

ISSUE BRIEF

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Refuge and Asylum: President Obama Should Not Abuse One of America's Great Humanitarian Tools

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Several weeks ago, President Obama announced that the U.S. would begin accepting refugee applications for children from El Salvador, Guatemala, and Honduras (the so-called “Northern Triangle”) with legally resident relatives in the U.S. While the violence and poverty in these countries is real, it does not meet the legal justification for refugee or asylum. Such a program creates a legal slippery slope: The Administration’s legal justification for considering these few thousand children eligible for refugee status would make it untenable for the U.S. to deny asylum to any child from the Northern Triangle who reached the U.S. Rather than contort refugee and asylum law, which already allows tens of thousands of individuals to seek safe harbor in the U.S. every year, the Administration and Congress should do more to partner with the countries of the Northern Triangle in combatting violence and citizen insecurity in the region.

Refugee and Asylum Basics

Under U.S. immigration law, refugee eligibility is determined using a specific set of criteria that are drawn from international law. These criteria are that the refugee candidate:

- Is located outside the United States,
- Is of special humanitarian concern to the United States,
- Demonstrates that he or she was persecuted or fears persecution due to race, religion, nationality, political opinion, or membership in a particular social group
- Is not firmly resettled in another country, and
- Is admissible to the United States.¹

Similarly, the asylum eligibility is determined based on the same criteria, except an asylum-seeker is already located in the U.S.² In other words, refugees are overseas (in, say, Jordan, having fled Syria) and asylees are at our borders seeking entry or already in the U.S. for other reasons. Regardless, since they are fleeing or seeking to avoid persecution, both refugees and asylees are (with few exceptions) outside their country of nationality when they apply for resettlement.

The U.S. is a generous nation that serves as the number one country of resettlement in the world, resettling 66,200 refugees out of a worldwide total of 98,400 in 2013.³ According to the U.S. Department of Homeland Security (DHS), “[B]efore the beginning of each fiscal year, the President, in consultation with Congress, establishes an overall refugee admissions ceiling as well as regional allocations” with a small number of slots not regionally allocated.⁴ Asylum claims have no limits, however.

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Once given refuge or asylum in the U.S, refugees and asylees are given expedited access to legal permanent residency (LPR), also known as a green card, and then put on a fast track to citizenship. Refugees are required to apply for LPR status after one year in the U.S., while asylees can apply one year after being granted asylum. Both refugees and asylees can then seek citizenship after four years as an LPR. Both groups are also eligible for immediate access to various government benefits, including welfare, food stamps, Medicaid, Supplemental Security Income, and other means-tested government programs.⁵ Furthermore, refugees and asylees are exempt from public charge requirements that mandate that green card applicants be able to support themselves and not depend on welfare.⁶

The President's FY 2015 Refugee Memorandum

In his fiscal year (FY) 2015 allocation of refugee numbers, President Obama allowed children from the Northern Triangle countries to seek refugee status from within their home country—a benefit previously given only to individuals in Cuba, Iraq, and the former Soviet Republics.⁷ Reportedly, this program will be available only to minors with relatives who are legally present in the U.S. and not to the children who crossed the southern border this summer. The children granted refugee status under this program will be counted against Latin America's refugee allocation of 4,000 slots.⁸

If the Obama Administration views a broad class of children as eligible for refuge, then such a policy would create a number of legal problems that will have long-term adverse effects. Under the criteria for refuge and asylum, the relevant issue is whether persecution is occurring based on these children's race, religion, political beliefs, or membership in a social group. While the exact nature of the program is still being developed, the legal justification given by some experts is that these children are being persecuted on the basis of their membership in a "social group."⁹

Such a justification is an extremely open-ended reading of refugee law at best—if not a fracturing of the law. The concept of "social group" is intended to convey the idea of some cohesive social whole, such as people of a minority ethnicity. Children are no more a "social group" of that nature than are "men." To be sure, in the Northern Triangle, violent crime and economic insecurity is endemic. But it affects almost all groups of people. This violence is not persecution based on any particular belief, feature, or demographic. It is horrendous, terrible violence that is society-wide due to the prevalence of gangs, vigilante justice, and drug trafficking organizations (DTOs). Gangs and DTOs murder, steal, threaten, extort, and traffic in drugs and other illicit goods in efforts to expand their power. As such, violence cannot be considered persecution against any particular group but rather an assault on the fabric of the whole of society. If anything, young males tend to be more vulnerable

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1. U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, "Refugees," April 11, 2013, <http://www.uscis.gov/humanitarian/refugees-asylum/refugees> (accessed October 15, 2014).
 2. U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, "Asylum," January 22, 2013, <http://www.uscis.gov/humanitarian/refugees-asylum/asylum> (accessed October 15, 2014).
 3. United Nations High Commissioner for Refugees, "War's Human Cost," 2013, <http://www.unhcr.org/5399a14f9.html> (accessed October 15, 2014). Totals provided by DHS and the U.S. Department of State show a slightly higher total of 69,909 refugees in FY 2013. This is likely due to slightly different ways of counting refugees and the fact that the fiscal year differs from the calendar year. Daniel C. Martin and James E. Yankay, "Refugees and Asylees: 2013," U.S. Department of Homeland Security, Office of Immigration Statistics, August 2014, http://www.dhs.gov/sites/default/files/publications/ois_rfa_fr_2013.pdf (accessed October 15, 2014).
 4. Martin and Yankay, "Refugees and Asylees: 2013."
 5. Tanya Broder and Jonathan Blazer, "Overview of Immigrant Eligibility for Federal Programs," National Immigration Law Center, October 2011, <http://www.nilc.org/overview-immeligfedprograms.html> (accessed October 15, 2014).
 6. U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, "Public Charge," September 3, 2013, <http://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge> (accessed October 15, 2014).
 7. The White House, "Presidential Memorandum—FY 2015 Refugee Admissions," September 30, 2014, <http://www.whitehouse.gov/the-press-office/2014/09/30/presidential-memorandum-fy-2015-refugee-admissions> (accessed October 15, 2014).
 8. Michael D. Shear, "Obama Approves Plan to Let Children in Central America Apply for Refugee Status," *The New York Times*, September 30, 2014, <http://www.nytimes.com/2014/10/01/us/obama-approves-plan-to-let-children-apply-for-refugee-status-in-central-america.html?referrer> (accessed October 15, 2014).
 9. Shear, "Obama Approves Plan to Let Children Apply for Refugee Status."
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than children to such criminal-driven violence in Central America, as they are more likely to get caught up in gang, criminal, vigilante, or law enforcement activities and the violence that accompanies them.¹⁰ As such, fear of persecution based on childhood is not a viable legal justification for refuge. Since the entire society is affected by the violence accompanying gangs and DTOs, adopting such a justification would just be a convenient fiction to allow the Administration to disregard the clear import of the law.

Another consideration is the slippery slope created by granting refugee status. If the position of the U.S. government is that youths threatened by violence in the Northern Triangle are entitled to refugee status, then it also necessarily entitles all such children to asylum status if they arrive at U.S. borders. Since the legal standard for asylum and refugee is essentially the same, the individual applying for refuge from Honduras and the individual applying for asylum when picked up by a Border Patrol officer are equally entitled to protection. This is a dangerous precedent to set as it would likely encourage more illegal immigration through the asylum system by young children. Since refugee admissions are limited to 4,000 for all of Latin America and the Caribbean, dangerous travel to the U.S. border will now become the favored option—with the golden card of U.S. asylum and, eventually, citizenship at the end of the journey.

This, however, should not exclude legitimate cases of refuge and asylum which could still occur as individuals flee government-sponsored or government-supported vigilantism or other forms of persecution. The U.S. government should do nothing to influence immigration officials in their adjudication of these cases.

A Better Way Forward in the Northern Triangle

Rather than twisting the law to allow mass refuge and asylum of children, the U.S. should do more to promote regional security efforts in the North-

ern Triangle. Such a solution is not only in the U.S.'s immigration interests, it is also in its economic, security, and humanitarian interests. U.S. and regional partner efforts must sufficiently match the threats posed by rising levels of drug trafficking and related violence. It has become evident that the Administration's policies under the Central American Regional Security Initiative have been insufficient. Defense budget cuts and congressional withholdings on counternarcotics operations further undermine security cooperation efforts and should be undone.

That being said, the onus should not fall solely on the United States. Regional governments have proposed the creation of a "Plan Central America," modeled after the U.S.'s "Plan Colombia."¹¹ While a more robust U.S. role is needed, the primary responsibility falls on Central American governments.

Upholding U.S. Refugee and Asylum Policies

Refuge and asylum are policies that prove America's generosity and support for the rights, liberties, and lives of the persecuted. While the U.S. should and does support refugees and asylees from anywhere in the world, it should not bend the law to justify accepting refugees based on U.S. political pressures. In this most sensitive of issues, it is important that the Obama Administration allow these cases to be fairly adjudicated according to statutory requirements of U.S. immigration law. Maintaining the integrity of refugee and asylum policies is critical to maintaining bipartisan support for these programs that truly show America at her best.

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10. United Nations Office on Drugs and Crime, "Global Study on Homicide 2013: Trends, Contexts, Data," March 2013, http://www.unodc.org/documents/gsh/pdfs/2014_GLOBAL_HOMICIDE_BOOK_web.pdf (accessed October 15, 2014).

11. Ana Quintana, "Should the U.S. Start a 'Plan Central America'?" Heritage Foundation *Issue Brief* No. 4284, October 20, 2014, <http://report.heritage.org/ib4284>.