, abandoned, or neglected.

## WHAT IS THE TVPRA

The Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) strengthens U.S. laws protecting trafficking victims. The TVPRA requires that all unaccompanied children must be screened for trafficking and other possible harms—something that was not being done before 2008. It also recognizes the vulnerability of child asylum-seekers by providing special procedures for children to apply for asylum and excluding them from the one-year asylum filing deadline, because, for many unaccompanied children, they may move from shelter to shelter or face other delays that would make it difficult to apply for asylum.

The TVPRA provides procedural protections for children in immigration proceedings. It is designed to require adjudicators and enforcement officials to take the extra steps needed to make sure that children are properly screened for protection concerns and placed in safest setting that is in their best interest.

chance to ask for protection in the United States. They face dangerous and unstable conditions, including exploitation and violence from the many criminal groups along the border. Mexican social services cannot support even a fraction of those waiting. Makeshift tent cities and children eating out of garbage cans are becoming the norm in cities like Tijuana, Matamoros, and Ciudad Juarez.<sup>3</sup>

The U.S. government has recently restricted access to ports of entry for people who wish to seek asylum. At many ports of entry, people wait weeks or months, under an informal system known as “metering,” to be given an opportunity to present themselves to a Customs and Border Protection (CBP) officer. Approximately 12,000 people, including babies and unaccompanied children, are currently waiting, living in crude shelters and on the streets, struggling to feed their families and using up limited savings, just for the chance to apply for asylum. Once they ask for asylum, most will be returned to Mexico to await a hearing date under the Migrant Protection Protocols (MPP)<sup>4</sup>. Numerous reports have found that these migrants are even more vulnerable, as desperation and poverty make them easy prey for all kinds of criminals. This is especially true for unaccompanied children. Recently, two unaccompanied children were murdered in Tijuana after leaving a children’s shelter, strangled and stabbed for little more than the thought that they had cell phones.<sup>5</sup>

The dangers migrants face on their journey are increasingly compounded by their treatment at the U.S.-Mexico border. As the U.S. turns migrants away, it puts them in even greater danger, contrary to our international commitments and our own laws that protect children and asylum seekers.

## Humanitarian Protection Does Not Create an Incentive for Illegal Migration

### The TVPRA is Not the Problem

Some critics of existing immigration laws have argued that they contain loopholes that make it easier for families and children

<sup>3</sup>KIND report: The Invisible Wall Obstacles to Protection for Unaccompanied Migrant Children at Along Mexico’s Southern Border, July 26, 2019, <https://supportkind.org/resources/the-invisible-wall-obstacles-to-protection-for-unaccompanied-migrant-children-along-mexicos-southern-border/>

<sup>4</sup> NPR, “Advocates Say President Trump’s Immigration Policy Is ‘A Tool of Cruelty’”, by Joel Rose, October 1, 2019 <https://www.npr.org/2019/10/01/765987523/advocates-say-trump-s-immigration-plan-creates-nightmarish-situations>

<sup>5</sup> The Guardian, “Tricked, Abducted, and Killed: The Last Day of Two Child Migrants in Mexico,” by Ed Vulliamy, February 16, 2019. <https://www.theguardian.com/world/2019/feb/16/tijuana-migrant-child-murders-mexico-us-asylum>

to abuse America's generosity, or that make it easier for traffickers and smugglers to lure people to the United States. Both types of claims exaggerate the impact of asylum and trafficking victim protection laws on illegal migration, while ignoring the impact of new, more punitive policies on human suffering at the border.

Access, a fair process, and limited detention are the kinds of requirements that critics refer to as loopholes—and yet they form the foundation of the system created to efficiently get to the bottom of the applicant's story and find out who needs protection and who can safely return to their country of origin. Laws that promote a fair process and increase efficiencies and reduce costs are not the cause of illegal migration.

The best illustration of this may be the response to the Trump Administration's efforts to slow illegal immigration. Over the course of the last three years, the Administration has implemented metering at the border, created the MPP program, separated parents and children, detained more people, including children, and for longer periods of time, and used regulations and policies to deny access and eligibility to asylum. Most recently, it signed agreements with Mexico and the Northern Triangle countries to permit the U.S. to return asylum seekers to these countries if they passed through without first applying for asylum. Cumulatively, these policies have not slowed the migration of children and families. As the 2019 data show, far more families are coming today than at the beginning of the Trump Administration, despite the restrictions imposed.

### **U.S. Laws Do Not Create an Incentive to Use Children as Pawns**

It is hard to ignore some of the claims being made by the Department of Homeland Security (DHS) that people are using their children as pawns, deliberately bringing them to the United States to avoid detention and removal. In years past, many parents would migrate to the United States, leaving their children with relatives to care for them. Today, amid growing violence in Central America, many parents do not believe it is safe to leave their children behind. Parents are constantly weighing the safety of their children against the dangers of the journey and choosing what they view as the best of bad options.

### **DHS Claims Regarding "Fake Families" and "Recycling Rings" Have Been Discredited or Can't Be Verified**

Former DHS Secretary Kirstjen Nielsen and Acting Secretary for DHS Kevin McAleenan have both made claims regarding "staggering" increases in trafficking of children, but the data do not support their claims. Frequently, DHS officials bolster percentages by relying on small samples or isolated incidents to justify extreme actions like family separation at the border.<sup>6</sup> For example:

- In June 2018, while defending family separation policies, then-Secretary Nielsen claimed that there had been a 300 percent increase between October 2017 and February 2018 of minors "trafficked" by unrelated adults to avoid detention. The actual number of cases, [according to an NBC investigation](#), represented an increase from 45 to 195 cases in which an unrelated adult was traveling with a child, which accounts for just half of one percent of the 31,000 people who crossed the border during that time. When government officials confuse trafficking and smuggling, it makes it difficult to assess how many of the children were victims of trafficking,

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<sup>6</sup> For more information on assistance to victims of trafficking, see U.S. Department of Health and Human Services Office of Trafficking in Persons Victims Assistance, <https://www.acf.hhs.gov/otip/victim-assistance>

how many were simply traveling with more distant but still related adults, and how many were traveling with unrelated adults.

- In June 2018, the Sector Chief for the Rio Grande Valley claimed that Border Patrol agents had identified 600 family fraud cases, but upon further breakdown, much of the fraud involved false documents, rather than false claims to parentage. Brothers, sisters, aunts, and uncles might have said they were parents, or might have simply been assumed to be the parent—in many cases the actual information exchanged can suffer from breakdowns in translation, manner of questioning, or misunderstandings. In the Rio Grande Valley example, of the 600 cases identified, only 63 were referred for prosecution, and only 27 of those were based on allegations of family fraud.<sup>7</sup>
- In June 2019, Acting Secretary Kevin McAleenan claimed before Congress that 15 percent of migrants screened in a [pilot DNA testing](#) program were found to be falsely claiming a family relationship to a child. Upon further examination, McAleenan admitted that the survey was both small, consisting of 109 persons, and not random, as testing was only conducted on family units for which an officer already suspected something was amiss. Upon further questioning, McAleenan acknowledged that he could not claim that the 15 percent was a representative sample.<sup>8</sup>
- In October 2019, ICE agents in El Paso announced another sweeping fraud investigation, claiming that over 200 fraudulent families had been discovered, as well as a multinational smuggling ring in which parents sold their children to create false families.<sup>9</sup> A careful review of the statement, however, indicates that only 19 children had been identified as in danger and in need of placement with government authorities. The other incidents appear to range from the use of false documents, to adults claiming to be a child. While the importance of this work should not be disregarded and every child should be protected, the promotion of the results appears to exaggerate the findings. No information from the government has indicated there has been any notable increase of children suspected to be in danger than there have been in years past.

### **“Recycling Rings” Have Not Been Proven**

Evidence of so-called “[recycling rings](#)” is equally suspect and may be nothing more than a single claim [repeated](#) over and over. In March 2019, then-Secretary Nielsen told Congress that DHS had uncovered multiple recycling rings in which children were placed with unrelated adults, crossed with them at the border, and upon release from DHS custody were then flown home to repeat the process with another unrelated adult. Neither Nielsen nor DHS provided follow-up information on this practice or quantified its frequency. In a White House meeting on trafficking at the border, a DHS official referred reporters to the U.S. District Attorney’s Office in Charleston, South Carolina, which is said to have brought charges against a woman for traveling to Guatemala 13 times with children as part of a recycling ring.<sup>10</sup> Efforts

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<sup>7</sup>NBC News, “Experts Cast Doubt on DHS Claim that Traffickers are Posing as Families at the Border,” by Tim Stelloh, June 21, 2018. <https://www.nbcnews.com/storyline/immigration-border-crisis/experts-cast-doubt-dhs-claim-traffickers-are-posing-families-border-n885241>

<sup>8</sup> Ibid.

<sup>9</sup> ICE Press Statement, October 17, 2019, <https://www.ice.gov/news/releases/ice-hsi-el-paso-usbp-identify-more-200-fraudulent-families-last-6-months>

<sup>10</sup>BuzzFeed, “The Homeland Security Chief Says, Without Evidence, Children are Being Recycled at Border,” by Adolfo Flores, March 6, 2019. <https://www.buzzfeednews.com/article/adolfoflores/nielsen-children-recycling-rings-border-immigration>

to verify this claim have failed to yield any additional information. Notably, there are no recent reports of an increased number of children referred for federal services designated for victims of human trafficking.

In April 2019, the DHS Homeland Security Advisory Committee's CBP Families and Children Care task force issued an interim emergency report listing the recycling of children in its finding of facts, but again with no evidence to support the claim.<sup>11</sup> In October 2019, ICE published data indicating that less than 1 percent of families in the El Paso sector were not parents with children<sup>12</sup>. ICE's own data proves the problem does exist, but not nearly at the level it is reporting. Immigration practitioners, including KIND staff, have seen no credible evidence that this is a common practice.

**It is important to note that protecting children should always be a law enforcement priority, and yet the government owes it to the public to be clear and precise about what the outcomes of investigations really are. Inflating numbers to justify policies does not keep children safe—it merely obscures the real problems that we must work together to resolve. Rescinding or changing the Trafficking Victims Protection Reauthorization Act will eliminate important protections for children and leave them at higher risk for exploitation.**

### Can More Be Done to Protect Children and Stop Illegal Migration?

In a recent report to Congress, CBP acknowledged that its entire strategy for detecting, deterring, and thwarting border crossers was based on the assumption that it was dealing with single, adult men from Mexico who were attempting to enter the United States to work.<sup>13</sup> In contrast, the rise of child and family migration has left CBP officers feeling overwhelmed and unprepared. The Homeland Security Advisory Committee recently recommended that the U.S. acknowledge that there is a humanitarian crisis, and that the U.S. should use more emergency management techniques at the border. Building a humanitarian response, one that both protects America's interests and treats migrants with dignity, is possible, but requires a commitment of resources and political will. In the short-term, we must address the needs of the people presenting themselves at the border—their physical, mental, and legal, protection needs. Just as we do not blame people for seeking refuge when a hurricane strikes, we cannot blame people for seeking protection in the one country in the region that offers a real chance for safety and opportunity. Actions that can be taken now and in the future to improve the situation at the border include:

- Reversing policies that harm children, such as metering at the ports of entry, the Migration Protection Protocols, and family separation.
- Hire child welfare professionals to screen children at the border. Professionals with training on how to conduct trauma informed interviews, have expertise in human trafficking, and implementing the best interest of the child principle will ensure that no child is left with a dangerous adult. Current practices of having border agents with no expertise screening children is troubling and must be changed.

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<sup>11</sup> Final Emergency Interim Report, CBP Families and Children Care Panel, Homeland Security Advisory Council, April 16, 2019, page 7.

<sup>12</sup> ICE Press release, "ICE HSI El Paso, USBP identify more than 200 'fraudulent families' in last 6 months", October 17, 2019, <https://www.ice.gov/news/releases/ice-hsi-el-paso-usbp-identify-more-200-fraudulent-families-last-6-months>

<sup>13</sup> Department of Homeland Security Border Security Metrics Report, February 26, 2019, [https://www.dhs.gov/sites/default/files/publications/ndaa\\_border\\_metrics\\_report\\_fy\\_2018\\_0\\_0.pdf](https://www.dhs.gov/sites/default/files/publications/ndaa_border_metrics_report_fy_2018_0_0.pdf)

- Implementing significant reforms in child safety and care while in CBP custody, including mandatory medical screenings, child friendly facilities, and enhanced independent oversight.
- Withdrawing regulations that harm children, such as the rule that permits long-term detention of children and families. Instead, realign resources to support families through the provision of social services that help families to prepare their cases, support their well-being while awaiting the outcome of their case, and appear for all court proceedings.
- Increase efforts to create safe and functioning governments in the Northern Triangle countries. Invest in programs that create economic opportunity and stability for communities, stamp out corruption, and reinforce the rule of law.
- Withdrawal from “safe third country” agreements with Mexico and Central American governments. These agreements limit children’s ability to ask for protection when their own government is unwilling or unable to protect them. All children should have a fair opportunity to ask for protection. Instead, the U.S. should work with these countries to increase capacity to manage migration flows humanely, including expanding asylum and other humanitarian protection frameworks.
- Continue to work across the region to address both human and drug trafficking, creating regional solutions to end violence and offer people a vision of greater opportunity and safety within their own countries.

Finally, we must reject rhetoric that suggests it is a kindness to turn people away at our borders. There is nothing humanitarian about forcing people to wait for months in dangerous conditions in Mexico for an asylum hearing or shirking our own responsibilities to consider their asylum claims by sending them back to third countries. The United States has a long history of freedom and justice. We must appropriately support our robust judicial system to ensure due process and an efficient way to determine if a child needs humanitarian protection or if it is in their best interest to return to their country of origin.