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Session 503 | Crisis at the Border: Accounts from the Frontline

Since 2013, there has been an uptick in the number of migrants coming to the United States southern border from the “Northern Triangle,” a region which includes the countries of Guatemala, Honduras, and El Salvador. A large number of the migrants include families and unaccompanied minors. Under the current administration, the migration from the Northern Triangle has been called a “national emergency.” This panel will discuss the push/pull factors causing the migration, regulatory and policy changes implemented including the “zero tolerance” policy and Migration Protection Protocols, and efforts being made to assist the migrants seeking asylum and other humanitarian status in the United States.

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Crisis at the Border: Accounts from the Frontline

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In 2013, there was an uptick in unaccompanied minors and families arriving at the southwest border. The majority of children and families were fleeing violence in Guatemala, Honduras, and El Salvador—a region of Central America known as the “Northern Triangle.” Children from the Northern Triangle consistently cite gang or cartel violence as the primary motivation for fleeing. The number of unaccompanied children arriving at the southern border reached a peak in 2014. The number of migrants reached a high in May 2019. A number of push/pull factors are at the root of migration from the Northern Triangle. Many of these factors are related to the historic geopolitical relationship between the United States and countries in the region. The number of migrants from the Northern Triangle have created a crisis of resources, in part due policies implemented by the United States.

I. Push and Pull Factors

The migration of nationals from countries in the Northern Triangle to the United States are being driven by push/pull factors. Pull factors are the attractions of a new place, like economic and educational opportunities, religious and political liberties, and the presence of family, friends, or community. Push factors are forces driving people to migrate and can include war; the drug trade; political, communal, or sexual violence; famine and drought; environmental degradation and climate change; and ordinary, soul-eating poverty.

The push/pull factors affecting migration are resulting in the greatest displacement in known history. The total number of refugees is estimated at 25.4 million; another 41.3 million are internally displaced, meaning they have been forced by conflict or violence to move elsewhere within their home country. As many as 20 million more are displaced by natural disaster. Roughly 28 million people were newly displaced just last year, according to the Internal Displacement Monitoring Centre in Switzerland.¹

There are several major push factors influencing the migration from the Northern Triangle. The first is political repression and violent corruption. A second driver is the impact of criminal violence. Third, climate change and environmental degradation force migration and prevent many from returning. These factors are related to the historic impact of United States foreign policy in the region.

A. Political Repression and Violent Corruption

Political repression and violent corruption is a major factor causing migration from Northern Triangle countries to the United States. Much of instability is a result of the United States interventions within the region.

1. Honduras

Honduras has endured decades of instability resulting in political persecution and violence. The United States has been instrumental in the support of dictatorial governments and undermining democratically

¹ David S. Bernstein, The U.S. Border Crisis is Just the Tip of an International Problem, WGBH News, (Aug. 19, 2019) (<https://www.wgbh.org/news/commentary/2019/08/19/the-us-boarder-crisis-is-the-tip-of-an-international-problem>).

elected governments in the country. United States interference started as early as in 1911 when the United States acted to depose the president of Honduras after the country borrowed money from European banks instead of J.P. Morgan.

Despite such interventions, Guatemala remained a poor but peaceful country through most of the 20th century. The social order declined in the 1980s when the United States supported a military-run government there that routinely "disappeared" and tortured its opponents. The CIA used the country as a training ground for the Contras it backed, who were then fighting the Sandinistas across the border in Nicaragua (who had recently deposed their own U.S.-backed dictator). Many who protested were killed by police-sponsored death squads, which had never before been seen in Honduras.

The events of the 1980s resulted in a wave of migration from Honduras. Many of those migrants absorbed gang culture in Los Angeles and were subsequently deported back to Honduras, resulting in much of the gang related criminal violence impacting the region.

In 2006, José Manuel Zelaya became president of Honduras. Although he'd run on a conservative platform, he promptly launched a program of economic and political reforms to ease tensions in the country. These included free public education, an increased minimum wage, low-interest loans for small farmers, the inclusion of domestic workers in the social security system, and a number of important environmental regulations. The United States perceived Zelaya as a supporter of leftist leaders like Hugo Chavez of Venezuela. Wealthy Hondurans who detested him read signals from Washington and executed a political coup on June 28, 2009.

In a cable to the State Department, the US ambassador to Honduras called the action "an illegal and unconstitutional coup." The United Nations, the European Union, and the Organization of American States agreed and demanded Zelaya's return. However, the United States government supported the action. Several members of Congress flew to Honduras to congratulate the new regime. Secretary of State Hillary Clinton, who saw the coup as a win over anti-American forces in the hemisphere, became one of its chief promoters.

In the 10 years since then, the regime has held power through electoral fraud and has tolerated waves of violence in which dozens of activists, especially environmental protesters, have been murdered.

The police, despite having all the facts, do next to no-thing. Violence and corruption have only become more intense under Honduras's current president, Juan Orlando Hernández, who returned to office after a contested election in 2017. Although the Organization of American States called for a redo, the Trump administration hastily recognized Hernández.²

2. Guatemala

In 1944, Guatemala transitioned from a dictatorship to an electoral democracy. President Jacobo Arbenz proclaimed his determination "to convert Guatemala from a backward country with a predominantly feudal economy into a modern capitalist state." Arbenz's desires put him in conflict with the Boston-based United Fruit Company, which owned vast plantations in Guatemala. In June 1954,

² Stephen Kinzer, Who's responsible for the border crisis? The United States, Boston Globe (Jun. 20, 2019) (<https://www.bostonglobe.com/ideas/2019/06/20/who-responsible-for-border-crisis-the-united-states/K0qVm5AVf6SOaZGK1KwheO/story.html>)

President Dwight Eisenhower sent the CIA to overthrow him. On June 27, 1954, after an intense campaign that involved everything from radio propaganda to aerial bombardment, the United States deposed Arbenz. Several years later, civil war erupted resulting in the death of more than 200,000 people, most of them Maya Indians. Dictatorships flourished in the 1960s with the economic and military backing of the United States.

During the 1970s and 1980s, Central Americans began to rise up to dictatorial governments in the region. The response from the United States was stronger support of right-wing military regimes, many of which implemented death squads. In Guatemala, the United States supported successive regimes in genocidal wars on the indigenous Mayan majority.

B. Criminal Violence

Criminal violence is also a major push factor for migrants fleeing the Northern Triangle. The United States government support for repressive regimes in Honduras and El Salvador in particular, drove thousands of the inhabitants of those countries to migrate here, where their children were recruited into the very U.S. gangs now devastating their countries.

MS-13 had its roots in Los Angeles, California, among Salvadorans who had fled the U.S.-backed dictatorships of the 1970s and 1980s. When young people who grew up in Los Angeles returned to El Salvador at the end of that country's civil war, MS-13 went with them. What had begun as a neighborhood street gang created to protect Salvadoran youth in Los Angeles transformed into a vast criminal enterprise in El Salvador. The 18th Street gang, or Calle 18, which also came out of Los Angeles, following a similar path. In the late 1990s, the U.S. deported hundreds of early MS-13 and 18th Street gang members back to Central America, where they created offshoots and grew more powerful.³

The gangs of the Northern Triangle engage in extortion and killings driving the current migration from the region. Many young people in the Northern Triangle face the choice of joining a gang or death, driving them to flee to the United States.

Murder rates have skyrocketed. According to World Bank figures, in 2016 (the latest year available), El Salvador had the highest murder rate in the world, 83 homicides per 100,000 inhabitants. Honduras took second place with 57 per 100,000, while tenth place went to Guatemala, with 27.⁴

Corruption and drug trafficking have flourished as the drug cartels. Extortion is rampant. For public transportation, anyone who operates a taxi or a bus must pay a daily tax amounting to 30% to 40% of the driver's income. Since 2010, more than 1,500 Hondurans working in transportation have been murdered—shot, strangled, cuffed to the steering wheel and burned alive while their buses are torched. If anyone on a bus route stops paying, gangs kill a driver—any driver—to send a message.⁵

C. Climate Change

³ Cindy Carcamo, Is there really a border crisis?, L.A. Times (Oct. 23, 2018) (<https://www.latimes.com/nation/la-fg-central-american-caravan-explained-20181023-story.html>)

⁴ World Bank, Data, Intentional homicides (per 100,000 people) (https://data.worldbank.org/indicator/VC.IHR.PSRC.P5?most_recent_value_desc=true).

⁵ Rebecca Gordon, How the U.S. Created the Central American Immigration Crisis, Common Dream (Aug. 19, 2019) (<https://www.commondreams.org/views/2019/08/15/how-us-created-central-american-immigration-crisis>).

An additional push factor, which will have a greater impact in the future, is that of climate change. The Northern Triangle has long been subject to periods of drought and flooding as part of a natural alternation of the El Niño and La Niña phenomena in the Pacific Ocean. But climate change has prolonged and deepened those periods of drought, forcing many peasants to abandon their subsistence farms. Some in Guatemala are now facing not just economic hardship but actual starvation thanks to a heating planet. All along a drought corridor that runs from Nicaragua through Guatemala, the problem is a simple lack of water. In El Salvador, many people now spend their days in search of enough water to keep their families alive. Even where river water is available, the price—in money or sex—extracted by the gangs for using it is often too high for most women to pay, so they are forced to rely on distant municipal taps. While El Salvadorans live with strict water rationing, the U.S.-based multinational Coca Cola is exempt from water consumption rules.

In Honduras, on the other hand, the problem is often too much water, as rising sea levels eat away at both its Atlantic and Pacific coasts, devouring poor people's homes and small businesses in the process.⁶

A 2014 report noted that the highlands of Guatemala were vulnerable to climate change. In the years before the report was published, three hurricanes caused more damage than the previous four decades' worth of public and private investment in the national economy. Increasing fluctuations in temperature and unpredictable rainfall would destroy crops. The effect was that grain and vegetable harvests that once produced enough food to feed a family for close to a year now lasted less than five months.⁷

II. Actions Exacerbating the Border Crisis

The number of apprehensions at the border is increasing as a result of the wave in migration from the Northern Triangle. In 2018, CBP reported 225,570 apprehensions. In May 2019, CBP reported 132,887 apprehensions at or near the border.⁸ While the number of migrants could be managed, the United States government has exacerbated the situation by implementing a series of policies which are intended to discourage potential migrants. As a result, the southern border of the United States is perceived as an area in crisis.

A. Asylum Ban

On November 9, 2018, President Trump issued a proclamation that, in combination with a rule promulgated by DHS and DOJ, bars individuals from seeking asylum who enter the United States from Mexico between ports of entry.^{9 10} The proclamation guts key due process protections for asylum seekers, which permits the right to seek asylum regardless of where the asylum seeker entered.

On July 16, 2019, the Trump administration issued a joint interim final rule which makes all individuals who enter, attempt to enter, or arrive to the United States across the southern border ineligible for

⁶ *Id.*

⁷ Jonathan Blitzer, Dispatch How Climate Change Is Fueling the U.S. Border Crisis, *The New Yorker* (Apr. 3, 2019) (<https://www.newyorker.com/news/dispatch/how-climate-change-is-fuelling-the-us-border-crisis>).

⁸ Dara Lind, The border is in crisis. Here's how it got this bad., *Vox* (<https://www.vox.com/2019/4/11/18290677/border-immigration-illegal-asylum-central-america-mexico-trump>).

⁹ Proclamation 9822 of November 9, 2018, Addressing Mass Migration Through the Southern Border of the United States, 83 FR 57661 (Nov. 15, 2018).

¹⁰ Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for Protection Claims, 83 FR 55934 (Nov. 9, 2018)

asylum if they have transited through at least one country outside of their country of origin, and have not applied for protection in that country.¹¹

On July 24, 2019, the U.S. District Court for the Northern District of California issued an order enjoining the government from implementing this Rule pending final judgment or further order from the Court. On August 16, 2019, the Ninth Circuit limited the injunction only to the Ninth Circuit, thus allowing the "third country transit asylum ban" to go into effect outside of the Ninth Circuit in the border region of New Mexico and Texas. The rule is currently being litigated in both the Northern District of California and in the District Court for the District of Columbia.

B. Remain in Mexico/Migrant Protection Protocols

On January 24, 2019, DHS announced it would begin implementing "Remain in Mexico," a new policy that would force individuals arriving at the U.S. southern border who are fleeing violence and persecution in their home countries to remain in Mexico pending an asylum hearing before a U.S. immigration judge. DHS has dubbed this plan, the "Migrant Protection Protocols."¹² Remain in Mexico dramatically alters processing of asylum claims at the U.S. southern border and makes it far more difficult for asylum seekers to receive a fair and meaningful review of their claims as required under both U.S. and international law.

C. Family Separation and Zero Tolerance Policy

In April 2018, the Trump administration implemented a "zero tolerance policy" resulting in the widespread separation of parents and children arriving together at the U.S. southern border between ports of entry. The "zero tolerance policy" mandated the prosecution for illegal entry of everyone apprehended between ports of entry, including asylum seekers. Under this directive, while parents in federal custody underwent criminal prosecution, the administration took away their children without any clear requirement of eventual reunification. On June 20, 2018, President Trump issued an Executive Order (EO) purporting to address the family separation crisis that it created, by expanding the use of family detention, while reaffirming his commitment to a "zero tolerance" policy of border prosecutions, even for those who lawfully claim a fear of persecution and are entitled to seek asylum in the United States.^{13 14 15} Subjecting children and their families to prolonged detention, however, is harmful, traumatic, and impedes due process. Both family separation and family detention are inhumane practices that create severe due process barriers: the administration should end these policies without delay.¹⁶

III. Conclusion

¹¹ Asylum Eligibility and Procedural Modifications, 84 FR 33829 (Jul. 16, 2019).

¹² USCIS, PM-602-0169, Guidance for Implementing Section 235(b)(2)(C) of the Immigration and Nationality Act and the Migrant Protection Protocols (Jan. 28, 2019).

¹³ Executive Order 13841 of June 20, 2018, Affording Congress an Opportunity To Address Family Separation, 83 FR 29435 (Jun. 25, 2018).

¹⁴ DHS, Fact Sheet: Zero-Tolerance Prosecution and Family Reunification (Jun. 23, 2018).

¹⁵ CBP, CBP's Statement on Implementing the President's Executive Order Affording Congress the Opportunity to Address Family Separation (Jun. 21, 2018).

¹⁶ OIG, HHS, HHS OIG Issue Brief, OEI-BL-18-00511, Separated Children Placed in Office of Refugee Resettlement Care (Jan. 2019).

Push factors driving migration from the Northern Triangle region is closely connected to United States foreign policy in the region. The United States support for dictatorial regimes over democratically elected governments has resulted in systematic persecution and violence. The push factor of gang violence was also an effect of United States foreign policy. Migrants fleeing political situations were later recruited by gangs in the United States. Those gang members were able to build large criminal enterprises after being deported by the United States back to their countries in the Northern Triangle. Climate change is also significant push factor, driving many subsistence farmers to seek better economic opportunity in the United States.

The migration crisis at the border has been exacerbated by policy decisions of the current United States government. The zero tolerance policy separates children from parents. The asylum ban and Migration Protection Protocols deprive migrants of the ability to seek asylum.



HHS/OIG Oversight of HHS Care and Custody of UAC

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Inspector General Act

- The Office of Inspector General's duties and responsibilities under the IG Act of 1978 –
 - Conduct audits and investigations related to the programs and operations of HHS
 - Promote economy, efficiency, and effectiveness of such programs and operations
 - Prevent fraud, waste, and abuse in such programs and operations





Inspector General Act

- OIG is statutorily independent –
 - Department cannot prevent or prohibit OIG from carrying out any audit or investigation or issuing any subpoena
 - The IG must obtain legal advice from its own legal counsel
 - OIG submits semi-annual reports to Congress, highlighting the results and findings of its audits and evaluations





HHS/ORR

- The Office of Refugee Resettlement
 - An agency within the Administration for Children and Families, operates the Unaccompanied Alien Children (UAC) program
 - The UAC program serves children who arrive unaccompanied or who are separated at the border
 - Children leave the UAC program when placed with a sponsor, turn 18, or immigration status otherwise is resolved





OIG Oversight

- Pursuant to the IG Act, OIG —
 - Conducts audits of health and safety standards at ORR facilities and their use of grant and contract funds
 - Conducts evaluations of ORR's oversight over program operations, such as reunification and health/safety
 - Conducts criminal investigations of Federal crimes committed against children while in ORR custody





OIG Response to ZTP Crisis

- Following revelations in Spring-Summer 2018 that the U.S. Government's Zero Tolerance Policy was resulting in an increased number of children being transferred to ORR custody, OIG planned and executed an unprecedented national program of site visits to identify and report health and safety and other program vulnerabilities.





OIG Response to ZTP Crisis

- In August and September 2018, OIG –
 - Conducted 2-3 day site visits at 45 of 102 ORR-funded facilities
 - Each site visit team had at least one auditor, one investigator, one attorney, and one evaluator
 - More than 200 OIG employees participated, many of them volunteers





OIG Response to ZTP Crisis

- During the 2018 site visits, the OIG teams conducted visual inspections, interviews, and document reviews related to:
 - reunification of children
 - employee background checks and qualifications
 - medical and mental health services
 - facility security
 - protecting children from abuse/neglect





Recent OIG Findings

- Separated Children (OEI-BL-18-00511)
 - Thousands of children were separated and released prior to the June 26, 2018 Ms. L. court order
 - Ensuring that the certified Ms. L. class list was accurate was an ongoing process
 - Separations continued after court order to curtail separations, but with limited information from DHS as to the reason for the separations





Recent OIG Findings

- Challenges Addressing Mental Health Needs of Children in HHS Custody (OEI-09-18-00431)
 - Facilities reported that challenges employing mental health clinicians resulted in high caseloads and limited their effectiveness in addressing children's needs.
 - Facilities also reported challenges accessing external mental health providers and transferring children to facilities within ORR's network that provide specialized treatment.
 - Policy changes in 2018 exacerbated these concerns, as they resulted in longer stays in ORR custody and a rapid increase in the number of younger children—many of whom had been separated from their parents after entering the United States.





Recent OIG Findings

- The Tornillo Influx Care Facility (A-12-19-20000)
 - ORR regulations require that all staff undergo FBI fingerprint checks, State criminal history checks, and child abuse/neglect checks
 - Tornillo was not conducting FBI checks and ORR was unaware of this non-compliance
 - ORR *generally* requires a 1:12 clinician-to-child ratio
 - The ratio at Tornillo was 1:55
 - Tornillo was closed to children in January 2019



Recent OIG Findings

- Required Background Checks and Challenges in Hiring, Screening, Retaining Employees (A-12-19-20001)
 - In general, UAC facilities met background checks and qualification requirements designed to keep individuals who may pose a risk to the safety and well-being of children from having direct access to children.
 - Some facilities did not have evidence of required FBI or CPS background check results
 - Over half of the facilities we allowed employees to begin employment before receiving the results of background checks
 - Most facilities hired mental health clinicians who met program education requirements; however, many facilities hired case managers who did not.
 - Facilities had difficulty maintaining required staffing ratios because of challenges experienced in screening, hiring, and retaining qualified employees.

