

# ISSUE BRIEF

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## Immigration Working Group Recommendations Fall Short

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Representative Kay Granger (R-TX) recently released the Border Crisis Working Group’s recommendation on what should be done to deal with the influx of unaccompanied alien children (UAC) crossing the southwest border.<sup>1</sup> While some of the recommendations are sound, others fall short, and some merely recycle flawed ideas of the past.

Most important, however, the recommendations do nothing to deal with the root causes of this crisis—most notably President Obama’s lax enforcement policies, such as Deferred Action for Childhood Arrivals (DACA). Until proposals take the right approach and first stop anti-enforcement measures taken by the executive branch, other reforms will be undermined.

### The Working Group’s Recommendations

**Recommendation:** “Deploy the National Guard to the Southern border to assist Border Patrol in the humanitarian care and needs of the unaccompanied minors. This will free up the Border Patrol to focus on their primary mission.”

**Analysis:** The National Guard has served with distinction on the border multiple times in the past decade, supporting the efforts of the Border Patrol through surveillance and logistical support.<sup>2</sup> That said, deploying the military is not cost-effective and should not be considered a long-term solution.

**Recommendation:** “Prohibit the Secretary of the Interior or the Secretary of Agriculture (USDA) from denying or restricting U.S. Customs and Border Protection (CBP) activities on federal land under their respective jurisdictions.”

**Analysis:** There are no justifiable reasons why the Border Patrol should not be allowed to patrol the entirety of the border. Bureaucratic and environmental turf wars prevent the Border Patrol from patrolling certain areas of border, which have become known holes that illegal immigrants and smugglers use to get through the U.S. border. This should be changed to give the Border Patrol full, complete, and unlimited access to as much of the border as possible.

**Recommendations:** “Require a DHS [Department of Homeland Security] strategy and implementation plan to gain operational control of the Southwest border.... Establish independent third party commission to develop border security metrics as a means to accurately gauge progress on border security.”

**Analysis:** These policies seem to be drawn from past, similar bills (such as the Border Security Results Act) that call for various strategies, plans, metrics, and reports from DHS, which end up being empty words on paper if not properly administered and financed. As Heritage has noted in the past, “even where metrics can be reliably established today, they may be meaningless tomorrow. The same is true regarding any attempt to certify that the border is secure.”<sup>3</sup> Importantly, such efforts are similar in text and purpose to the Senate immigration bill, opening up the potential for a debate on wider immigration issues and going to a conference committee with S. 744.

This paper, in its entirety, can be found at <http://report.heritage.org/ib4254>

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**Recommendations:** “Establish border security in Central American countries and Mexico... Increase law enforcement operations domestically and in originating countries to disrupt and dismantle transnational criminal organizations and encourage originating countries to pass strict laws against human smuggling.”

**Analysis:** Guatemala, El Salvador, Honduras, and Mexico are struggling with the violence, crime, and corruption caused by drug cartels and their trafficking. While the U.S. provides security aid to these nations, in several cases it has been restricted or redirected to development aid, thus limiting the effectiveness of these nation’s security forces.<sup>4</sup> Improving security and combatting drug cartels, at borders and throughout these countries, is important to creating more stable nations and thus reducing illegal immigration.

**Recommendation:** “Establish repatriation centers in originating countries in order to facilitate the return of family units and unaccompanied minors.”

**Analysis:** This policy seems to be the responsibility of the originating countries. The U.S. can support such efforts, but it should focus its resources on dealing with the current problem in the U.S. and establishing greater security cooperation with these nations.

**Recommendation:** “Deploy aggressive messaging campaigns in originating countries and the U.S. to dispel immigration myths, clarify that individuals will be deported on arrival and advise on the dangers and legal penalties of traveling through Mexico to enter the United States illegally.”

**Analysis:** While this may be marginally helpful, actions speak louder than words. So long as large sections of immigration law are not enforced and most

of the UAC currently crossing the borders are not returned, would-be illegal immigrants would give minimal credence to such messaging campaigns.

**Recommendations:** “Mandate the detention of all Family Units apprehended at the border with the ultimate goal of processing family units 5–7 days. Congress must continue stringent oversight to ensure this mandate is being met... Amend the Trafficking Victims Protection and Reauthorization Act [TVPRA] of 2008 so all unaccompanied minors are treated the same as Mexicans for the purpose of removals...while they await an expedited immigration court hearing that must occur not more than 7 days after they are screened by child welfare officials.”

**Analysis:** Mandating detention is an important change, given that as many as 46 percent of juveniles do not appear at their immigration court date.<sup>5</sup> Even the best court system is completely undermined if it counts on the voluntary attendance of those who will likely be deported.

Fixing TVPRA would clarify any ambiguity in the President’s authority to remove these children. However, President Obama already has authority under section 235 of the Immigration and Nationality Act to remove “any or all aliens” in an expedited manner.<sup>6</sup>

The other parts of these recommendations, which require an expedited hearing within seven days, are good goals with little substance about how they will be met. Simply suggesting a goal of seven days will not make it happen unless policy changes are made by or forced upon this Administration. Additionally, DHS has been delivering children smuggled across the border to their parents located in other parts of the country who are also in the country illegally. DHS should be required instead to detain those

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1. Press release, “Granger Releases Border Crisis Working Group Recommendations,” Representative Kay Granger (R-TX), July 23, 2014, <http://kaygranger.house.gov/press-release/granger-releases-border-crisis-working-group-recommendations> (accessed July 25, 2014).
  2. James Carafano, “Is Sending the Military to the Border a Good Idea?” The Heritage Foundation, The Daily Signal, July 16, 2014, <http://dailysignal.com/2014/07/16/sending-military-border-good-idea/>.
  3. Jessica Zuckerman, “Border Security Results Act: Misguided Metrics and a Potential Trigger for Amnesty,” Heritage Foundation *Issue Brief* No. 3992, July 17, 2013, <http://www.heritage.org/research/reports/2013/07/border-security-results-act-misguided-metrics-and-a-potential-trigger-for-amnesty>.
  4. Ana Quintana, “Improving Regional Security in Central America’s Northern Triangle,” Heritage Foundation *Issue Brief* No. 4240, June 23, 2014, <http://www.heritage.org/research/reports/2014/06/improving-regional-security-in-central-americas-northern-triangle>.
  5. Committee on Appropriations, U.S. Senate, “Full Committee Hearing: President’s Emergency Supplemental Request,” July 10, 2014, <http://www.appropriations.senate.gov/webcast/full-committee-hearing-president%E2%80%99s-emergency-supplemental-request> (accessed July 25, 2014).
  6. See David Inserra, “Children Illegally Crossing the U.S. Border: Responding Requires Policy Changes,” Heritage Foundation *Issue Brief* No. 4248, July 15, 2014, <http://www.heritage.org/research/reports/2014/07/children-illegally-crossing-the-us-border-responding-requires-policy-changes>.

illegal parents and keep them in custody with their newly arrived children.

**Recommendation:** “Deploy additional judge teams and temporary judges to expedite the hearing of asylum and credible fear claims. Congress must address the occurrences of fraud in our asylum system. Baseless claims crowd the immigration court system and delay processing for those with legitimate claims. The standard under current law that allows an alien to show a ‘credible fear of persecution’ needs to be examined and addressed to ensure a fraud-free system moving forward. In addition, criminal aliens and criminal gang members should not receive asylum.”

**Analysis:** Additional judge teams will take months to identify and train, so while this solution may have some long-term benefit, it is not an immediate fix. The asylum claims process does need reform, as the asylum approval rate has more than doubled in the past seven years: Asylum cases are now immediately approved 65 percent of the time—not including appeals, which the requester is also very likely to win.<sup>7</sup> With other internal DHS evidence indicating high levels of fraud,<sup>8</sup> the asylum process should be reformed. Such reforms should include blocking criminals and gang members from asylum.

**Recommendation:** “Establish tough penalties for those engaged in human smuggling, including the smuggling of unaccompanied minors by strengthening penalties for human smugglers and those who assist them.”

**Analysis:** Making it more legally dangerous to engage in human smuggling could make smuggling less attractive. That said, DHS already does not prosecute unlawful immigrants in the U.S. who pay smugglers to bring family members across the border. It is not just the smuggler but also those who initiate the smuggling who should be severely punished.

## The Right Solutions

Congress should:

- **Defund DACA.** Non-enforcement of U.S. immigration law encourages more illegal immigration. A simple and immediate step to help resolve this issue is to defund DACA and other efforts to not enforce the law against various groups of unlawful immigrants.
- **Increase detention and removals.** Unlawful immigrants who are released into the U.S. often do not appear in court. For those who do remain in the system, a year or more can go by before a case is decided. To fix this, Congress should amend TVRPA, or DHS should use its existing authority to expediently and safely remove unlawful immigrants. Congress should also demand that DHS enforce the hundreds of thousands of unenforced deportation orders already issued by immigration judges.

## Solving the Border Crisis

The U.S. should consider both short- and long-term solutions to the current crisis on the southwest border. More faithfully enforcing U.S. immigration law, considering short-term deployments of the National Guard, and building partner capacity in Latin America are potential solutions. Importantly, the U.S. does not need to throw money at the problem but rather carefully consider better policies that more effectively enforce the law and contribute to border security.

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7. Press release, “Judiciary Obtains Data Showing Majority of Central Americans’ Asylum Claims Immediately Approved,” Committee on the Judiciary, U.S. House of Representatives, July 18, 2014, <http://judiciary.house.gov/index.cfm/2014/7/judiciary-obtains-data-showing-majority-of-central-americans-asylum-claims-immediately-approved> (accessed July 25, 2014).

8. Stephen Dinan, “Audit Finds Asylum System Rife with Fraud; Approval Laws Broken with Surge of Immigrants,” *Washington Times*, February 5, 2014, <http://www.washingtontimes.com/news/2014/feb/5/audit-finds-asylum-system-rife-with-fraud/?page=all> (accessed July 25, 2014).