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## Seeking Asylum: Immigration Law in the Context of Human Rights

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Seeking Asylum:  
Immigration Law in the Context of Human Rights

Western Washington University Honors Capstone  
Hannah Blank  
Professor Michael Wolff  
June 15, 2019

### Abstract

The purpose of this paper is to understand the dynamic between Latin American countries and the United States in relation to asylum, mass migration and the process of legally entering the country. This explores the implications of the United States' current legislature in place and how this caters to the U.S.'s interests. Furthermore, the theoretical implementation of asylum and its political origins are evaluated in the context of organized crime and social issues that impact migration trends. While the movement of goods is acceptable the movement of people is heavily scrutinized and politically charged. My proposed argument is that the current asylum laws in place benefit a select few, often not covering individuals who need protection but do not meet requirements. The requirements are vague, where the definition of "well-founded fear" is subjectively decided and requires "evidence of persecution," which is challenging to provide authorities. This leads to the denial of asylum status to individuals that need protection but would benefit from an alternative legal path to immigration.

## Introduction

Immigration is an endless concept but the process is constantly changing and is confusing for those trying to immigrate legally. It is arguably one of the most highly debated topics in the United States as of late. The rising population of undocumented immigrants has created controversy since the early days of the United States. Since then, politicians have attempted to regulate the flow of people into the country. The requirements of legally entering the U.S. have fluctuated over the years resulting in immigration caps based on country of origin and/or an immigrant's connection with the U.S.: familial or employee-based.

Over the past decade, the United States has seen a growing crisis along the southern border. Latin American migrants have flooded the system, fleeing violence, crime and seeking an altogether better life in the United States. Rather than trying to immigrate legally, the growing trend is for migrants to enter into the U.S. and then turn themselves into Border Control. From there, many claim asylum causing the process to become backed-up and swamped with more cases than the system can handle. This paper looks at the historical underpinnings of immigration, asylum, and Latin American conflicts to see how they all intertwine.

## A Background of Immigration Law

To begin to understand the immigration debate happening along the United States' southern border, there must first be an understanding of the history of immigration law. While the United States is a nation of immigrants, with the exception of Native American tribes, there are numerous laws regarding the kinds of individuals that are deemed worthy of entry. In times of labor shortages immigration was highly sought after while limitations were put in place in times of mass migration, restricting the movement from specific countries just as we see today.

This section will go through the laws for legal immigration into the United States enacted over the past hundred years.

An early concept of twentieth century immigration included what was called a “head tax.” This tax was imposed on any individual entering the U.S. with a few exceptions. Congress exempted children under the age of sixteen who were accompanied by at least one parent as well as all immigrants from Cuba and Mexico from paying the \$8 per person tax. The Immigration Act of 1917 established a literacy requirement for all immigrants in any language. Again, Latin American immigrants were exempt from this test. Furthermore, it reiterated a wide range of classifications of individuals who were barred from entering the States as stated in the Immigration Act of 1907 which, included idiots, imbeciles, feeble-minded persons, epileptics, insane persons; alcoholics, criminals, those with tuberculosis, and those who have any form of dangerous contagious disease, polygamists, and anarchists. This Act in essence halted immigration from most Asian countries, hence why it is also referred to as the Asiatic Barred Zone Act.<sup>1</sup> Between 1820 to 1920, Latin American immigration to the United States was marginal – only 2 percent – in relation to the United States’ total immigration.<sup>2</sup>

In 1921, the Emergency Quota Act created annual immigration limitations for each country.<sup>3</sup> Quotas were based on each country’s immigrant population living in the United States as of the 1910 census, allowing only 3 percent of that population.<sup>4</sup> Once again Mexico and Central and South America were exempt from the quotas because of historically low

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<sup>1</sup> Immigration Act of 1917, 8 U.S.C. § 874 (1917).

<sup>2</sup> Pastor, Robert A. "U. S. Immigration Policy and Latin America: In Search of the "Special Relationship"." *Latin American Research Review* 19, no. 3 (1984): 37. <http://www.jstor.org/stable/2503379>.

<sup>3</sup> *Ibid.*, 38

<sup>4</sup> Emergency Quota Act, 42 U.S.C. § 5 (1921).

immigration. Consequently, this pushed for immigration from Mexico and the Caribbean due to the States' need for more labor.<sup>5</sup>

Three years later, the National Origins Act of 1924 barred most immigration from southern and eastern Europe, a modification which remained in effect until 1929. This Act reduced the quota from 3 percent to 2 percent of the total number of people from each country of origin but was now based on the 1890 national census. This explicitly intended to bar Asian immigrants from entering the U.S., building upon existing laws from as early as 1790 which excluded the naturalization of Asian immigrants.<sup>6</sup> As the Great Depression gripped the U.S. economy, the focus of immigration law shifted to undocumented immigrants from Mexico as unemployment skyrocketed. In 1929, Mexico joined the list of countries where its immigrants into the States were required to pass the literacy test. During 1932, emigration from the United States exceeded immigration.<sup>7</sup>

It wasn't until 1965 that the quota system based on the immigrant's nation of origin was repealed. The Immigration and Naturalization Act drastically changed immigration, allowing more individuals from developing countries to enter with a focus on skilled labor and reuniting immigrant families. This later became known as "chain migration," which has been heavily criticized. Since there is no annual limit on green cards issued to immediate relatives of U.S. citizens, the argument the current administration has is that this form of immigration "de-skills the labor force, puts downward pressure on wages, increases the deficit, and undermines national

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<sup>5</sup> Pastor, "U. S. Immigration Policy and Latin America: In Search of the "Special Relationship"," 38.

<sup>6</sup> Ibid., 39; "Milestones: 1921–1936 - Office of the Historian." n.d. Accessed June 2, 2019.

<https://history.state.gov/milestones/1921-1936/immigration-act>; National Origins Act, 43 U.S.C. § 153 (1924).

<sup>7</sup> Pastor "U. S. Immigration Policy and Latin America: In Search of the "Special Relationship"," 41.

security.”<sup>8</sup> Furthermore, Asian and Latin American immigrants comprised 62 percent of immigrants in 1968 and continued to increase to 82 percent in 1978.<sup>9</sup>

In 1986, President Reagan signed the Immigration Reform and Control Act (IRCA) which focused on the labor market and paths to legal residency. The law restricted the employment of known undocumented residents and aimed to preserve jobs for those legally living in the United States.<sup>10</sup> Immigrants who were in the United States illegally were given the opportunity to apply for legal status if all mandated requirements were met as stated in Section 201. If granted lawful temporary residency, individuals became ineligible for financial assistance from the state for the next five years with the exception of Cuban and Haitian entrants.<sup>11</sup>

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 increased greater criminal penalties for undocumented immigrants including deportation of those who commit a felony or two or more misdemeanors. The Act also made it so undocumented immigrants were ineligible for in-state tuition rates at public institutions.<sup>12</sup>

The past three administrations have all had their impact on immigration policy to varying degrees. President G. W. Bush implemented policy aimed at fostering and growing trade with the El Salvador, Guatemala and Honduras as well as giving millions in grants via the Millennium Challenge Corporation to El Salvador, Honduras and Nicaragua. In 2005, Operation Streamline went into effect to combat the increase in immigrants by prosecuting and deporting undocumented immigrants under a “zero-tolerance policy.”<sup>13</sup> The Obama Administration aimed

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<sup>8</sup> The White House. Twitter Post. Dec 17, 2017, 3:33 PM. [twitter.com/WhiteHouse/status/942538158750818304](https://twitter.com/WhiteHouse/status/942538158750818304).

<sup>9</sup> Ibid., 45-47; Ludden, Jennifer. "1965 Immigration Law Changed Face of America." NPR. May 09, 2006. Accessed June 04, 2019. <https://www.npr.org/templates/story/story.php?storyId=5391395>.

<sup>10</sup> "Immigration Reform and Control Act (IRCA)." Boston University Human Resources. Accessed June 08, 2019. <https://www.bu.edu/hr/policies/federal-and-state-laws/immigration-reform-and-control-act-irca/>.

<sup>11</sup> Immigration Reform and Control Act, 100 U.S.C. § 3359 (1986).

<sup>12</sup> Illegal Immigration Reform and Immigrant Responsibility Act, 110 U.S.C. § 3009 (1996).

<sup>13</sup> "Central America's Violent Northern Triangle." Council on Foreign Relations. June 26, 2018. <https://www.cfr.org/backgrounder/central-americas-violent-northern-triangle>.

to “promote prosperity and regional integration, strengthen governance, and improve security” in relation to Central America. In 2016, there was an increase in deportations of those who were denied asylum.<sup>14</sup>

During his presidential campaign, one of the most predominant aspect of Trump’s immigration plan is the wall he wants to build along the U.S./Mexico border in which he claimed Mexico would foot the bill. At the end of 2017 and into 2018, President Trump attempted to terminate the temporary protected status (TPS) of previously protected populations from countries such as El Salvador, Honduras, Haiti and Nicaragua. TPS is a program that provides protection and legal (temporary) residency to individuals who come from countries that have endured political turmoil, natural disasters, war and other unrest.<sup>15</sup> As a result of a series of court cases, the termination of TPS for El Salvador, Haiti and Nicaragua has been halted and affected TPS holders will retain their status through January 2, 2020. Due to current pending appeals, the termination of TPS for Honduras will not go into effect as of now.<sup>16</sup>

The Trump Administration has attempted to halt immigration by tightening the asylum standards and slowing the process by limiting daily applications for asylum. Further, applicants are being forced to remain in Mexico while they wait for court dates. There is an emphasis on prosecuting those who cross illegally and as a deterrent, children are often separated from their parents.<sup>17</sup> The practice of separating families ended in June of 2018, but only after more than

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<sup>14</sup> Ibid.

<sup>15</sup> Ibid.; Felter, Claire, and Amanda Shendruk. "What Is Temporary Protected Status?" Council on Foreign Relations. May 8, 2018. Accessed June 07, 2019. <https://www.cfr.org/article/what-temporary-protected-status>.

<sup>16</sup> "Temporary Protected Status." USCIS. January 07, 2015. Accessed June 07, 2019. <http://www.uscis.gov/humanitarian/temporary-protected-status>.

<sup>17</sup> Shear, Michael D., Miriam Jordan, and Manny Fernandez. "The U.S. Immigration System May Have Reached a Breaking Point." The New York Times. April 10, 2019. Accessed April 24, 2019. <https://www.nytimes.com/2019/04/10/us/immigration-border-mexico.html?action=click&module=TopStories&pgtype=Homepage>.



2,000 children were taken from their parents. Due to the negative climate surrounding immigration, border crossings decreased by 26 percent during the 2017 fiscal year.<sup>18</sup>

### Legal Immigration

Immigrant visas are the standard method of legal immigration with two subsets: family-based and employment-based immigration. Family-based visas require a U.S. citizen relative to sponsor the potential immigrant(s). Filing an immigrant visa petition may include their spouse, children, parent, and/or sibling. Similarly, employment-based visas require a prospective employer to sponsor immigrants prior to entering the States with the exception of a select few specialized fields where immigrants may be allowed to sponsor themselves.<sup>19</sup>

Permanent residency or Green Cards are for individuals currently in the U.S. After obtaining permanent residency, they are able to file a petition for their spouse and/or unmarried children to join them in permanent residency similar to the immigrant visa process. Green cards are valid for up to ten years before it must be renewed, costing \$540 for each renewal.<sup>20</sup>

The third and possibly least certain option for immigrating to the States is called the Diversity Immigrant Visa Program. This program falls under Section 203(c) of the Immigration and Nationality Act (INA) and allocates visas between countries with historically low immigration to the U.S., making this option incredibly similar to the outdated practice of quota

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<sup>18</sup> "Central America's Violent Northern Triangle." Council on Foreign Relations.

<sup>19</sup> "The Immigrant Visa Process." U.S. Department of State. Accessed June 07, 2019. <https://travel.state.gov/content/travel/en/us-visas/immigrate/the-immigrant-visa-process.html>.

<sup>20</sup> "Cost to Become a U.S. Citizen through Naturalization." CitizenPath. Accessed June 07, 2019. <https://citizenpath.com/faq/cost-become-us-citizen/>.

based immigration. This program limits immigrants by requiring a high school diploma or two years of work experience which meets U.S. Department of Labor qualifications.<sup>21</sup>

### The Birth of Asylum

Currently, there are more than 65 million refugees, asylum-seekers and internally displaced people around the world.<sup>22</sup> The word asylum originates from the Greek ἄσυλον or *asylon*, which translates to “refuge” or “fenced territory.” This noun is a neuter of *asylos* which means “inviolable, safe from violence.” Broken down, this means: “a” (without) + “syle” (the right of seizure).<sup>23</sup> The Merriam-Webster dictionary defines asylum as “an inviolable place of refuge and protection giving shelter to criminals and debtors” otherwise known as “sanctuary.”<sup>24</sup> This concept originally referred to sacred, often religious sites where individuals could have protection, outside of the State’s jurisdiction. Eventually, asylum became the responsibility of the State rather than a role of the religious community.<sup>25</sup>

The asylum and refugee protections of today are a consequence of nation-states failing to protect their citizens. It wasn’t until the global community was faced with international conflict that regulations and procedures were created to assist the flood of displaced individuals from Russia, Armenia and other refugees. In 1933, the League of Nations created the Convention Relating to the International Status of Refugees which granted refugees protection and was a

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<sup>21</sup> "Diversity Visa Program." U.S. Department of State. Accessed June 06, 2019. <https://travel.state.gov/content/travel/en/us-visas/immigrate/diversity-visa-program-entry.html.html?wcmode=disabled>.

<sup>22</sup> United Nations. "Figures at a Glance." UNHCR. Accessed June 05, 2019. <https://www.unhcr.org/en-us/figures-at-a-glance.html>.

<sup>23</sup> Harper, Douglas. "Asylum." Online Etymology Dictionary. Accessed June 05, 2019. <https://www.etymonline.com/word/asylum>.

<sup>24</sup> Merriam-Webster Dictionary, s.v. "asylum," Accessed May 10 2019, <https://www.merriam-webster.com/dictionary/asylum>.

<sup>25</sup> "History of Asylum." Asylum Insight. November 2016. Accessed June 05, 2019. <https://www.asyluminsight.com/history-of-asylum#.XPb0-9NKjOQ>.

model for following international law. The Convention required the signatory states to open their borders to refugees of neighboring states and prohibited refugees from being deported. These first changes occurred in the context of WWI but were built upon as WWII displaced millions more. Granting asylum to stateless and persecuted people became a States' responsibility.<sup>26</sup>

The Universal Declaration of Human Rights (UDHR) was created by the United Nations General Assembly in Paris in 1948. This document outlined internationally agreed upon fundamental human rights that were to be protected by all countries. In regards to the migration of people, Article 13 of the UDHR states "Everyone has the right to freedom of movement and residence within the borders of each state" and "Everyone has the right to leave any country, including his own, and to return to his country." Article 14 follows with "Everyone has the right to seek and to enjoy in other countries asylum from persecution. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations."<sup>27</sup> The second part of Article 14 states individuals have the right to apply for asylum but are not guaranteed a right to receive asylum.<sup>28</sup>

From the 1951 Convention Relating to the Status of Refugees, the status of "refugee" is reserved for those fleeing persecution, war, or violence in their home country. These individuals must have a well-founded fear of persecution based on racial, religious, political membership or association to another specific group.<sup>29</sup> These groups of people are exceedingly vulnerable and experience immense amounts of trauma from human rights violations. It is important to note that in order to obtain asylum today, an individual must meet refugee requirements. Someone seeking

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<sup>26</sup> Ibid.; League of Nations, Convention Relating to the International Status of Refugees, 28 October 1933, League of Nations, Treaty Series Vol. CLIX No. 3663, available at: <https://www.refworld.org/docid/3dd8cf374.html>

<sup>27</sup> UN General Assembly. "Universal Declaration of Human Rights." 1948.

<sup>28</sup> "History of Asylum." Asylum Insight. 2016.

<sup>29</sup> "What Is a Refugee?" USA for UNHCR. Accessed June 06, 2019. <https://www.unrefugees.org/refugee-facts/what-is-a-refugee/>.

asylum is someone whose refugee status is undetermined.<sup>30</sup> Applicants are not allowed the same benefits as those who have been given asylum status.

In essence, asylum-seekers are refugees. The key difference, and for further clarification between asylees and refugees, is the when and where they are asking for protection. Refugees request protection while they are outside of the States, potentially still in their home country that they are trying to leave. Asylees may only ask for protection once they are physically in the States and then must go through the process of filing their case.

Asylum can be obtained through two paths in the United States: affirmative asylum process and defensive asylum process. Both require the individual to be physically present in the United States to apply. Under the current law in the United States regarding asylum, anyone granted asylee status is protected from deportation to their country of origin and may remain in the United States. They may be allowed benefits such as work authorization, ability to apply for a Social Security card, and utilize Medicaid or Refugee Medical Assistance. Individuals who have started the asylum process may also apply for work authorization 150 days after their case has begun.<sup>31</sup> However, asylum is only granted to about 20 percent of all those who apply.<sup>32</sup> Asylees may apply to become a permanent resident after a period of one year. After being granted permanent residency, another four years must pass before they can apply for citizenship.<sup>33</sup>

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<sup>30</sup> UNHCR. "UNHCR Global Trends 2015." UNHCR. Accessed June 2, 2018.

<http://www.unhcr.org/statistics/unhcrstats/576408cd7/unhcr-global-trends-2015.html>.

<sup>31</sup> "Asylum in the United States." American Immigration Council. May 14, 2018. Accessed May 30, 2019.

<https://www.americanimmigrationcouncil.org/research/asylum-united-states>.

<sup>32</sup> Shear, "The U.S. Immigration System May Have Reached a Breaking Point."

<sup>33</sup> "Asylum in the United States." American Immigration Council. May 14, 2018. Accessed May 30, 2019.

### Affirmative Asylum Process

The affirmative asylum process is for individuals who are present in the United States. Within one year of entering the States, individuals must file Form I-589, Application for Asylum and for Withholding of Removal, with United States Citizenship and Immigration Services (USCIS).<sup>34</sup> As previously stated, individuals who believe they meet the definition of refugee may apply. Individuals are ineligible for asylum if they do not follow the one-year filing deadline, were previously denied asylum, or have the ability to move to another country with the agreement between the States and the other country.<sup>35</sup>

Fingerprinting and a background check are required of all applicants after the USCIS has received the completed application. Each applicant then meets with an asylum officer for an interview where an attorney may be present as well as any immediate family that is also seeking asylum. Applicants are responsible for any and all attorneys, interpreters, and witnesses to testify during this process. From there, it will be determined if the applicant meets the definition of refugee.

According to the USCIS, affirmative asylum applicants are rarely detained by U.S. Immigration and Customs Enforcement (ICE) and “may live in the United States while [their] application is pending before USCIS. If [they] are found ineligible, [the applicant] can remain in the United States while [the] application is pending with the Immigration Judge.”<sup>36</sup>

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<sup>34</sup> "The Affirmative Asylum Process." USCIS. September 02, 2009. Accessed May 30, 2019. <https://www.uscis.gov/humanitarian/refugees-asylum/asylum/affirmative-asylum-process>.

<sup>35</sup> Ibid.

<sup>36</sup> "Obtaining Asylum in the United States." USCIS. September 03, 2009. Accessed May 30, 2019. <https://www.uscis.gov/humanitarian/refugees-asylum/asylum/obtaining-asylum-united-states>.

## Defensive Asylum Process

The defensive asylum process is reserved for individuals who are in the process of being removed from the U.S. with the Executive Office for Immigration Review (EOIR). Individuals are put in this position in a couple ways. They can be referred to an immigration judge in the defensive asylum process by the USCIS if their affirmative asylum request was denied.<sup>37</sup>

Another possibility is that they arrived at a U.S. border without proper documentation or are found without proper documentation within 100 miles of the border during the first two weeks after crossing, thus being detained by Customs and Border Protection. In the latter cases where there is a lack of proper documentation, expedited removal, or rapid deportation, may occur in which they may claim asylum. Individuals will then be screened for credible and/or reasonable fear of return to their country of origin.<sup>38</sup> This process ensures that international and domestic laws protecting persecuted individuals are being respected.<sup>39</sup>

Credible fear includes fear of persecution and torture. Asylee applicants must prove that, if returned to their country of origin, there is a “significant possibility” they will be subject to torture. The Convention Against Torture and as modified in 8 CFR 208.18 defines torture as the infliction of severe pain or suffering, whether physical or mental, for the purposes as obtaining information or a confession, punishment for an act committed or is suspected of having committed, intimidating or coercing, or infliction of pain or suffering for any reason based on discrimination.<sup>40</sup>

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<sup>37</sup> Ibid.

<sup>38</sup> Ibid.; UNHCR. “Defensive Asylum.” UNHCR. Accessed April 4, 2019. <https://www.unhcr.org/en-us/defensive-asylum.html>.

<sup>39</sup> Asylum in the United States." American Immigration Council.

<sup>40</sup> "Credible Fear." USCIS. September 26, 2008. Accessed June 07, 2019. <https://www.uscis.gov/faq-page/credible-fear-faq#t12831n40004>.

In both situations, asylum-seekers must make a case for asylum. The difference in the defensive process is that they are actively defending their removal from the States in a courtroom against an Immigration and Customs Enforcement (ICE) attorney. If the individual qualifies for asylum, the immigration judge may grant asylum. If they do not, other forms of protection may be considered prior to deportation. Both parties can appeal the immigration judge's verdict if unsatisfied with the result based on evidence.<sup>41</sup>

According to the American Immigration Council, there were more than 318,000 affirmative asylum applications pending with USCIS as of March 2018. At this time there was a total of 690,000 open deportation cases which was an all-time high, but this number has continued to rise.<sup>42</sup> The 2018 fiscal year ended with a total of 768,257 pending immigration cases and as of April 2019, there are 892,517 pending cases.<sup>43</sup> The average wait time to see an immigration judge is around 718 days and those who have been granted asylum waited an average of 1,000 day, or about three years, before reaching an outcome.

### Current Immigration

Current immigration policy is complex. The United States' southern border sees thousands crossing daily from Central America. Based on the immigration trends as of April 2019, more than a million people will have tried to cross the border by the end of the year.<sup>44</sup>

In 2015, around 110,000 asylum-seekers were from the Northern Triangle of Central America (El Salvador, Guatemala and Honduras) where there are some of the highest homicide

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<sup>41</sup> "Obtaining Asylum in the United States." USCIS.

<sup>42</sup> "Asylum in the United States." American Immigration Council.

<sup>43</sup> "Backlog of Pending Cases in Immigration Courts as of April 2019." Backlog of Pending Cases in Immigration Courts as of April 2019. Accessed May 05, 2019.

[https://trac.syr.edu/phptools/immigration/court\\_backlog/apprep\\_backlog.php](https://trac.syr.edu/phptools/immigration/court_backlog/apprep_backlog.php).

<sup>44</sup> Shear, "The U.S. Immigration System May Have Reached a Breaking Point."

rates. Those fleeing claimed poverty and crime – such as gang violence from MS-13 and M-18 – as primary reasons for leaving their home country.<sup>45</sup> According to a 2015 investigation by Honduran newspaper *La Prensa*, El Salvador, Honduras and Guatemala, in that order, pay hundreds of millions in extortion fees every year.<sup>46</sup> Further, these countries have a long history of human rights violations that have been well documented, ranging from genocide to death squads.<sup>47</sup> With the goal of reducing gang involvement and crime, El Salvador, Guatemala and Honduras enacted numerous policies known as *mano dura*, which translates to firm hand or iron fist. These policies gave greater policing responsibilities to the military and resulted in an exponential increase in incarceration.

Unaccompanied minors are predominantly from the Northern Triangle and are typically teenage boys. In addition to children migrating on their own, running children to the States by smugglers, or *coyotes*, is a growing issue.<sup>48</sup> A study from the Mexican and Latin American Migration Projects found that children immigrate for the same reasons as adults do: usually they come from places with limited economic and educational opportunities or are trying to reunite with family members. A major reason that the undocumented immigrant population in the States is growing is because many decide to settle after their temporary work permit expires.<sup>49</sup>

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<sup>45</sup> "Central America's Violent Northern Triangle." Council on Foreign Relations.; Gagne, David. "InSight Crime's 2016 Homicide Round-up." InSight Crime. January 16, 2017. Accessed June 08, 2019. <https://www.insightcrime.org/news/analysis/insight-crime-2016-homicide-round-up/>; Donato, Katharine M., and Blake Sisk. "Children's Migration to the United States from Mexico and Central America: Evidence from the Mexican and Latin American Migration Projects." *Journal on Migration and Human Security* 3, no. 1 (March 2015): 62. doi:10.1177/233150241500300103.

<sup>46</sup> "Imperios De La Extorsión" Están En Honduras Y El Salvador." *La Prensa*. June 30, 2015. Accessed June 08, 2019. <https://www.laprensa.hn/honduras/854572-410/imperios-de-la-extorsión-están-en-honduras-y-el-salvador>.

<sup>47</sup> Manz, Beatriz. "Central America (Guatemala, El Salvador, Honduras, Nicaragua): Patterns of Human Rights Violations" University of California, Berkeley, commissioned by United Nations High Commissioner for Refugees. August 2008. <https://www.refworld.org/pdfid/48ad1eb72.pdf>

<sup>48</sup> "The U.S. Child Migrant Influx." n.d. Council on Foreign Relations. Accessed May 4, 2019. <https://www.cfr.org/backgrounder/us-child-migrant-influx>.

<sup>49</sup> Donato, "Children's Migration to the United States from Mexico and Central America: Evidence from the Mexican and Latin American Migration Projects."



Getting to the point of immigration visa or asylum approval is not easy. The processes are long, as stated in previous sections, and it is confusing – especially for individuals that don't speak English as a first language. Failure to show up for asylum immigration proceedings results in deportation despite previously being released on released on bond or recognizance, often due to the long periods in between court dates.<sup>50</sup>

### A U.S. Perspective

There is bipartisan agreement that the current U.S. immigration system is “broken.” However, the disagreements on solutions to fix the broken system are boundless. Between the Republican and Democratic Parties, they choose to focus on different aspects of immigration as found in their 2016 party platforms.

The immigration section of the Republican platform begins with: “Our party is the natural home for those who come in search of freedom and justice. We welcome all to the Great Opportunity Party.”<sup>51</sup> The GOP stands firmly with current immigration laws, asking only that they be better enforced. Their perspective is that reform is necessary to protect American working families and their wages. They continue with stating that they stand with the victims of President Obama’s policies, referencing murders carried out by undocumented immigrants. According to the Republican Party, undocumented immigration “endangers everyone, exploits the taxpayers, and insults all who aspire to enter America legally.” The party opposes all amnesty given to those who have broken immigration law, thereby “disadvantaging those who have obeyed it.”<sup>52</sup> Finally, from the GOP website on the topic of immigration:

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<sup>50</sup> Shear, "The U.S. Immigration System May Have Reached a Breaking Point."

<sup>51</sup> "2016 Republican Party Platform." GOP. Accessed June 09, 2019, 25. [https://prod-cdn-static.gop.com/media/documents/DRAFT\\_12\\_FINAL\[1\]-ben\\_1468872234.pdf](https://prod-cdn-static.gop.com/media/documents/DRAFT_12_FINAL[1]-ben_1468872234.pdf).

<sup>52</sup> "2016 Republican Party Platform." GOP.

Immigrants have undeniably made great contributions to our country, but any national immigration policy must put the interests of our existing citizens first. To start, our border must be absolutely secured and illegal immigration must be stopped. Then, and only then, can we begin reforming our system in a way that lets new immigrants experience the American Dream without causing economic hardships to American citizens.<sup>53</sup>

According to the Democratic Party Platform of 2016, the party believes that immigration should prioritize the deportation of undocumented immigrants who pose a threat to communities.

Democrats do not support “religious tests to bar immigrants or refugees from entering the States” nor do they believe in raiding and rounding up undocumented immigrants for deportation.<sup>54</sup> In relation to immigrants from the southern border, the Democrats state they want to work with the countries that people are fleeing in order to address the underlying causes of violence and mass migrations.<sup>55</sup>

While the current Republican administration has tried to slow down immigration, the immigration crisis has grown. The already huge backlog of cases along with the creation of stricter qualifications for asylum protection have successfully slowed down the process of immigration and asylum, resulting in more people being put on hold. Then the 35-day shutdown of the government in December 2018 to January 2019 led to the furlough of immigration judges and tens of thousands of deportation and asylum cases were delayed as a result.<sup>56</sup>

Where does this leave the United States? Is there enough evidence of suffering in populations that don't qualify for asylum to redefine asylum thus allowing more people to claim this form of protection? Is it possible to open the border for more legal immigration?

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<sup>53</sup> "Republican National Committee." GOP. Accessed June 09, 2019. <https://gop.com/issue/immigration/>.

<sup>54</sup> "Party Platform." Democrats. Accessed June 09, 2019. <https://democrats.org/about/party-platform/#broken-immigration>.

<sup>55</sup> Ibid.

<sup>56</sup> Shear, "The U.S. Immigration System May Have Reached a Breaking Point."

The United States has directly or indirectly been responsible for more than 40 regime changes in Latin America within a 100-year span – not including failed attempts such as the 1961 Bay of Pigs invasion.<sup>57</sup> Robert Pastor, a member of the National Security Council under Jimmy Carter, elaborates on the history of U.S. immigration policy in relation to Latin America in his article *U. S. Immigration Policy and Latin America: In Search of the "Special Relationship."*

The United States, no matter the administration, has often cited security interests and on occasion, human rights, as their reason for inserting themselves into the governmental affairs of other nations. Pastor's examination of the U.S. and Latin America relations presents the argument that there was a special relationship between the regions that justified intervention.<sup>58</sup>

However, in current events, this supposed special relationship no longer seems to include preferential treatment of immigrants from Latin America like early immigration law once did. This leads us to the conflicting conclusion that while the United States justifies intervening in Latin American conflicts, it does not believe people fleeing those same countries should be allowing into the United States.

### Concluding Thoughts

Asylum was never meant for large groups of people. The laws in place cater to individuals who finds themselves in dire situations where they do not qualify for immigration visas but need to immediately leave their home country for their safety. Currently, defensive

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<sup>57</sup> Coatsworth, John H. "United States Interventions: What For?" *ReVista: U.S. Foreign Policy Towards Latin America and the Caribbean*, Spring 2005, 6.

[http://revista.drclas.harvard.edu/files/revista/files/foreign\\_policy.pdf?m=1410443672](http://revista.drclas.harvard.edu/files/revista/files/foreign_policy.pdf?m=1410443672).

<sup>58</sup> Pastor, "U. S. Immigration Policy and Latin America: In Search of the "Special Relationship", " 50.

asylum is the path majority of individuals are taking because they are entering the country without documentation in the first place.

The current asylum laws in place benefit a select few that can provide crucial evidence of persecution and credible fear of returning to their country of origin. Evidence is not always available. The requirements are vague but still specific enough that leads to the denial of asylum status to many. General violence is not covered, which often leads to the denial of asylum to individuals who need protection from gang violence.

If asylum is not the way, what about legal immigration? The legal immigration process is long, expensive, and excludes the most potential immigrants. An individual must have both the time and monetary means to apply for an immigration visa. If immigration visas expanded to a wider audience, there is potential to cut down on the number of immigrants not completing the legal side of moving countries.

Increasing access to legal immigration appears to currently be the best solution without compromising the integrity of asylum law. Legal immigration should always be the number one way people enter the community; however, if legal immigration is limited to select individuals, people will inevitably try to enter in whatever capacity they can. Making legal immigration accessible would benefit the community by allowing all those living in a community to participate more in the community without fear of deportation. Asylum is not the catch-all for immigration and the current hyper-focus on this aspect of immigration is detrimental to overall immigration policy.

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