

Commentary: Fractured Families: US Asylum Backlog Divides Parents and Children Worldwide

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This commentary focuses on the detrimental effects of the US asylum backlog on families around the world. It puts a spotlight on the backlog of the 82,175 individuals who are currently (as of March 2015) waiting to have their asylum cases heard. These individuals fleeing torture, political persecution, or persecution due to their race, religion, ethnicity, or membership in a particular social group are especially vulnerable. We identify the essential human rights of asylum seekers who are children and their family members, including the right to seek asylum, the right of family members to be protected from harm, and the right to family life, family unity, and reunification. Throughout, the principle of what is in the best interest of the child is highlighted. Using the example of how resources have been shifted to process the cases of Central American families crossing the US southern border, the authors question the effectiveness of a crisis-focused US immigration policy. We call for broad immigration reform in the USA with resulting policies that do not focus on the needs and rights of one group of vulnerable children at the expense of another. Thus, we call for an immigration policy that puts the rights of all children at its center.

Keywords US immigration policy · Migration · Human rights · Asylum seekers · Asylum · Children's rights

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Introduction: Broadening the Lens

This commentary focuses on the detrimental effects of the US asylum backlog on children and their families around the world. It puts a spotlight on the current backlog of the 82,175 individuals who are currently (as of March 2015) waiting to have their asylum cases heard (Dzubow 2015). These individuals fleeing torture, political persecution, and/or persecution due to their race, religion, ethnicity, or membership in a particular social group are vulnerable, and they have the human right to seek and receive asylum (UDHR 1948, Art 14(1)) although they do not appear to have a right to have their cases heard expeditiously. Furthermore, many of those individuals waiting to have their cases heard are parents who have children back in their countries of origin. Those children have rights to family reunification (UN Convention on the Rights of the Child, Art 10(1), 1989)—as well as personal safety—that may be compromised while their parents wait their turns to be heard.

Using the example of how resources have been shifted to process the cases of Central American families crossing the US southern border, the authors question the effectiveness of a crisis-focused US immigration policy. We seek to place the situation of the Central American migrants within the wider context of asylum-seeking and the overall immigration process in the USA. In particular, we want to highlight the impact of the current US immigration backlog not only on Central American families, but also on the families of all individuals seeking asylum in the USA from around the world.

Beyond the individual asylum seeker, the asylum seeker's family members—who have been left behind in the home country—also have a right to be protected from harm (UN Convention Relating to the Status of Refugees 1951). In addition to this right to basic safety, asylum seekers and their families are also entitled to enjoy the right to a family life (UN

Convention on the Rights of the Child, Article 16, 1989) and the principle of what is in the best interest of the child should be followed in all policy decisions (UNHCR 2008). Further, family unity and reunification have been deemed to be essential rights of refugees and asylum seekers (Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons 1951; UN Convention on the Rights of the Child, Art 10(1), 1989).

We will develop our argument in the following way. First, we will briefly summarize the situation of the unaccompanied children and the Central American families who have entered the USA via our southern border. We will review the needs of those children and families and also discuss the human rights violations that advocates have identified in the US's handling of that situation. It is helpful—and also ethical from a social work and rights-based perspective—to examine the situation of Central American migrants in the USA and the associated unintended consequences through a broader lens. Our wider lens will put these Central American children and families in the context of the larger population of individuals seeking asylum in the USA.

As we proceed, we will explain the asylum process and then begin to explore the ways in which the human rights of these other asylum seekers—and their families and children waiting overseas to be reunited with them—are impacted by the decision to divert US Citizenship and Immigration Services (USCIS) resources to addressing the asylum cases of migrants crossing into the USA from Central America via Mexico. And, finally, we will call for an immigration policy in the USA that does not focus on the needs of one vulnerable group of children at the expense of another. It is our argument that our current crisis-driven immigration policy privileges the needs of vulnerable individuals in the current spotlight at great expense to those who are waiting in line. Sadly, as we have seen, the human rights of all asylum seekers in the USA are at risk. Efforts to ensure the rights for all call for fundamental reform of, and increased resources for, our immigration system. Absent such an overall solution, the suffering and rights violations of migrant children and families from all over the globe will likely be prolonged and intensify. As the Special Rapporteur on the Rights of Migrants François Crépeau has stressed, immigration policies should never be enforced at the expense of a child's enjoyment of all his/her rights and best interests (Committee on the Rights of the Child 2012). Thus, we call for an immigration policy that puts the rights of all children at its center.

Central American Migrant Arrivals to the USA: Women and Children

In the spring of 2014, tens of thousands of children and families from El Salvador, Guatemala, and Honduras arrived at the southwest border of the USA fleeing conditions of severe violence and deprivation (US Senate Committee on Homeland

Security and Governmental Affairs 2015). These migrants came to the USA to assert their human right to asylum and were ready to present their credible fear to US authorities.

The arrival of these migrants—especially the presence of so many women and children among them—rightly caught the attention of US media and immigration advocates. The importance of addressing this wave of migration was only underscored when the number of families seeking asylum from Central America rose again in the second half of 2015 (Preston 2016). Alongside the flow of migrants, US citizens have been able to observe the challenges that our immigration system has experienced in processing these migrants' cases.

First, the numbers of Central American asylum seekers have added to the existing strain on the system. These migrants are seeking legal protection—asylum—that requires consideration by an immigration judge. Unaccompanied children, in particular when they arrive from non-contiguous countries, are guaranteed a hearing under the Trafficking Victims Protection Act to review whether they qualify for legal protection. According to a recent report of the Senate Homeland Security Committee (2015),

While the case burden of U.S. immigration courts has increased dramatically, the personnel and resources to address this caseload has not kept pace, with only 249 immigration judges in all of the United States. With the backlog of [all immigration] cases exceeding 450,000 and climbing, the Department of Justice reports that it would need 495 to 540 immigration judge teams to eliminate the backlog within 5 to 6 years and keep pace with new cases. (p. 4).

As they wait for their cases to be adjudicated, the treatment of these migrants has rightly raised serious human rights and humanitarian concerns, as families are detained and many children have had to argue their asylum cases in the absence of experienced (or any) legal representation¹ (ACLU 2015). Further, families and their advocates—including social workers (Lazare 2015)—have complained of human rights abuses as they are held in US immigration detention (Grassroots Leadership 2014; Lee 2015), and the Obama administration's wholesale

¹ A nationwide class-action lawsuit was filed in July 2014 in Seattle on behalf of thousands of migrant children against the federal government by the American Civil Liberties Union, American Immigration Council, Northwest Immigrant Rights Project, Public Counsel, and K&L Gates LLP (ACLU 2015). The lawsuit challenges the federal government's failure to provide the children with legal representation in their deportation hearings and holds that the government violated the US Constitution's Fifth Amendment Due Process Clause and the requirement of a "full and fair hearing" before an immigration judge under the Immigration and Nationality Act.

detention of women and children has come under fire for being unconstitutional (Preston 2015).

The US Asylum Process

Individuals and families who are interdicted as they come across the US-Mexico border may apply for asylum in the USA. The right to asylum was established in Article 14 of the Universal Declaration of Human Rights (UDHR) guarantees the universal right “to seek and to enjoy” asylum in other countries. In order to obtain asylum in the USA, an individual must show that he or she is vulnerable to persecution at home due to race, caste nationality religion, political opinion, or membership in a certain social group.

For those, like the asylum seekers from Central America who are detained, they must submit a defensive asylum application because they are already in removal (i.e., deportation) proceedings after encountering US authorities. The defensive application is initiated to an immigration judge.

Asylum applications may also be filed affirmatively. Affirmative asylum applications are filed with the USCIS. After the application is filed, an asylum officer interviews the applicant and either approves the case—thereby granting asylum—or places the applicant into removal proceedings in US Federal Immigration Court. Asylum applicants who are referred to court can then renew their application for asylum and may lawfully stay in the USA until their case is adjudicated by a judge.² US law stipulates that, in the absence of exceptional circumstances, an asylum case should be administratively adjudicated within the first 180 days after the application is filed. Specifically, under US Law (Immigration and Nationality Act 1994),

(ii) in the absence of exceptional circumstances, the initial interview or hearing on the asylum application shall commence not later than 45 days after the date an application is filed; (iii) in the absence of exceptional circumstances, final administrative adjudication of the asylum application, not including administrative appeal, shall be completed within 180 days after the date an application is filed.

It is important for the reader to be familiar with these rules because it is only in the context of these rules that the current backlog of affirmative asylum applications can be appreciated.

² A more complete description of the asylum process and alternative forms of immigration relief can be found on the U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) (n.d.) website (<http://www.uscis.gov/humanitarian/refugees-asylum/asylum/obtaining-asylum-united-states>).

The US Asylum Backlog Currently, there is an enormous backlog³ of affirmative asylum applications awaiting initial interview by an USCIS asylum office (Attix 2014). According to the USCIS, there was a backlog of 73,000 asylum cases at the beginning of 2015, with 4000 of these submitted during the last 60 days of 2014 (Matza 2015). The large number of Central American migrants arriving in the USA is only one of several factors contributing to backlog in processing of other asylum cases. Indeed, Matza (2015) quotes a USCIS spokesman, speaking in February 2015, asserting that asylum filings had doubled since 2009. Refugees fleeing from Syria, Iraq, and other war-torn parts of the world have also contributed to the strain on the US immigration system. In addition, the recent U.S. Board of Immigration Appeals (2014) decision establishing a new social class eligible for asylum, that of women who flee domestic violence, may also have contributed to the increase in pending asylum cases.

The number of pending asylum cases differs across regions, with Los Angeles having the largest caseload and Newark (which processes applications for parts of Pennsylvania, New Jersey, New England, and New York) second (Matza 2015). As of the end of November 2015, there were 431,237 pending immigration cases (of all types, including asylum but not counting criminal, national security or terror cases) in the USA, with an average number of 654 days per case (TRAC Immigration 2015)—that is more than 3.5 times the expected case length of 180 days.

Still, the backlog continues to grow, despite efforts by USCIS. In January 2015, there were 76,446 backlogged asylum cases. By the end of March 2015, there were 82,175 (Dzubow 2015). The USCIS has been making efforts to reduce the backlog through streamlining its processing of asylum cases, including by hiring additional asylum officers and immigration judges (Matza 2015). These efforts are excellent, but they are not yet reducing the backlog. In Arlington, Virginia, new asylum seekers are now receiving court dates for their first individual hearings 5 years in the future in 2021 (Alysha Taggart, personal communication, January 14, 2016).

In order to cope with the backlog, the USCIS created a system to prioritize certain cases over others. As of December 2014, the following priorities were for scheduling asylum interviews for affirmative applications: (1) those that had been scheduled for an interview that was later canceled or rescheduled; (2) those filed by children; and (3) all others in the order received, with priority given to the oldest cases

³ For updated wait list times, see U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) (2015). Affirmative asylum scheduling bulletin. Retrieved from <http://www.uscis.gov/humanitarian/refugees-asylum/asylum/affirmative-asylum-scheduling-bulletin>

(USCIS, 2015). In its scheduling bulletin, USCIS states that the first two categories will also take precedence over the third (USCIS, 2015), leaving older cases to wait while newer applications are handled first by the asylum office. The perceived rush to adjudicate the large numbers of cases of children has raised questions about the overall fairness of the asylum system (Brayman and Mann 2015). Even in the unlikely event that no new asylum cases were filed, it would likely take more than 2 years to address the backlog of cases that are already in the system (Matza 2015).

Individuals who are granted asylum in the USA have the right to petition to be reunited with their spouses and any children who were under 21 (and unmarried) when the parent's asylum petition was filed. Therefore, the immigration backlog not only impacts those individuals who are in the USA petitioning for their asylum, but it also directly affects their family members who are waiting back home. Even after a parent's US asylum is granted, the petition for family reunification may take an additional 1 to 3 years. So, a child who was 3 years of age when a parent was forced to flee his or her country of origin is likely to be at least 8 years old before being able to see that parent again. A child aging into his or her twenties while waiting for family reunification may put off marriage, if he or she expects to emigrate with the family of origin.

Impact of Backlog on Asylum Applicants It is documented within the literature—as well as in our experience in working with hundreds of asylum applicants—that delays in processing asylum cases create serious problems for these individuals and their families, including personal suffering, family breakups, and sometimes physical harm to family members left behind (Hocking, Kennedy, and Sundram 2015; Silove et al. 2007). If we shift our gaze away from the crisis in Central America that has prompted the large number of children and families arriving at our southern border, we see that many times asylum-seekers arrive alone at an airport, in a port, or via a land border. These asylum seekers—who are claiming their rights to safety after political or personal persecution—must take their place in line as US asylum court dockets fill. These solitary asylum seekers are a very vulnerable population with high levels of psychiatric morbidity, especially depression, anxiety, and posttraumatic stress disorder (Hocking, Kennedy, and Sundram 2015; Quiroga and Jaranson 2005).

Importantly, many of these single asylum seekers have left spouses and children behind, and even if they are successful in claiming asylum in the USA, they may spend 5 years or longer waiting for asylum and another year or more for permission to reunite with their families. The human cost to them—and to their children—of the extended asylum timeline includes lengthy separation from family (and delays in applying to sponsor one's spouse and unmarried children who were under

the age of 21 at the time the sponsor applied for asylum). We have seen this, in turn, contribute to the following: enormous stress on the family unit (e.g., emotional, financial, childrearing, forced separation of family unit), loved ones back in the homeland having difficulty understanding why there is a delay (and, in some cases, not believing that the applicant is really trying to sponsor them), break up of marriages, and persecution of family members (including children) of torture survivors who remain in the homeland (Berthold 2015).

When asylum seekers flee their countries of origin, authorities may target their loved ones back home in an effort to find or punish the torture survivor who escaped (Berthold 2015). Sometimes such asylum seekers may not know if their loved ones are dead or alive (Akinsulure-Smith and O'Hara 2012). The persecution of family members left behind may take many forms including threats, intimidation, interrogation, torture, murder, abductions/disappearances, and being forced into hiding. In hiding, families typically do not feel safe engaging in normal activities such as working or allowing children to go to school. They may relocate to another part of the country and even sever contact with family and other support systems. In some countries, the authorities have extensive networks, making it hard to hide anywhere in the country. Knowing this risk to their family members, asylum-seekers in the USA may be left in a state of fear and guilt due to their sense of having made family members targets of persecution. The asylum-seeker carries this burden even if his or her family members remain safe because the vulnerability is ever-present.

There are additional implications of the backlog, including a denial of a speedy resolution of the asylum seeker's case. Asylum seekers are systematically denied the right to work (UDHR, Article 23(1)), at least for the first 6 months after applying for asylum. Without legal authorization to work, asylum applicants' ability to support themselves and their family is jeopardized. If they do work "under the table" without a work permit, they can experience legal problems and may become increasingly vulnerable to exploitation and trafficking, including labor trafficking. Asylum seekers are also denied the right to access healthcare (including mental health care) until their asylum is granted. This deprives them of their right to the highest attainable standard of health (UN Committee on Economic, Social and Cultural Rights 2000). Few health providers currently extend health services to the undocumented, with the exception of some large community-based clinics and county health facilities. Obtaining coverage for emergency care for children is sometimes possible (through emergency Medicaid/Medical).

Those who flee from persecution are at risk of experiencing psychological distress, and the stress of being in limbo waiting for the adjudication of one's immigration case may prolong the uncertainty of whether they will be deported back to where

they are at risk of being tortured or killed. Such circumstances can exacerbate psychological conditions and lead to hopelessness and despair. Further, a long wait for asylum may compromise the psychological recovery process for trauma/torture survivors, thereby reducing their quality of life and well-being (Berthold 2015).

Conclusions and Recommendations

The USCIS change of policy that prioritized processing of cases of unaccompanied children and other Central American families has had the effect of slowing down the asylum process for all other asylum applicants. Of course, we agree that the US government must *direct* resources to these children and their families, but it is unfair and unethical to *divert* resources from other vulnerable children and their families. Who can say whether a Central American child waiting in detention in Texas is at greater or more urgent risk than a child of a political dissident waiting behind in Ethiopia or Iraq? It is inappropriate to compare trauma and hardship across groups. Instead, we are in favor of a speedy resolution to all asylum cases, especially if those cases involve children—and whether those children are present in this country or abroad.

Although we do not see their faces because they are waiting in their home countries for their parent to receive asylum (and then apply for family reunification), the children of asylum-seekers also suffer when their parent's asylum cases are put on hold or administratively closed, in effect delaying the parent's eligibility to sponsor family members (Haile 2015). The US Department of Homeland Security has hired additional judges and asylum officers in recent months—but huge backlogs remain and some immigration judges have resigned or retired. In at least some of these retirement cases, vicarious trauma and/or burnout caused by large caseloads, the pressure to complete cases quickly, and having to hear case after case of human suffering with graphic violent details may be a contributing factor to a judge's decision to step down (Lustig et al. 2008).

What do We Recommend? Efforts to address the asylum backlog in the US should start with creative media campaigns to build social awareness about the magnitude of the hidden burden caused by the extended delay in the resolution of these situations. Enhanced public awareness may create support for immigration policy change. Comprehensive reform of the US immigration system is needed to ensure that all asylum applicants are treated with dignity and have all their rights upheld. Asylum proceedings must be streamlined to reduce the length of time to adjudicate cases (e.g., requests for sending documents for forensic examination must be made in a timely manner). We advocate for a humanitarian approach that prioritizes family reunification in processing asylum cases. This

would result in those older cases involving unmarried children outside the USA to be processed sooner than those of single individuals who are not parents. In addition, we recommend adding an explicit priority⁴ category to process cases with family back home who are in danger of persecution by the authorities.

The number of immigration judges and asylum officers should be dramatically increased to reduce the caseload for each adjudicator and, in turn, the backlog. Information focused on the impact of trauma on child and adult migrants should be integrated into the mandatory training that immigration judges and asylum officers receive. Furthermore, in recognition of the challenges implicit in working with traumatized individuals, judges and asylum officers should receive training on the potential impact of the trauma on them (vicarious trauma). They should learn how vicarious trauma can affect their own well-being, and be taught self-care strategies that may improve their ability to continue in their work over time.

It is past time for significant reform to the US immigration system. The rights and well-being of vulnerable children—both those who have made the dangerous journey to arrive in the USA, and those who have been left behind by parents who plan to reunify their families after obtaining legal status—hang in the balance. Certainly, all asylum seekers are suffering. Their rights to work, to the highest standard of obtainable health, to family life, and to family unity and reunification are being violated. The rights of their family members back home to be protected as well as the promotion of the best interests of their children is sometimes being compromised.

In the absence of increased resources and meaningful structural changes to the system, policy makers and adjudicators are forced to make untenable choices. Do they give priority to processing the unaccompanied children or to those applicants who are separated from their children? And what about the rights of those who have already been waiting many years for their case to be resolved? In accordance with the Convention on the Rights of the Child and the principle of the best interests of the child, it is important to create a priority for children. The priority for children is vital, but it is not a sufficient response to the asylum backlog in the USA. We must expand our capacity to address asylum cases so that other victims of political violence—who may already have been waiting for years—will not have to wait years longer.

How Social Workers Can Contribute to the Solution Social workers can be involved in creating a more just immigration

⁴ At present, these cases are expedited on an ad hoc rather than systematic basis. Applicants would need to provide evidence that their family members are in danger of persecution. This may prove challenging to document in some cases as well as lead to the need to authenticate the evidence. If it were possible to prevent additional persecution by expediting these cases, however, this would be an important mechanism to further human rights and prevent additional suffering.

system in the USA and around the world—and many are already doing so.

Social workers can bring awareness to the problems faced by asylum seekers in the USA and their families abroad. They can create and/or participate in social media campaigns to bring attention to children and families who are waiting for their cases to be heard. Social workers can collaborate with local agencies who serve these populations to tell the stories of asylum seekers. The US Office of Refugee Resettlement currently funds 35 torture treatment centers which serve this population and are usually eager for volunteer assistance. Social workers can also pressure their local and national professional organizations (e.g., the National Association of Social Workers in the USA) to take a stand in support of reducing the immigration backlog, and they can urge their local and national elected officials to change immigration law. An interdisciplinary group of professionals (including social workers) from the National Consortium of Torture Treatment Programs (NCTTP) recently advocated for exactly such reform. Social workers who have been elected to local, state, and federal office can also push for legislative reform.

Social workers can get involved professionally by working with this population. Working with asylum seekers offers many opportunities for interdisciplinary practice as well as practice with trauma and culture. Skilled social workers can conduct forensic evaluations of asylum seekers and testify about their findings and the impact of asylum delays on families who experience lengthy separations. Working with this population also provides social workers with more information with which to advocate. Recently, a social worker working in an immigration detention center in Texas left her job because of the human rights violations she observed while on duty (Lazare 2015). She used her voice in a powerful way to make citizens and legislators aware of the problems faced by asylum seekers.

Social workers are also in an excellent position to become involved with burnout prevention and trauma-informed practice training for asylum officers and immigration judges. Social workers are aware of burnout and can teach judges the self-care skills they need to take care of themselves.

Conclusion It is our position that the state of affairs in the asylum system is so problematic that choices are being made that should not be made. We should not have to make these draconian decisions whose consequences impede the realization of human rights for vulnerable persons who seek their human right to international protection and safety. We call for an immigration policy in the USA that does not focus on the needs and rights of one group of vulnerable children at the expense of another. It is our argument that our current crisis-driven immigration policy privileges the needs of vulnerable individuals in the current spotlight at great expense to those who are waiting in line. Sadly, as we have seen, the human

rights of all of these asylum seekers in the USA are at risk. Ultimately, what is needed is preventive efforts to address the root causes that promote the forced migration of people, thereby creating peaceful and better life conditions in their home countries and the protection of human rights.

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