

November 2, 2018

BASICS AND TALKING POINTS ON THE ASYLUM BAN

•**The administration may soon issue an executive order to suspend or restrict entry of some or all migrants at the southern border.** There is little information about the timing and content of this executive order. The order may be based on section 212(f) of the Immigration and Nationality Act. Under this provision, the president can suspend or restrict entry of some migrants if he deems that their entry “would be detrimental to the interests of the United States.” This is the same provision that was used to justify the Muslim ban (the January 2017 executive order that blocked entry of visitors and immigrants from certain Muslim-majority countries). Reports suggest that the executive order may build off an Interim Final Regulation to be issued in advance of the order, purporting to provide the President with the authority to invoke 212(f) without formal notice and comment.

•**The President is framing this as a response to reports of a caravan of migrants traveling from Honduras through Mexico. But there is no crisis and his announcement is not grounded in reality. Instead, it is an attempt to grab headlines and fuel fear of immigrants and people of color leading up to the midterms.** Recent reports indicate that the numbers traveling with the caravan are dwindling, and that many of the travelers are families and children who are still nearly 1,000 miles away from the southern border.

•**The administration is depicting the caravan as a “crisis” to justify a massive and wasteful deployment of more than 5,000 U.S. military troops to the border, adding to the already significant National Guard forces and Border Patrol agents already at the southern border.** At this point, there is no evidence to support a claim that the migrants who may be trying to seek entry to the U.S. pose a threat to the country. In addition, according to data published by U.S. Customs and Border Protection, crossings in 2018 at the southern border are not particularly high as compared to previous years.ⁱ In fact, although crossings are at extremely low levels compared to past decades, Border Patrol agents are staffed at near all-time highs, leaving the average agent to make an average of two apprehensions per month, per agent.ⁱⁱ

•**An executive order may keep out all immigrants, including asylum seekers.** There is no reason to isolate asylum seekers traveling with the caravan (and difficult to envision how an executive order based on 212(f) could do so). In order

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to serve the administration's purpose, such an order might have to either keep out those from certain countries, like the 2017 Muslim ban which failed in federal court, or block entry of all migrants regardless of their path or purpose.

•It would be illegal under U.S. and international law for the President to block asylum seekers from asking for protection in the U.S. The federal immigration law explicitly states at section 208 of the Immigration and Nationality Act that any person in or arriving in the United States may seek asylum.

•Many of those seeking entry--whether independently or with the caravan--need protection from severe and imminent threats of violence.

The violent conditions in countries of the Northern Triangle explain individuals' and families' need to embark on a perilous journey to find safety. Conditions are so dire that mothers and fathers are willing to risk the horrifying possibility of being separated from their children at the U.S. border.ⁱⁱⁱ Migrants fleeing Central American countries are fleeing unimaginable and targeted violence that in many cases gives rise to a valid asylum claim; despite the President's rhetoric, there is in fact no evidence of rampant fraud or manipulation of the asylum system among this population.^{iv} To the contrary, the United Nations High Commissioner for Refugees has found that the majority of Central American women and children fleeing violence merit protection.^v The additional perils and dangers of the journey have long caused migrants to endeavor to make the trip in the safety of numbers, in large groups or caravans.

•Survivors of gender-based and domestic violence will be more vulnerable to exploitation without the chance to make their case for asylum. Women and children in Honduras, Guatemala, and El Salvador are often specifically targeted for rape, sex trafficking, and domestic abuse, and those crimes take place with complete impunity. In recent years, women have consisted of a much higher percentage of all migrants from Central America apprehended at the border (43-48%, compared to 20-23% in 1995).^{vi} If they are turned away at the border, survivors face severe danger when forced to return to their homes. Such removals would blatantly violate federal law that prevents the U.S. from returning individuals to persecution, created explicitly to bring the U.S. in compliance with binding international law. Migrants also face exposure to violent crime in the regions surrounding the U.S.-Mexico border; Medecins Sans Frontieres recently found that 68% of interviewed migrants and refugees were exposed to violence in transit in Mexico, and about one third of the women were sexually abused.^{vii} If the executive order is issued, our nation will be complicit in the abuse and violence the refugees will face if they are turned away.

•The U.S. terminated an important program providing minors from Central America the opportunity for protection in the U.S., despite no change in country conditions. In 2017, the government stopped the Central American Minors Refugee Processing and Parole Program, which

offered minors the chance to be considered for refugee resettlement while still in their home country. Ending this program cut off access to protection for thousands of minors in Central America, and has prompted them to flee to the southern border.

•**The U.S. must uphold its values and abide by the rule of law by allowing migrants arriving at our border to seek asylum.** Seeking asylum at the border is not illegal. Much of the recent anti-refugee, anti-immigrant rhetoric has been centered on the notion of “illegal” entry. Under U.S. and international law, we must offer an opportunity to apply for asylum to those who declare a fear of return, and we cannot turn away those who declare their fear. In fact, it is illegal to turn away asylum seekers at the border, as the expected executive order may do. Providing refuge to individuals who suffer persecution and are unable to avail themselves of protection in their home countries is a responsibility we took on along with other nations around the globe in the era after the Holocaust. We must continue to respect the values of shared humanity and international obligation that underlie these promises. We cannot allow these longstanding protections to be undermined.

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ⁱ U.S. Customs and Border Protection, Southwest Border Migration statistics FY18, <https://www.cbp.gov/newsroom/stats/sw-border-migration>. See also Miriam Valverde, Politifact, “Immigration in 5 charts: a 2018 midterm report,” Oct. 7, 2018, <https://www.politifact.com/truth-o-meter/article/2018/oct/07/immigration-5-charts-2018-midterm-report/>.

ⁱⁱ Border Briefing, Southern Border Communities Coalition, April 2017, https://d3n8a8pro7vhm.cloudfront.net/alliancesandiego/pages/464/attachments/original/1490906529/Border_Briefing-FINAL.pdf?1490906529.

ⁱⁱⁱ Suzanne Gamboa, et al., NBC News, “Why are so many migrants crossing the U.S. border?,” June 20, 2018, <https://www.nbcnews.com/storyline/immigration-border-crisis/central-america-s-violence-turmoil-keeps-driving-families-u-s-n884956>.

^{iv} Maureen Meyer and Elyssa Pachico, Washington Office on Latin America, “Fact Sheet: U.S. Immigration and Central American Asylum Seekers,” Feb. 1, 2018, <https://www.wola.org/analysis/fact-sheet-united-states-immigration-central-american-asylum-seekers/>.

^v United Nations High Commissioner for Refugees, Women on the Run: first-hand accounts of refugees El Salvador, Guatemala, Honduras, and Mexico (2015), <http://www.unhcr.org/en-us/publications/operations/5630f24c6/women-run.html>; United Nations High Commissioner for Refugees, Children on the Run: unaccompanied children leaving Central America and Mexico and the need for international protection (2014), <http://www.unhcr.org/56fc266f4.html>.

^{vi} Stephanie Leutert, Lawfare, “Who’s really crossing the U.S. border, and why they’re coming,” June 23 2018, <https://www.lawfareblog.com/whos-really-crossing-us-border-and-why-theyre-coming>.

^{vii} Medecins Sans Frontieres, “An unsafe country for thousands of refugees fleeing violence in Central America,” June 28, 2018, <https://www.msf.org/mexico-unsafe-country-thousands-refugees-fleeing-violence-central-america>.