

Refugee Council USA

Central America: Key Policy Recommendations

September 30, 2016

Overview. Although the migration of individuals from Central America to the United States is not a new phenomenon, the United States has witnessed an exponential increase in this migration in recent years, coinciding with pervasive and ever-increasing violence in the Northern Triangle of Central America (NTCA).¹ Persons from the NTCA have long been compelled to migrate by a complex set of often-interlinked factors, which include family separation, poverty, lack of opportunities, and abuse or neglect. But most of these factors, such as poverty, do not account for the recent increase in migration and displacement. As legal aid providers, social workers, pastoral care workers, and others in routine contact with persons from the NTCA began to note an increase in reporting of violence as a principal driver of flight, the issue has more recently been monitored by the United Nations High Commissioner for Refugees (UNHCR). In an early 2014 report, the UNHCR stated that “the violence and insecurity within El Salvador, Guatemala, Honduras and Mexico, as well as across their borders, have led to the displacement of children and others in the region.”² According to the UNHCR, from 2008 to 2014, there was a 1,185% increase in asylum applications filed in Belize, Costa Rica, Mexico, Nicaragua, and Panama by individuals originating from El Salvador, Guatemala, and Honduras.³ Although still a mixed migration flow, this is predominately a refugee population.⁴

Members of Refugee Council USA (RCUSA) – the leading coalition of U.S. organizations focused on refugee protection – encourage U.S. Government action in the region that strengthens access to asylum and expands protection across the region. In this document, RCUSA primarily focuses on recommendations that would maximize the positive impact of U.S. asylum, resettlement, and temporary protection for this population. Included are recommendations for the Department of State (DOS), the Department of Homeland Security (DHS), and Congress regarding the implementation of the Central American Minors (CAM) program, refugee resettlement to the United States from the region, and the designation of Temporary Protected Status for this population. In addition, RCUSA also puts forth recommendations to the wider U.S. Government and to members of Congress related to strengthening protection efforts and access to asylum.

Strengthen the asylum system within the United States. Refugee protection is often compromised by the use of detention to deter migration. Persons from the NTCA who are apprehended at the U.S.-Mexico border first encounter DHS Customs and Border Protection agents or officers, or DHS Immigration and Customs Enforcement officers if within U.S. borders. The emphasis DHS has placed on detention has resulted in asylum seekers, including families, being detained and placed in removal proceedings. These individuals face a long legal process and overwhelming challenges in securing legal information, orientation, and representation. Even those who secure representation face wide geographic disparities in asylum

1 The Northern Triangle of Central America is made up of Guatemala, Honduras, and El Salvador.

2 The United Nations High Commissioner for Refugees (UNHCR), “Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection,” (Washington, DC: UNHCR, 2014), 54.

3 UNHCR Statistical Online Population Database, United Nations High Commissioner for Refugees (UNHCR), Data extracted: 2 July 2015, available at http://popstats.unhcr.org/en/asylum_seekers.

4 A 2014 study conducted by the UNHCR on children fleeing Central America and Mexico found that “58 percent of 404 children interviewed for [the] study were forcibly displaced because they suffered or faced harms that indicated a potential or actual need for international protection.” UNHCR, Children on the Run at 6.

approval rates. There are numerous other individuals who are legitimately denied asylum but have serious protection risks if deported. The U.S. Government should partner with civil society at every stage of the process to facilitate humanitarian support and legal services to persons from the NTCA who are seeking asylum, peace, and safety. Specifically, the U.S. Government should:

- Ensure legal orientation and government-funded legal representation for NTCA asylum-seekers and unaccompanied children seeking SIJS or other forms of relief;
- Start with the presumption that individuals should not be detained during removal proceedings, particularly those seeking asylum, and seek to employ humane, effective, and less costly alternatives, such as release on their own recognizance, release after paying a fair bond, or release to a community-based alternatives to detention program;
- Adhere to the “best interest of the child” standard in all procedures, protocols, mechanisms, and decision-making impacting children’s lives;
- Ensure that application of the refugee definition is informed by a correct understanding of country conditions and is in line with international doctrinal standards by increasing trainings for U.S. Citizenship and Immigration Services (USCIS) asylum officers and immigration judges on those standards; and
- Grant Temporary Protected Status to persons from the NTCA who are already in the United States.

Strengthen the implementation of the Central American Minors program. The recent expansion of the CAM program, which is the in-country, U.S. resettlement program for certain eligible children from the NTCA, is a critical way that the United States takes direct responsibility in a wider regional child protection response for Central American children facing protection threats in their home countries. The CAM program originally allowed an eligible parent in the United States (“anchor parent”) to apply for the following relatives in the NTCA: (i) qualifying children, (ii) biological parent of the qualifying child if he or she is legally married to the eligible U.S. parent, and (iii) unmarried children of the in-country spouse or qualifying child (if under age 21). The CAM program allows these individuals to be admitted to the United States as refugees through the refugee resettlement process or as parolees through humanitarian parole. The recent CAM program expansion will broaden those considered eligible to include the anchor parent’s in-country children who are married and/or over age 21, the caregiver of the qualifying child if he or she is related to the anchor parent, and an in-country biological parent of the applicant (even if he or she is not married to the U.S. anchor parent).

While NGOs welcomed the CAM program and its recent expansion, they have recognized several program obstacles that need to be addressed. First, in-country processing programs have inherent safety risks that require continued vigilance and ongoing safeguards against persecutors. Unlike refugees who cross international borders to seek safety, those applying for in-country processing continue to live in the dangerous situations from which they are trying to flee. In the case of the CAM program, the criteria for eligibility remain extremely narrow and excludes many individuals from protection who face imminent danger, such as threats by criminal actors, police, military, or gangs. Second, resettlement agencies, which already face significant obligations due to federal program activities, have not received direct funding to process Affidavits of Relationship (AORs). Additionally, there is no federal funding available for services for those admitted as parolees. As a result, the capacity of NGOs to process CAM requests from parents in the United States has not kept up with the need. In one RCUSA member’s Houston office, a senior supervisor must set aside one day per week to try to keep up with the CAM program application demand. Funding for

staff dedicated to processing CAM program applications would allow a much greater number of AORs to be processed. Most recent figures show that over 9,000 applications have been submitted through the program. Third, and finally, the implementation of the CAM program has demonstrated that many persons from the NTCA who come forward for consideration for refugee resettlement are not being granted refugee status, but humanitarian parole. While this removes them from imminent harm, it neither makes them eligible for refugee benefits nor does it provide certainty for ongoing protection beyond the time of their temporary parole. To help address the above concerns, RCUSA recommends the U.S. Government:

- Facilitate physical protection through the expanded use of emergency transit centers and safe houses, while ensuring that these centers do not become long-term detention facilities, and wherever possible, expedite the process to reduce risks to people still living in danger;
- Provide transportation and safe shelter for program-eligible children and families who do not live in the capital cities where processing takes place;
- Provide persons granted humanitarian parole with travel loans to facilitate their timely departure from Central America;
- Provide program-eligible individuals with fee waivers to cover the cost of filing for an Employment Authorization Document;
- Provide reception and placement services for children paroled into the United States through the CAM program to the same extent as children admitted as refugees;
- Approve processing of CAM AORs by legal service providers and immigration legal clinics that are in partnership with resettlement agencies; and
- Provide administrative funding for all entities approved to process CAM AORs to increase processing capacity.

Strengthening region-wide resettlement to U.S. program. Refugee resettlement to the United States is a critical element of the protection response. Beyond the CAM program, RCUSA applauds the recently announced expansion of in-country processing for all NTCA refugees and the Protection and Transfer Arrangement (PTA) between the government of Costa Rica, UNHCR, and IOM. Although we welcome the introduction of the PTA, we anticipate the need will be greater than the PTA can accommodate, which can host a maximum of 200 individuals at a time. However, access to in-country processing remains unachievable to many forced to flee their countries before or while making such an application. Furthermore, even with streamlined procedures, refugee processing is a slow and cumbersome process. In-country resettlement applicants in immediate danger are jeopardized as they transit to interviews or wait for decisions. Arrangements for safe houses and emergency transit centers, such as the PTA, can help to ameliorate these risks. To increase these safeguards and to improve access to refugee resettlement, the U.S. Government should:

- Continue to develop policies and procedures which recognize the imminent risks facing many applying for in-country processing, to include those applying through the CAM program, many of whom are in need of immediate protection. At a minimum, when an individual flees to another NTCA country, allow that individual to continue the application process in that country;

- Further expand eligibility and access to the refugee resettlement program, whether applying in their country of origin or elsewhere in the region, to include all those who meet the definition for refugee status (or for the CAM program, those who qualify for humanitarian parole);
- Expedite processing of cases by increasing resources and staff (expedited processing is needed due to the unique imminent threats faced by in-country processing); and
- Increase the capacity of the Refugee Access Verification Unit (RAVU) to increase the speed of processing.

Repatriation and re-integration services. To assure that repatriation of Central Americans is done safely, it's recommended that the U.S. Government work with governments and civil society groups in the region to provide comprehensive repatriation and re-integration programs for children. This will ensure that they are returned safely to appropriate caregivers and provided with follow-up services to help them reintegrate into their communities with the goal of preventing re-migration.

Strengthen child protection throughout the regional refugee system. Unaccompanied children are particularly vulnerable as they flee danger and seek safety. Whatever particular safety concerns they face or durable solutions they seek, the large number of at-risk children in this situation requires that we build in child protection into the refugee protection system. To achieve these safeguards, the U.S. Government in collaboration with UNHCR should:

- Implement, in partnership with UNHCR, NGOs, and Central American governments, a mechanism to provide for Best Interest Assessments (BIAs) to identify children in need of immediate protection and Best Interest Determinations (BIDs) to identify durable solutions for those children who are in need of one. BIAs, crucial to the identification of children in need of protection in countries where child protection systems are lacking or under resourced, assess the needs of vulnerable refugee children and ensure immediate protection needs are addressed through referrals to local governmental and NGO service providers. In the context of the CAM program, BIAs would be helpful in addressing immediate protection needs for children who are waiting for their CAM cases to be processed and, in the interim, are still facing the same risks from which they are applying to flee; in identifying children whose protection needs are grave enough that they warrant transfer to Costa Rica through the PTA; or for children who do not qualify for the CAM program but who have protection risks that can be addressed through local referrals.
- Employ use of BIDs, which ensure consultation with the child and the child's family and caregivers. BIDs describe a process of identifying long-term durable solutions, which include repatriation, family reunification, or resettlement. In the context of the CAM program, BIDs would be particularly helpful for children who are in need of international protection but who do not qualify for the CAM program—a durable solution might include a referral to the U.S. embassy for resettlement or referrals to embassies of other countries for potential resettlement. BIDs are helpful in cases where the child is too young to articulate his or her claim for protection or for a child who has a disability impacting his or her ability to articulate a claim. BIDs would also be helpful are those where there are custody considerations (i.e., the child is pregnant or parenting and there are custody issues with the father of the baby; resettlement of a child would impact family unity; there is suspected abuse, neglect or maltreatment of the child by their qualifying parent in the United States or caregiver in the home country; or the child has limited or no relationship with the qualifying parent).