

Toward a 21st-Century Asylum System

by John Daniel Davidson



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Introduction

The United States has an outdated asylum system that is ill-suited to meet the challenges posed by the current migrant crisis. Although the system was until recently considered among the best in the world, even a model for other countries, the sharp increase in asylum-seekers from Central America since 2014 has created an enormous backlog of asylum cases with yearslong wait times that have invited abuse of the system while failing to give needed protection to those with valid claims.

The vast majority of the Central American families and unaccompanied minors apprehended at the southwest border claim to be afraid of returning to their home countries and initiate asylum proceedings. Enhanced border security measures and strict immigration enforcement will not, on their own, significantly reduce the number of people crossing the border. Without reforming the asylum system and reducing the backlog of cases, the incentive to cross the border illegally and claim asylum—regardless of the merits of one's claim—will remain strong. For those traveling with children, claiming asylum is a near-certain way to gain entry into the United States and temporary work authorization while their asylum case is being adjudicated, which can take years.

The current U.S. asylum regime is the outdated product of a strategic policy framework dating from the Cold War—as indeed our entire immigration system is—and reflects the exigencies and imperatives of that era. The form and purpose of the system were meant to demonstrate to an emerging international community the difference between American democracy and various authoritarian, especially communist, regimes around the world. The message policymakers wished to send was that the United States is a free and compassionate country, and, as the leader of the free world, a refuge for oppressed peoples.

In this way, U.S. asylum policy during the Cold War properly reflected the generosity at the heart of the American people while also serving the national interest. Much has changed in the decades since the end of the Cold War, and it is long past time to reform the asylum system to meet the challenges of the 21st century. In particular, U.S. asylum laws and policies must change in order to solve the problems posed by mass illegal immigration from Central America. The unprecedented surge of asylum-seekers at the southwest border in recent years has exposed just how obsolete and ineffectual the current asylum regime has become.

Indeed, many of those now claiming asylum at the border are, knowingly or not, taking advantage of asylum laws and procedures that were intended for a very different population and different circumstances. The majority of families now claiming asylum at the southwest border come from the so-called Northern Triangle countries of Guatemala, Honduras, and El Salvador. They are being encouraged to travel with children and seek asylum by criminal smuggling networks that are profiting off the transit of asylum-seekers through Mexico and across the U.S. border. Although many of these people face violence, poverty, and

Key Points

- The current U.S. asylum system was designed for the Cold War and the exigencies of that era. Today we face new challenges, and we need an asylum system that, above all, serves the national interest first.
- Enhanced border security measures and strict immigration enforcement will not, on their own, significantly reduce the number of migrants crossing the border. Without reforming the asylum system, the incentive to cross the border illegally will remain strong.
- The credible fear interview process, the first step in determining whether a migrant has a valid claim to asylum, needs to be stricter and more streamlined.
- The 1997 *Flores* settlement, which prohibits families from being detained for more than 20 days, must be superseded by federal legislation that gives immigration officials more time to assess asylum claims.
- The Trafficking Victims Protection Reauthorization Act of 2008 should be amended to eliminate incentives for families to send their children across the border unaccompanied.

difficult circumstances in their home countries, few of them will qualify for asylum.

Nevertheless, the backlog of cases and long wait times invite abuse of the system through the filing of specious claims. In short, the U.S. asylum system was not designed to operate under these circumstances. There are at least three major loopholes that are largely responsible for the current surge of asylum-seekers at the border and that demand reform.

1. **The “credible fear” interview process should be stricter and more streamlined.** Most of those now claiming asylum are doing so after being apprehended near the U.S. border and placed in expedited removal proceedings. They are given a credible fear interview with an asylum officer to determine whether there is a “significant possibility” they could establish eligibility for asylum. Those who meet this low threshold may apply for asylum defensively (that is, as a defense against deportation) before an immigration judge. Not only should the threshold for establishing credible fear be stricter, but cases with positive credible fear findings should remain with the Asylum Division of USCIS for adjudication rather than going to the immigration courts.
2. **The 1997 Flores settlement must be superseded by federal legislation.** A 22-year-old judicial ruling controls the detention policy of unaccompanied alien children (UACs) in federal custody. A 2015 reinterpretation of the Flores settlement held that it applies to both UACs and “accompanied” children, or family units, and that federal authorities cannot detain UACs or family units for more than 20 days. This provides a powerful incentive for parents or other adults to bring children with them when they illegally cross the border, because it guarantees they will be released after a short time pending an asylum hearing.
3. **The Trafficking Victims Protection Reauthorization Act (TVPRA) must be reformed.** The TVPRA was a well-intentioned law aimed at protecting UACs from exploitation and abuse, but its misapplication has created incentives for UACs who are not being trafficked to enter the country, often to reunite with parents who are here illegally. To correct this, policymakers should treat all UACs the same whether they are from contiguous or noncontiguous countries and limit federal agencies’ ability to apply provisions of the TVPRA in cases where it is unwarranted.

Enhanced border security measures and strict immigration enforcement will not, on their own, significantly reduce the number of people crossing the border.

These measures will do far more to address the migrant crisis than recent proposals put forward by Republican members of Congress and the Trump administration, including the Migrant Protection Protocol program and other measures to require asylum-seekers to wait in Mexico or Central America while their asylum claims are processed. Such measures rely too heavily on Mexican officialdom to relieve pressure on the U.S. asylum system and amount to outsourcing in place of substantive reform.

Without addressing the structural deficiencies in the asylum system itself, the backlog of some 892,000 pending asylum cases cannot be cleared, the incentives to file specious claims cannot be mitigated, and the American people cannot have confidence that the asylum system is being administered in a fair and competent manner.

Background

The current U.S. asylum system is based on the Refugee Act of 1980, which codified American commitments and legal obligations under the United Nations’ 1967 Protocol Relating to the Status of Refugees. That convention was an update to the 1951 Convention Relating to the Status of Refugees that built on Article 14 of the 1948 Universal Declaration of Human Rights and applied only to Europeans who had become refugees “[as a result of events occurring before 1 January 1951](#),” that is, after World War II. The 1967 convention simply removed time and geographic limits, essentially extending refugee recognition to people from all countries and circumstances.

Hence, fundamental principles of international law that were articulated in these U.N. conventions found their way into U.S. law, such as the formal definition of a refugee as someone who is unable to return to their home country because of persecution or a well-founded fear of persecution “on account of race, religion, nationality, membership in a particular social group, or political opinion” ([8 U.S.C. section 1101\(a\)\(42\)\(A\)](#)). The 1980 law also incorporated other basic concepts like the principle of “non-refoulement,” which states that a country receiving asylum-seekers must not return them to a country where they would be likely to face persecution.

The Refugee Act was meant to be a comprehensive amendment to U.S. immigration law that eliminated considerations of ideology and geography from U.S. refugee policy and established a single administrative system with which to respond to chronic refugee crises. Much of U.S. refugee and

asylum law had up until this time been a series of ad hoc, temporary measures in response to emergencies stemming from World War II, the Cold War, and the Vietnam War. That is to say, the Refugee Act was not reactionary but arose from deliberations and compromises reaching back decades. As Deborah Anker has noted, “The genesis of its major provisions derived directly from the debates surrounding the 1965 Amendments to the Immigration and Nationality Act” ([Anker, 90](#)).

Significantly, the act established for the first time the statutory basis for asylum and raised the number of refugees admitted annually from 17,000 to 50,000. The new system, which took effect in March 1980, would be tested almost immediately by the Mariel Boatlift,¹ which had brought some 125,000 Cubans to the U.S. by that October. The Carter administration struggled to formulate a consistent response to the crisis, initially granting refugee status to the so-called *Marielitos* but later choosing not to classify the majority of these Cubans as refugees under the new law.

The early 1990s brought mounting pressure on the new system, which developed a significant backlog—150,000 new asylum claims were filed in 1995, adding to a backlog of nearly 500,000 cases. This surge in asylum cases was a result of conflicts and political instability in Haiti and Central America, and the case backlog was only ameliorated by a series of reforms in the mid-1990s that helped to shape the asylum regime in use today. Those reforms included timeliness requirements (180 days to adjudicate an asylum case), temporary measures such as “first in, last out”² for affirmative asylum cases, and other reforms deemed to increase fairness in the system.

However, nothing did more to resolve the case backlog and restore the system to sound administrative footing than the 1997 Nicaraguan Adjustment and Central American Relief Act (NACARA), which allowed certain Nicaraguans and Cubans who have been living in the U.S. illegally to gain lawful permanent residence (LPR) status. In addition, NACARA eased permanent resident requirements for certain individuals from El Salvador, Guatemala, and former Soviet-bloc countries. That is, the other asylum reforms of

the mid-1990s, while perhaps necessary for administrative reasons, did not resolve the case backlog—the easing of LPR requirements did ([Meissner et al., 9](#)).

More germane to the current crisis are certain changes brought about by the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). Among other reforms to the immigration system, this law established expedited removal and credible fear protection safeguards for migrants taken into custody at the border by U.S. Customs and Border Protection (CBP). Most such migrants lack documentation to enter the U.S. legally. Under IIRIRA, these people would be subject to expedited removal, a relatively swift process that does not allow for a hearing before an immigration judge.

However, those migrants who expressed a fear of returning to their home countries would be given a credible fear interview by a U.S. Citizenship and Immigration (USCIS) officer to determine whether they have a “significant possibility” of establishing eligibility for asylum or protection under the Convention Against Torture. Those who received a positive finding after a credible fear interview would be placed in formal removal proceedings but also be given the chance to apply for asylum defensively before an immigration judge.

The current U.S. asylum regime is the outdated product of a strategic policy framework dating from the Cold War—as indeed our entire immigration system is—and reflects the exigencies and imperatives of that era.

For UACs, an important change came in 1997 with the *Flores* settlement, which stemmed from a 1987 case involving four Salvadoran minors who crossed the border illegally and were detained in California pending removal proceedings. A lawsuit filed on their behalf argued that the government’s detention policy violated their due process and equal protection rights under the Constitution, and the case eventually went to the Supreme Court, which ruled in 1993 that the government could detain UACs as long as the facilities met minimum standards.

The Court remanded the case for further review, and plaintiffs and the government agreed to a consent decree in 1997, commonly called the *Flores* settlement, that established “a nationwide policy for the detention, release, and treatment of minors” in federal custody ([Flores v. Reno Stipulated](#)

1 In the late 1970s, a series of attempts by Cubans to take refuge and claim asylum inside the embassies of South American countries in Havana culminated in thousands of people storming the Peruvian embassy in the spring of 1980. An international crisis ensued, and on April 20, Fidel Castro announced that the port of Mariel would be opened to anyone who wished to leave Cuba. Over the next six months, 125,000 Cubans arrived at U.S. ports by boat.

2 Instead of processing asylum claims in the order they are received, a “first in, last out” policy takes the most recent claims first, working backward toward older claims as a way to clear backlogs more quickly.

[Settlement Agreement, 6](#)). Under *Flores*, UACs were to be placed in a safe and sanitary facility licensed by the state to provide foster care services for dependent minors and released “without unnecessary delay.” Initially, there were no time limits on how long UACs could be detained.

In 2008, parts of *Flores* dealing with rights for UACs were codified in law under the Trafficking Victims Protection Reauthorization Act (TVPRA), which distinguished between UACs from “contiguous” countries (Canada and Mexico) and those from “noncontiguous” countries. The TVPRA stipulated that UACs from Canada and Mexico could under certain circumstances be swiftly returned, but UACs from noncontiguous countries, including Guatemala, Honduras, and El Salvador, must be transferred to the care of the Office of Refugee Resettlement (ORR) in the Department of Health and Human Services (HHS) within 48 hours.

Further, the law mandated that these UACs be placed in formal removal hearings and housed in the “least restrictive setting,” which in practice has meant that most UACs are released within 60 days to a parent, family member, or other sponsor residing in the United States. ORR is required to conduct background checks on all potential sponsors and other adults in the household, and to conduct home studies in certain circumstances, although recently it has relaxed some procedures such as fingerprinting sponsors in order to expedite placement ([Dickerson](#)).

In practice, however, these policies have not prevented UACs from being placed with parents or guardians who are themselves in the country illegally. Between February 2014 and September 2015, the height of the initial UAC crisis, 80 percent of UACs were placed with sponsors who were in the United States illegally, including 700 who were in deportation proceedings ([Kolb](#)). In many cases, parents illegally present in the United States are paying to have their children smuggled into the country from Central America, only to have ORR release them into their custody after the children have been apprehended at the border. That is, under the auspices of the TVPRA, both DHS and ORR are being roped into abetting a criminal conspiracy.

Another important change came in 2015 during the unaccompanied minor crisis. Beginning in 2014, the number of family units and UACs apprehended at the border increased sharply—more than 68,500 UACs were apprehended in

2014, compared to less than 16,000 in 2011 ([U.S. Customs and Border Protection 2018](#)). In response, the Obama administration began detaining family units at the end of 2014 as a deterrence measure and opened two permanent facilities in Texas and a temporary one in New Mexico for this purpose. The policy appears to have worked; the Department of Homeland Security reported a more than 41 percent drop in apprehensions of family units from FY 2014 to FY 2015. Later, the Obama administration would argue that its detention policy was necessary because “[the] release of accompanied children and their parents gives families a strong incentive to undertake the dangerous journey to this country” (*Flores v. Johnson*).

But it was a short-lived policy. A 2015 class action lawsuit alleged that family detention violated the terms of the *Flores* settlement, and a federal judge agreed, reinterpreting *Flores* to apply not just to UACs but also to family units, and further ruling that the government could only detain minors,

unaccompanied or accompanied, for 20 days. In 2016, a panel of the Ninth Circuit Court of Appeals confirmed this ruling, leaving the Obama administration with a choice: either break up family units by separating parents from children, in order to detain the parents, or release family units

together—a policy that would come to be known as “catch and release.” The administration opted for the latter.

Recommendations for the Current Crisis

The events and policies recounted above have brought us to the present crisis, in which record numbers of UACs and family units are arriving at the U.S. border and filing asylum claims in an overloaded system. Reform is desperately needed in three areas to eliminate the incentives for Central American families to bring or send children to the border—incentives that have been built into the U.S. asylum system piecemeal over more than a decade.

1. Reform credible fear interviews and asylum processes

Eight months into FY 2019, more than 65 percent of those apprehended at the southwest border are family units or UACs ([U.S. Customs and Border Protection 2019a](#)). Never before have family units and UACs comprised so large a share of those taken into federal custody at the border. The two categories, as of

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May 2019, total nearly 390,000—almost as many people as were apprehended in all of 2018 for all categories combined.

The vast majority of these family units and UACs are claiming asylum. Currently, there are myriad ways an individual can request asylum and initiate asylum proceedings. The threshold for initiating such proceedings is intentionally low under the theory that it is better to err on the side of caution and allow asylum claims to be filed and adjudicated, rather than let valid claims go unheard.

Those apprehended at or near the border must simply inform a CBP officer that they have a fear of persecution or torture upon returning to their home country, or that they wish to apply for asylum. They are then given a credible fear interview by an asylum officer, who determines whether a migrant has a “significant possibility” of establishing eligibility for asylum. Most of those who go through a credible fear interview obtain a positive finding and are allowed to formally apply for asylum. In the first six months of FY 2019, credible fear was established in 88 percent of all cases ([U.S. Citizenship and Immigration Services](#)). That figure does not include “closings,” cases in which a credible fear claim was withdrawn or some other action was taken. Even factoring in closings, however, credible fear was still established in more than 78 percent of cases.

It is clear, given these figures, that migrants entering the country illegally have a strong incentive to claim credible fear after being apprehended, whether or not they have valid asylum claims. Even those who are caught re-entering the United States after having been deported have such an incentive. These people are placed in “reinstatement of removal” proceedings, and those who express a fear of returning to their home country in these proceedings are given what is called a “reasonable fear” interview by a USCIS officer. Reasonable fear is the same legal standard used to establish well-founded fear of persecution in an asylum case, but it applies to far fewer people.

In both reasonable fear and credible fear interviews, there are no mandatory bars to establish fear of persecution, but there are procedural differences. If reasonable fear is established by a USCIS officer, the person must then persuade an immigration judge that it is “more likely than not” that their life or freedom will be threatened in the country they are being removed to on account of their race, religion, nationality, membership in a particular social group, or political opinion, or that they will be tortured. Immigration judges can grant either “withholding of removal” or “deferral of

removal,” which are not the same as asylum (for example, they do not offer a path to LPR status).

However, in both credible fear and reasonable fear interviews, in cases with a negative finding the decision of the USCIS officer can be appealed to an immigration judge, thus further delaying the adjudication process, which can take years. Currently, the case backlog for immigration court has grown to more than 900,000 with an average wait time of 814 days ([TRAC 2019](#)). After 180 days pass with no decision on an asylum case, the applicant is eligible for a work permit called an Employment Authorization Document (EAD).

For asylum cases decided in FY 2018, asylum was denied 65 percent of the time on average. For applicants from Honduras, Guatemala, and El Salvador, the denial rate was higher: 78, 81, and 76 percent, respectively ([TRAC 2018](#)). The increase in denial rates follows a six-year trend, and it should be noted that cases decided in FY 2018 involve asylum applicants who arrived in the United States before President Trump took office. It should likewise be noted that a denial of asylum does not necessarily mean the case

ends in a deportation order. There are other forms of relief an immigration judge can grant to an applicant, or cases in which an applicant is deemed not deportable even though asylum has been

denied.

Nevertheless, the disconnect between the rate at which credible fear is granted at the outset of an asylum case (88 percent) and the average rate at which asylum is ultimately denied to applicants from Honduras, Guatemala, and El Salvador (about 78 percent) is cause for concern. Although it is true that under normal circumstances the number of asylum denials should be greater than the number of positive credible fear findings, the sheer volume of incoming cases and the size of the current backlog do not represent normal circumstances. As it stands today, the incentive to file specious asylum claims in order to gain admission to the United States and obtain an EAD is very strong. The only way to restore confidence in the asylum system is to mitigate these incentives as much as possible.

One way to do that would be to reduce the wait time for a decision to the statutory requirement of no more than 180 days. This could be achieved by referring cases with a positive credible-fear finding to the Asylum Division of USCIS, instead of an immigration judge. By empowering USCIS asylum officers to make a full merits adjudication, cases would not have to begin anew in immigration court

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after yearslong delays. Some experts have argued for such a change for affirmative asylum cases ([Meissner et al., 3](#)), but there is no reason it could not also apply to defensive cases, which are far more numerous. In FY 2018, for example, 48,997 affirmative asylum cases were filed compared to 113,063 defensive cases ([Executive Office for Immigration Review 2019a](#)).

This would require additional resources for the Asylum Division. Because of the increased volume of credible fear interviews in recent years, the Asylum Division has had to devote more personnel to conducting these interviews, therefore reducing capacity for adjudicating affirmative asylum applications. Moving defensive asylum cases out of immigration court and into the Asylum Division will help address a growing case backlog in immigration courts, of which asylum cases comprise only about a third of all cases ([Executive Office for Immigration Review 2019b](#)). Although the number of immigration judges increased by 100 between 2016 and 2018, the growth of the case backlog has not slowed. With proper funding and training, USCIS should be able to deliver fair, timely decisions on defensive as well as affirmative asylum claims, thus avoiding the need for a lengthy wait to appear before an immigration judge.

2. Replace the *Flores* settlement with legislation that empowers federal immigration authorities

There is no reason that DHS policy on the detention of family units and UACs should be governed by a reinterpretation of the *Flores* settlement. Policies relating to the detention and treatment of families and UACs should emanate from elected representatives in Congress, not the federal judiciary. Congress, responding to the exigencies of the current crisis, should authorize in statute the length of time family units and UACs can be detained by DHS. The 20-day limit imposed by a reinterpretation of the *Flores* settlement in 2015 is arbitrary and, in the context of the current crisis, impractical. That is, there is no point in holding families and UACs for 20 days because no decision about their cases or asylum claims can be made in that timeframe.

Extending the length of detention to 100 days would give USCIS more time to conduct credible fear interviews and, for affirmative decisions, make a full merits adjudication of the case. This, of course, was one of the measures proposed in Sen. Lindsey Graham's asylum reform bill, introduced in May 2019 ([S. 1494](#)). The bill would have also required

migrants seeking asylum to apply at a consulate or embassy in their home country or Mexico, and, through amending the TVPRA, made it easier for federal immigration officials to deport UACs.

The need to change the *Flores* settlement was recognized early on in the crisis. Attorneys for the Obama administration said as much when they filed a petition for an expedited hearing on the 2015 reinterpretation of *Flores*: “Past experience has shown the Government that it will be difficult to have and maintain a firm and humane response to the challenge of mass family migration, if we do not have the legal authority and nimbleness to strike the right balance in the face of a constantly changing landscape” ([Gerstein](#)). Prior to the reinterpretation of *Flores*, according to one ICE official who testified before the Senate Judiciary Committee, average detention time of family units was about 60 days, in some cases 90 days.

3. Amend the TVPRA to expedite deportation of UACs not being trafficked

The distinction made in the TVPRA between UACs from contiguous and noncontiguous countries was designed to expedite the voluntary repatriation of Mexican and Canadian UACs who are not being trafficked. Under the TVPRA, UACs from contiguous countries are screened within two days to determine if they are victims of trafficking, are at risk of being trafficked upon their return, or have a credible fear of persecution in their home country. If they do not belong to any of these categories, they are eligible for voluntary return. The process, in other words, is handled administratively and does not involve the immigration courts.

A similar process could be devised for UACs from Honduras, Guatemala, and El Salvador. Rather than transferring them into ORR custody within 72 hours and initiating a lengthy adjudication process, these UACs could be held in DHS custody while the agency makes the same determinations it does for UACs from Mexico and Canada, and, under the same repatriation criteria, arrange for their deportation in a timely manner.

Such reform ideas are not new. U.S. Sen. John Cornyn and U.S. Representative Henry Cuellar proposed something similar in May 2019 with the HUMANE Act, which would create a new form of removal for all UACs called “Expedited Due Process and Screening for Unaccompanied Alien Children.” Under this process, UACs would not be placed

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in formal removal proceedings but would make their case directly to an immigration judge within seven days of their screening, and the judge would have 72 hours to make a determination. In addition, UACs would remain in custody prior to their hearing. The HUMANE Act includes funding for 40 new immigration judges, but clearly additional judges would be needed for these policy reforms to succeed. There have been several other bills aimed at reforming the TVPRA in recent years, and nearly all of them propose that the distinction between UACs from contiguous countries and noncontiguous countries should be scrapped and that all UACs should be treated the same.

Beyond amending the law, policy changes at DHS are needed. For example, UACs released to parents living in the United States are not in fact UACs under the definition in federal law. Section 462(g)(2) of the Homeland Security Act, 6 U.S.C. § 279(g)(2), defines “unaccompanied alien child” as someone who:

- (A) has no lawful immigration status in the United States;
- (B) has not attained 18 years of age; and
- (C) with respect to whom—
 - (i) *there is no parent or legal guardian in the United States; or*
 - (ii) *no parent or legal guardian in the United States is available to provide care and physical custody.*

This last point (ii) is crucial. Clearly, a UAC released to a parent is, by that very fact, not a UAC under U.S. law. Nevertheless, DHS policy has long been that an alien minor will be considered unaccompanied if a parent or legal guardian, who is in the United States, is not able to provide immediate care or is not “within a geographical proximity” ([Kandel, 1](#)). In a 2006 memo on UACs, DHS officials responded to queries from the Congressional Research Service about UACs with parents living in the United States:

The DHS criteria for a juvenile being considered “anything other than unaccompanied” is that the parent or legal guardian must be able to provide care to a child. DHS interprets this criterion in a “very strict” manner, according to DHS officials, and if a parent or legal guardian is not present to provide care (or cannot be present within a short period of time) that child is technically considered unaccompanied and processed accordingly. Children with parents in the United States may therefore still be classified as unaccompanied. DHS claims that this subset of unaccompanied alien children constitutes a very small percentage of the alien juveniles the agency apprehends ([Congressional Research Service, 8](#)).

It might have been the case in 2006 that UACs released to parents living in the United States constituted “a very small percentage” of all juveniles apprehended, but it is not the case today. Nowhere in federal statute are these distinctions or definitions about the speed with which a parent can care for an apprehended alien minor stated; they are purely an invention of DHS policymakers, and there is no reason DHS should maintain this policy. Instead of releasing such minors to ORR for resettlement with a parent or guardian, DHS could simply detain them, or, in cases where the parent is also present in the country illegally, detain them together as a family unit until their cases are resolved.

Conclusion

The crisis at the border is, above all, an asylum crisis. It has exposed, in dramatic fashion, the inadequacies of an outdated and ineffective system that was designed to operate under very different circumstances. A functioning, narrowly-tailored asylum system would not be a means to circumvent our legal immigration system.

Right now, under the strain of the ongoing migrant crisis, the system needs immediate reform. It is not fair to the thousands of asylum-seekers with valid claims, whose circumstances warrant action but who are being failed by policies and regulations that have effectively barred them from seeking protection in the United States. What’s more, criminals and previously deported felons are increasingly attempting to gain entry into the country, blending into large groups of families and UACs crossing the border to seek asylum ([U.S. Customs and Border Protection 2019b](#)).

Without reform, the asylum system will worsen and incentives to take advantage of it will increase. If Central American families know that they can obtain authorization to work in the United States if they initiate asylum proceedings, and that it could be years before their asylum cases conclude, there is nothing to stop them from taking advantage of a system that has ceased to function altogether. Instead, the system itself has become an incentive to break the law and file specious claims.

The United States once had an asylum system that was looked to as a model for countries around the world. It was a system that produced fair, timely results, and that functioned as it was designed to do. Those days are over. The only way to restore public confidence in America’s asylum regime is to change it. The United States is facing an unprecedented crisis on its southwest border, and until policymakers decide to enact reforms that resolve the growing backlog of asylum cases and mitigate the incentives for misuse of the system, the crisis will deepen. ★

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About Texas Public Policy Foundation

The Texas Public Policy Foundation is a 501(c)3 non-profit, non-partisan research institute. The Foundation promotes and defends liberty, personal responsibility, and free enterprise in Texas and the nation by educating and affecting policymakers and the Texas public policy debate with academically sound research and outreach.

Funded by thousands of individuals, foundations, and corporations, the Foundation does not accept government funds or contributions to influence the outcomes of its research.

The public is demanding a different direction for their government, and the Texas Public Policy Foundation is providing the ideas that enable policymakers to chart that new course.

